

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF VILLASEÑOR VELARDE et al. V. GUATEMALA
JUDGMENT OF FEBRUARY 5, 2019
(Merits, Reparations and Costs)

In the case of *Villaseñor Velarde et al. v. Guatemala*,

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

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

also present

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

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

* Judge Ricardo Pérez Manrique did not take part in deliberating and signing this judgment because the case was already at the stage of judgment when he joined the Court on January 1, 2019.

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I INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. The case is submitted to the Court.- On March 15, 2017, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Court the case of María Eugenia Villaseñor Velarde et al. v. the Republic of Guatemala (hereinafter "the State" or "Guatemala"). The Commission stated that the case involved threats and acts of intimidation against María Eugenia Villaseñor (hereinafter "Mrs. Villaseñor" or "the judge") while she was serving as a judge, during the 1990's through 2013, as well as the lack of effective measures of protection and investigation into the events to identify and punish those responsible. The Commission held that the actions against Mrs. Villaseñor were associated with her status as a judge and that the facts of the case were detrimental to the principle of judicial independence.

2. Proceedings before the Commission.- The case proceeded before the Commission as follows:

a. *Petition.*- On September 22, 1994, the Commission received the initial petition¹ and assigned it case number 11.388.

b. *Precautionary measure.*- On July 21, 1994, the Commission was asked to grant precautionary measures on behalf of Mrs. Villaseñor and two other judges from the Third Court of Appeals, who had been receiving threats. On July 25, 1994, the Commission asked the State to adopt precautionary measures.² On July 26, 2013, it let Mrs. Villaseñor know that it had decided to lift the precautionary measures.

c. *Report on Admissibility and Merits.*- On December 18, 2002, the Commission notified the parties that it had decided to defer its treatment of admissibility of the petition until it decided on the merits, invoking article 37(3) of its Rules of Procedure then in force. On November 29, 2016, the Commission approved the Report on Admissibility and Merits No. 46/16 (hereinafter "Merits Report"), drawing a set of conclusions³ and extending several recommendations to Guatemala.⁴

d. *Notification of the State.*- The Commission served the State notice of the Merits Report on December 15, 2016, giving it a two-month term to report on compliance with the recommendations.

e. *Submission to the Court.*- On March 15, 2017, the Commission submitted to the Court "the full body of facts and violations" described in the Merits Report.

3. *Petitions by the Commission.*- The Commission asked this Court to find and declare the international responsibility of the State for violations set forth in the Merits Report and

¹ The petition was lodged by the Human Rights Office of the Archdiocese of Guatemala. In a communication dated June 13, 2013, Mrs. Villaseñor indicated that she would continue representing herself as petitioner in this case (hereinafter, the term "the petitioners" will be used in reference to all those who intervened as petitioners before the Commission).

² The Commission asked the State to adopt measures as "necessary to safeguard the life, freedom and integrity of Mrs. Villaseñor and two judges who, at that time, sat with her on the Third Court of Appeals (cf. communication by the Commission to the State, July 25, 1994 (evidence file, appendix 20, Merits Report, folio 304).

³ The Commission concluded that Guatemala is responsible for violating the rights to personal integrity, judicial guarantees and judicial protection, enshrined respectively in article 5(1), 8(1) and 25(1) of the American Convention on Human Rights, in conjunction with the obligations set forth in article 1(1) thereof.

⁴ The Commission made the following recommendations to the State: (a) provide full moral and material redress for the violations found in the Merits Report, (b) develop and complete a full, independent, impartial, effective, expeditious investigation, (c) order relevant administrative, disciplinary or criminal measures for actions or omissions by State officers, (d) implement measures for non-recurrence.

order Guatemala to take the measures of reparation recommended therein (*supra* footnotes 3 and 4).

4.

II PROCEEDINGS BEFORE THE COURT

5. *Notification of the State and Mrs. Villaseñor.*- The State and Mrs. Villaseñor were notified on April 19, 2017 that the case had been submitted.

6. *Designation of inter-American public defenders.*- Mrs. Villaseñor asked on April 25, 2017 to have an inter-American public defender appointed. Following the necessary communications with the Inter-American Association of Public Defenders (AIDEF), the General Coordinator of the Association notified the Inter-American Court on May 10, 2017 that two individuals had been appointed as inter-American public defenders, although they were later replaced⁵ (hereinafter the different individuals who served in this capacity will be referred to generally as "inter-American public defenders" or "the representatives").

7. *Brief of pleadings, motions and evidence.*- On June 26, 2017, the representatives filed their brief of pleadings, motions and evidence (hereinafter "pleadings and motions brief"), in keeping with articles 25 and 40 of the Rules of Procedure of the Court. They agreed in substance with the pleadings of the Commission and asked the Court to declare violation of the same articles of the Convention cited by the Commission (*supra* footnote 3). They further argued violation of the right to privacy enshrined in Article 11 of the Convention. Finally, they asked that the State be ordered to adopt several measures of reparation. They requested access to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter "Fund," "Victims' Fund" or "Assistance Fund").

8. *Respondent's answer.*- The State submitted its answering brief to the Commission's submission of the case on September 6, 2017, and its comments on the pleadings brief (hereinafter "response") under the terms of article 41 of the Rules of Procedure of the Court. It objected to the claims of violation and replied to the requests for reparation.

9. *Public hearing.*- The President of the Court (hereinafter "the President") issued an Order on April 24, 2018, convening the State, the representatives and the Commission to a public hearing on the merits and possible reparations and costs and to hear the final oral pleadings of the parties and the final oral observations of the Commission on these items. He also summoned Mrs. Villaseñor to make a statement at the hearing and provided for the use of the Victims' Fund. Finally, he called for a written statement by an expert witness.⁶ The public hearing took place on May 24, 2018, during the Court's 124th Regular Session at its seat.⁷

⁵ The appointment was given first to Mr. Reyes Ovidio Girón Vázquez and Mrs. Suyapa Concepción Torres Aguilera. A communication from AIDEF on April 6, 2018, advised the Court that the appointments of these persons had been "set aside," and the position would be taken instead by Juana María Cruz and Isabel Penido de Campos Machado.

⁶ The Commission reported on May 3, 2018, that expert witness Leandro Despouy would be unable to attend the hearing due to reasons of health. On instructions by the Court President, the expert witness was authorized to submit his statement in writing. It was received on May 21, 2018.

⁷ The following appeared in the hearing: (a) for the Inter-American Commission, Esmeralda Arosemena de Troitiño, first vice-president of the Commission, Christian González Chacón, advisor, and Selene Soto Rodríguez, advisor; (b) in representation of the alleged victims, Isabel Penido de Campos Machado and Juana María Cruz Fernández, inter-American public defenders, and (c) for the State, Jorge Luis Borrayo Reyes, head of delegation, president of the President's Coordinated Commission for Presidential Policy on Human Rights (hereinafter COPREDEH); Felipe Sánchez González, executive director of COPREDEH; Lourdes Mylene Woolfolk Contreras, COPREDEH director for monitoring international human rights cases; Delia Marina Dávila, president of the Criminal Chamber of the Supreme Court of

10. *Amici curiae*.- The Court received an *amicus curiae* on June 8, 2018 from the International Human Rights Studies Group (GEDI-DH) of the Federal University of Minas Gerais, Brazil⁸.

11. *Final written pleadings and observations of the Commission*.- On June 25, 2018, the representatives submitted their final written pleadings, the Commission, its final written observations, and the State, several attachments. The representatives filed their comments on the attachments presented by the State on the following July 9, and the Commission reported that it had no comments on the documents.

12. *Outlays in application of the Assistance Fund*.- The Registrar of the Inter-American Court of Human Rights (hereinafter "the Registrar"), on instructions from the President, sent information to the State on September 4, 2018 concerning outlays made under the fund in the instant case, and in keeping with the provisions of article 5 of the Rules for the Operation of the Victims' Legal Assistance Fund, granted the State a term to submit any comments it deemed appropriate. The State submitted its observations on September 24, 2018.

13. *Evidence incorporated by the Court on its own motion and evidence to facilitate adjudication of the case*.- On December 10 and 14, 2018, the registrar, on instruction from the president, sent the Commission and the parties documents that this Court would add as evidence on its own motion and requested the State to send evidence to facilitate adjudication of the case (*infra* par. 18 and footnote 10). The parties submitted their observations on the evidence the Court had adduced on December 18, 2018. The State submitted its evidence to facilitate adjudication of the case on January 4, 2019, and the representatives lodged their comments on January 16, 2019 (*infra* par. 18 and footnote 10). The Commission offered no observations.

14. *Deliberation of the instant case*.- The Court began its deliberations on this judgment on January 30, 2019.

III JURISDICTION

15. The Court is competent to hear the instant case pursuant to article 62(3) of the Convention, as Guatemala has been a State Party to the American Convention on Human Rights since May 25, 1978 and recognized the contentious jurisdiction of the Court on March 9, 1987.

IV PRELIMINARY CONSIDERATION ON THE FACTS OF THE CASE

16. The **Commission** noted in its Admissibility and Merits Report No. 46/16 that certain items that ran in the press in 2014 and 2015, as well as the alleged "irregular dismissal" of

Guatemala; Juan Carlos Orellana Juárez, Ambassador of Guatemala in Costa Rica; Verónica Jiménez, assistant director of human rights for the Guatemalan Foreign Ministry, and Minor Alfredo Aguilar, from the Office of the State's Attorney for Human Rights under the Public Prosecutor of Guatemala.

⁸ The brief was signed by Professor Roberto Luiz Silva and offered views on judicial independence and the duties derived from this principle, the need to protect judges handling cases of human rights violations, judicial independence "with a gender perspective," and the importance of transitional justice as a mechanism for judicial independence.

Mrs. Villaseñor from her position as General Supervisor of the Courts, are not associated with the central object of the case, and therefore they did not consider them among the facts examined in the analysis of the merits. By contrast, the **representatives** stated that the Court should examine these facts, as they are mentioned in the Merits Report and were cited in the procedure before the Commission and in the pleadings and motions brief. The **State** held no position as to whether these facts fit into the corpus of facts in the case.

17. The **Court** examined the Merits Report and concludes that the Commission's body of facts in the case did not include the alleged "dismissal" of Mrs. Villaseñor in 2013 or the press reports from 2014 and 2015. The Commission submitted to the Court the facts detailed in paragraphs 41 through 109 of the Merits Report, covering circumstances that, as stated, occurred during the 1990s and through 2013 and that were associated with the work of Mrs. Villaseñor in her capacity as a judge. The alleged facts of her "dismissal" from the other position and those involving the press reports from 2014 and 2015 were not admitted by the Commission and were not examined in the Merits Report, and therefore they were not submitted to the cognizance of this Court. Therefore, the Court will not examine them and will not consider arguments regarding them.

V EVIDENCE

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

18. The Court received documents submitted as evidence by the Commission and the parties, together with their main briefs (*supra* par. 2, 6 and 7). It also received documents attached to the final written pleadings of the State (*supra* par. 10).

19. In the instant case, as in others, this Court admits documents submitted within established time limits by the parties and the Commission, absent any challenges or objections to their allowance.⁹ It also deems valid the addition of documentary evidence requested on its own motion, and further evidence to facilitate adjudication as requested of the State and submitted accordingly (*supra* par. 12).¹⁰

⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, par. 140, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 371, par. 49.

¹⁰ The following documents were added to the case file on the Court's own motion: (1) Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society, signed in Mexico D.F., September 19, 1996; (2) Commission for Historical Clarification. Volume II. "Human Rights Violations and Acts of Violence." *Guatemala Memory of Silence*. Guatemala, 1999; (3) Human Rights Committee, OHCHR and Centro de Derechos Humanos, University of Santiago, Chile. Compilation of final observations on the countries of Latin America and the Caribbean 1977-2004. Guatemala, April 3, 1996, including observations on Guatemala, August 27, 2001 (Doc. CCPR/CO/72/GTM) and April 3, 1996 (Doc. CCPR/C/79/Add. 63); (4) National Commission to Monitor and Support the Strengthening of Justice. "Una Justicia para la Paz" (justice for peace). El proceso de implementación 1998-2004. Guatemala City, Guatemala, 2011, and (5) *Humans Rights First. Violencia contra jueces y fiscales en Guatemala 2008*. Guatemala City, Guatemala, July 28, 2008. The **representatives** expressed their agreement with the inclusion of these documents. The **State** objected, arguing that they were unrelated to the specific case at hand. The **Court** decided, nonetheless, to include the documents listed, limiting their relevance to points pertaining to the situation surrounding the case. The **Court** also admitted the information submitted by the **State** concerning the unit on crimes committed against justice employees attached to the Human Rights Prosecutor (hereinafter "the Unit"), requested as evidence to facilitate adjudication of the case. The **representatives** submitted observations on this information along with their view that there was no evidence on the alleged relevance of the Unit. They stated for the record that, depending on the content of the Court's judgment on the instant case, in particular on the measures of redress (*infra*, par. 161), it would not be necessary for the Court to rule on the parties' views concerning the Unit.

20. On June 22, 2018, the **State** submitted its final written pleadings, along with 10 documentary attachments.¹¹ On July 9, 2018, the **representatives** lodged their observations on the attachments filed by Guatemala. They deemed that the document should not be admitted, with the exception of Appendix 8, as they were time-barred and had not been requested. Appendix 8, in their view, did make reference to a supervening fact and could be admitted. The **Commission** stated that it had no comment on the attachments submitted by the State in its final written pleadings.

21. The **Court** notes that Appendix 2 submitted by the State was already included in the case file, and therefore it is not necessary to hold on the admissibility of its being submitted along with the final pleadings. It further notes that Appendix 8 does indeed refer to a supervening fact and agrees to admit it. Appendix 10 is admitted because it responds to questions asked by the Court in the public hearing. The submission of the other documents attached to the State's final written pleadings is time-barred, under the terms of article 57(2) of the Rules of Procedure and was not requested, and therefore, these documents are not admitted.

(B) Admissibility of testimonial evidence by the expert witness

22. The Court heard a statement by María Eugenia Villaseñor Velarde in the public hearing and received a written affidavit submitted by expert witness Leandro Despouy. The Court finds admissible the statement rendered by Mrs. Villaseñor in the public hearing and the expert opinion rendered via sworn statement, as they are consistent with the purpose outlined by the President in the subpoena contained in the Court's Order (*supra* par. 8).

VI FACTS

23. The central facts in this case entail a series of claims about events that, as stated, occurred in the 1990s and through 2013. These events allegedly created a situation of danger for Mrs. Villaseñor and her family, associated with her position as a judge. The corpus of facts in the case also includes actions by the State in the face of these events. The facts were cited

¹¹ The State submitted the following documents as attachments to its final pleadings: Appendix 1: REF. EXP. ORD. GUA. 361. Date February 2, 2009. Verification performed by an officer from the Civil and Political Rights Section, on the status of file 001-2007-125364, undertaken in response to the complaint brought by Mrs. Villaseñor; Appendix 2: Date March 12, 2009. REF. EXP. ORD. GUA. 361-2007/DCP. Document from the Human Rights Ombudsman on the case file concerning the complaint brought by Mrs. Villaseñor; Appendix 3: Date June 24, 2011. MP001/2007/125364, Item 116-2008, Official fifth request by the Office of the Public Prosecutor to dismiss case MP001/2007/125364, item 116-2008; Appendix 4: Process 09012-2008-00116, MP001-2007-125364. Date June 10, 2011. Communiqué on holding a unilateral hearing, with the request by the Assistant Human Rights Prosecutor, Section Unit against Justice Operators, dismissing the process identified; Appendix 5: MP001-2007-125364. Date December 27, 2013. Statement by the Office of the Public Prosecutor declaring dismissal in the central office of the prosecutor of the complaint by Mrs. Villaseñor of the crime of threats and coercion; Appendix 6: MP001/2007/125364. Date April 23, 2014. Notification to Mrs. Villaseñor of the dismissal in the central office of the prosecutor of the complaint lodged in case file MP001/2007/125364; Appendix 7: June 3, 2014. Office of the Public Prosecutor sends notice to the Second Division of the First Criminal Court on Drug Crimes and Crimes against the Environment of Quetzaltenango, department of Quetzaltenango, that on December 27, 2013, the Office of the Public Prosecutor dismissed complaint MP001/2007/125364; Appendix 8: Case file 2925-2017, Constitutional Court, upholding the judgment appealed by Mrs. Villaseñor; Appendix 9: Date March 13, 2013. Print and electronic file from the Human Resources System of the Registrar of the Guatemalan Supreme Court, C.A.; Appendix 10: Supreme Court, report requested by COPREDEH concerning the case of Attorney María Eugenia Villaseñor Velarde and Responses to the Inter-American Court of Human Rights on the questions asked in the hearing on May 24, 2018, in the Case of Villaseñor et al. v. State of Guatemala.

by the parties or the Commission and are described in greater detail in the evidence adduced.¹²

24. This section will first discuss circumstances present in the context surrounding the case. It will then describe the relevant information about Mrs. Villaseñor, her family members and her judicial work, the actions described as “intimidation” (*infra* footnote 44), the investigation of these facts and the security measures taken.

(A) Context of external pressures in the judicial system

25. As the Court examines this case, it will consider various sources that have pointed to a difficult situation in the system for the administration of justice at the time the facts occurred, particularly concerning acts of intimidation against justice operators. This can be outlined as follows.

26. The truth commission (Commission for Historical Clarification)¹³ found that prior to 1996, judges, attorneys and employees of the justice system were being executed arbitrarily, arousing fear among justice operators and leading to greater inaction by the courts, resulting in impunity.¹⁴ That year, the United Nations Human Rights Committee found that members of the judiciary in Guatemala had received death threats on several occasions, and some were killed, and regretted that no effective measures had been taken to prevent the recurrence of such actions.¹⁵

27. The peace agreements were signed that same year, putting an end to the armed conflict in Guatemala.¹⁶ The agreements proposed a body of reforms to the judicial system¹⁷ and made recommendations on codifying crimes of threats and coercion against judicial officers, for which particularly severe punishment would apply.¹⁸ A “public declaration” released on February 26, 1997 by the director of the United Nations Verification Mission in Guatemala (hereinafter “MINUGUA”) nevertheless expressed several concerns, including that the acts of “violence” that needed to be “eradicated” in Guatemala included “rhetoric containing violent statements against judges who apply the Constitution and honor international commitments.”¹⁹ Furthermore, the Commission to Strengthen Justice²⁰ pointed to a period from 1998 to 2004 and identified hindrances to judicial procedures including threats to witnesses, attorneys and other members of the justice system. It stated, “[t]his

¹² On different occasions, the documents submitted as evidence specify statements by the applicants or Mrs. Villaseñor, as well as the State.

¹³ The truth commission, or Commission for Historical Clarification (CEH), was created under the Oslo Agreement on June 23, 1994, to shed light on the human rights violations and acts of violence that had caused suffering in the population of Guatemala, associated with the armed conflict.

¹⁴ Commission for Historical Clarification (1999). Volume II, *supra*, pg. 396.

¹⁵ Human Rights Committee. Observations on Guatemala. April 3, 1996, *supra*, par. 18.

¹⁶ *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs.* Judgment of November 25, 2003. Series C No. 101, par. 134.9 and *Case of Coc Max et al. v. Guatemala, supra. Merits, Reparations and Costs.* Judgment of August 22, 2018. Series C No. 356, par. 27.

¹⁷ A set of constitutional and legislative reforms was proposed along these lines, to ensure free and equal access to justice and introduce a judicial career path and public criminal defense, as well as criminal reforms that would emphasize crimes of greater social impact and guarantee human rights.

¹⁸ Agreement on strengthening civil power and the operation of the army in a democratic society, *supra*, commitment 13.

¹⁹ Document entitled “Public Declaration by the director of MINUGUA [...] in the publication of the sixth report to the General Assembly of the United Nations,” February 26, 1997 (evidence file, proceedings before the Commission, folios 483 and 484).

²⁰ The National Commission to Monitor and Support the Strengthening of Justice is part of the so-called institutional structure for the peace process, created under Governing Agreement Number 221-97; at that time, it was known as the “Commission to Strengthen Justice.”

conduct [wa]s quite widespread, as reflected in the frequent requests for protection of judges and justices."²¹

28. Similarly, 57 cases of threats against judges were recorded from 2000 to 2001, according to the report of the United Nations Special Rapporteur on the independence of judges and lawyers (hereinafter "the Rapporteur").²² The Rapporteur also emphasized risks faced by judges in matters involving human rights violations in Guatemala and sustained that the State offered them no protection.²³

29. Moreover, in 2001, the Inter-American Commission found that one of the most serious problems for the administration of justice in Guatemala was the "widespread situation of threats and attacks against victims or family members, witnesses, lawyers and prosecutors and judges to influence judicial proceedings" and that the "severity of this problem is exacerbated and perpetuated by the lack of effective response by the State."²⁴ That same year, the United Nations Human Rights Committee expressed "concern" because "particularly" members of the judiciary were being intimidated and even killed, and "regret[ted]" the lack of measures to prevent the repetition of such acts.²⁵

30. The Commission reported that during the period from 2002 to 2012, 640 judges and magistrates were victims of threats and intimidation, 27 were assaulted, five were abducted, and eleven administrators of justice were murdered.²⁶ The Rapporteur stated that seven justice operators were murdered in 2008, and "the attacks on justice operators continued to be a cause of great concern," in view of the fact that "no progress has been reported in investigating and prosecuting these crimes."²⁷ The Human Rights Ombudsman of Guatemala emphasized in 2009 that "the conditions of violence affecting [Guatemala] have constantly targeted justice operators."²⁸

²¹ National Commission to Monitor and Support the Strengthening of Justice, "Una Justicia para la Paz," El proceso de implementación 1998-2004, *supra*, pp. 55 and 56.

²² UN. Report of the Special Rapporteur on the independence of judges and lawyers. Param Coomaraswamy. Guatemala. January 6, 2000. par. 47.

²³ UN. Report of the Special Rapporteur on the independence of judges and lawyers. Param Coomaraswamy, *supra*, par. 48.

²⁴ Inter-American Commission, Fifth Report on the Situation of Human Rights in Guatemala. OEA/Ser.L/V /11.111, Doc. 21 rev., April 6, 2001. par. 47.

²⁵ Human Rights Committee. Observations on Guatemala. August 27, 2001, *supra*, par. 21. As to whether the situation continued in later years, in addition to the information given below, it is relevant to point to the well-known fact that in 2006, the International Commission against Impunity in Guatemala (hereinafter "CICIG") was set up and stated that its purpose was to address the ineffectiveness of justice institutions in the face of common and organized crime. In particular, it cited background information on the implementation of the commission and made reference to the existence of "mafia-like networks [that] hold powerful influence in various institutions of the [S]tate," and information on "threats against human rights defenders and investigating officers from the justice sector assigned to political crimes committed during the war." It also stated, "[i]n particular, the institutions of the justice and security sectors have been penetrated by these mafias" (Cf. Official website of the CICIG: <https://www.cicig.org/cicig/antecedentes/>. Websites cited in this judgment were consulted most recently on the date the judgment was delivered, February 5, 2019).

²⁶ Inter-American Commission on Human Rights. *Guarantees for the independence of justice operators. Towards strengthening access to justice and the rule of law in the Americas*. OEA/Ser.L/V /11. Doc. 44. December 5, 2013, par. 155. Violence also affects other justice operators. In this regard, the State of Guatemala informed the Commission that, from 2010 to 2013, it had received 124 reports of crimes committed against public defenders. This information, along with other sources cited in this note, does not clarify or differentiate by gender; it does not indicate what share of these incidents affected male or female judges.

²⁷ UN. Report of the Special Rapporteur on the independence of judges and lawyers. Leandro Despouy. Guatemala. October 1, 2009. par. 78 and 79. Along the same lines, *Human Rights First* expressed concern about the selective violence against justice operators in Guatemala, particularly those hearing high-impact cases, in 2007 and increasing in 2008 (cf. *Human Rights First*. *Violencia contra jueces and fiscales en Guatemala*, *supra*).

²⁸ Order by the Human Rights Ombudsman, March 12, 2009 (evidence file, appendix 21 to the Report on the Merits, folios 328 to 330).

31. According to expert witness Leandro Despouy, in his statement to the Court (*supra* note 6 and par. 21), information provided by the State indicated that 54 complaints had been received for crimes against prosecutors in 2010, 57 in 2011, and 61 in 2012. The expert said that the State of Guatemala also informed the Commission that a total of 147 complaints had been lodged from 2010 through 2013 for crimes against public defenders.

32. He added that while the authorities had taken certain very encouraging measures, such as creating the Unit on Crimes against Justice Operators, at present the violations of international standards of justice for the defense of justice operators continued to occur. This Court, in considering violations of this kind, emphasizes the assessment given at the time by the Commission to Strengthen Justice, to the effect that “the degradation of the administration of justice” due to acts of intimidation “undermines the effective exercise of the guarantee of due process” and independence and impartiality in judicial proceedings.²⁹

33. The Court, in view thereof, points to various sources indicating that, during the 1990s and at least until 2012, Guatemala was in a situation of insecurity for justice operators, who could be exposed to various acts of intimidation or aggression, associated with their work, including homicide; this compromised real conditions of judicial independence, and there was no effective response by the State to guarantee their rights.

(B) Facts of the case

B.1 Mrs. Villaseñor, her work in the judiciary, and her family members

33. María Eugenia Villaseñor Velarde was born in Guatemala on September 25, 1944.³⁰ Her family members, alleged victims in the case, are: her daughter, Beatriz Eugenia Villaseñor Velarde, her brother, Francis Antonio Villaseñor Velarde, and her sister, Rosa Antonieta Villaseñor Velarde.³¹

34. During and after the 1990s, Mrs. Villaseñor worked as a judge in the Guatemalan judiciary, holding a variety of positions:)a) judge in the “First Court of Criminal Investigation” in the early 1990s;³² (b) elected by Congress as “regular judge on the Court of Appeals,” April 1, 1992;³³ (c) elected by Congress as “alternate judge on the court of appeals,” October 9,

²⁹ National Commission to Monitor and Support the Strengthening of Justice, “Una Justicia para la Paz.” El proceso de implementación 1998–2004, *supra*, pp. 55 and 56.

³⁰ Cf. Mrs. Villaseñor’s Guatemalan passport (merits file, folio 479).

³¹ The Commission named these individuals in paragraph 50 of the Report on the Merits under the section “Proven facts,” adding that the information was based on Mrs. Villaseñor’s explanations to the Commission. The representatives named these same persons as alleged victims and Mrs. Villaseñor’s family members.

³² By agreement of the Supreme Court on January 6, 1989, Mrs. Villaseñor was “transferred” to the position of “First Judge in the Court of Criminal Investigation,” and by a similar act on May 11, 1992, she was “[t]ransferred to the position of Second Judge on the First Court of Criminal Investigation.” Prior to those dates, from April 23, 1979, when she was appointed “trial judge,” Mrs. Villaseñor had worked in that position in various judicial bodies and departments of Guatemala (Cf. certification of July 25, 2017, issued by the Registrar of the Supreme Court of Guatemala. Evidence file, proceedings before the Commission, folios 1303 to 1305.)

³³ She was subsequently reelected to the same position: October 12, 1994 and October 12, 1999. Following these elections, she was “designated” by the Supreme Court to a variety of positions: “Second Judge in the Tenth Division of the Court of Appeals,” April 9, 1992; “Second Judge in the Third Division of the Court of Appeals,” February 17, 1993; “First Judge in the Ninth Division of the Court of Appeals,” October 13, 1994; “First Judge in the Tenth Division,” March 4, 1998; “First Judge in the Third Division of the Court of Appeals,” October 13, 1999, and “Chief Justice of the Fifth Division of the Court of Appeals for criminal offenses, drug crimes and crimes against the environment of Quetzaltenango”, October 13, 2004 (cf. certification of July 25, 2017 issued by the Registrar of the Supreme Court of Guatemala, *supra*.) At the same time, according to information that the applicants submitted to the Commission in 2000, Mrs. Villaseñor was elected president of the Association of Judges and Justices of the Judiciary, “an

2009.³⁴ Mrs. Villaseñor was named General Supervisor of the Courts in March, 2010.³⁵ The representatives stated that in 2014, Mrs. Villaseñor concluded her career in the judiciary.³⁶

B.2 Noteworthy actions by Mrs. Villaseñor in her work as a judge

35. The parties and the Commission made reference to certain specific judicial proceedings by Mrs. Villaseñor and to her other activities that they considered significant. They are outlined below.

36. In July 1991, Mrs. Villaseñor, sitting in for the “regular judge on another court” to consider the investigation into the death of Myrna Mack Chang, ordered the arrest of a certain person.³⁷

37. That same year, she took part in a proceeding in which high-level government officials were charged with over-assessing the purchase price of three helicopters, in what was known as the “Sikorski case.”³⁸

38. The judge was sitting on the Court of Appeals when it heard the case on the death of student July Cu Quim. It upheld an earlier conviction; then, on December 20, 1995, the ruling by the Court of Appeals was upheld by the Supreme Court.³⁹

39. Mrs. Villaseñor took part in a draft bill to reform the law of the Prosecutor General in 1994, together with members of the Mack Foundation.⁴⁰

40. Mrs. Villaseñor published a book, also in 1994, entitled “Myrna Mack y su encuentro con la justicia” (Myrna Mack and her encounter with justice), with information on the death of this human rights defender, details about the resulting judicial process, and the subsequent work of her sister. It also gave historical references on the judiciary in 1980 and details about the murders of judges.⁴¹

autonomous organization of [...] judges [and] justices to protect their collective interests” (cf. communication from the applicants to the Commission, July 3, 2000, evidence file, appendix 6 of the Report on the Merits, folio 59).

³⁴ Following this election, on October 13, 2009, she was appointed by the Supreme Court as “alternate judge in the Fifth Division of the Court of Appeals for criminal offenses, drug crimes and crimes against the environment” (cf. certification of July 25, 2017, issued by the Registrar of the Supreme Court of Guatemala, *supra*).

³⁵ This fact was noted by the representatives in the pleadings brief (merits file, folios 110 to 118).

³⁶ Cf. Pleadings brief, *supra*.

³⁷ Mrs. Villaseñor explained that, “I first hear[d] the case of the death of the anthropologist Myrna Mack in 1990 [over the course of] 20 days, to cover vacation leave; and also over the second 15-day stage, because the regular judge was on marriage leave.” She said it was “in this second stage of hear[ing] this case” when “[she] ordered the arrest of the person who was suspected and later convicted” (statement to the Court by Mrs. Villaseñor, in public hearing).

³⁸ Cf. Communication dated October 4, 1994 by the Commission for the Defense of Human Rights in Central America (hereinafter “CODEHUCA”) addressed to the Inter-American Commission (evidence file, appendix 2 to the Report on the Merits, folios 41 to 43), and press release entitled “Justice Villaseñor considers going into exile,” September 1, 1994 (evidence file, appendix 8 of the Report on the Merits, folio 63).

³⁹ Cf. Communication from the petitioners to the Commission on January 5, 1996 (evidence file, appendix 12 to the Report on the Merits, folios 86 to 89). The petitioners stated in this submission that “the acts of intimidation against Mrs. Villaseñor beg[an...]” on December 20, 1995. They made reference in this communication to “July Cu Quim,” while in the pleadings brief, the representatives mentioned “July Cu Quin”. This judgment will use the name as in the first citation.

⁴⁰ Cf. Communication of October 4, 1994 from CODEHUCA, *supra*.

⁴¹ Cf. <http://www.worldcat.org/title/myrna-mack-y-su-encuentro-con-la-justicia/oclc/31358110> (link to the Internet document cited in the Report on the Merits) and a communication on November 23, 1994 from the applicants to the Commission (evidence file, appendix 4 to the Report on the Merits, folios 51 to 53).

41. Prior to January 1996, Mrs. Villaseñor had sat as a judge in the Third Division of the Court of Appeals and heard the case, "Hunapú Action Plan," which led to the conviction of agents from a task force of the Guatemalan military.⁴²

42. In January 1997, Mrs. Villaseñor took part in delivering a judgment that was reported in the news media, reversing a death sentence in consideration of the American Convention.⁴³

B.3 Facts described as acts of intimidation against Mrs. Villaseñor⁴⁴

43. Following is a narration of the factual circumstances that have been placed before this Court and that were associated with Mrs. Villaseñor's work as a judge.. The evidence lodged with the Court concerning some of these incidents includes statements that the parties have made directly to the Commission or the Court, as well as reports or complaints filed with national authorities. The Court would clarify that it will hold the expressions themselves as proven, but not necessarily the actual events narrated therein. These statements or acts of expression will be described in the rest of the main text and in the footnotes.

44. The Court also notes that there are proportionally more statements about acts of intimidation in 1994 than in any of the later years. Therefore, the Court will first discuss the statements of fact concerning 1994 and later, in the second place, it will examine claims about later years.

B.3.1 Assertions about facts in 1994

45. The case file before the Court shows that, during the time the case was being processed before the Inter-American Commission, statements were made about a number of events said to have occurred in 1994, as described below.

46. Mrs. Villaseñor stated that in 1994, on a date that she was unable specify, the Minister of Defense called one of her family members to report an alleged request by a general for the judge not to "politicize" the investigation into the death of Myrna Mack Chang.⁴⁵ Mrs. Villaseñor narrated the same incident before this Court.⁴⁶

47. *February, March and/or July.*- The judge reported that "in late February and early March" and/or in July, depending on the different statements, a strange man on a motorcycle stole Mrs. Villaseñor's belongings while she was in her vehicle.⁴⁷

⁴² According to what Mrs. Villaseñor reported to the Commission (Cf. May 7, 2014 brief from the petitioners to the Commission (evidence file, appendix 1 of the Report on the Merits, folios 4 to 39)).

⁴³ Cf. Judgment of the Ninth Division of the Court of Appeals, January 30, 1997 (evidence file, proceedings before the Commission, folios 453 to 464); press report on January 31, 1997 in the newspaper Siglo Veintiuno, "Condenados a muerte se salvan: Sala de Apelaciones modificó la sentencia" (After the death penalty, relief from the Court of Appeals) (evidence file, proceedings before the Commission, folio 472), and brief by Mrs. Villaseñor, March 10, 1997, to the Inter-American Commission (evidence file, appendix 11 to the Report on the Merits, folios 81 to 84).

⁴⁴ The Court takes note that several different kinds of incidents have occurred: threats, statements, press reports, theft of belongings, destruction of goods, stalking, kidnap attempts, physical assault, threatening emails, and more. This judgment will use the term "acts of intimidation" to refer in a general sense to the circumstances described below. The Court gives no opinion on the true intimidatory potential of each incident.

⁴⁵ Cf. Petitioners' brief before the Commission, giving the dates of the event as "August 5 and 11 and September 20, 1999" (evidence file, proceedings before the Commission, folios 663 to 668).

⁴⁶ Cf. Statement by Mrs. Villaseñor before the Court, *supra*.

⁴⁷ Cf. CODEHUCA brief received by the Commission on October 4, 1994, *supra*, stating that Mrs. Villaseñor told CODEHUCA what had happened. Given the statement that the event had occurred in late February and early March, it is not clear whether this was just one incident or two similar occurrences. The brief says that a person on a motorcycle blocked Mrs. Villaseñor's vehicle, that two others came alongside, and that a man stole her belongings while she was in the car. Another document ("Actualización del caso de la magistrada María Eugenia Villaseñor Velarde" (update on the case of Judge María Eugenia Villaseñor Velarde), dated August 5, 1999 (evidence file,

48. *May and/or July.*- Information received by the Commission indicates that on May 20 and/or on July 24, one or several persons broke the lock on Mrs. Villaseñor's vehicle.⁴⁸

49. *July.*- The Commission received information to the effect that the following occurred in the month of July:

- (1) on the fifth or sixth, one or several persons destroyed a tire on Mrs. Villaseñor's car;
- (2) the same thing happened on another occasion sometime between the 15th and the 20th;⁴⁹
- (3) on the ninth and/or 16th, the judge heard "some individuals" talking outside her home, saying, "we have got to kill that old woman," or statements of similar ilk;⁵⁰
- (4) on the 11th, "two men who appeared to be soldiers" attempted to enter the Mrs. Villaseñor's home;
- (5) on the 20th, she received "death threats" on a telephone call;⁵¹
- (6) on the 21st, one of the tires on the vehicle she was driving was punctured;⁵²
- (7) on the 24th, after she parked her vehicle outside the Mack Foundation, several individuals attempted to force the door open,⁵³ and
- (8) in the "weeks prior" to the 25th, there were men "parked suspiciously" in front of her house.⁵⁴

50. *August.*- Statements before the Commission, in one case, and before domestic authorities, in the other, indicate that in August:

appendix 15 to the Report on the Merits, folios 101 to 104)) describes an event of a similar nature, stating that it took place in July, sometime after the fifth. It is therefore unclear whether one of the documents contains a mistaken date, or whether there were one, two or three occurrences.

⁴⁸ The CODEHUCA brief received by the Commission on October 4, 1994 (*supra*) states that this occurred in May. However, a document submitted to the Commission under the title "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde" (update on the case of Judge María Eugenia Villaseñor Velarde) (*supra*) describes a similar incident and states that it occurred "[on] approximately July [24], 1994." It is not clear whether one of the documents contains a mistaken date, or whether they describe two separate incidents.

⁴⁹ Cf. "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*.

⁵⁰ Cf. CODEHUCA brief received by the Commission on October 4, 1994, *supra*, making reference to July 4, 1994. The Commission also noted that it had received information that on the sixteenth of the same month, several persons were heard talking outside Mrs. Villaseñor's house, saying, "we are going to kill that old woman" (communication from the Commission to the State, July 25, 1994 *supra*). Given the differences in dates and expressions, but also considering the similarities, it is not clear whether these were two different incidents or only one.

⁵¹ Cf. CODEHUCA brief received by the Commission on October 4, 1994, *supra*, The Commission said it had received information indicating that on that day, "three telephone calls were received at the Third Division of the Appeals Court [...]. The first two calls were cut off before they could be answered, while [on the] third, they said they would kill [Mrs.] Villaseñor if she did not drop the processes she was handling" (cf. communication from the Commission to the State on July 25, 1994, *supra*).

⁵² Cf. Communication of August 5, 1994 from the Human Rights Office of the Archbishop of Guatemala to the Inter-American Commission (evidence file, appendix 20 to the Report on the Merits, folios 299 to 301).

⁵³ Cf. "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*.

⁵⁴ Cf. Communication from the Commission to the State, July 25, 1994, *supra*. The same thing occurred, as the Commission noted, in injury of another judge, who sat with her (and a third judge) on the Third Division of the Court of Appeals. The Commission also stated that it had received information saying, with reference to the same judge, that on July 17, 1994, "in the house of a relative [...] he had heard a gunshot that hit his car." The Commission's description of this incident was worded in such a way that it was not clear whether the shots had been fired at the judge's car or his relative's car. With respect to these incidents, a press report written on July 18, 1994 stated that the members of the Third Division of the Court of Appeals "who recused themselves from hearing the appeal on the Celis case" "reported" having been victims of "threats," explaining that their vehicles had been shot at, that they had received anonymous telephone calls that their homes were being watched (cf. press report from the Servi-Prensa Centroamericana newspaper, July 18, 1994, "Judges report death threats; vehicles shot by unknown persons" (evidence file, appendix 20, Report on the Merits, folio 324), and likewise, press reports entitled "Death threats against three judges" and "Shots fired at judge who had received death threats," dated July 19 and 20, 1994, respectively (evidence file, appendix 20 of the Report on the Merits, folios 325 and 326, respectively)).

- (1) on a date not specified, "men described by neighbors as appearing to be soldiers" attempted to "break into" the judge's home,⁵⁵ and
- (2) on the 29th, the police officer assigned to protect her home was "accosted by three men," who hurled death threats against "the people who live there," beat him and drugged him, and questioned him about the judge's activities, particularly the Sikorski and Mack cases and her connection with Myrna Mack Chang's sister, and also about Mrs. Villaseñor's daughter.⁵⁶

51. *Prior to September.*- The Commission received information with explanations about circumstances prior to the month of September:

- (1) Reportedly, 30 copies of the book written by Mrs. Villaseñor, "*Myrna Mack y su encuentro con la Justicia*" were "seized" in customs when they were to be shipped from Guatemala to El Salvador.⁵⁷
- (2) Mrs. Villaseñor also stated, without specifying dates, that prior to September, she had received "death threats" and "threats to kidnap [her] daughter, who [at that time] was only two years old."⁵⁸ The judge also described these incidents as "attempted" kidnappings of her daughter.⁵⁹

52. *September.*- The Commission was informed that on September 1, "an anonymous document was circulated" in the Court of Appeals, "denigrating [the] honor and dignity [of Mrs. Villaseñor] and requesting that [she] not be elected to sit on the Supreme Court."⁶⁰ The same day, after the Supreme Court had extended her a 30-day leave of absence, Mrs. Villaseñor left the country.⁶¹ COPREDEH claimed that she had gone to "attend a seminar,"⁶² and Mrs. Villaseñor said it was because of the attempted kidnapping of her two-year-old daughter, and that she remained in Costa Rica until September 30, 1994, when she returned to Guatemala.⁶³

⁵⁵ Cf. "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*. According to the judge's statement, the men were unable to "break into" her home "because a group of young people was nearby."

⁵⁶ Cf. Order by the Human Rights Ombudsman, September 5, 1994 (evidence file, appendix 9 of the Report on the Merits, folios 65 to 68). The Commission was notified that the police officer was released, whereupon he returned to Mrs. Villaseñor's house and told what had happened and that the men who had taken him and beaten him had said, "get out of here because we are going to kill the people who live there." (Petitioners' communication to the Commission, September 20, 1994 (evidence file, appendix 3, Report on the Merits, folios 45 to 49)). Cf. also, reports in *Servi-prensa Centroamericana* entitled, "Villaseñor bodyguard kidnapped, interrogated and beaten," and "Villaseñor security officer beaten and drugged," August 31 and September 1, 1994, respectively (evidence file, proceeding before the Commission, folios 598 and 597, respectively).

⁵⁷ The information received by the Commission indicates that this occurred before September 1. The Commission received a variety of reports: periodical publications, information submitted to the Commission and statements by the Human Rights Ombudsman about Mrs. Villaseñor's claims (cf. CODEHUCA brief received by the Commission on October 4, 1994, *supra*); also a press report, September 16, 1994 entitled "Anatomía de un libro que desató el pánico" (anatomy of a book that set off panic), from the newspaper *Crónica de Guatemala* (evidence file, appendix 20 of the Report on the Merits, folios 171 and 172), and Order by the Human Rights Ombudsman, September 5, 1994, *supra*.

⁵⁸ Cf. Petitioners' brief to the Commission, May 7, 2014, *supra*, and brief from Mrs. Villaseñor to the Inter-American Commission, March 10, 1997, *supra*. Mrs. Villaseñor stated that the death threats were associated with her book *Myrna Mack y su encuentro con la justicia* (*supra*, par. 40).

⁵⁹ Cf. Petitioners' brief to the Commission, May 7, 2014, *supra*.

⁶⁰ "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*.

⁶¹ Cf. Press report entitled "Judge Villaseñor leaves the country," September 2, 1994 (evidence file, appendix 20 of the Report on the Merits, folio 235). The article said that although the reason for her trip was the problem of insecurity, it had been said "officially" that she had gone to attend an academic event.

⁶² COPREDEH report, September 26, 1994 (evidence file, appendix 23 of the Report on the Merits, folios 335 and 336).

⁶³ Cf. Brief from Mrs. Villaseñor to the Inter-American Commission, March 10, 1997, *supra*. Mrs. Villaseñor told the Commission that she returned to Guatemala "with the status of a returned refugee" (cf. "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*).

53. *December.*- In December, two press outlets ran "a letter from one of the alleged defendants [in the 'Plan de Tarea Hunapú' case]," saying that "[the] verdict [was] an act of political revenge by [...the judge]." ⁶⁴

B.3.2 Claims about events subsequent to 1994

54. *December, 1995.*- Information received by the Commission states that in December, 1995:

(1) on the seventh, a report "against" the judge was presented on a television broadcast and reiterated two weeks later in the written press; specifically, a former police officer, making reference to the July Cu Quim case (*supra* par. 38), said that Mrs. Villaseñor had "convicted him as political revenge;" ⁶⁵

(2) on the 20th, ⁶⁶ Mrs. Villaseñor's telephone wire was cut, ⁶⁷ and "the electrical safety wire had some kind of short circuit;" ⁶⁸

(3) on the 21st, "the [same] telephone wire was tied into a knot;" ⁶⁹

(4) after the 20th, because of "acts of intimidation and threats," Mrs. Villaseñor, her daughter, and the person she lived with at that time, moved house twice; ⁷⁰

(5) on the 25th, the judge left a light on in her house when she went out, and when she returned, a neighbor told her that the light in the room had been turned off; ⁷¹

(6) that same evening, Mrs. Villaseñor noticed that a man, who apparently was not alone, climbed onto the balcony outside the window, ⁷² and

(7) on the thirty-first, "suspicious" men began to watch her house. ⁷³

55. *January 1996.*- Documents on file show that on January 17, 1996, a Honduran man told Mrs. Villaseñor that he knew of a plan to kill several judges, including her. ⁷⁴ The judge said that afterward, the man showed up at her work, and she asked to have him arrested, which he was. ⁷⁵

⁶⁴ Cf. Letter from Mrs. Villaseñor to the president of the Judicial Organization and the Supreme Court, January 2, 1996 (evidence file, proceeding before the Commission, folios 688 to 690).

⁶⁵ Cf. "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*. Similarly, Mrs. Villaseñor said that the publications reported that she had convicted 30 police officers, even though the decision had been made by a panel of judges of which she was a member (cf. brief from Mrs. Villaseñor, March 10, 1997, to the Inter-American Commission, *supra*).

⁶⁶ Mrs. Villaseñor pointed out that on the same day, the Supreme Court had delivered its decision on a cassation appeal in the "Plan de Tarea Hunapú" case, upholding a judgment in which she had participated (cf. letter from Mrs. Villaseñor to the president of the Judicial Organization and the Supreme Court, January 2, 1996, *supra*).

⁶⁷ Cf. Petitioners' communication to the Commission, January 5, 1996, *supra* and "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*. In another communication to the Commission, Mrs. Villaseñor stated that telephone wires "were cut in mid-December, 1995" (cf. brief from Mrs. Villaseñor, March 10, 1997, to the Inter-American Commission, *supra*). It is not clear whether this was in reference to a separate incident other than the one on December 20, 1995, or whether there is a slight inconsistency in the date given.

⁶⁸ Cf. Petitioners' communication to the Commission, January 5, 1996, *supra*.

⁶⁹ Cf. Petitioners' communication to the Commission, January 5, 1996, *supra*.

⁷⁰ Cf. Petitioners' communication to the Commission, January 5, 1996, *supra*. Similarly, the judge said that she had moved house on 26 December 1995" (cf. brief from Mrs. Villaseñor, March 10, 1997, to the Inter-American Commission, *supra*).

⁷¹ Cf. Petitioners' communication to the Commission, January 5, 1996, *supra*.

⁷² Cf. Petitioners' communication to the Commission, January 5, 1996, *supra*, and brief from Mrs. Villaseñor to the Inter-American Commission, March 10, 1997, *supra*.

⁷³ Cf. Brief from Mrs. Villaseñor to the Inter-American Commission, March 10, 1997, *supra*. Mrs. Villaseñor said, "the same day, a former judge was murdered." It should be noted that the acts of "stalking" that Mrs. Villaseñor said had taken place in December 1995 included the presence of individuals in vehicles near her home (*infra* par. 93).

⁷⁴ Cf. Brief from Mrs. Villaseñor to the Inter-American Commission, March 10, 1997, *supra*, and press report, "Justicia: intimidador a juicio" (justice: harasser goes to trial), September 25, 1998 (evidence file, proceeding before the Commission, folio 397).

⁷⁵ Cf. Brief from Mrs. Villaseñor to the Inter-American Commission, March 10, 1997, *supra*.

56. *January and February 1997.*- According to statements, the following occurred in 1997. After January, the Prosecutor General, in the framework of a judicial filing, spoke out against a judicial decision delivered that month with the participation of Mrs. Villaseñor, holding a death sentence invalid (*supra* par. 42).⁷⁶ On February 6, an opinion piece concerning the same judgment was published under the title, "Judges and justices deserve the death penalty."⁷⁷ Mrs. Villaseñor added that on the tenth of the same month, "a woman[,] who claimed to belong to a group called Anguished Mothers[,...] place[d] black ribbons in the windows of the Ninth Division of the Court of Appeals," where she and other people had their offices.⁷⁸

57. *February 1998.*- Mrs. Villaseñor said that in February 1998, the Ninth Division of the Court of Appeals received a murder case involving a member of the presidential escort detail, and that she and the then-chief justice of the Ninth Division were transferred.⁷⁹ The judge said they learned "extra-officially" that they had been transferred because death threats had been levelled against her and the chief justice of the division if they heard the case.⁸⁰

58. *1999.*- Press documents in some cases, and statements by Mrs. Villaseñor in others, pointed to the following events in 1999:

(1) on *February 16*, the written press ran an article entitled "El MP pone en duda imparcialidad de sala" (Prosecutor General questions impartiality of the court), reporting that a prosecutor was planning to file a challenge against Mrs. Villaseñor and two other "judges from the Tenth Division of the Court of Appeals," questioning their impartiality in a case;⁸¹

(2) on *May 24*, a person in the witness protection program stated that the judge had received money in exchange for favoring General José Efraín Ríos Montt;⁸²

(3) on *June 8*, a newspaper reported that a witness had made a statement to the effect that Mrs. Villaseñor had received money in exchange for "alternative sentencing" for Mr. Ríos Montt,⁸³ and

⁷⁶ In July 1996, the prosecutor filed a constitutional motion partially challenging the final clause of the second paragraph of article 4 of the American Convention, which on August 28 of that year had been in the status of "decision pending." The Prosecutor General submitted arguments after January 30, 1997, stating that the decision delivered that day by the Ninth Division of Appeals on the non-applicability of the death penalty was contrary to the Constitution (*cf.* Proceedings of the Prosecutor General on the partial constitutional challenge (evidence file, proceeding before the Commission, folios 465 to 471)). The State said that on January 31, 1997, the Prosecutor General "lodged a [c]onstitutional motion" with the "Constitutional Court" for the ruling by the "Ninth Division of the Court of Appeals" that had "modified the death penalty" ordered in a case by another court. Guatemala stated that on April 30, 1997, the Constitutional Court "suspend[ed] the processing of the matter," stating that the Prosecutor General had failed to meet certain requirements (*cf.* State's report to the Commission, October 10, 1997 (evidence file, appendix 25 to the Report on the Merits, folios 343 and 344)). It also said that as of May 30, 1997, the decision by the Constitutional Court was still pending (*cf.* State's document addressed to the Commission, May 30, 1997 (evidence file, proceeding before the Commission, folios 440 to 442)).

⁷⁷ Opinion piece in the newspaper "El periódico," February 6, 1997, entitled "Judges and justices deserve the death penalty" (evidence file, proceeding before the Commission, folio 473).

⁷⁸ *Cf.* Brief from Mrs. Villaseñor to the Inter-American Commission, March 10, 1997, *supra*.

⁷⁹ *Cf.* "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*.

⁸⁰ *Cf.* "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*.

⁸¹ *Cf.* Press item, February 16, 1999, entitled "El MP pone en duda imparcialidad de sala" (evidence file, proceedings before the Commission, folio 1289).

⁸² *Cf.* "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*. Mrs. Villaseñor also said she had never handled any case involving Mr. Ríos Montt. *Cf.* also, press item entitled "Magistrada pide explicaciones a Fiscal General" (judge asks the State's Attorney for explanations)," June 13, 1999 (evidence file, proceeding before the Commission, folio 692), and brief sent by the petitioners to the Commission on May 7, 2014, *supra*). Mrs. Villaseñor also told the Commission that the State's Attorney had made reference to his report in "several news media" (*cf.* petitioners' communication to the Commission on August 11, 1999 (evidence file, appendix 14 to the Report on the Merits, folios 94 to 96)).

⁸³ *Cf.* Affidavit, June 21, 1999, and press item, June 8, 1999, entitled "Caso Moreno: testigo acusa a jueces, abogados and políticos" (witness accuses judges, attorneys and politicians) (evidence file, proceedings before the Commission,

(4) on *June 16*, a newspaper reported that a former prosecutor general had stated that “the slander against [Mrs.] Villaseñor should be understood as a classic case of legal vendetta because of her very visible intervention in several cases including Myrna Mack [Chang],” and that the “President’s chief of staff” was “behind the statements” made in this regard.⁸⁴

59. *June 2000.*- The judge informed the Commission that on 20 June 2000, a person had been on the property surrounding her house told her that three men had said they were going to kill her sister, but Mrs. Villaseñor felt that the threats were actually against herself.⁸⁵ The Commission also received information that the man was inebriated, the police were called, and they arrived in 30 minutes.⁸⁶

60. *October 2001.*- The Commission was informed of a press conference on October 3, 2001, in which three military “defendants charged in the death of Myrna Mack [Chang],” accompanied by their attorneys, “presented the book entitled ‘Myrna Mack y su encuentro con la Justicia’” (Myrna Mack and her encounter with justice), that she had written.⁸⁷ The judge said that the military personnel had made “statements [...] against [her] that pose[d] a threat to her life,” her “employment stability,” and “judicial independence” in Guatemala, and alluded to “the risks that her family members c[ould] face”.⁸⁸

61. *October and November 2002.*- Mrs. Villaseñor said that in October and November of 2002, she “learned about” threatening acts against an attorney who had taken part in the prosecution in the trial for the death of Myrna Mack Chang and who had also lodged a “writ of habeas corpus” for Mrs. Villaseñor’s brother.⁸⁹

62. *2003.*- The following events were reported to have occurred in 2003:

(1) On *January 1*, Mrs. Villaseñor’s niece died in an automobile accident when her vehicle was hit by another car;⁹⁰

(2) on *May 2*, Mrs. Villaseñor’s sister said that several individuals had climbed into trees near the judge’s house with the intention of breaking in;

(3) for two weeks in the month of *July*, calls were received allegedly from the secretary in the office of a fellow judge, asking Mrs. Villaseñor to contact him, but when she returned

folios 1278 and 1279, and 1286, respectively).

⁸⁴ Affidavit, June 21, 1999, and press report, June 16, 1999, entitled “AV señala que EMP orquestó declaración testimonial contra Magistrada” (AV states that PCS orchestrated witness statement against judge) (evidence file, proceedings before the Commission, folios 1278 and 1279, and 1280 respectively).

⁸⁵ Cf. Petitioners’ brief to the Commission, May 7, 2014, *supra*.

⁸⁶ Cf. Petitioners’ communication to the Commission, July 3, 2000, *supra*. The petitioners said that the man was arrested, and later, on August 3, 2000, the Public Prosecutor requested information from Mrs. Villaseñor, which she supplied (cf. petitioners’ brief to the Commission, May 7, 2014, *supra*). It was also stated that on June 21, 2000, police personnel appeared at the judge’s door in response to a call that they claimed had been placed from her home; however, “it was not true” that any call had been made (Cf. petitioners’ communication, July 3, 2000, *supra*). The Court clarifies that it does not hold this statement, on circumstances alleged to have occurred on June 21, 2000, to constitute an act of intimidation.

⁸⁷ Cf. Mrs. Villaseñor’s brief to the Commission, October 5, 2001 (evidence file, appendix 17 to the Report on the Merits, folios 110 and 111).

⁸⁸ Cf. Mrs. Villaseñor’s brief to the Commission, October 5, 2001, *supra*.

⁸⁹ More specifically, Mrs. Villaseñor said that in October 2002, several telephone calls had been received by this attorney’s office, and that no one had spoken when the calls were answered. She further stated that on 19 November of the same year, after a writ of habeas corpus had been lodged, a person called the attorney’s office, did not self-identify, and said they would kill her; three days later, the office received another telephone call, answered, and heard only funeral marches. Mrs. Villaseñor said that in 2002, this attorney had been serving for three years as an attorney for the “Association of Judges and Justices of the Supreme Court” (cf. Mrs. Villaseñor’s brief to the Commission, December 8, 2002, (evidence file, proceedings before the Commission, folios 1163 to 1165), and petitioners’ brief to the Commission, May 7, 2014, *supra*.)

⁹⁰ Cf. Petitioners’ brief to the Commission, May 7, 2014, *supra*.

the calls, they were answered by someone else, claiming that they had made no attempt to reach her;

(4) on the 22nd of the same month, a tire burst on Mrs. Villaseñor's car;⁹¹

(5) one day that same month of July, Lourdes Villaseñor noticed that someone had taken flowers to the family tomb, and when she began to rearrange them, she realized that they were marked with the first name (not including the surname) of Mrs. Villaseñor's attorney;⁹²

(6) Mrs. Villaseñor's home telephone "constantly" emitted a sound when the handset was hung up at the end of a call, "as if the call had not been disconnected," and

(7) the same telephone was disconnected "until *September* [12], even though it was fully paid up," and the technical explanations she was given were not convincing.⁹³

63. *July and August 2005.* - The Commission received communications saying that in 2005:

(1) on *July 1*, an agent who provided security for Mrs. Villaseñor received threatening gestures from a person; afterward, when this security guard's vehicle experienced a mechanical problem, two individuals "approached as if to identify him,"⁹⁴ and

(2) on *August 22*, a group of unknown persons entered the family home of the judge's sister, assaulted her and her housekeeper, stole the family's passports and mobile telephones, and finally drew a Swastika on the door.⁹⁵

64. *November 2007.* - On November 21, 2007, a person calling himself KM sent an email to the then-Chief Justice of the Supreme Court, accusing Mrs. Villaseñor, among other things, of being "capable of killing just to stay in power," "making threats without regard," having a "corruption-based profit motive," and being backed by organized crime.⁹⁶

65. *February, 2008.* - Mrs. Villaseñor stated that on February 13, 2008, she experienced the "theft" of a file containing personal information.⁹⁷

66. *October 2012.* - On October 30, 2012, Mrs. Villaseñor said that during that year, she had received "approximately four messages consisting of about five lines of the letter 'p.'"⁹⁸

⁹¹ The police report (*infra* footnote 93) notes that the store where the tire had been bought did not recognize the damage under the purchase guarantee because it was evident that the incident had been deliberate.

⁹² Despite this, paragraph 79 of the Report on the Merits said that the judge had dated this incident in 2005, that Mrs. Villaseñor herself had gone to the cemetery and that it was her own name that was affixed to the flowers. She, in turn, told that Commission that on July 2, 2005, she had informed the Chief Justice of the Supreme Court, in an official document, that plastic flowers had been found at the mausoleum, with a single letter written on each petal; when read from left to right, they spelled out the name of her attorney. In her communication to the Commission, she did not specify the date of the incident she described, but did make reference to an affidavit "filed on 20 June 2005" (*cf.* brief of May 7, 2014 from the petitioners to the Commission, *supra*). The different descriptions of the incident and the inconsistent dates call into question whether this was a single event occurring in 2003, or two separate incidents.

⁹³ *Cf.* Brief of September 18, 2003, signed by an officer of the National Civil Police and addressed to the "Head of SEPROSE" of the National Civil Police (evidence file, proceedings before the Commission, folios 1160 and 1161). The report describes the facts given in paragraph 62 of this judgment, numbers 2 through 7. In the case of the final incident, the officer said that when the technical team arrived to reconnect the line, they explained that Mrs. Villaseñor's computer was interfering with the telephone, but that "in fact the computer ha[d] always worked fine and had never caused any interference with the telephone."

⁹⁴ *Cf.* Petitioners' brief to the Commission, May 7, 2014, *supra*.

⁹⁵ *Cf.* Petitioners' brief to the Commission, May 7, 2014, *supra*.

⁹⁶ *Cf.* Communication of November 21, 2007 (evidence file, appendix 19 to the Report on the Merits, folio 117). The text of this judgment, with a few exceptions, uses initials to identify certain individuals whose actions are reported in documents from the domestic courts; this cannot be construed to mean that they have had any connection with the processing of the case in the international jurisdiction or any participation before the Inter-American Commission or the Inter-American Court. The exceptions in this judgment involve persons who are publicly known and/or who, as can be inferred from information submitted to this Court, or in accordance with publicly known circumstances, had passed away at the time of completion of this judgment.

⁹⁷ *Cf.* Petitioners' brief to the Commission, May 7, 2014, *supra*.

⁹⁸ *Cf.* Record No. 089.2012 from the General Directorate of the National Civil Police, October 30, 2012 (evidence file,

67. *March 2013.*- In a presentation to the Human Rights Ombudsman on March 13, 2013, Mrs. Villaseñor, without specifying details or dates, described "a publication in the social media making reference to credit card operations" that, according to the judge, made her fear for her family's safety and her own.⁹⁹

B.4 Actions by the State regarding reported acts of intimidation

68. The State learned from a variety of sources about these alleged acts of intimidation (*infra* par. 91 to 95).

69. From 1994 through 2013, Guatemala provided Mrs. Villaseñor and her family with security services, as described below.

70. The Court has received information stating that on July 25, 1994, when the Commission adopted precautionary measures,¹⁰⁰ the State was already providing protection for Mrs. Villaseñor.¹⁰¹ It also gave her security services the following month of August.¹⁰² The judge was out of Guatemala in September, and security was resumed upon her return (*supra* par. 52)¹⁰³ and at least until October 22 of the same year (when she waived the security service).¹⁰⁴ There is no information about security services after that date and through January 1996. That month, Mrs. Villaseñor was assigned police protection.¹⁰⁵

71. Mrs. Villaseñor and her family had at least two security officers provided by the State from January 1996 through September 2013, after the Commission lifted its order for precautionary measures the previous July 26.¹⁰⁶ There is information that additional measures of protection were provided on certain occasions.¹⁰⁷

appendix 22 to the Report on the Merits, folio 332).

⁹⁹ Report filed by Mrs. Villaseñor with the Human Rights Ombudsman, March 24, 2013 (evidence file, proceedings before the Commission, folios 1127 to 1132)

¹⁰⁰ Cf. Communication from the Commission to the State, July 25, 1994, *supra*.

¹⁰¹ On July 25, 1994, Mrs. Villaseñor informed the Human Rights Ombudsman about the security she was already receiving (*cf.* Order by the Human Rights Ombudsman, September 5, 1994, *supra*). Therefore, and considering other statements about the security provided before September 1, 1994, the Court holds as inaccurate the information set forth in a document by the Human Rights Ombudsman, claiming that Mrs. Villaseñor reported having received no protection for the 57 days prior to that date (*cf.* Order by the Human Rights Ombudsman, September 5, 1994, *supra*).

¹⁰² Cf. Communication from the Human Rights Office of the Archbishop of Guatemala to the Inter-American Commission, August 5, 1994, *supra*; communication from the Commission to the State, August 9, 1994, (evidence file, appendix 20 to the Report on the Merits, folios 296 to 301); note from Mrs. Villaseñor to the Director of the National Police, August 8, 1994 (evidence file, proceedings before the Commission, folio 596). The judge asserted that the agents had little equipment, that the one with a gun had only five cartridges, and that "two of them [had been] sick and the other two had the weekend off" ("Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*).

¹⁰³ COPREDEH report, September 26, 1994, *supra*. The document gives little detail about the security services provided.

¹⁰⁴ Information from the State says that Mrs. Villaseñor, while assigned duties in the city of Antigua, Guatemala, waived the security offered there, claiming that the threats against her had ceased (*cf.* COPREDEH report, September 26, 1994, *supra*).

¹⁰⁵ Cf. Brief from Mrs. Villaseñor to the Inter-American Commission, March 10, 1997, *supra*. According to information from COPREDEH, "as of January 5, 1996," Mrs. Villaseñor received security provided by "four officers from the National Civil Police, two of whom were withdrawn in [...] 1997." COPREDEH, in its report on February 28, 2004, added that as of 1997, two police officers continued to provide security to Mrs. Villaseñor (*cf.* Report from Guatemala to the Commission, February 28, 2005 (evidence file, appendix 18 to the Report on the Merits, folios 113 to 115)).

¹⁰⁶ Cf. Communications by the inter-American Commission on July 26, 2013 (evidence file, appendix 20 to the Report on the Merits, folios 144 to 146), and notification by the Office of the Assistant Director General of Operations of the National Civil Police to Mrs. Villaseñor, September 2, 2013 (evidence file, proceedings before the Commission, folio 1149).

¹⁰⁷ In the framework of the proceedings to investigate the crime of "threats" against Mrs. Villaseñor, on July 4, 2005, the Prosecutor General asked the police to provide security around the perimeter of the judge's home (*infra* footnote

72. On October 30, 2012, police personnel interviewed Mrs. Villaseñor to conduct a “risk analysis,” and she stated, among other things, that she wished the protection measures to continue.¹⁰⁸ The next day, an order from the Director General of the National Civil Police acknowledged receipt of the “risk analysis,” concluded that Mrs. Villaseñor faced “medium” level risk, and recommended “cancel[ing] the security measures.”¹⁰⁹ In 2013, as recounted above (*supra* par. 2 and 71), the measures of protection were lifted.

73. The State also conducted investigative activities concerning certain evidence of acts of intimidation. Details are given below (*infra* par. 119 to 121, 123, 124 and 135).

VII MERITS¹¹⁰

74. The core of the instant case is a series of events that took place in the decade from 1990 to 2013, indicating that Mrs. Villaseñor was in a situation of risk that impinged on her work as a judge. These acts allegedly included harassment, threats and other acts of intimidation or aggression.

75. The case therefore entails possible external pressure on judicial work, potentially interfering with judicial independence. Although the Court, in the framework of its jurisdiction and functions, must rule on claims of violation of the rights of the alleged victims, it notes that this case also addresses a central tenet of the rule of law. Judicial independence is, in effect, a broadly recognized principle,¹¹¹ a key objective of the separation of public powers (*infra* par. 83) and one of the “basic pillars of the guarantees of the due process” and it is “necessary for the protection of fundamental rights.”¹¹²

76. State responsibility is being claimed in this case because agents of the State allegedly took part in in certain circumstances, and because Guatemala failed to meet its obligations to

203). The Prosecutor General reported that in early January 2008, Mrs. Villaseñor had two National Civil Police officers assigned to her security detail, and also that she was given “perimeter protection” (*infra* footnote 206).

¹⁰⁸ Cf. Record No. 089.2012, *supra*.

¹⁰⁹ Cf. Order no. 1741-2012, October 31, 2012 (evidence file, appendix 28 of the Report on the Merits, folios 355 to 357).

¹¹⁰ The Court notes that the representatives in this case substantially expanded their arguments on merits and reparations in their final written pleadings. It recalls that the primary purpose of the final pleadings is to systematically set out the arguments of fact and law submitted at the specified procedural moment; therefore this is not the right time to make up for a failure to submit the initial brief, nor is it the stage for bringing up additional facts, evidence or pleadings, as the other parties would be unable to give a response (*cf. Case of Pollo Rivera v. Peru. Merits, Reparations and Costs*. Judgment of August 21, 2016. Series C No. 319, par. 23; and *Case of Órdenes Guerra et al. v. Chile. Merits, Reparations and Costs*. Judgment of November 29, 2018. Series C No. 372, par. 27).

¹¹¹ Cf. Universal Declaration of Human Rights, article 10; International Covenant on Civil and Political Rights, article 14; European Convention on Human Rights, article 6, and African Charter on Human and Peoples’ Rights, article 26. The Human Rights Committee has stated that the requirement of judicial independence (as well as its competence and impartiality) is an “absolute right” that “may suffer no exception” (*cf. Human Rights Committee. General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, par. 19, and Communication N° 263/1987 of October 28, 1992, González del Río v. Peru, par. 5.2*). Expert witness Leandro Despouy said, similarly, “[t]here is universal consensus that the principle of independence of judges and justice operators constitutes international custom and general principles of law recognized by the Community; it is an absolute right that may suffer no exception” (statement before the Court by expert witness Leandro Despouy via affidavit on May 21, 2018 (merits brief, folios 423 to 435)).

¹¹² Cf. *Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6) of the American Convention on Human Rights)*. Advisory opinion OC-8/87 of January 30, 1987. Series A No. 8, par. 30, and *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2009. Series C No. 197, par. 68. Cf., similarly, *Case of Acosta et al. v. Nicaragua. Preliminary Objection, Merits, Reparations and Costs*. Judgment of March 25, 2017. Series C No. 334, par. 171.

investigate the facts and safeguard the judge and her family.¹¹³ Arguments have been put forward on acts of “defamation” against Mrs. Villaseñor. It was alleged that members of Mrs. Villaseñor’s family were also affected. The arguments on these incidents narrated all the instances of violation of the right to personal integrity, right to judicial guarantees, right to privacy, and right to judicial protection. Violation of the right to privacy, the Court would note, was claimed only by the representatives. Based on the *jurisprudence constante* of this Court, all the different allegations will be examined, as the representatives may adduce violations of rights different from those outlined in the Report on the Merits.¹¹⁴

77. The Court will now set forth its analysis of the following points from the merits of the case: (1) right to personal integrity, right to judicial guarantees, right to privacy, and right to judicial protection for Mrs. Villaseñor, and 2) right to personal integrity and right to privacy for the family members of Mrs. Villaseñor. Its analysis will be performed in consideration of the obligations set forth in article 1(1) of the Convention.¹¹⁵

VII-1

RIGHT TO PERSONAL INTEGRITY,¹¹⁶ RIGHT TO JUDICIAL GUARANTEES,¹¹⁷ RIGHT TO PRIVACY,¹¹⁸ AND RIGHT TO JUDICIAL PROTECTION¹¹⁹ FOR MRS. VILLASEÑOR

78. The Court finds it necessary to set out certain considerations on the facts and the cause of this action. It will then proceed to examine arguments concerning the State’s conduct in response to reports about acts of intimidation that allegedly constituted “external pressure” on Mrs. Villaseñor’s judicial work. In the third place, it will discuss other pleas on alleged “acts of defamation” against the judge.

¹¹³ The representatives also said that Mrs. Villaseñor had lodged a motion for constitutional relief to prevent her transfer to the city of Antigua, Guatemala, but it was denied.. The representatives drew a connection between this and the situation of Mrs. Villaseñor’s safety. The Court would reply by drawing attention to its comments on upholding the duty to guarantee (*infra* par. 102 torque 132). In any case, the Court recalls that on multiple occasions, it has held that if a remedy is not ruled favorably this does not, per se, demonstrate the absence of effective domestic remedies or that the remedy filed was ineffective (*cf.*, *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, par. 67; *Case of Fermín Ramírez v. Guatemala. Merits, Reparations and Costs. Judgment of June 20, 2005. Series C No. 126, par. 83; Case of Raxcacó Reyes v. Guatemala. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 133, par. 112; Case of Brewer Carías vs. Venezuela. Preliminary Objections. Judgment of May 26, 2014. Series C. No. 278, par. 87, and Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, par. 169). The Court does not hold that a violation on this basis has been demonstrated.*

¹¹⁴ *Cf. Case of the “Five Pensioners” v. Peru. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, par. 156, and Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No. 362, par. 172.*

¹¹⁵ Article 1(1) of the Convention says: “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

¹¹⁶ Article 5(1) of the Convention enshrines every person’s right “to have his physical, mental, and moral integrity respected.”

¹¹⁷ Article 8(1) of the Convention states: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

¹¹⁸ Article 11 of the Convention reads: “(1) Everyone has the right to have his honor respected and his dignity recognized. (2) No one may be the object of arbitrary or abusive interference with his private life, his family, his home or his correspondence, or of unlawful attacks on his honor or reputation (3) Everyone has the right to the protection of the law against such interference or attacks.”

¹¹⁹ Article 25(1) of the Convention states: “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

(A) Considerations on the facts and the cause of this action

79. The key matter in this case is to determine whether Guatemala is responsible for violating its duty to guarantee or respect, in reference to the facts alleged to have constituted “external pressures” on Mrs. Villaseñor’s work as a judge.

80. The Court cautions that information has been adduced about a wide variety of multiple incidents that, according to the claims, took place between the 1990s and 2013. The claims indicate such incidents as alleged kidnapping attempts, thefts, threats, damage to automobile parts and telephone lines, mishandling of flowers in a cemetery, press reports, words written on a book or statements by public officials, and the like. It is not the task of the Court to determine whether, in each case, the alleged incidents would be lawful or unlawful, as this is the responsibility of relevant government authorities, based on the enforcement of Guatemalan law and, if relevant, formal investigations.

81. Rather, the Court’s role is to examine information on the facts and decide whether the State complied with its Convention-based obligations. Accordingly, and in consideration of the great diversity of facts brought before this Court, it will be necessary, in response to the arguments of the Commission and the parties, to determine the following: (a) whether the facts alleged in this case can be classified as “external pressure” with the potential to impinge on Mrs. Villaseñor’s judicial work, and (b) how and when the State was made aware of the facts, which as will be shown, shapes its duties to conduct investigations and provide protection. As the Court develops these answers, it will settle some of the questions about alleged violations and will set out details before it then proceeds to examine other allegations and decide whether the State, based on the actions it undertook, can be held internationally liable.

A.1 On whether the facts can qualify as “external pressure” on judicial work

A.1.1 Arguments of the Commission and of the parties

82. The Court notes the **Commission’s** view that Mrs. Villaseñor was subjected to acts that constituted “external pressures,”¹²⁰ and they should be analyzed jointly as a full a sequence of multiple offenses designed to attack Mrs. Villaseñor’s personal integrity¹²¹ and related directly to her work as a judge. It saw that she had been obliged to tolerate a wide-ranging situation of peril and intimidation incompatible with the principle of judicial independence and her personal welfare. The **representatives**, in turn, said that Guatemala had breached article 1(1) of the Convention by allowing threats and intimations to be leveled

¹²⁰ The Commission referred to “(i) house searches; (ii) death threats by phone, text messages and even by unknown persons outside her home; (iii) an attempt to kidnap her daughter and to kidnap one of the policemen guarding her home, the beating of her sister and death of her niece, who was hit by a car; (iv) theft, on more than one occasion, of her personal information; (v) attempts to break into her car, and destruction of tires and a telephone line; and (vi) statements and communications from unidentified persons denigrating her work as a judge.”

¹²¹ The Commission stressed the essential components of judicial independence from the functional standpoint. It also addressed guarantees against external pressures, noting that such pressures are unlawful mechanisms for attempting to influence the work or decisions of a justice operator by means of pressure, threats, acts of intimidation and direct or indirect interference, and reprisals directly targeting them and their families or undermining their stability and professional future.

against Mrs. Villaseñor in her role as a judge,¹²² injuring her personal integrity¹²³ and her privacy. The **State** denied responsibility, and while not making mention of the specific features of the incidents, held that it had acted appropriately regarding security measures and the investigation (*infra* par. 99).

A.1.2 Considerations of the Court

83. The Court has stated that “the independence of all judges must be guaranteed” by the State, and that one of “the principal purposes of the separation of public powers” is “to guarantee the independence of judges”.¹²⁴

84. The guarantee of judicial independence “includes a guarantee against external pressures,¹²⁵ and therefore the State must refrain from undue interference with the Judicial Branch or its members” and take action to prevent such interference from being committed by persons or entities outside the judiciary.¹²⁶ Likewise, the Court has held that “the United Nations Basic Principles [on the Independence of the Judiciary] provides that the Judiciary ‘shall decide matters before them [...] without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.’”¹²⁷ Moreover, “the Principles establish that ‘[t]here shall not be any inappropriate or unwarranted interference with the judicial process.’”¹²⁸

85. Moving now to the details of the case, in the first place, the Court notes that certain facts involve judicial statements casting doubt on a decision by a court or disqualifying Judge

¹²² The representatives said that protection of personal integrity is especially critical for certain categories of people who, because of their profession or other personal qualities, are at heightened risk. They associate this case with the Court’s jurisprudence on the nature of the obligation to guarantee the right to physical integrity for human rights defenders and the special measures of protection that should be adopted to keep them safe.

¹²³ They said that because of the threats, the failure to investigate, and the absence of effective or suitable protection, Mrs. Villaseñor experienced severe psychological pain and suffering.

¹²⁴ *Cf. Case of the Constitutional Court v. Peru. Merits, Reparations and Costs.* Judgment of January 31, 2001. Series C No. 71, par. 73 and 75, and *Case of Acosta v. Nicaragua, supra*, par. 171. A similar view was expressed by expert witness Despouy (*cf. Statement before the Court by expert witness Leandro Despouy, supra*).

¹²⁵ *Cf. Case of the Constitutional Court v. Peru, supra*, par. 75, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of February 8, 2018. Series C No. 348, par. 207. Expert witness Despouy spoke along the same lines when he said, “the existence of independent judges implies that they perform their duties free of undue interference by factors both external and internal to the judiciary” (statement before the Court by expert witness Leandro Despouy, *supra*).

¹²⁶ Accordingly, as this Court has stated, it is possible that, given the particular circumstances of a case, it might be asked whether people involved in the administration of justice were “subject to undue restrictions in the performance of their responsibilities by persons or entities from outside the Judicial Branch” (*cf. Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008. Series C No. 182, par. 55, and *Case of San Miguel Sosa et al. v. Venezuela, supra*, par. 209).

¹²⁷ **Case of López Lone et al. v. Honduras. Preliminary objection, Merits, Reparations and Costs. Judgment of October 5, 2015.** Series C No. 302, par. 197 (the reference is to Principle 2 of the United Nations Basic Principles on the Independence of the Judiciary).

¹²⁸ *Case of Reverón Trujillo v. Venezuela, supra*, par. 80 and *Case of López Lone et al. v. Honduras, supra*, par. 197 (the reference is to Principle 4 of the United Nations Basic Principles on the Independence of the Judiciary). Similarly, the Bangalore Principles of Judicial Conduct, subparagraph 1(1) states, “[a] judge shall exercise the judicial function independently [...], free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.” These principles were drafted by “the second meeting of the Judicial Group on Strengthening Judicial Integrity, held in 2001 in Bangalore, India, at which the chief justices recognized the need for universally acceptable standards of judicial integrity.” This is the sense of Resolution 2006/23 of the United Nations Economic and Social Council, that “[i]nvite[d] Member States, [...] to take [these Principles] into consideration.” (Available online: https://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf)

Villaseñor.¹²⁹ It is clear that such facts, in and of themselves, cannot be held as acts of intimidation because they are part of the regular operation of judicial institutions.

86. In the second place, it should be noted that another series of facts involve newspaper articles or other forms of expression as well as complaints against the judge.¹³⁰ The Court would clarify that there can be tension between the exercise of freedom of expression and the presence of judicial independence. Along these lines, the Court has emphasized, on one hand, the importance of the exercise of freedom of expression in a democratic society,¹³¹ even regarding the actions of public officials, who are more exposed to scrutiny and criticism.¹³² It is equally important for public officials to be reported or investigated for possible commission of unlawful acts.¹³³ On the other hand, these considerations do not signify that the honor of public officials should not be protected,¹³⁴ or that certain expressions, by their nature, may prove intimidating or constitute undue pressure on the work of a judge.¹³⁵

87. These facts of the case, as described, were not presented as violations per se, but as part of a situation or series of incidents. The Commission and the parties did not bring specific arguments to apply to each particular case that would lend credence to the claim that the acts of expression or complaints about the honor and dignity of Mrs. Villaseñor were disproportionate. In the absence of such supporting arguments, this Court, in principle, does not perceive that the actions described amount to violations of the judge's rights, and it lacks

¹²⁹ Reference here has been made to the fact that in 1997, the Prosecutor General made a judicial statement speaking out against a verdict handed down with the participation of Mrs. Villaseñor, and a 1999 press report said that a prosecutor was going to disqualify Mrs. Villaseñor in a case (*supra*, par. 56 and 58).

¹³⁰ It is enough to recall the incidents alleged to have occurred on 1 September and December 7, 1994; December 7, 1995; February 6 and 10, 1997; February 16, May 24 and June 8 and 16, 1999; October 3, 2001, and November 21, 2007 (*supra* par. 52, 53, 54, 56, 58, 60 and 64).

¹³¹ Cf. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory opinion OC-5/85 November 13, 1985. Series A No. 5, par. 70; *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, par. 112 and 113; *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111, par. 82 and 83; *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177, par. 87, and *Case of Carvajal Carvajal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of March 13, 2018. Series C No. 352, par. 174.

¹³² The Court has asserted, "statements concerning public officials and other individuals who exercise functions of a public nature should be accorded, in the terms of Article 13(2) of the Convention, a certain latitude in the broad debate on matters of public interest that is essential for the functioning of a truly democratic system" (*Case of Herrera Ulloa v. Costa Rica, supra*, par. 128, and similarly, *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135, par. 82). It has further explained, "in a democratic society, public officials are more exposed to scrutiny and criticism by the general public. This different protection threshold is justified by the fact that public officials have voluntarily exposed themselves to a stricter scrutiny" (*Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193, par. 115).

¹³³ In the same vein, the Court has held that "a judicial proceeding does not, in itself, constitute [a violation of the Convention]. Despite the fact that it can indirectly cause difficulties to those who must undergo a trial, its purpose is to settle a dispute" (*cf. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, par. 176).

¹³⁴ *Case of Herrera Ulloa v. Costa Rica, supra*, par. 128 and 129.

¹³⁵ Thus, "[t]he use of means of social communication with the purpose of supplanting jurisdictional functions, imposing or influencing the content of judicial decisions, in conditions exceeding the legitimate right to the freedom of expression and information, is considered as harmful for judicial independence" (Statute of the Iberoamerican Judge, article 3 (approved at the Sixth Iberoamerican Summit of Presidents of Supreme Courts and Tribunals of Justice, Tenerife, May 25, 2001. Available online: <https://www.icj.org/wp-content/uploads/2014/10/Statute-Iberoamerican-Judge.pdf>)). The Court, in turn, has warned that freedom of expression is not an absolute right, and that "public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge's freedom of action" (*Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, par. 131, and *Case of San Miguel Sosaet al. v. Venezuela, supra*, par. 144).

sufficient information to determine otherwise. It cannot therefore conclude, regarding each of these incidents, that they constitute inappropriate acts of pressure or intimidation that could injure Mrs. Villaseñor's honor or dignity.¹³⁶ This is why the Court will not examine the alleged violation of article 11 of the Convention, except as regards specific points, to be explained below (*infra* par. 133 to 139). As for the right to personal integrity, the Court also lacks sufficient information to hold that the actions of expression or complaint, in and of themselves, undermine this right.

88. In the third place, the Court notes that several facts of the case, when considered individually, could potentially be illegal acts unrelated to the work of the judiciary, or facts that do not constitute crimes, but mere accidents, unfounded assertions or actions committed against third parties other than the judge or her family members. This does not prevent them from ultimately being seen as part of a situation of intimidation against the judge.¹³⁷ The Court cannot draw a conclusive opinion on the matter, as such a finding would need to be based on investigative work.

89. Nonetheless, this Court would note that this case has seen a sequence or body of events that may be interrelated, and it would be worthwhile to examine them as shedding light on a situation that could reveal the existence of external pressures on Mrs. Villaseñor's judicial work. The Court is also aware that in the framework of the explanations of this situation, statements have been made about actions that could have constituted serious circumstances of intimidation. More specifically, statements have been made about several events that occurred in July and August 1994, or before September of that year, that may have constituted threats (including the kidnapping of her daughter), intentional damage to the judge's property, attempted break-ins at her home, and acts of stalking (*supra* par. 49 and 50). These include: the judge received threats on several occasions; Mrs. Villaseñor's car tires were destroyed several times; an attempt was made to force her vehicle door; two men tried to enter the judge's house; people were seen outside her house and heard making threatening remarks and even death threats, such as "we need to kill that old lady" and the like; two men attempted to enter the house, and on August 29,, a person assigned to Mrs. Villaseñor's security detail was stopped, beaten, drugged and questioned about her judicial work in court cases. It has also been stated that the kidnappers said they were "going to kill" anyone living in the judge's home. The descriptions of these incidents paint a picture of insecurity for judges in Guatemala (*supra* par. 32).

90. The repeated and continuous occurrence of such incidents should have caught the attention of the State; even though not all of them merited investigation, it is clear that this was a case of continuous intimidation or a chain of interlinked events that reveals at least a need to exhaust all efforts to identify the sources and motivations involved.

A.2 On the State's awareness of the facts

91. The Court has held that, in order to prevent "external pressures" that could undermine judicial independence, "that is, in relation to a specific judge[, the State must prevent] these

¹³⁶ The Court clarifies that this statement refers to acts of expression or complaint per se; it is not saying that the circumstances as narrated or described for each of these actions may not be unlawful acts or should not be considered in the course of their investigation.

¹³⁷ The Court takes note, in particular and notwithstanding other circumstances, that actions were reported to have taken place after August 1994 that could reflect the direct reference to threats. In this regard, it is worth recalling the comments Mrs. Villaseñor made on December 20, 1995; the statements made by a Honduran man on January 17, 1996; her assertions concerning circumstances in February 1998 on "extraofficial" information about threats made against her, and references to threats against Mrs. Villaseñor or her sister on June 20, 2000. The Court clarifies that, in listing these claims of different facts, it is not casting judgment on whether the State may have had the duty to investigate each instance.

interferences [and] investigate and punish those who commit them.”¹³⁸ It is clear that in order for these duties to materialize, the State must be cognizant of the relevant facts. In this regard, Guatemala argued that it was able to collect information about only two complaints, one involving three incidents, and the other, one incident,¹³⁹ and therefore, it could not investigate facts other than those reported in the complaints.

92. The Court notes that the record contains evidence of both of the complaints detailed by the State:

- (1) The Office of the Public Prosecutor reported that on July 5, 2005, it had received a note from the Supreme Court containing a complaint filed by Mrs. Villaseñor to the effect that she had felt threatened on three different occasions: when the incident with the flowers in the cemetery occurred (*supra* par. 62); on July 1, 2005 when a person made gestures at one of her security officers, and that same day, when certain individuals tried to identify him (*supra* par. 63).¹⁴⁰
- (2) On December 10, 2007, Mrs. Villaseñor filed a complaint about incidents involving an email from a persona who called himself KM (*supra* par. 64).¹⁴¹

93. This Court also notes that:

- (1) On July 25, 1994, Mrs. Villaseñor asked the Human Rights Ombudsman to contact the National Police and request upgrades to the protection measures that, by implication, were already being implemented.¹⁴²
- (2) The Human Rights Ombudsman stated that on July 28, 1994, the “Office of the Public Prosecutor’s Department of Investigation and Prosecution” reported that “the case file” on “[Mrs.] Villaseñor’s reports of threats” was missing.”¹⁴³

¹³⁸ Cf. *Case of Reverón Trujillo v. Venezuela*, *supra*, par. 146, and *Case of San Miguel Sosa and et al. v. Venezuela*, *supra*, par. 207. Similarly, the United Nations Human Rights Committee has said that the States must adopt effective measures of protection from attacks against judges because of their work. The Committee held that these incidents “should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims [...] be in receipt of appropriate forms of redress” (UN. Human Rights Committee. General Comment No. 34, Article 19: Freedoms of opinion and expression, par. 23). Expert witness Despouy said, “[t]he guarantees that should be assured for judicial operators, whether because of their work or as individuals, include [...] personal safety.” He explained that “when there are assaults, acts of intimidation and other forms of systematic violence against justice operators, there is no judicial independence.” He believed that justice operators, as “guardians of rights, require more rigorous protection” of their lives and integrity, and the protection must go “beyond mere form, and be physically present.” He added, “[i]f the States do not keep justice operators safe from all types of external pressures, including from reprisals targeted directly at them and their families, the exercise of judicial duties may be gravely affected, frustrating access to justice.” Therefore, he explained that “[t]he States must adopt a policy for prevention and protection of justice operators, including effective security measures that will prevent attacks, and if such attacks should be recurrent, to conduct swift, exhaustive, diligent investigation to identify the perpetrators.” He noted that identifying those responsible “is of the essence” because “impunity would not help attenuate the risks to independent practice by justice operators” (statement before the Court by expert witness Leandro Despouy, *supra*).

¹³⁹ The State pointed to the following incident reports filed: (a) the first, July 5, 2005, claiming: i.- the events of July 1, when Mrs. Villaseñor’s security detail received threatening gestures and the attempt by certain persons to identify her guards (*supra* par. 63) and ii.- the events prior to July 5, 2005, involving the manipulation of flowers at the cemetery (*supra* par. 62), and (b) the second, “December 10, 2007,” involving an email received by the Supreme Court (*supra* par. 64).

¹⁴⁰ Cf. Report by the Office of the Public Prosecutor, August 17, 2017, received by COPREDEH on August 31, 2017 (evidence file, appendix III to the response brief, folios 1645 to 1648).

¹⁴¹ Cf. Report filed by Mrs. Villaseñor with the District Attorney of the Office of the Public Prosecutor of Quetzaltenango (evidence file, proceedings before the Commission, folio 1012), communication of November 21, 2007, *supra*, and report by Office of the Public Prosecutor, August 24, 2017, received by COPREDEH on August 31, 2017 (evidence file, appendix III to the answering brief, folios 1645 and 1649 to 1652).

¹⁴² Order by the Human Rights Ombudsman, September 5, 1994, *supra*. Moreover, according to news articles published on July 20, 1994, Mrs. Villaseñor said that prior to that date, she had received protection from the National Police (cf. press item entitled “Shots fired at judge under death threat,” July 20, 1994 (evidence file, appendix 20 to the Report on the Merits, folio 326)).

¹⁴³ Order by the Human Rights Ombudsman, September 5, 1994, *supra*.

(3) The Human Rights Ombudsman released an order on September 5, 1994, concluding that, given the threats received by Mrs. Villaseñor, her rights to “personal integrity and safety” had been breached, “seriously endangering the independence of the administration of justice in Guatemala.” He added that the acts of “intimidation” against the members of the Third Division Court of Appeals “coincid[ed] with the court’s cognizance of the Celis Hech case,” and that Judge Villaseñor was “the person who [had] receive[d] the most intimidation.” He asked for an order from the Ministry of Security to go “as far as it takes” to conduct an “exhaustive investigation of the facts” so that “the perpetrators [...would be] brought into [c]ourt.”¹⁴⁴

(4) COPREDEH released a document on September 26, 1994, noting that on the previous July 19, it had learned that the members of the Third Division of the Court of Appeals had “publicly report[ed] [...] constant threats and intimidation by unknown persons,” and that accordingly, the State’s Attorney had “conduct[ed] the necessary investigations.”¹⁴⁵

(5) On January 2, 1996, Mrs. Villaseñor informed the president of the Bureau of Justice that she had experienced “acts of intimidation” in December 1995, including that the telephone line to her home had been cut, and her house was being watched by persons in “a succession of different [...] vehicles that all use[d] the same license plate.”¹⁴⁶

(6) The record shows that the Honduran man, who had said in January 1996 that he was aware of a plan to murder judges (*supra* par. 55), made a statement to the Office of the Public Prosecutor¹⁴⁷ and that a judicial process on his report had begun (*infra* par. 119).

(7) Both the State and the petitioners told the Commission that the judge had reported these incidents in February 1997.¹⁴⁸ Guatemala said specifically that Mrs. Villaseñor had lodged two complaints, whose text is in the case file,¹⁴⁹ to the “District Attorney of Office of the Public Prosecutor” and to the “Human Rights Ombudsman” against “[a] columnist from the morning paper *El Periódico*, an unidentified woman who was a member of the group known as ‘Mothers in Anguish’ and the Prosecutor General.”¹⁵⁰ They added that “[o]n February 28, 1997[...] the [...] Metropolitan Attorney [...] told the [...] District Attorney of the [D]epartment of Sacatepéquez[...] that it was forwarding the complaint [...] so as to continue with the investigation[, and n]oted that [...] the publication attached

¹⁴⁴ Order by the Human Rights Ombudsman, September 5, 1994, *supra*.

¹⁴⁵ COPREDEH report, September 26, 1994, *supra*.

¹⁴⁶ *Cf.* Letter from Mrs. Villaseñor to the president of the Bureau of Justice and the Supreme Court, January 2, 1996, *supra*, and petitioners’ brief to the Commission, May 7, 2014, *supra*.

¹⁴⁷ *Cf.* Statements by the Honduran man to the Ninth Division of the Court of Appeals of Antigua, Guatemala, and to the Office of the Public Prosecutor of Guatemala City (evidence file, proceedings before the Commission, folios 485 to 488). Moreover, Mrs. Villaseñor said that the person made his statements to the Office of the Public Prosecutor (*cf.* Mrs. Villaseñor’s brief to the Inter-American Commission, March 10, 1997, *supra*).

¹⁴⁸ *Cf.* Document entitled “Case 11.388 María Eugenia Villaseñor and family. Observations on the response by the Government of Guatemala, June 2, 1997” (evidence file, proceedings before the Commission, folios 428 and 429), and document from the State to the Commission, May 30, 1997, *supra*.

¹⁴⁹ *Cf.* Complaints lodged on February 10, 1997, signed by Mrs. Villaseñor, to the “District Attorney of the Office of the Public Prosecutor of Sacatepéquez” and to the “Human Rights Ombudsman” (evidence file, proceedings before the Commission, folios 481 and 482, respectively).

¹⁵⁰ State’s communication to the Commission, May 30, 1997, *supra*. As can be seen in the footnote on the last page, the complaints were dated February 10, 1997. However, in the document dated May 30, 1997, the State said that “COPREDEH officials verified that both complaints were filed on February 17, [1997].” Guatemala also explained in the same document that “[t]he case file in the Office of the District Attorney of the Department of Sacatepéquez [bears] the number 656-97 Official 4th, for the crime of [c]oercion. The court overseeing the investigation is the First Court of the Lower Criminal Division of the same city. [...]the case file in the office of the Human Rights Ombudsman is kept at the main office in Guatemala City in the Area of Individual Rights, labeled GUA-47-97/D.I.” The State added that by May 30, 1997, “no order ha[d] been] release[d]” in this process. It also claimed that “[o]n February 17, 1997 [...] the investigator in charge of prosecuting the case [...] asked the department-level head of the National Police to investigate the incident reported by [Mrs. Villaseñor, and that t]he District Attorney of Sacatepéquez acknowledged receipt of the complaint and decided to forward it to the Metropolitan Attorney.”

to the complaint did not constitute a crime; as well as the position of the national Prosecutor General.”¹⁵¹

(8) The State said that on May 9, 1997, Mrs. Villaseñor “explained her situation” to the “President of COPREDEH.”¹⁵²

(9) Mrs. Villaseñor filed a submission with the Supreme Court on June 7, 1999, asking it to intervene regarding statements made in May 1999, to the effect that she had allegedly received money to find in favor of Mr. Ríos Montt (*supra* par. 58)¹⁵³.

(10) On November 14, 2001, the Director General of the National Civil Police ordered his department’s Criminal Investigation Service to “conduct an exhaustive investigation into the threats [allegedly] received by [Mrs.] Villaseñor [...] by [three military personnel] named in the case for the death of [...] Myrna Mack Chang”¹⁵⁴.

(11) On September 18, 2003, a police officer signed a report detailing several “incidents” that had taken place between May and September of that year (*supra* par. 62 and footnote 93).

(12) On March 12, 2009, the Human Rights Ombudsman released an order stating, “since [1994], [Mrs.] Villaseñor[...] as part of her [judicial] work, ha[d] been receiving threats, intimidation and coercion by unknown persons, [I]itigating attorneys and employees and officers of various [S]tate institutions,” and that this was associated with her work in cases of “high national and international impact.” Based on all this, the Human Rights Ombudsman concluded, “there ha[d] been threats against the safety and judicial independence” of Mrs. Villaseñor, and that she was facing “a situation of risk.” He decided to “[d]eclare violation of the human right to [o]rder and [s]afety;” that “there [we]re sufficient leads” to determine on this basis that the Government of Guatemala was responsible “for not guaranteeing and protecting safety,” and “to provide the State’s Attorney with a [certified] copy of actions taken [...] for pertinent purposes.”¹⁵⁵

(13) On October 30, 2012, Mrs. Villaseñor told police personnel that she had received four messages over the course of that year, bearing the letter “p” (*supra* par. 66, meaning “puta” or “whore”) and that since 1994 a “series of incidents” had occurred of which the Office of the Public Prosecutor, COPREDEH and the Human Rights Ombudsman had been apprised.¹⁵⁶

94. The Court would also note that on multiple occasions during the processing of the case and the precautionary measures before the Commission, statements had been made about the reporting of facts to entities or agents of the State.¹⁵⁷ It recalls that the Commission

¹⁵¹ Cf. State’s communication to the Commission, May 30, 1997, *supra*. According to the State’s information, “on October 10, 1997, the investigations [were] underway,” and the same occurred on July 13, 1998, although by that time, according to the State, “it [was] necessary to receive cooperation from the complainant to contribute any clues available to her” (*cf.*, respectively, the State’s report to the Commission, October 10, 1997, *supra*, and the State’s report to the Commission, July 17, 1998 (evidence file, proceedings before the Commission, folios 385 to 387)).

¹⁵² Cf. State’s communication to the Commission, May 30, 1997, *supra*.

¹⁵³ Cf. Written filing from Mrs. Villaseñor to the Supreme Court, June 7, 1999 (evidence file, proceedings before the Commission, folios 931 to 935).

¹⁵⁴ Cf. Order by the Human Rights Ombudsman, March 7, 2002 (evidence file, appendix 27 of the Report on the Merits, folios 348 to 353).

¹⁵⁵ Cf. Order by the Human Rights Ombudsman, March 12, 2009, *supra*. The order was issued, according to its text, in response to the Mrs. Villaseñor’s complaint that she had been falsely accused in an “anonymous document [that] ha[d] circulated in the Supreme Court, in [which] [the judge was accused] of false claims of honesty.”

¹⁵⁶ Cf. Record No. 089.2012, *supra*.

¹⁵⁷ The record shows, for example: (1) the Commission stated that it had received information to the effect that on July 18, 1994, Mrs. Villaseñor, together with two other judges who were then members of the Third Division of the Appeals Court, informed the Supreme Court that they had received “harassment” before that date (*cf.* communication from the Commission to the State, July 25, 1994, *supra*); (2) a press report on July 20, 1994, forwarded to the Commission, said that according to Mrs. Villaseñor, “a complaint of harassment was lodged with the Ministry of Security,” and the “[S]tate’s [A]ttorney [...] decided it would be best to conduct an exhaustive investigation of the threats” (*cf.* press report entitled “Shots fired at judge under death threat,” July 20, 1994 (evidence file, appendix

agreed, in the Report on the Merits, that while the case was being processed, the State had not denied having received multiple "complaints" that "the petitioner" said she had lodged. It should also be noted that during the time the case and the precautionary measures were being processed before the Commission, Guatemala had received all the information mentioned here and in the preceding paragraph.

95. In view of all this, the Court concludes that the State had been made aware via several mechanisms about all the claims of factual circumstances that are listed in this Judgment under the heading "Facts described as acts of intimidation against Mrs. Villaseñor" (*supra* par. 46 to 67). They began learning these things in at least the month of July 1994, probably before the 25th.

96. Having established this, the Court is in a position to outline and examine the parties' arguments regarding measures taken in this case for investigation and security.

(B) State actions taken in response to the reported acts of intimidation

B.1 Arguments of the Commission and of the parties

97. The **Commission** held that Guatemala was responsible "for failing in its obligation to offer guarantees in the investigation phase," injuring Mrs. Villaseñor's rights "as applicable to the principle of judicial independence." It also claimed the State was responsible "for the failure to provide Judge Villaseñor with effective protection." It believed that the investigations had been flawed¹⁵⁸ because they were not conducted diligently and promptly, and that "the

20 to the Report on the Merits, folio 326)); (3) according to information received by the Commission, which it forwarded to the State, Mrs. Villaseñor had submitted "several complaints" in July 1994 to a variety of institutions: on the 13th, to the President of the Bureau of Justice and the Supreme Court, and on the 21st, to: (a) the Inspector General of the Army, (b) the President of the Supreme Court and the Bureau of Justice, (c) the Minister of Defense, (d) the "Presidential Chief of Staff," (e) the State's Attorney, and (f) the Board of Directors of the Bar Association (*cf.* communication from the Human Rights Office of the Archbishop of Guatemala to the Inter-American Commission, August 5, 1994, *supra*); (4) the petitioners told the Commission that on August 29, 1994, Mrs. Villaseñor notified the police about the incident involving the person assigned to her security who, as has been stated, was held and beaten that day (*supra* par. 50); they also said that she had "gone in to lodge the complaint with the [j]udge who was on [d]uty, who [c]ould then notify the Supreme Court and the Prosecutor General about what had happened," and that the judge on duty "question[ed]" the officer who had been beaten (*cf.* communication from the petitioners to the Commission, September 20, 1994, *supra*); (5) with respect to the events of December 20, 1995 (*supra* par. 54), the Commission was told: (a) that day, Mrs. Villaseñor reported to the police and to a Justice of the Peace that, contrary to the police assessment, she understood that her telephone line had been cut, and "it appeared to have been deliberate;" (b) on the 22nd of the same month, personnel from the Office of the Public Prosecutor affirmed that the line had been cut, and (c) the following day, "a report of the events" was lodged with "the Human Rights Ombudsman," stating that the events had occurred on the 20th and 21st of that month (*supra* par. 54) (*cf.* communication from the petitioners to the Commission, January 5, 1996, *supra*); (6) in more general terms, on January 2, 1996, Mrs. Villaseñor told the President of the Bureau of Justice and the Supreme Court that several "acts of intimidation against [her] had been reported to the Justice of the Peace on duty at that time[... the] Human Rights Ombudsman, [the] Office of the Public Prosecutor, [MINUGUA, and the] National Police" (*cf.* letter from Mrs. Villaseñor to the president of the Bureau of Justice and the Supreme Court, January 2, 1996, *supra*); (7) the events of December 25, 1995 (*supra* par. 54) have already been mentioned; that day the judge called the Human Rights Ombudsman, and three police patrol cars arrived on the scene (*cf.* petitioners' communication to the Commission, January 5, 1996, *supra*); (8) Mrs. Villaseñor told the Commission on March 10, 1997 that prior to that date, she had "report[ed]" the "situation" to the "District Attorney of the Department of Sacatepéquez;" she did not say explicitly what "situation" she meant, but in her submission, the judge described events that had occurred between 1994 and February 10, 1997 (*cf.* brief from Mrs. Villaseñor to the Inter-American Commission, March 10, 1997, *supra*); (9) Mrs. Villaseñor said that on February 15, 2008, she had contacted the Office of the Public Prosecutor to report that two days earlier, a file of personal information had been "stolen" from her (*supra* par. 65; see petitioners' brief to the Commission, May 7, 2014, *supra*).

¹⁵⁸ The Commission viewed that the analysis could not be limited only to the two complaints that the State acknowledged having received. This, it explained, was "because of the basic standard of risk response," stating that the "duty to respond [...] is activated," with respect to "protection" and "investigation," "when any authority becomes

lack of suitable protection[...], starting with a conscientious assessment[...], had repercussions for Mrs. Villaseñor's judicial activities," and this situation jeopardized the performance of her duties.¹⁵⁹ Furthermore, it held that there were signs of participation by agents of the State in the different incidents.¹⁶⁰ It concluded that the State had violated the rights to personal integrity, judicial guarantees and judicial protection, as set forth respectively in articles 5(1), 8(1) and 25(1) of the Convention, in conjunction with article 1(1) thereof, in injury of María Eugenia Villaseñor Velarde.

98. The **representatives** argued that the right to personal integrity had been violated because of the failure to adopt effective measures of protection¹⁶¹ and to investigate diligently the sources of reported danger facing the judge.¹⁶² They asserted that Mrs. Villaseñor, because of her work, needed "reinforced guarantees"¹⁶³ of protection that the State failed to provide. They also made reference to the investigation, adding that despite the full body of facts, action had been taken on only three, and that only one had been "more or less resolved."¹⁶⁴ They noted that the right to a reasonable time for proceedings had been breached, as "over 20 years elapsed" without adequate investigation.¹⁶⁵ They also commented that the

aware of threats and harassment."

¹⁵⁹ The Commission pointed out that the judge needed to perform her judicial duties "while tolerat[ing] a widespread situation of risk and intimidation incompatible with the principle of judicial independence, with her own personal integrity and [with] her [...] right [...] of access to justice."

¹⁶⁰ It noted, along these lines, that the judge had taken part "in several proceedings associated with human rights violations or crimes against property allegedly committed by agents of the State, including both military and police personnel." The Commission said that there were signs of intervention by agents of the State because certain incidents were associated with the Mack case. It also pointed to the military "appearance" of certain individuals who apparently had attempted to enter the judge's house. The Commission also noted that "early in 1997, various State authorities, including the then Prosecutor General[,...] criticize[d] Mrs. Villaseñor's participation in the proceedings involving the inapplicability of the death sentence." He added that "in May 1999, the then prosecutor for special cases reported Mrs. Villaseñor for acts of corruption in the framework of the proceedings underway against former President Efraín Ríos Montt for several human rights violations;" and that "in October 2001, various military generals and colonels allegedly had questioned Mrs. Villaseñor's book on the murder of Myrna Mack." It added, without detailing the specific facts, that the Human Rights Ombudsman had made reference on several occasions to the participation of agents of the State.

¹⁶¹ The representatives said, "[t]he State took more than a year to adopt the precautionary measures ordered by the Commission, [and] when it did so, it did not perform sustainable planning, so that the judge need[ed] to pay for food for the [agents assigned to her] from her own pocket, and there were no replacements to cover their time off."

¹⁶² The representatives felt that there were flaws in the measures of protection adopted by the State of Guatemala, noting: the State took more than a year to implement the precautionary measures ordered by the Commission; the lack of prior risk assessment; the "failure to keep records of the threats in the administrative file;" the failure to "institutionalize" the measure, and that the process was "unduly burdensome." They also stated, "[b]ecause of the clear connection between the facts of the case and the judge's professional role[...], it was necessary to develop a line of investigation" to "[d]etermine the sources of risk, and thus to develop effective measures of protection." As to the investigation into the incident on November 21, 2007 (*supra* par. 64), they said, "the Office of the Public Prosecutor shelved the case, and the necessary measures were not taken to investigate the virtual crimes." "This process of defamation," they observed, was "not an isolated instance in this case, and should have been taken as an integral part of the investigations into the other threats and the attempt to interfere in [Mrs. Villaseñor's] judicial work"

¹⁶³ At the public hearing, the representatives pointed out that as a judge, Mrs. Villaseñor needed particularly robust protection. They asserted that her judicial independence was affected when she did not receive it. In their written pleadings, they added that "reinforced guarantees derive from the independence needed for the Judiciary," which meant the State should "lend special attention to the need for effective protection." They also claimed that this meant protecting the judge's safety and identifying the source of the threats by means of effective investigation. They understood that in this case, certain of Mrs. Villaseñor's rights as a woman were also affected. They felt that as a woman, the judge needed particular protection, that the adoption of the measures of protection was not guided by an evaluation of the gender perspective, and that her "self-esteem as a woman" holding public office had been undermined.

¹⁶⁴ The representatives noted that even though the Honduran man had been convicted (*infra*, par. 119) there was no investigation into the truthfulness of his claims.

¹⁶⁵ They added that the right to a reasonable time had also been violated more specifically with respect to the two complaints that the State admitted having received (*supra* par. 92).

participation by agents of the State in a number of incidents was evident,¹⁶⁶ and that if indeed this had not been found to be true, it was only because of the lack of a “conscientious, timely and diligent” investigation.” They held that the State had violated articles 5(1), 8(1) and 25(1) of the Convention.

99. The **State** maintained that it had adequately investigated the reports it received and that it provided Mrs. Villaseñor with security. Guatemala said that, regarding the two complaints it acknowledged having received (*supra* par. 91 and 92), “it undertook criminal proceedings” and requested information from Mrs. Villaseñor and from “various entities” in order to identify those responsible. The State added that Mrs. Villaseñor had submitted no documents to prove the alleged threats.

B.2 Considerations of the Court

100. Let it be clear, to begin with, that the Court does not find that the State in the instant case can be held responsible for breaching its duty to respect human rights due to direct participation in the facts by agents of the State. In addition to the discussion about facts that have already been held as proven (*supra* par. 43), and in view of the arguments by the Commission and the representatives on this matter (*supra* par. 97 and 98 and footnotes 160 and 166), this Court cautions that:

(1) The mere mention of intervention by Judge Villaseñor in proceedings that involved agents of the State cannot, without further evidence, lead to the conclusion that it must have been agents of the State who committed the acts of intimidation.¹⁶⁷

(2) The comment about the perceived “military appearance” of certain persons is, in this case, clearly insufficient to attribute the incidents to the State.¹⁶⁸

(3) As for the failure to investigate the case, a matter that has already been discussed, it is worth recalling that “the fact that a case is in a state of impunity, making it impossible to know what happened, cannot always lead this Court to automatically hold the State responsible for failing to uphold its obligation to respect.”¹⁶⁹

(4) With regard to complaints or statements by public officials, the Court would draw attention to its remarks about facts involving a judge’s formal statements, acts of expression or complaints (*supra* par. 85 to 87)¹⁷⁰.

101. For this reason, there are insufficient grounds in the case to hold the State in breach of its obligation to respect Mrs. Villaseñor’s rights.

¹⁶⁶ The representatives recalled signs that agents of the State had been involved with the facts after certain circumstances were linked to the Mack case and the conviction of 30 military personnel in the July Cu Quim case (as a result of which, according to what they said, the threats “[were] reactivated in 1995”). They also said that certain persons who attempted to enter Mrs. Villaseñor’s house had a military “appearance.” They understood, furthermore, that comments by the Office of the Public Prosecutor had created risk for Mrs. Villaseñor.

¹⁶⁷ As an added note, it should be recalled that the perpetrators of the different incidents have not been identified, and that the judge was also involved in cases not associated with public officials. Furthermore, in a document dated September 26, 1994, COPREDEH asserted that Mrs. Villaseñor had stated that she was not accusing “any State [s]ecurity [a]gency” for the “threats” she had experienced prior to the first of that month, because she “attribute[d] them to particular cases she was hearing” (COPREDEH report, September 26, 1994, *supra*).

¹⁶⁸ These would be the incidents described as having occurred in July and August 1994, when persons “who looked like soldiers” attempted to enter Mrs. Villaseñor’s house (*supra* par. 49 and 50).

¹⁶⁹ Cf. Case of González et al. (“Campo Algodonero”) v. Mexico. *Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009*. Series C No. 205, par. 242, and Case of Pacheco León et al. v. Honduras. *Merits, Reparations and Costs. Judgment of November 15, 2017*. Series C No. 342, par. 148.

¹⁷⁰ It should be understood that the Court takes note of a claim included in the facts of the case that on an indeterminate date in 1994, the Ministry of Defense had apparently called Judge Villaseñor and conveyed a request “not to politicize” the investigation into the death of Myrna Mack (*supra* par. 46). This Court cannot rule autonomously on this incident, as it lacks sufficient grounds to do so. The Commission and the representatives said likewise within the sequence of circumstances of this case and offered no specific arguments.

102. Having clarified this, the Court must consider whether the State upheld its obligation to guarantee Mrs. Villaseñor's rights. This is relevant even under the hypothesis that the incidents reported may have been committed by private individuals.¹⁷¹ This obligation entails adopting actions to "ensure, legally, the free and full exercise of human rights,"¹⁷² and may take shape in different ways. It is "based on the specific right that the State must ensure and the particular needs for protection."¹⁷³ In this sense, the Court has held that a variety of actions can be taken, including measures of prevention and investigation;¹⁷⁴ both are obligations of means.¹⁷⁵ The Court will therefore proceed to examine: (a) the security measures adopted in this case, and (b) actions of investigation.

B.2.1 On security measures adopted in this case

103. On the subject of security measures adopted in this case, it has been established that the State did learn of the perilous situation facing Mrs. Villaseñor (*supra* par. 95). The question to examine is whether it took action to keep her safe and, if so, whether the means it used was injurious to her rights.

104. The Court notes that the State provided measures of security in behalf of Mrs. Villaseñor and her family, at least for a period of nearly 18 years (*supra* par. 69 to 72).

105. As questions of fact, the record shows that Mrs. Villaseñor made statements pointing to certain deficiencies in the security provided in 1994, primarily regarding the failure to provide the personnel supplied by the National Police with essential equipment.¹⁷⁶ Mrs.

¹⁷¹ The Court has held, specifically, that human rights violations committed by private individuals are not "automatically attributable" to the State, "because the specific circumstances of the case and the execution of these guarantee obligations must be considered" (*cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs.* Judgment of January 31, 2006. Series C No. 140, par. 123, and *Case of López Soto et al. v. Venezuela, supra*, par. 138).

¹⁷² *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, par. 166, and *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of February 5, 2018. Series C No. 346, par. 121.

¹⁷³ *Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs.* Judgment of September 26, 2006. Series C No. 155, par. 73, and *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 30, 2016. Series C No. 329, par. 207. Similarly, *Case of the Pueblo Bello Massacre v. Colombia, supra*, par. 111 and *Case of Isaza Uribe et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 20, 2018. Series C No. 363, par. 87.

¹⁷⁴ The Court has held that as part of its obligation to guarantee, the State is legally constrained to "take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation" (*Case of Velásquez Rodríguez v. Honduras. Merits, supra*, par. 174, and *Case of Isaza Uribe et al. v. Colombia, supra*, par. 150).

¹⁷⁵ Prevention and investigation are obligations of means and not of results; if the result is not satisfactory, non-compliance cannot be automatically declared (*cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, par. 177 (regarding the obligations to prevent and investigate); *Case of López Soto et al. v. Venezuela, supra*, par. 130 (regarding the obligation to prevent), and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs.* Judgment of November 28, 2018. Series C No. 370, par. 240 (regarding the obligation to investigate)).

¹⁷⁶ *Cf.* Order by the Human Rights Ombudsman, September 5, 1994, *supra*. The Human Rights Ombudsman asserted that he or his staff had contacted the National Police and been told that they had already ordered the requested essential equipment. *Cf.* also the August 8, 1994 letter from Mrs. Villaseñor to the Director of the National Police, *supra*. The judge asserted in this document that the agents had little equipment, that the one with a gun had only five cartridges, and that "two of them [had been] sick and the other two had the weekend off. On July 25, 1994, Mrs. Villaseñor said that "neither the Office of the Public Prosecutor nor the Ministry of National Defense ha[d] provided the protection she requested" (Order by the Human Rights Ombudsman, September 5, 1994, *supra*). It has also been stated that on August 30, 1994, Mrs. Villaseñor asked the Ministry of Defense for security (*cf.* CODEHUCA communication to the Commission, October 4, 1994, *supra*). Mrs. Villaseñor pointed to September 1, 1994, saying, "not until that date did the Ministry of National Defense offer to have the Army [...] protect her" (Order by the Human Rights Ombudsman, September 5, 1994, *supra*). COPREDEH stated in a document on September 26, 1994 that the

Villaseñor had two complaints about her security services after 1995. First, she said she was paying for food for the officers.¹⁷⁷ Second, on October 9, 2001, she said that one of the two men on her security detail had gone on vacation, and that the police had informed her that it would be impossible to assign a replacement because they had staff shortages.¹⁷⁸ It has been shown that “[i]t was necessary to request the services of a security officer appointed by the Supreme Court”¹⁷⁹ and that, in the end, as the judge explained, starting on November 9, 2001 she once again had two security officers.¹⁸⁰

106. This Court notes that the State provided protection measures and does not hold that the comments by Mrs. Villaseñor about the lack of equipment for the security personnel are enough to conclude therefore that the State violated her human rights. Moreover, there is documentation showing that the time when Mrs. Villaseñor was without protection resulted from her having declined to receive security measures (*supra* par. 70 and footnote 104). In and of itself, this does not relieve the State from guaranteeing the judge’s rights, and furthermore, at that time the precautionary measures ordered by the Commission were in effect. Nevertheless, the Court must examine the specific impact that the State’s conduct had on the judge’s rights or her risk status. There was no indication, it notes, that she experienced acts of intimidation from January to December 1995, that is, for most of the time she was without protection. Several did occur after that period (*supra* par. 54), and in January 1996 she was given security measures (*supra* par. 71).

107. After 1996, security was present almost continuously through 2013 (*supra* par. 71). The Court understands that it may have been inappropriate for the judge to have needed to cover expenses and, because of disorganization in scheduling vacation leave for the officers, there should not have been periods when the service was not given.¹⁸¹ Even so, it does not believe that these or other issues raised by the representatives (*supra* par. 98) in this case were material enough to have impinged on Mrs. Villaseñor’s rights. As an aside, it should be noted that the case file contains documents from her expressing satisfaction with the measures received and their impact on deterring risk.¹⁸²

National Police and the Ministry of National Defense had assigned personnel to protect Mrs. Villaseñor (COPREDEH report, September 26, 1994, *supra*). Moreover, in the view of the Human Rights Ombudsman, regarding the events that occurred prior to September 5, 1994, “the institutions responsible for providing security services did not respond as expeditiously as the case of a judiciary officer would merit,” or they did so ineffectively (*cf.* Order by the Human Rights Ombudsman, September 5, 1994, *supra*).

¹⁷⁷ *Cf.* Brief from Mrs. Villaseñor to the Inter-American Commission, March 10, 1997, *supra*; report from the State to the Commission, October 10, 1997, *supra*, and report from the State to the Commission, July 17, 1998, *supra*.

¹⁷⁸ *Cf.* Mrs. Villaseñor’s brief to the Commission, October 9, 2001 (evidence file, appendix 17 to the Report on the Merits, folios 110 and 111).

¹⁷⁹ *Cf.* Order by the Human Rights Ombudsman, March 7, 2002, *supra*.

¹⁸⁰ *Cf.* Order by the Human Rights Ombudsman, March 7, 2002, *supra*. Mrs. Villaseñor told the Commission in a filing that the “situation with the officer’s vacation leave” had also occurred prior to October 2001 and moreover, it was on November 16, 2001 that she asked the Supreme Court to “provide security services” (*cf.* Petitioners’ brief to the Commission, May 7, 2014, *supra*).

¹⁸¹ Expert witness Despouy expressed similar views, not regarding this case, but in general terms (*cf.* Statement before the Court by expert witness Leandro Despouy, *supra*).

¹⁸² According to the State’s information, on October 8, 1997, Mrs. Villaseñor told an official from COPREDEH that as of October 1997, she had been receiving security from the National Civil Police for two years, and that it had served as a “deterrent;” it had prevented incidents against her from occurring and it had allowed her and her family to “feel safer” (*cf.* State’s communication to the Commission, May 10, 1997,) *supra*. According to the document, Mrs. Villaseñor explained that the security was lent by four officers who rotated weekly, in two-person shifts, and was at her service 24 hours a day. She added that one officer escorted her and the other, her daughter and her mother, and that they spent the night at Mrs. Villaseñor’s house. The State also said that on February 28, 2004, Mrs. Villaseñor had told COPREDEH on a telephone call that the measures had been effective, that the security officers had performed well and provided her with the needed security, and moreover, that during “this time she ha[d] received no threats or acts of intimidation” (*cf.* Guatemala’s communication to the Commission, February 28, 2005, *supra*).

108. In conclusion, according to the information available to this Court, during the period in question, the State effectively fulfilled its duty to provide protection. This conclusion is unaltered by any specific shortcomings that may have occurred during the time the State was providing security services. The Court concludes that, with respect to the security measures adopted in this case, the State cannot be held responsible for failing to meet its obligation to guarantee Mrs. Villaseñor's right to personal integrity.

109. In the framework as described, let it also be clear that the State has not been shown to have breached specific obligations regarding the judge's gender.¹⁸³ The case does not show that the alleged violations, based on the facts as adduced, reveal a connection to Mrs. Villaseñor's status as a woman.

B.2.2 On the investigation activities

110. With respect to the work of investigation, the Court has held that, depending on the case, "[t]he obligation to investigate cases of violations of [a] certain substantive right [may be a means to safeguard, [...] protect[]or[]ensure [that right]."¹⁸⁴ The duty to investigate has also been examined in the framework of the right to judicial guarantees and the right to judicial protection.¹⁸⁵ Along these lines, the Court has held that all persons who have suffered any violation of their human rights are entitled "to obtain from the competent authorities of the State the clarification of the facts of violations and the corresponding perpetrators, by way of an investigation and judgment that is foreseen in Articles 8 and 25 of the Convention."¹⁸⁶ Similarly, "any person who considers himself or herself to be a victim of [violations of his or her rights] has the right to resort to the system of justice to attain compliance with this duty by the State, for his or her benefit and that of society as a whole."¹⁸⁷

111. The Court's case law has already made repeated reference, in discussion of cases before it, to the obligation to investigate not only attacks against personal integrity¹⁸⁸ and

¹⁸³ This conclusion applies to the security measures and also to the investigation measures.

¹⁸⁴ *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No 195, par. 298. Similarly, see also *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, par. 166; *Case of the Pueblo Bello Massacre v. Colombia, supra*, par. 142 and *Case of Terrones Silva et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2018. Series C No. 360, par. 181.

¹⁸⁵ The Court has recalled that "[i]n recurring case law, [...] reference has been made to the broad content and scope of the right of access to justice, in the framework of the right to judicial guarantees and the right to judicial protection, recognized in articles 8(1) and 25(1) of the Convention, in conjunction with articles 1(1) and 2 thereof" (*Case of Órdenes Guerra et al. v. Chile, supra*, par.76). Similarly, the Court has held that, "[u]nder the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8 (1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1(1))" (*cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, par. 91, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, par. 267). It has also found that "the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is done to discover the truth of what happened, and to [investigate,] prosecute and to punish, as appropriate, those eventually found to be responsible" (*cf. Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, par. 114, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, par. 267).

¹⁸⁶ *Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010. Series C No. 212, par. 206 and *Case of Isaza Uribe et al. v. Colombia, supra*, par. 159. Even previous to the first judgment cited above, the Court had similarly held that articles 8 and 25 of the Convention anticipate the investigation of actions that violate human rights (*cf. Case of Durand and Ugarte v. Peru. Merits*. Judgment of August 16, 2000. Series C No. 68, par. 130 and 131, and *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, par. 151).

¹⁸⁷ *Case of the Caracazo v. Venezuela. Reparations and Costs*. Judgment of August 29, 2002. Series C No. 95, par. 115, and *Case of Bulacio v. Argentina, supra*, par. 110.

¹⁸⁸ This applies not only to serious offenses such as torture or cruel, inhuman or degrading treatment, but also,

against life,¹⁸⁹ but also, in other circumstances and depending on the details of the case,¹⁹⁰ to investigate such acts as threats or harassment.¹⁹¹ At the same time, the Court has cautioned that “the obligation to investigate” derives not only from international obligations, but “also from domestic legislation related to the duty to investigate ex officio certain unlawful conduct.”¹⁹²

112. Now, with respect to the instant case, the Court reiterates (*supra* par. 88) that it cannot review each one of the facts described and determine which ones constitute per se unlawful acts that warrant criminal investigation.¹⁹³

113. Nevertheless, this Court can stress that there are certain facts Guatemala should have investigated, at the very least. First of all, the State should have investigated claims about the incidents on August 29, 1994, when one of the people assigned to Mrs. Villaseñor’s security detail was seized, beaten, drugged and interrogated about the judge’s activities (*supra* par. 50). This obligation is drawn from guidelines already set forth in this Court’s case law,¹⁹⁴ due to clear implications for the dangers faced by Mrs. Villaseñor, as well as statements

depending on the case, can apply under a variety of circumstances (*cf. Case of Perozo et al. v. Venezuela, supra*, par. 358, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, par. 79).

¹⁸⁹ *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, par. 176 to 178, and *Case of Alvarado Espinoza et al. v. Mexico, supra*, par.212.

¹⁹⁰ Thus, for example, depending on the features of the case and considering the obligations stipulated in domestic legislation, it has analyzed investigation into the circumstances of forced displacement (*cf. Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325*, par. 287 to 298). It has also had the opportunity to hear cases that brought to the fore the obligation to investigate instances of incarceration (*cf. Case of the Barrios family v. Venezuela. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237*, par. 213 to 215 and 257 to 260).

¹⁹¹ *Cf. Case of the Barrios family v. Venezuela, supra*, par. 216 to 219 and 261 to 263, and *Case of Alvarado Espinoza et al. v. Mexico, supra*, par. 214, 255 and 256. The Court has also held that “the State is specially obligated to guarantee the rights of persons in situations of risk and must move forward with the investigations necessary to clarify the facts, followed by the consequences established in pertinent legislation” (*Case of Velásquez Rodríguez. Provisional Measures with regard to Honduras. Court Order, January 15, 1988, considering paragraph 3, and Case of Fernández Ortega et al. v. Mexico. Provisional Measures. Order of the Inter-American Court of Human Rights, February 20, 2012, considering paragraph 31. Similarly, Matter of the Penitentiary Complex of Curado with regard to Brazil. Provisional Measures. Order of the Inter-American Court of Human Rights, November 28, 2018, considering paragraph 143*). Let it be clear that this text is taken from the considering paragraph of orders on provisional measures, and in the specific order cited above on the *Case of Fernández Ortega et al.*, the Court stated that this obligation is a separate matter from the provisional measures themselves. Also, it can be concluded from the considerations developed by the Court that this obligation is not lessened by this Court’s understanding that claims concerning the failure to investigate, per se, can be considered part of the merits of a case and are not necessarily the circumstances of extreme gravity and urgency that warrant the adoption of provisional measures as set forth in Article 63(2) of the Convention (*cf. Matter of Pilar Noriega García et al. Provisional Measures with regard to Mexico. Court Order of February 6, 2008, considering paragraph 14; Case of Carpio Nicolle et al. with respect to Guatemala. Provisional measures. Order of the Inter-American Court of Human Rights, July 6, 2009, considering paragraph 24 and Case of La Rochela Massacre v. Colombia. Provisional measures. Order of the Inter-American Court of Human Rights, February 16, 2017, considering paragraph 5 and footnote 3*).

¹⁹² *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No 196*, par. 77. Thus, “it corresponds to the States Parties to establish, pursuant with the procedures and through the bodies established in its Constitution and its laws, which illegal behaviors will be investigated ex officio and regulate the regimen of criminal actions within the domestic procedure, as well as the rules that allow the victims or affected parties to file a complaint or exercise a criminal action and, if this is the case, participate in the investigation and the process” (*Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No 194*, par. 284 and 285).

¹⁹³ Nonetheless, any investigations that are deemed necessary, seeking to pursue logical lines of inquiry, could proceed to consider the full array of these facts (*infra* par. 114 and 115).

¹⁹⁴ The Court’s case law shows that States must investigate serious affronts to personal integrity (*cf. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Series C No. 149*, par. 147). The Court has added that, depending on the circumstances of the case, it may also be necessary to investigate threats (*supra* par. 111). The Court points to claims that the man who provided security services to Mrs. Villaseñor was beaten, drugged and interrogated about her activities, and his captors hurled threats against her and those who were in her residence.

by domestic authorities.¹⁹⁵ It is reasonable to assume that, as part of this or other investigations, and considering the similar timing between this fact and its possible relationship with the conditions of risk already mentioned, the State should have investigated statements about events prior to September 1, 1994, at least those involving direct threats, including the threatened or attempted abduction of the judge's daughter. The State should also have taken actions regarding the complaints that were lodged, other than mere communications or presentation of information. These complaints already include those of July, 2005 and December, 2007, for which Guatemala acknowledges receipt (*supra* par. 91 and 92). The facts also show that State authorities reported that Mrs. Villaseñor had lodged a report even before July 28, 1994; that a process was undertaken regarding the Honduran man who in January 1996 had claimed to be aware of a plan to murder judges; that on February 10, 1997, Mrs. Villaseñor lodged two complaints, and that on November 14, 2001, orders were given for an "exhaustive investigation" into the alleged "threats" against Mrs. Villaseñor by military persons (*supra* par. 93)¹⁹⁶.

114. This Court does not deny that the State could have been under obligation to pursue investigations on its own motion concerning other circumstances different from those indicated in the preceding paragraph; instead, it holds that this cannot be determined by the Court, given its jurisdiction and the evidence adduced to the process.¹⁹⁷ This is true notwithstanding the points set forth below concerning the obligation to consider the facts in the overall framework of pursuing all logical lines of investigation.

115. Turning to the material that is relevant for the case, it should be stated that the obligation to investigate should be exercised within a reasonable period¹⁹⁸ and following logical lines of investigation.¹⁹⁹ Accordingly, because the case involves actions probably associated with the work of a judge, the State must take this work into consideration to identify any interests that could be affected in the exercise of her duties and pursue an exhaustive search for all relevant information, to then design and implement an investigation that will lead to an effective analysis of hypotheses concerning those who could be involved, whether by action

¹⁹⁵ It should also be recalled that on September 5, 1994, the Human Rights Ombudsman requested "an exhaustive investigation into the facts" of the threat against Mrs. Villaseñor (and other judges), including mention of the incident on August 29 of that year.

¹⁹⁶ The State's reaction to the complaint regarding an incident on November 21, 2007 (*supra* par. 64 and 92 and *infra* par. 123), that the State admits to having received, is examined in this section of the text, in response to these claims by the representatives, and also in a later section that will address certain other relevant points (*infra* par. 135 to 139). Also discussed below (*infra* par. 135 to 139) is the matter of the report on June 7, 1999 (*supra* par. 93) of incidents that were alleged to have occurred in May of 1999 (*supra* par. 58).

¹⁹⁷ The Court believes it must clarify a few points regarding the statements on the death of Mrs. Villaseñor's niece, who is not an alleged victim in this case, when she was hit by an automobile (*supra* par. 62). The Court is not claiming that it is unnecessary to investigate the incident or to consider the possibility that it could bear some relationship with Mrs. Villaseñor's judicial work, but rather that, in the framework of the international procedure in this case, the facts available would not allow the Court to relate it to the central object of the action, which involves specifically the acts of intimidation against Mrs. Villaseñor because of her work on the bench. The file does not contain sufficient information to hold that the act was committed deliberately, as a means to intimidate or affect Mrs. Villaseñor. Nor is there information on complaints lodged or procedural actions undertaken on this incident.

¹⁹⁸ Cf. *Case of Bulacio v. Argentina*, *supra*, par. 114, and *Case of Alvarado Espinoza et al. v. Mexico*, *supra*, par. 250. The Court considers the proceeding to be at an end when a final and firm judgment is delivered and the jurisdiction thereby ceases; and particularly in criminal matters, that time must cover the entire proceeding, including any appeals that may be filed. The Court has considered that a prolonged delay may, in itself, constitute a violation of judicial guarantees" (cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, par. 71, and *Case of Terrones Silva et al. v. Peru*, *supra*, par. 185. As for the question of whether a prolonged delay may, in itself, constitute a violation of judicial guarantees, cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, par. 145 and *Case of Alvarado Espinoza et al. v. Mexico*, *supra*, par. 250).

¹⁹⁹ Cf. *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163, par. 158, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, *supra*, par. 289.

or by omission, at all different levels, and delve into all relevant lines of investigation to identify the perpetrators.²⁰⁰

116. Clearly, the on-going nature of the incidents that affected Mrs. Villaseñor is not merely a chain of isolated acts of intimidation against her, but fits into a composite of similar or even more serious strikes against other judges. It is self-evident that this composite of intimidating behaviors, which as a whole were intended to interfere with the exercise of judicial action, can only reflect motivations and derive from sources that should have been systematically investigated by the State until finally identifying the individuals who were responsible and putting a stop to these acts of interference.

117. Based on these tenets, the Court will proceed to examine the different situations presented.

118. *Failure to investigate or respond.*- To begin with, it should be noted that there is no evidence that the State investigated or responded to: the complaint filed prior to July 28, 1994 (the file was lost²⁰¹), the incident on August 29 of that same year, instances of direct threats allegedly made before September 1, 1994, the two complaints in February 1997 and the investigation ordered on November 14, 2001.

119. *Investigation of the "Honduran man".*- The Court also notes Mrs. Villaseñor's report that in September 1998, the Honduran man who had described the plan to kill judges in 1996 was convicted and sentenced to six years in prison.²⁰² The Court takes note of the argument by the representatives that although there was a conviction, there was no exploration into the truthfulness of the allegations proffered by the Honduran man (*supra* footnote 164). This Court recalls, nonetheless, Mrs. Villaseñor's explanation that the process lodged against him was for "cover-up of crimes, coercion, defamation and false accusation and false claims." Therefore, in view of the fact that he had been charged specifically with making false statements, it is not clear that the State ought to have pursued an investigation into these claims. Therefore, and considering the final outcome of the process, the Court has no grounds to hold that the State has breached its duty to investigate on this specific point.

120. *Investigation of the complaint of July 2005.*- Regarding the complaint filed in July 2005 (*supra* par. 92), relevant authorities decided to undertake proceedings, and the State provided information on the actions taken. The Office of the Public Prosecutor said that various investigative actions began on the fourth of that same month to look into the crime of "threats",²⁰³ but that after "the subsequent investigation" took place, "it was not possible to verify [...] the facts reported or to identify participation by any individual," and for this reason, the court involved was requested on September 11, 2007 and on May 10, 2011 to "[d]ismiss

²⁰⁰ Cf., *mutatis mutandi*, *Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 283, par. 131, 216, 219 and 220, and *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, par. 47.

²⁰¹ The Human Rights Ombudsman stated that on July 28, 1994, the "Office of the Public Prosecutor's Department of Investigation and Prosecution" reported that "the case file" on "[Mrs.] Villaseñor's reports of threats" was missing (Order by the Human Rights Ombudsman, September 5, 1994, *supra*).

²⁰² Cf. "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*.

²⁰³ They cited several other actions in addition to those discussed in the following paragraph: on July 4, 2005, the police were asked to provide perimeter security around the judge's residence; on October 3, 2005 "investigation guidelines were provided" to the Director of Criminal Investigations of the Office of the Public Prosecutor; on October 4, 2005, the case judge was asked for "[j]urisdictional [c]ontrol" and authorization to subpoena information from legal entities, and on August 25, 2011, a report was received from COPREDEH on the request by the Inter-American Commission to adopt precautionary measures (cf. Report by the Office of the Public Prosecutor, August 17, 2017, received by COPREDEH on August 31, 2017, *supra*).

the case." The request was "denied" on June 16, 2011, and by August 17, 2017 the case was still "under investigation."²⁰⁴

121. The Court notes that these actions have lasted over 12 years, but there is no evidence that the process has been closed. The State has reported only three substantive acts of investigation during this period, and the other actions (*supra* footnote 203), while they may have been significant, were not designed to shed light on the incidents. The substantive actions reported by the State are: (1) on November 4, 2005, the public telephone company, Telecomunicaciones de Guatemala, was asked for "the record of incoming calls" to a telephone number; (2) on March 12, 2007, the Supreme Court was asked for a "data report" on Mrs. Villaseñor, and (3) on July 19, 2007, Mrs. Villaseñor made a statement but, according to the Office of the Public Prosecutor, "did not provide information on the incidents under complaint" and said that she had received no new threats associated with them.²⁰⁵

122. The Court cautions that very little investigative work took place and produced only three actions, in 2005 and 2007. The record does not show any other action taken during the more than 12 years that the investigation lasted. Neither these actions nor any other process attempted to trace a connection between the specific incidents under investigation and any others. As a result, the Court has no need to delve further into the matter and can hold that the State did not conduct a diligent investigation within a reasonable period, concerning the complaint lodged in July 2005.

123. *Investigation into the events of November 21, 2007.*- Judge Villaseñor said that on the following tenth of December, she brought a complaint about the email sent to the Supreme Court on November 21, 2007, making offensive remarks about her (*supra* par. 64 and 92). On January 2, 2008, this complaint was submitted to the Unit on Crimes against Justice Operators of the Human Rights Attorney, and several procedures were undertaken to investigate the crimes of "coercion and threats."²⁰⁶ The Office of the Public Prosecutor explained that after the investigation was complete, the identity of KM could not be determined, nor was it possible to identify the person who had sent the messages, but it was assumed that this name had been used only to send the "coercive, threatening messages."²⁰⁷ It therefore declared on an unspecified date, "the investigation was [d]ismissed."²⁰⁸

²⁰⁴ Cf. Report by the Office of the Public Prosecutor, August 17, 2017, received by COPREDEH on August 31, 2017, *supra*). Mrs. Villaseñor said that on July 19, 2007, she had received a visit from an assistant prosecutor regarding her complaint, and she expressed dissatisfaction with the lack of activity by the State (*cf.* Petitioners' brief to the Commission, May 4, 2014, *supra*).

²⁰⁵ Cf. Report by the Office of the Public Prosecutor, August 17, 2017, received by COPREDEH on August 31, 2017, *supra*).

²⁰⁶ Several other actions were cited in addition to those discussed in the following paragraph: January 4, 2008: i.- "[j]urisdictional [c]ontrol and [j]udicial [a]uthorization were requested to subpoena information from legal entities;" ii.- a report was issued confirming the position held by Mrs. Villaseñor; iii.- it was "establish[ed]" that she had not been assigned security by the "Security Unit of the Bureau of Justice," but by the National Civil Police, and iv.- the Director of the Office of Vital Statistics of the Board of Elections was asked to provide information on KM; on January 8, 2008: i.- it was confirmed that Mrs. Villaseñor had two National Civil Police officers assigned to her security, and ii.- it was "establish[ed]" that she was then given "perimeter and personal protection;" on January 16, 2008, authorization was given to subpoena information from legal entities; on March 26, 2008, complaints were received from the Secretariat of the Judicial Disciplinary Board of the Bureau of Justice against Mrs. Villaseñor, but they were not processed, and on August 8, 2008, a copy of the file was delivered to the CICIG (*cf.* Report by the Office of the Public Prosecutor, August 24, 2017, received by COPREDEH on August 31, 2017, *supra*).

²⁰⁷ Cf. Report by the Office of the Public Prosecutor, August 24, 2017, received by COPREDEH on August 31, 2017, *supra*. An additional item associated with the actions of government officials, regarding the investigation, was a statement by Mrs. Villaseñor that a woman had upbraided her for the presence at her home of "people from the Office of the Public Prosecutor, in the facts involving [KM]" (*cf.* Petitioners' brief to the Commission, May 7, 2014, *supra*). The Court lacks sufficient material to understand whether this incident is relevant to the analysis of investigative activities or as a possible act of intimidation.

²⁰⁸ Cf. Report by the Office of the Public Prosecutor, August 24, 2017, received by COPREDEH on August 31, 2017,

124. The Court observes that the following acts of investigation were conducted: (1) on February 12, 2008, Mrs. Villaseñor delivered an "eyewitness account" of the facts; (2) the following March 5, the TIGO telephone company reported that it could not provide details on calls from a telephone line from October 1 through November 2, 2007, because the line in question "wa[s] not equipped to register incoming or outgoing calls;" (3) on the 25th of the same month, it was determined that a person by the name of RG is an attorney "whose registration with the bar is up to date;" (4) on the following 31st, a report stated that Mrs. Villaseñor had recommended against interviewing that lawyer and, through interviews, it was found that the person known as KM was unknown in his supposed place of residence, nor were there other persons of the same surname in the vicinity; (5) on April 3, 2008, an "employment certification" was provided for a person by the name of MP; (6) on June 27, 2008, the Secretariat of the Judicial Board of Discipline "establish[ed]" that the complaints lodged by the attorney RG against Mrs. Villaseñor were "dismissed," and (7) on June 10, 2009 the attorney RG made a statement "regarding what he knows personally about the facts reported by [Mrs.] Villaseñor."

125. This Court has no information about when the investigation was completed, nor can it weigh the relevance of the measures regarding the people identified as RG and MP, as it lacks sufficient information about them or their possible connection to the facts of the case. It does acknowledge that the State undertook actions attempting to identify KM or the person who, using that name, sent the email. Moreover, although the representatives claimed that "necessary measures" had not been taken, the Court notes, in this case, that their statement alone is not sufficient to conclude that the State's actions were negligent. Based on these considerations, the Court finds that it lacks sufficient grounds to determine whether or not the investigation activities took a reasonable amount of time or followed the guidelines of due diligence. It cannot conclude, therefore, that the State breached its obligation to investigate the incident of November 21, 2007.²⁰⁹

126. *Conclusion.*- In conclusion, and notwithstanding the discussion about the conviction of the Honduran man in 1998 and the inquiry into the incident of November 21, 2007, Guatemala did not conduct an effective investigation into the facts of the case.

B.2.3 Conclusion

127. The Court notes that in the instant case, the State's conduct needs to be evaluated in the context of claims about an array of acts of intimidation (*supra* par. 89 and 90). It cannot be held that every incident per se ought to be investigated, but nevertheless, the State had to undertake actions to identify the sources of attempts to impede the work of the judiciary and, if relevant, the corresponding responsibilities (*supra* par. 102 and 110 to 116).

128. Thus, in addition to its actions to provide security (*supra* par. 69 to 72 and 103 to 109), the State needed to examine the source of the acts of intimidation. Guatemala did not comply with this obligation because it did not investigate events prior to September 1994 that had clear implications for the safety of Mrs. Villaseñor (*supra* par. 113). Nor did it respond to the claims that Mrs. Villaseñor lodged in 1997 or conduct effective actions in other cases in

supra.

²⁰⁹ As for the argument that the incident "should have been approached as an integral part of the investigations on other threats and attempts at interference," the Court points to what has already been said about pursuing logical lines of investigation and the facts not investigated, or investigated without due diligence. The representatives also associated the incident of November 21, 2007 with an alleged breach of the right to privacy. This will be discussed below (*infra* par. 133 to 139).

which, in 2001 and 2005, the State authorities themselves felt that investigations were in order (*supra* par. 118 and 120 to 122).

129. The Court understands that, given the circumstances of the case involving a succession of incidents described as an on-going, prolonged situation of danger, the timely fulfillment of the obligation to investigate could have led to a clear understanding of circumstances associated with the risk being alleged or, ultimately, in alleviating or deactivating it. This is associated, in the instant case, with her work as a judge, given the assumption that the reported danger was related thereto. The Court has reached this conclusion drawing on reports about a situation of insecurity or risk for judges in Guatemala (*supra* par. 32).

130. An investigation into the facts would not only have been a significant action to comply with Mrs. Villaseñor's right to judicial guarantees and right to judicial protection. Additionally, given the situation described in the previous paragraph, it would have been a means to guarantee her ability to enjoy her substantive rights and her performance as a judge. The State also had a clear duty to investigate the alleged facts, because it was a necessary means to guarantee the independence of the judiciary, a matter of concern even beyond the interests of Mrs. Villaseñor. Judicial independence, in this regard, is not a "privilege" for judges or an end in itself, but has a clear rationale for enabling judges to discharge their duties effectively, even though, as this Court has explained, "judicial independence should not only be analyzed in relation to justiciable matters," but also, depending on the circumstances of the case, can be linked to Convention-based rights proper to judges.²¹⁰

131. It is reasonable to assume that the State's failure to comply with the obligation to investigate facts that could comprise a situation of risk, associated with her position as a judge, placed Mrs. Villaseñor in a years-long situation of uncertainty and anxiety that affected her personal integrity. This was why she described the conditions in which she was living as "painful [and] cruel," and said she needed "to be strong just to go" to work. She also said that after the incidents began, she had "emotional problems" and singled out "pain," "anger," "powerlessness" and a sensation of "horrible loneliness," as well as "health problems." Furthermore, documentation has been submitted showing that she suffered from anxiety, with "depressive tendencies," and that she experienced excessive occupational and emotional stress.²¹¹ The Court therefore concludes that the State, by failing to abide by its obligation to guarantee because it did not carry out the required investigations, infringed Mrs. Villaseñor's right to personal integrity. She felt the effects of the State's inappropriate conduct and experienced damage to her personal integrity as related to her judicial activity.

132. Based on this discussion about the investigation of the facts, this Court therefore concludes that the State breached its duty to guarantee the right to personal integrity for Mrs. Villaseñor, whose judicial independence was undermined. Moreover, the failure to take effective actions to investigate the facts injured her right to judicial guarantees and her right

²¹⁰ Cf. *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary objection, Merits, Reparations and Costs*. Judgment of August 23, 2013. Series C No. 266. par. 153; *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 28, 2013. Series C No. 268, par. 199, and *Case of López Lone et al. v. Honduras, supra*, par. 240.

²¹¹ It is worth noting that in June 2014, Mrs. Villaseñor's cardiologist declared that she had been under medicinal care since November 1994, with a condition of high blood pressure, palpitations and depression caused by excess emotional and occupational stress (*cf.* Certification by Dr. AR, June 6, 2014 (evidence file, proceedings before the Commission, folios 1247 to 1249)), and that on July 23, 2016, Mrs. Villaseñor was diagnosed with an "[a]nxiety disorder with depressive tendencies" (clinical report, Institute of Applied Psychology, June 23, 2016 (evidence file, proceedings before the Commission, folios 1240 to 1242)). The Court assures that it cannot establish a causal link between the facts of the case and any specific health condition. Nevertheless, the Court is pointing to these medical reports as additional references that strengthen the Court's belief that Mrs. Villaseñor did experience negative consequences.

to judicial protection. The Court therefore finds that Guatemala violated Articles 5(1), 8(1) and 25(1) of the American Convention on Human Rights, in conjunction with Article 1(1) thereof, in injury of Mrs. María Eugenia Villaseñor Velarde.

(C) On alleged "acts of defamation"

C.1 Arguments of the parties

133. The **representatives** argued violation of the right to privacy enshrined in Article 11 of the Convention, for two reasons:

- (1) First, "[i]n 1999 a prosecutor from the Office of the Public Prosecutor accused the judge of having taken part in a corruption scheme presumably for having received money in exchange for ordering the release of General Ríos Montt;" a subsequent report on "supervision of the courts," issued the same year and demonstrating "that she was not involved" was kept "confidential." They found that this "arbitrarily injured" her reputation.
- (2) Second, they stated in 2007, a person self-identified as KM sent an email to the Chief Justice of the Supreme Court accusing Mrs. Villaseñor of involvement in organized crime. They maintained that the investigative procedures on this incident were not diligent. They also claimed alleged breach of due process because Mrs. Villaseñor was not given the right to defense or to demonstrate that she was innocent of participation in corruption cases.

134. The **State** said that the instant case did not demonstrate any arbitrary or abusive interference by the State against Mrs. Villaseñor.

C.2 Considerations of the Court

135. The Court notes, as relevant factual circumstances, that:

- (1) On May 24, 1999, a person under witness protection stated that the judge had received money in exchange for favoring Mr. Efraín Ríos. Following a submission by the judge, the Supreme Court ordered an investigation.²¹² On July 1, 1999, the Supervisor General of the Courts, "responsible for the investigation, did not find [...] anomalies [in the prosecutor's conduct], and recommend[ed] that the case file be drop[ped]."²¹³ Nonetheless, in August 1999, the Supreme Court found that Mrs. Villaseñor had not taken part in any judicial proceedings involving Mr. Ríos Montt.²¹⁴ On November 10, 2015, the President of the Bureau of Justice denied a request for rectification submitted by Mrs. Villaseñor, in which she objected to the fact that no decision had been made to publish the report proving that she had not taken part in a case involving Ríos Montt.²¹⁵ The President of the Bureau of Justice

²¹² Cf. "Actualización del caso de la magistrada María Eugenia Villaseñor Velarde," *supra*.

²¹³ Document by the President of the Bureau of Justice, July 1, 1999 (evidence file, proceedings before the Commission., folio 1299).

²¹⁴ Cf. Petitioners' brief to the Commission, May 7, 2014, *supra*. Despite this claim, Mrs. Villaseñor told the Commission that the Supreme Court "den[ie]d her request, saying that it was out of order." She said that she had requested the Supreme Court for an investigation to determine whether she had been involved in the case; that the findings be made public, and that "the [S]tate's Attorney be asked for an explanation of the case" (cf. petitioners' communication received by the Commission on August 11, 1999, *supra*). This would suggest that Mrs. Villaseñor had claimed that these final two requests were denied, and that in fact, they are consistent with the very petitions she set out in her submission (cf. written submission by Mrs. Villaseñor to the Supreme Court, June 7, 1999, *supra*). Mrs. Villaseñor added that following the decision by the Supreme Court, she "lodge[d] a constitutional motion of amparo with the Fourth Division of the Court of Appeals," it was denied, and the Constitutional Court upheld the decision to deny (cf. petitioners' communication received by the Commission on August 11, 1999, *supra*). The decision to deny the constitutional motion stated that Mrs. Villaseñor's rights had not been infringed in the process of taking the statement from the person who made claims against her (cf. Fourth Division of the Court of Appeals, judgment of August 18, 1999 (evidence file, proceedings before the Commission, folios 358 to 365)).

²¹⁵ Cf. Order by the President of the Bureau of Justice of Guatemala, November 10, 2015 (evidence file, proceedings before the Commission, folios 1308 to 1314).

said, as grounds for this decision, that "there was no error [...] because [Mrs. Villaseñor] still has the constitutional right to reply."²¹⁶

(2) On November 21, 2007, a person self-identified as KM sent an email to the Supreme Court hurling accusations against Mrs. Villaseñor. This incident, along with action to investigate it, were described above (*supra* par. 64, 123 and 124).

136. The Court has already observed that any "arbitrary or abusive interference with [a person's] private life" is a violation of Article 11 of the Convention. This article recognizes the personal right to have one's honor respected, prohibits "illegal attacks on [...] honor or reputation and imposes on the States the duty to afford protection against such attacks."²¹⁷ The Court has also held that "reputation may be harmed as a result of false or erroneous information that is disseminated without justification and that distorts the public opinion of an individual," and that reputation "protects the individual against attacks that restrict the individual's status in the public or collective sphere."²¹⁸ It has also been stated previously that public employees are more exposed to public scrutiny, but this does not mean, depending on the case, that statements or complaints may not constitute inappropriate interference in judicial activity (*supra* par. 86).

137. This Court has already pointed out that it cannot examine, *per se*, the complaint lodged on May 24, 1999 and the event of November 21, 2007 (*supra* par. 86 and 87 and footnote 130). Regarding the State's response to these events, the Court cautions:

(1) Judge Villaseñor's complaint concerning the 1999 incident was duly processed and received a response. The Court cannot adjudge the finding of "absence of anomalies" by the State's Attorney. Nevertheless, it does recall that in fact Judge Villaseñor was found not to have taken part in judicial cases involving Mr. Ríos Montt. Although the report to this effect was not published, Mrs. Villaseñor was told that she had "the constitutional right of reply." The representatives did not explain why they considered this to be unsatisfactory or why, despite this constitutional right, the report needed to be published. The Court definitely does not see that the State's response was injurious to the right to privacy.

(2) As for the incident of November 21, 2007, the Court reiterates what it already said, that it is impossible to identify an action that is contrary to due diligence in investigation (*supra* par. 123 to 125).

138. "Due process" was allegedly injured because Mrs. Villaseñor was not given the right to demonstrate that she was innocent of participation in corruption schemes, but the Court notes that this case is unrelated to the criminal charges against her. The Court would also address the matter of Mrs. Villaseñor's reputation and recall its finding on the right to privacy.

139. In conclusion, the Court finds no grounds to hold the State liable for the alleged violation of the right to privacy in injury of Mrs. Villaseñor. Guatemala is therefore not responsible for violating Article 11 of the American Convention on Human Rights. Nor is it responsible, in the same respect, for violating the right to be presumed innocent, as provided in Article 8(2) of the Convention.

²¹⁶ The Order stated that the internal regulations "provide as follows: 'newspapers are required to publish clarifications, corrections, explanations or refutations submitted by any person, whether an individual or a legal entity, that has been implicated in inaccurate claims, accused of any actions, or directly and personally alluded to in any other way'" (*cf.* Order by the President of the Bureau of Justice of Guatemala, November 10, 2015, *supra*).

²¹⁷ *Case of Tristán Donoso v. Panama*, *supra*, par. 55, 56 and 57.

²¹⁸ *Case of Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2016. Series C No. 315, par. 155.

VII-2
RIGHT TO PERSONAL INTEGRITY and RIGHT TO PRIVACY FOR THE FAMILY OF
MRS. VILLASEÑOR

(A) Arguments of the Commission and of the parties

140. La **Commission** concluded that the reported shortcomings in the measures of protection and investigation (*supra* par. 97) violated the right to personal integrity enshrined in Article 5(1) of the American Convention, in conjunction with Article 1(1) thereof, in injury of Mrs. Villaseñor's daughter, Beatriz Eugenia Villaseñor Velarde; Mrs. Villaseñor's brother, Francis Villaseñor Velarde, and Mrs. Villaseñor's sister, Rosa Antonieta Villaseñor Velarde. It held that these people had been subjected to prolonged danger and anxiety.

141. The **representatives** stated that Guatemala, by allowing Mrs. Villaseñor to be threatened and intimidated, also damaged the personal integrity of her family.²¹⁹ They said in the public hearing that both Mrs. Villaseñor and the members of her family "experienced [...] violations of their rights enshrined in Article 5(1) in combination with Article 11 for interference in family life."

142. The **State**, in addition to asserting that it took appropriate action for protection and investigation, also claimed that there was no evidence to prove that it had come under any of the Court's documented criteria for holding the family members as victims in the case.²²⁰

(B) Considerations of the Court

143. The Court has held on several occasions that:

...the next of kin of the victims of human rights violations may also, in turn, be victims.²²¹ The Court has understood that the right to mental and moral integrity of "next of kin" or other persons with close personal ties to the victims has been violated owing to the additional suffering they have undergone as a result of the particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent actions of the State authorities in relation to those violations,²²² taking into account, inter alia, the steps taken to obtain justice and the existence of close family ties.²²³

144. In the instant case, then, the discussion about improper conduct by the State has been limited to the obligation to investigate. It has been found reasonable to assume that this affected Mrs. Villaseñor's personal integrity, considering the relationship between the State's non-compliance and her judicial work. The Court does not hold that this consideration can be extended automatically to Mrs. Villaseñor's family members.

²¹⁹ They said that because of the threats, the failure to investigate, and the absence of protection, the alleged victims experienced severe psychological pain and suffering. They held, therefore, that Mrs. Villaseñor's daughter, sister and brother, who are also alleged victims, saw their Convention Article 5 rights infringed, in conjunction with Article 1.

²²⁰ The State pointed to the Courts' rulings on the cases of *Blake v. Guatemala*, *Bámaca Velásquez v. Guatemala*, and *Kawas Fernández v. Honduras* (Judgments of January 22, 1999, November 25, 2000 and April 3, 2009, respectively), holding that to be considered victims, family members of persons who had experienced violation of their human rights needed to have been involved in the search for justice, to have experienced sufferings of their own, or to have been the mother, father, son, daughter, husband, wife, or permanent life partner of the person who was directly affected.

²²¹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, par. 176, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, par. 320.

²²² Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, par. 114, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, par. 320.

²²³ Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, par. 163, and *Case of López Soto et al. v. Venezuela, supra*, par. 262.

145. Moreover, it should be emphasized that the assertions about the impact on the personal integrity of the family members is based on statements by the alleged victims or their representatives in reference to circumstances that cannot be attributed directly to the State. For example, the judge stated that her family “receive[d] the full emotional blow” and “needed an escort to go out.” It has been said also that the judge’s sister Rosa Antonieta devoted herself to caring for Mrs. Villaseñor’s health, while her brother Francis Antonio also lent her his support. It was further claimed that, because of their proximity, Mrs. Villaseñor’s siblings also shared the deep-seated fear of being exposed to the same pattern of violence that had been leveled against the judge, and other specific circumstances were also brought to bear.²²⁴ The Court recalls that it has found no direct involvement in the facts of the case by agents of the State, and notes that the circumstances described are not directly or primarily related to the failure to investigate on which it has already ruled regarding the claims about certain facts.

146. The Court therefore finds that the State did not violate the right to personal integrity of the judge’s family. For the same reasons, it holds that no violation can be found in injury of the right to privacy of these family members. The Court therefore rules that Guatemala is not responsible for violating Articles 5 and 11 of the Convention in injury of Beatriz Eugenia Villaseñor Velarde, Francis Villaseñor Velarde and Rosa Antonieta Villaseñor Velarde.

VIII REPARATIONS (Application of Article 63(1) of the American Convention)

147. Pursuant to the provisions of Article 63(1) of the Convention,²²⁵ the Court has held that every violation of an international obligation which results in harm creates a duty to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.²²⁶ The Court has also established that reparations must have a causal nexus with the facts of the case, the alleged violations, the proven damages, as well as with the measures requested to repair the resulting damages. Therefore, the Court must observe such coincidence in order to adjudge and declare according to law.²²⁷

148. Taking into account its ruling on violations of the Convention, and in light of the criteria set in its case law regarding the nature and scope of the obligation to redress,²²⁸ the Court will analyze the relevant petitions and arguments of the Commission and the parties. Although

²²⁴ Thus, as has already been stated (*supra* par. 51), claims were made of threats or a kidnap attempt against Mrs. Villaseñor’s daughter. It was also alleged that Rosa Antonieta had received threats on June 20, 2000 (*supra* par. 59). Moreover, the judge stated in the public hearing that “on a certain occasion,” Mr. Francis Antonio’s “car was [...] destroyed, the motor was removed,” and that “he experienced so much workplace harassment [...] that he nearly had to leave the judiciary.”

²²⁵ Article 63(1) of the Convention says, “[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.”

²²⁶ *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7, par. 25, and *Case of López Soto et al. v. Chile, supra*, par. 103.

²²⁷ *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, par. 110, and *Case of Órdenes Guerra et al. v. Chile, supra*, par. 104.

²²⁸ *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, par. 25 to 27, and *Case of Órdenes Guerra et al. v. Chile, supra*, par. 106.

the judgment is a form of redress in and of itself,²²⁹ the Court will order additional measures in view of the damages caused to the victims.

(A) Injured Party

149. Article 63(1) holds as an injured party those persons declared victims of the violation of one of the rights enshrined in the Convention. The Court therefore holds María Eugenia Villaseñor Velarde as an "injured party."²³⁰

(B) Request for investigation into the facts of the case

150. The **Commission** has asked the Court to order the State: (i) to carry out and complete an independent, impartial, thorough, effective and expeditious investigation of the complaints lodged by Mrs. Villaseñor; the investigation must explore and exhaustively pursue the logical investigative threads derived from her work as a judge and identify and, where applicable, punish all those who participated in the facts; and (ii) impose appropriate administrative, disciplinary or criminal penalties for the acts or omissions of state officials that contributed to the denial of justice and impunity regarding the facts in the case.

151. The **representatives** in their brief of pleadings and motions did not request actions of investigation, and in their brief of final observations, they mentioned the same measures of investigation requested by the Commission. They said that the State should be called upon to conduct a satisfactory investigation, within a reasonable period, of "the events that remain unresolved to date." The purpose would be to identify the perpetrators and determine "whether the sources of risk remain."

152. The **State**, in line with its arguments on the merits, held that it had already conducted the necessary investigations of the case.

153. The **Court** has ruled that the State failed to abide by its obligation to investigate. Based on all that has been said, it pointed to the State's failure to investigate or respond regarding: (a) the complaint lodged by Mrs. Villaseñor prior to July 28, 1994; (b) the incident alleged to have occurred on August 29 of the same year; (c) statements on acts of direct threats committed prior to September 1, 1994; (d) the request for investigation implied in the complaints that Mrs. Villaseñor lodged in February, 1997; (e) the investigation ordered on November 14, 2001, and (f) the complaint dated July 1, 2005 (*supra*, par. 118, 120 to 122 and 126 to 132).

154. Some of the complaints or circumstances cited above are drawn from events predating September 1994, when the first petition was submitted to the Commission, and the most recent is dated in 2005.

155. The Court is aware that nearly 24 years have elapsed since the Commission took cognizance of this case addressing incidents that occurred before September, 1994, and nearly twelve years passed between the filing of the 2005 complaint and the time the case came before this Court. In view of this and the amount of time that has passed, the Court feels that it is neither necessary nor reasonable to apply the measure of ordering an

²²⁹ Cf. *Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, par. 56; *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, par. 329, and *Case of Órdenes Guerra et al. v. Chile, supra*, operative paragraph 3.

²³⁰ For this reason, the Court will not discuss or analyze arguments regarding requests for compensation for members of Mrs. Villaseñor's family.

investigation. Nevertheless, it will take into account its findings on violations as it considers pecuniary damages.

156. For these reasons, the Court will dismiss the Commission's request for investigation of government officials (*supra* par. 150).

(C) Measures of satisfaction

157. The Court deems appropriate, as it has in other cases,²³¹ for the State to publish, within six months of the notification of the judgment: (a) the official summary of this judgment, written by the Court, one time only, in the Official Gazette and in another newspaper of nationwide circulation, printed in a typeface that is suitable and legible, and (b) the full text of this judgment available for at least one year on an official State website, accessible to the public from the relevant home page. The State should report to this Court as soon as it has proceeded with each of the publications ordered, regardless of the one-year term to submit its first report as ordered in operative paragraph 8 of the instant judgment.

(D) Other measures requested

158. The **Commission** asked for implementation of "measures of non-recurrence to ensure that the investigations into complaints filed by judges, as well as possible measures of protection to be implemented for them, are in keeping with the standards [set forth in the Report on the Merits]."

159. The **representatives** asked the Court: (1) for the Supreme Court of Guatemala to publish the report issued by the Office of the General Supervisor of the Courts on July 1, 1999, which is currently in the archives of the full Supreme Court; (2) for the victim to be "reinstat[e]d to] the position of 'General Supervisor of the Courts;'"²³² (3) for the State of Guatemala to "recognize:" (a) that it did not properly safeguard the independence of Guatemalan judges; (b) that it did not safeguard the victim's right to this independence for approximately twenty years while she served in the Judiciary, and (c) that Mrs. Villaseñor did not have access to due process that would have identified those responsible for over twenty years of harassment and persecution that affected her personal life, social relationships and professional ties. The representatives did not indicate by what means they felt the State should extend the recognition they were requesting.

160. The **State** argued: (1) that the request to publish the report issued by the General Supervisor of the Courts had already been settled in accordance with domestic law; (2) that the request for recognition of responsibility referred to alleged victims who were not duly identified in the case, and if the Court were to order this measure, it should be proportional, in the sense that the State should be required to recognize only the facts duly demonstrated before the Court that cannot be redressed by means of reinstatement or compensation, and (3) that the Office of the Public Prosecutor has a unit on crimes committed against justice operators in the Office of the Human Rights Attorney, that upon learning of a complaint lodged by a judge, takes urgent action on the claim under the charge of an appointed Assistant

²³¹ Even in the absence of an explicit request (*Cf. Case of Pollo Rivera v. Peru. Reparations and Costs. Judgment of December 3, 2001. Series C No. 88, par. 79 and Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, par. 158). The representatives discussed publication of the judgment, but only in their final written pleadings, so the request was time-barred.

²³² The representatives made this request in their final written pleadings, explaining that they had not requested the measure in their pleadings brief because, at the time the first brief was submitted, the victim was undergoing "taxing" medical treatment and was in poor health, and therefore she did not "anticipate being able to reenter the labor market," but her circumstances had later changed.

Prosecutor. They explained that current plans call for sending a request to the Director General of the National Civil Police and the Deputy Minister of Security under the Ministry of Defense and the Ministry of Internal Affairs to proceed to implement a preventive security mechanism following the Protocol for Implementation of Immediate and Preventive Security. They added that these institutions then coordinate the completion of a risk assessment for providing protection to the complainant and are expected to send a report to the Unit of the Office of the Public Prosecutor.

161. The **Court** recalls its analysis of the merits of the case, in which it discussed the alleged injury to the right to privacy due to the failure to publish the July 1, 1999 report and did not hold that a violation had been committed (*supra* par. 135 to 137 and 139). In that discussion, it did not examine facts regarding Mrs. Villaseñor's removal from the position of General Supervisor of the Courts (*supra* par. 16). Therefore, it would be out of order to require measures on these points. This judgment has held the State responsible for failing to investigate specific facts, but it found no relationship to a general situation of defective administration of justice and identified no responsibility regarding its provision of protective measures. Therefore, the Court deems that the measures already ordered are sufficient and understands that it would not be appropriate to order other measures of satisfaction or guarantees of non-recurrence.

(E) Pecuniary measures

162. The **representatives** asked for consequential damages in the amount of USD 143,561.64 for expenditures incurred to cover the costs of "maintaining public security by the National Civil Police." They also asked for USD 53,424.66 for Mrs. Villaseñor due to expenditures for medications, physicians, psychological counseling and a nutritionist. As "Expenditures for alleged victims," without further explanation, they listed: "María Eugenia Villaseñor Velarde, USD 6,000,000". They requested compensation of USD 12,000,000.00, for "pain and suffering for Mrs. Villaseñor and her family, reputation, prestige and professional career." They explained in their brief of final written pleadings that this amount was an "estimate" and applied to the entire family. They asked that "if the request" for this amount "is not accepted," then "at least" the compensation for pain and suffering should be no less than USD 100,000.00.

163. The **State** held that the amounts requested in the pleadings brief were excessive and not consistent with the alleged human rights violations. It also claimed that the Court, in setting fair compensation, should consider the country's economic, financial and banking conditions.

164. The **Court** recalls, regarding requests for consequential damages, that no causal nexus was established between the human rights violations and the specific physical troubles experienced by Mrs. Villaseñor. Moreover, the representatives had not duly authenticated the expenditures they claimed.²³³ Therefore, it would be out of order to require monetary payment for consequential damages.

165. With respect to the request for nonpecuniary damage, the request given in the pleadings brief is excessive and lacks justification. Nevertheless, considering its ruling on violations, the Court deems it reasonable to set a monetary amount in payment to Mrs.

²³³ As justification for these expenditures, the representatives submitted a document in their pleadings brief that mentioned only the amounts of GTQ 1,048,000.00 (USD 143,561.64) in expenditures for the security detail and GTQ 390,000.00 (USD 53,424.66) in medical expenses, for a total of USD \$193,986.30. The Court notes that this document does not provide payment vouchers, verification of expenditures for medical care or invoices to justify the amount requested by the representatives.

Villaseñor for recovery of nonpecuniary damages. This Court therefore orders the State to pay María Eugenia Villaseñor Velarde the amount of USD 30,000 (thirty thousand United States dollars).

(F) Reimbursement of expenditures to the Legal Assistance Fund

166. The General Assembly of the Organization of American States created the Legal Assistance Fund of the Inter-American Human Rights System in 2008, with the stated purpose “to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system”.²³⁴ In the case before us, the President issued an Order on April 24, 2018 (*supra* par. 8), providing for the Court’s Victims Legal Assistance Fund to offer the financial support needed to cover expenditures for “(i) travel, transfers and lodging for the representatives to attend the public hearing; (ii) travel, transfers and lodging for Mrs. Villaseñor Velarde to appear at the hearing and render her statement, and (iii) other reasonable and necessary expenditures that the representatives have incurred or may incur.”

167. The State was sent an expense report on September 14, 2018, in accordance with the provisions of Article 5 of the Court’s Rules of Procedure on the operation of the fund. The State therefore had the opportunity to submit its comments on the expenses incurred in the instant case, totaling USD 4,688.10.

168. On September 24, 2018, the **State** submitted its observations on the report. The State questioned the use of the fund to cover Mrs. Villaseñor’s expenses, as it felt she had sufficient income. In this regard, the **Court** understands the State’s remarks about whether it was appropriate to use the fund, but without challenging the expenditures actually incurred. Guatemala’s concerns cannot be addressed, as they were not raised at the right time. The decision as to whether it was appropriate to use the fund in this question was settled by the President in the Order of April 24, 2018, and was not challenged by the State. Therefore, this Court orders the State to reimburse the fund for USD 4,688.10 (four thousand, six hundred eight-eight United States dollars and ten cents) for expenditures incurred. This amount should be paid within six months of the date of notification of this judgment.

(G) Method of compliance with the payments ordered

169. The State must pay the compensation ordered in this judgment directly to the person indicated therein, within one year as of the date of notification of this judgment.

170. If the beneficiary has passed away or should pass away prior to the payment of her due compensation, the money shall be delivered directly to her heirs under the terms of applicable domestic legislation.

171. The State must fulfill all its monetary obligations by means of payment in United States dollars or, if this is impossible, the equivalent in national currency, calculated according to the exchange rate in effect on the New York stock exchange, United States of America, the day prior to the payment.

²³⁴ AG/RES. 2426 (XXXVIII-O/08), resolution adopted by the Thirty-eighth Regular Session of the OAS General Assembly in the fourth plenary session held on June 3, 2008, “*Establishment of the Legal Assistance Fund of the Inter-American Human Rights System*,” operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the Permanent Council of the OAS, “*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*,” article 1.1.

172. If for causes attributable to the beneficiary of the compensation or her heirs it should prove impossible to pay the amounts established within the required term, the State shall deposit the amount in her name into an account or certificate of deposit in a sound Guatemalan financial institution, in United States dollars, under the most favorable financial conditions allowed by law and by banking practice. If the compensation has not been claimed after ten years, the money shall revert to the State with interest.

173. The amount allocated in this judgment as compensation shall be disbursed in its entirety to the assigned person, as ordered in this judgment, with no deductions for possible fiscal fees.

174. If the State should fall behind in its payments, including for its reimbursement to the Court's Victims Legal Assistance Fund, it must pay interest on the amount owed at the overdue interest rate charged by banks in Guatemala.

IX OPERATIVE PARAGRAPHS

175. Therefore,

THE COURT

DECLARES:

Unanimously, that:

1. The State is responsible for violating the right to humane treatment, the right to judicial guarantees, and the right to judicial protection, as enshrined in Articles 5(1), 8(1) and 25(1) of the American Convention on Human Rights, in conjunction with Article 1(1) thereof, in injury of María Eugenia Villaseñor Velarde, under the terms of paragraphs 78 to 81, 83 to 96, 102, 110 to 118, 120 to 122 and 126 to 132 of this Judgment.

2. The State is not responsible for violating the right to privacy, as established in Article 11 of the American Convention on Human Rights, in injury of Mrs. Villaseñor, under the terms of paragraphs 87 and 135 to 139 of this Judgment.

3. The State is not responsible for violating the right to humane treatment and the right to privacy enshrined in articles 5(1) and 11 of the American Convention on Human Rights, respectively, in injury of Beatriz Eugenia Villaseñor Velarde, Francis Villaseñor Velarde and Rosa Antonieta Villaseñor Velarde, under the terms of paragraphs 143 to 146 of this Judgment,

AND ORDERS:

Unanimously, that:

4. This judgment constitutes per se a form of reparation.

5. The State shall issue the publications outlined in paragraph 157 of this judgment.

6. The State shall pay the amounts set forth in paragraph 165 of this judgment as compensation for nonpecuniary damage.

7. The State shall repay the Victims Legal Assistance Fund of the Inter-American Court of Human Rights the amount that was spent in the processing of this case, under the terms of paragraph 168 of this Judgment.

8. The State shall, within one year of the date of notification of this Judgment, submit to the Court a report on the measures adopted to comply therewith, notwithstanding the provisions of paragraph 157 of this judgment.

9. The Court shall monitor full compliance with this judgment, in exercise of its authority and in compliance with its obligations pursuant to the American Convention on Human Rights, and shall declare this case closed when the State has fully complied with all the measures ordered herein.

Judge Humberto Antonio Sierra Porto informed the Court of his concurring opinion, attached hereto.

Done in Spanish in the city of San Jose, Costa Rica, February 5, 2019.

I/A Court HR. Case of *Villaseñor Velarde et al. v. Guatemala*. Merits, Reparations and Costs.
Judgment of February 5, 2019.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Humberto A. Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Registrar

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Registrar

CONCURRING OPINION BY JUDGE HUMBERTO ANTONIO SIERRA PORTO

**ON THE JUDGMENT OF FEBRUARY 5, 2019
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

IN THE CASE OF VILLASEÑOR VELARDE ET AL. V. GUATEMALA

1. I write this concurring opinion, first emphasizing my respect for the unanimous decision adopted by the Inter-American Court of Human Rights (hereinafter “the Court”) in the case of *Villaseñor Velarde et al. v. Guatemala* (hereinafter “Villaseñor case”). Clearly, then, I offer this view stemming from my substantial agreement with the decision.

2. The reason for this separate opinion is to articulate my understanding of the limits of the State’s responsibility, which is based exclusively on its failure regarding the obligation to investigate. While I do agree with the Court’s decision, I understand that certain considerations on the obligation to investigate should have been more specific and delimited.

3. The purpose of this separate concurring opinion is therefore to clarify the terms in which, as I understand it, the obligation arose for the Republic of Guatemala (hereinafter “the State” or “Guatemala”) to investigate certain factual circumstances of the case, and to what degree the failure to abide by this obligation made the State internationally responsible.

4. The issue reflects certain peculiarities in this particular case, as it is based on claims about a succession of multiple facts, very diverse in nature, over the course of a lengthy period, nearly 19 years. Indeed, the claims of facts presented as “acts of intimidation”¹ ran from 1994 through March 2013, as described in paragraphs 45 through 67 of the Court’s Judgment on the *Villaseñor* case (hereinafter “the Judgment”). This differentiates the matter from many of the other cases adjudicated by the Court, in which the obligation to investigate pointed to one or several specific incidents, relatively close together in time, and patently injurious to human rights.²

5. Thus, in order to explain my understanding of what facts the State should have investigated and why it incurred responsibility in the case, I will first outline several ideas on the legal groundwork of the obligation to investigate and the possible implications that the context might hold for the case. I will address the matter both in general terms and with specific reference to the *Villaseñor* case. Bearing these considerations in mind,

¹ According to the concept adopted in the ruling, as explained in footnote 44 of the Judgment.

² Thus, to cite just a few examples of cases judged by the Court in the relatively recent past, the obligation to investigate was examined: (a) in the Case of *Coc Max et al. (Xamán Massacre) v. Guatemala* (Merits, Reparations and Costs Judgment of August 22, 2018. Series C No. 356), concerning a massacre that took place on October 5, 1995; (b) in the Case of *Omeara Carrascal et al. v. Colombia* (Merits, Reparations and Costs. Judgment of November 21, 2018. Series C No. 368), concerning direct assaults on life and personal integrity that occurred between July and October, 1994, and (c) in the Case of *Women Victims of Sexual Torture in Atenco v. Mexico* (Preliminary Objection, Merits, Reparations and Costs), Judgment of November 28, 2018. Series C No. 371), concerning acts of “torture and sexual violence” in early May, 2006.

I will then complete my critical discussion on the Judgment's analysis of the obligation to investigate in the *Villaseñor* case.

6. This presentation will be divided into the following sections: I.- legal grounds for the obligation to investigate in the Court's case law and in the *Villaseñor* case; II.- the role of "context" in the obligation to investigate as seen in the Court's case law and in the *Villaseñor* case; III.- the obligation to investigate in the *Villaseñor* case, and IV.- conclusion.

I. Legal grounds for the obligation to investigate in the Court's case law and in the *Villaseñor* case

7. The Inter-American Court, from the time of its first ruling on a contentious case until today, has developed a rich body of jurisprudence on the State's obligation to investigate and, if relevant, to sanction, acts that qualify as human rights violations.³

8. The focus here is to identify a specific facet of this case law, that is, the legal grounds for the obligation to investigate. The Court's various decisions have drawn on two sources: (a) first, the duty to guarantee human rights, enshrined in Article 1(1) of the American Convention, and (b) second, the right to judicial guarantees and right to judicial protection, as established respectively in Articles 8 and 25 of the Convention.

9. Under the former heading, the investigation of actions that constitute or could constitute human rights violations is a means to "guarantee" these rights, that is, to ensure the free and full exercise thereof. The idea was expressed by the Court at the very beginning of its work when it said, in the *Case of Velásquez Rodríguez vs. Honduras*: "[a]s a consequence of this obligation [to guarantee], the States must prevent, investigate and punish any violation of the rights recognized by the Convention..."⁴

10. In the second sense, the duty to investigate has been associated with the rights of victims to judicial guarantees and judicial protection. From this perspective, investigation is a duty based on victims' "rights" under the notion of "access to justice." In this sense, the Court has held:

Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1(1)).⁵ It has also found that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is done to discover the truth of what happened, and to [investigate,] prosecute and to punish, as appropriate, those eventually found to be responsible.⁶

11. It would exceed the purposes and needs of this opinion to develop an exhaustive, polished thesis on the jurisprudential avenues developed with respect to the two ways

³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, par. 166, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 371, par. 267. Between the dates of these two decisions, the Court discussed the obligation to investigate on multiple occasions.

⁴ *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, par. 166.

⁵ *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Serie C No. 1, par. 91, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 371, par. 267.

⁶ *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Serie C No. 100, párr. 114, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 371, par. 267.

of understanding the genesis of the obligation to investigate. Nor is it necessary to delve deeply, even beyond the description given above, into the fundamentals of the two concepts.

12. However, it is relevant to caution that the Court in its decisions has not held these notions to be contradictory.⁷ The case law in this regard includes instances in which the analysis was based on both ideas, at the very least to express conceptually the relationship between the duty to investigate and the obligation to guarantee, then proceeding with an examination of the right to judicial guarantees and the right to judicial protection.⁸

13. This Judgment is no exception, as it accommodates both ways of framing the duty to investigate. For example, it states in paragraph 110, "investigation [...] may be a means to [...] safeguard [a] [substantive] right" that "any person 'who considers himself or herself to be a victim [...] has the right to resort to the system of justice to attain compliance with this duty by the State, for his or her benefit and that of society as a whole.'"

14. In the case at hand, there are signs of a situation of risk that may have continued to occur at the time the State should have undertaken investigative work. This situation, despite the fact that it was mentioned in the Judgment, could have opened the way for the Court to develop clearer ideas about the way that, in this case, the obligation to investigate is linked to the obligation of guarantee and the right of access to Justice. I will return to this idea below (*infra* section III).

II. The role of "context" in the obligation to investigate as seen in the Court's case law and in the *Villaseñor* case

15. Another important point is the tie between the duty to investigate and the context surrounding a case.

16. "Context" is the surrounding situation in which the case occurs. Human rights violations are based on certain facts involving the victims, particular to each different case. The context is not part of the facts. This is why the importance of recognizing the contextual situation is not self-evident. The Court has explained (not in this Judgment, but in others):

[i]n the exercise of its contentious jurisdiction, the Court has examined diverse historical, social and political contexts that have allowed it to situate the facts alleged to have violated the American

⁷ Indeed, it does not appear to be the case: "access to justice" is a right that clearly operates for the purpose of fostering actions to guarantee other rights. That is, the idea of guaranteeing the substantive right is intertwined with the understanding of the duty to investigate as derived from the right to judicial guarantees and the right to judicial protection.

⁸ Thus, in the *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*, the Court said: "...it is clear from Article 1(1) that the State is obliged to investigate and punish any violation of the rights embodied in the Convention in order to guarantee such rights; and, in the circumstances of the instant case, this obligation is related to the rights to be heard by the courts and to a prompt and effective recourse, established in Articles 8 and 25 of the Convention" (*Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Serie C No. 63, par. 225). More recently, in the *Case of Luna López v. Honduras*, the Court ruled in the chapter on the right to judicial guarantees and the right to judicial protection that the obligation to investigate is among the positive measures that States should adopt to guarantee human rights (par. 153), and later it performed the relevant analysis under Articles 8(1) and 25(1) of the Convention, in connection with Article 1(1) (par. 154), finding that these provisions had not been violated (*cf. Case of Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, pars. 153 and 154).

Convention within the framework of the specific circumstances in which they occurred. In some cases, the context makes it possible to characterize the facts as part of a systematic pattern of human rights violations,⁹ as a practice applied and tolerated by the State¹⁰ or as part of massive and systematic or generalized attacks on one sector of the population.¹¹ The Court has also taken the context into account to establish the international responsibility of the State,¹² to understand and assess the evidence,¹³ to evaluate the relevance of certain measures of reparation, and to determine the standards established with regard to the obligation to investigate such cases.¹⁴

17. As the Court has said, one of the functions of delimiting a contextual situation is to identify a pattern that points to recurring behaviors that bear certain characteristics. Thus, if a particular factual circumstance reflects these same characteristics, it can be a convincing argument that is useful for deducing that the circumstance fits into a body of behaviors that form a pattern. As an example, the Court's Judgment on the Case of Terrones Silva, based on a number of convincing factors, including that some of the acts were "consistent" "with a pattern of forced disappearances occurring at the time in Peru," led the Court to rule that certain factors typical of forced disappearance were in place.¹⁵

18. In the *Villaseñor* case, the Court identified a context "during the 1990s and at least until 2021" of "insecurity for justice operators, who could be exposed to various acts of intimidation" (paragraph 32 of the Judgment). This context was very general and did not specify a particular *modus operandi* for the acts of intimidation.

19. The Court drew on the context to conclude that the activation of the duty to investigate could trigger a "deactivation" of the "risk being alleged," presumably associated with her work as a judge (*Cf.* par. 129 of the Judgment). Nevertheless, this

⁹ *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, par. 126, and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302, par. 43.

¹⁰ *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4 par. 126, and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302, par. 43.

¹¹ *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 26, 2006. Series C No. 154, pars. 94 to 96 and 98 to 99, and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302, par. 43.

¹² *Cf. Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs.* Judgment of September 22, 2006. Series C No. 153, par. 61 and 62, and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302, par. 43.

¹³ *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, par. 129 to 146, and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302, par. 43.

¹⁴ *Cf. Case of Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs.* Judgment of October 25, 2012 Serie C No. 252, par. 244 to 249 and 319 to 321, and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302, par. 43.

¹⁵ *Cf. Case of Terrones Silva et al. v. Perú. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 26, 2018. Series C No. 360, par. 143. In this decision, the Court saw that there was a "widespread or systematic practice of forced disappearances" with "[a particular] *modus operandi* practiced by the perpetrators [that] consisted of selection of a victim, detention of the victim, placement of the victim in a holding center, possible transfer to a prison, interrogation, torture, processing the information obtained, a decision to eliminate, physical elimination, destruction of the remains, and the use of State resources. In all these processes, the common denominator was to deny that the act of detention had occurred and not to provide any information on what was happening with the detainee. These stages did not necessarily take place consecutively" (par. 50 and 49, respectively). This example is given here for the purpose of underscoring the differences between this case and *Villaseñor*, in terms of the detailed behaviors peculiar to the context and the evidence that it was a recurring act. In the *Villaseñor* case, there was no "pattern" that could be found, but rather a much more general contextual reference.

conclusion is weak because the context was too broad (in terms of the types of incidents involved and the amount of time that passed). It cannot be concluded that the circumstances allegedly experienced by Mrs. Villaseñor were part of a pattern of behaviors that violated human rights or that were threatening. This is why the intimidating nature of each of these circumstances could be identified, if at all, based only on the very nature or characteristics of each one.

20. Thus, the context of this case could not lead to any implications concerning the obligation to investigate, but at most, can contribute to a general understanding of the case, that is, to fit the incidents within the framework of the specific circumstances in which they occurred.

III. The obligation to investigate in the *Villaseñor* case

21. Having developed these considerations, I will proceed with my thoughts about the way in which the obligation to investigate was weighed in the Judgment. I will first address the obligation to investigate events that occurred prior to September 1994, and then the Court's views on the obligation to investigate after the complaints were lodged, or after circumstances subsequent to that date.

(A) Obligation to investigate regarding claims of incidents before September, 1994

22. First of all, it is essential to emphasize that the Court did not hold as proven each one of the incidents (in 1994 or afterward) reported as acts of intimidation. In several instances, it held as factual only the claim that they had been reported. For example, paragraph 43 of the judgment reads: "[t]he evidence lodged with the Court concerning some of these incidents includes statements that the parties have made [...] The Court would clarify that it will hold the expressions themselves as proven, but not necessarily the actual events narrated therein."

23. The incident on August 29, 1994, is an exception to this, as it has more extensive documentary support and stands out for its importance. It is described in paragraph 50 of the Judgment, according to which, on that day a man who was part of Mrs. Villaseñor's security detail was stopped, attacked and questioned about the judge's work in certain legal cases, and at that point, the captors hurled death threats against her and the other people living in her home.

24. In the second place, the Court understood that not all claims of incidents described in the case as "acts of intimidation" could, in and of themselves, be considered a reflection of this type of event. Thus, it said in the Judgment that "a wide variety of" facts were discussed and that the Court could not "determine whether, in each case, the alleged incidents would be lawful or unlawful" (paragraph 80). Then in paragraphs 85 and 86 of the Judgment, it dismissed the possibility of concluding whether certain acts cited in the case, consisting of judicial filings, lodging of complaints, articles in the press or other forms of expression were violations or acts of intimidation. Furthermore, with respect to statements about the other facts, the Court held, in paragraph 88 of the Judgment, that "several facts [...], when considered individually, could potentially be illegal acts unrelated to the work of the judiciary, or facts that do not constitute crimes, but mere accidents, unfounded assertions or actions committed against third parties other than the judge or her family members." The Court also said that it could not hold the State responsible for the direct participation by agents of the State in the incidents (*cf.* paragraph 100 of the Judgment).

25. In the third place, it is worth noting that, despite all this, the Court should find that the case suggests claims of “a sequence or body of events that may be interrelated, and it would be worthwhile to examine them as shedding light on a situation that could reveal the existence of external pressures on Mrs. Villaseñor’s judicial work” (paragraph 89 of the judgment).

26. In view of these points, such a conclusion must be understood as mere speculation. That is to say, although there were insufficient grounds concerning several facts of the case to conclude that they might have been considered intimidation per se, they were held to be so.

27. In the fourth place, it should be stressed that, in the framework of this conclusion (“in the framework of this situation,” in the words of the Judgment), the Court stressed that “statements have been made about actions that could have constituted serious circumstances of intimidation[, m]ore specifically, [...] before September of [1994.]” (paragraph 89 of the Judgment). It also held that there was a “repeated and continuous occurrence of such incidents” that were “a case of continuous intimidation” (paragraph 90 of the Judgment).

28. To facilitate understanding of the matter, the Court considered the context of the case, as stated in paragraph 89 of the Judgment. In view of such factors, it then said that the State should investigate at least “statements about events prior to September 1, 1994” (paragraph 113 of the Judgment).

29. This is where I disagree because, for the reasons explained above in paragraphs 15 to 20 of this separate opinion, the context could not serve for drawing concrete conclusions about the facts or the obligation to investigate.

30. The incident on August 29, 1994 (as described *supra* in paragraph 23 of this opinion) was, in my understanding, the only fully demonstrated fact that, because of its characteristics, was clearly intimidating and that this intimidation was associated with Mrs. Villaseñor’s judicial work.

31. With respect to this incident, the obligation to investigate does apply, and its particular connection with the duty to guarantee also needs to be noted. If indeed the incident reflected a real and present danger, the State’s full compliance with the obligation to investigate could have helped, depending on the outcome, to remove the danger, or at least attenuate it.

(B) Obligation to investigate with reference to the filing of complaints and to circumstances subsequent to September, 1994

32. Having established this, it should be noted that the Court appeared to cement the obligation to investigate in this case not only regarding the incident on August 29, 1994 (and events prior to September of that year), but also regarding later circumstances. It said, in paragraph 113 of the Judgement, that

The State should also have taken actions regarding the complaints that were lodged, other than mere communications or presentation of information. These complaints already include those of July, 2005 and December, 2007, for which Guatemala acknowledges receipt [...]. The facts also show that State authorities reported that Mrs. Villaseñor had lodged a report even before July 28, 1994; that a process was undertaken regarding the Honduran man who in January 1996 had claimed to be aware of a plan to murder judges; that on February 10, 1997, Mrs. Villaseñor lodged two complaints I that on November 14, 2001, orders were given for an “exhaustive investigation” into the alleged “threats” against Mrs. Villaseñor by military persons[...].

33. The Court then cautioned that there was no record of an investigation into the complaint prior to July 28, 1994, the two complaints in February 1997, or the investigation ordered on November 14, 2001 (*cf.* paragraph 118 of the Judgment). The case file also showed that the investigation into the complaint in July, 2005 was not diligent, nor was it conducted within a reasonable time (par. 120 to 122 of the judgment).

34. Therefore the Court concluded, "Guatemala did not conduct an effective investigation into the facts of the case," (paragraph 126 of the Judgment), and emphasized that "the State needed to examine the source of the acts of intimidation[and] did not comply with this obligation because it did not investigate events prior to September 1994 that had clear implications for the safety of Mrs. Villaseñor [...]. Nor did it respond to the claims that Mrs. Villaseñor lodged in 1997 or conduct effective actions in other cases in which, in 2001 and 2005, the State authorities themselves felt that investigations were in order" paragraph 128).

35. This view as described refers to a duty to "investigate" or "respond," which in my view, is merely a question of form. In other words, it is inferred that this duty exists only because of the evidence that there was some type of complaint lodged or order to investigate issued, beyond the facts that need to be investigated. Note that, as can be seen in paragraphs 92, 93 and other related paragraphs of the Judgment: (a) only indirect information is available about the complaint on July 28, 1994, through a claim by the Human Rights Ombudsman, and therefore it is not clear what incidents were reported at that time; (b) the complaints in February, 1997 address incidents that, in themselves, were not considered acts of intimidation by the Court; (c) the same can be said of the investigation ordered in 2001, as there is no record making reference to acts that the Court could consider intimidating, and (d) the complaint in 2005 concerns claims about three incidents that were alleged to have occurred in 2003 and/or 2005, whose intimidating nature, in my view, was not clear and that, in any case, were not held as such by the Court, which as noted before, said only that there were clearly intimidating circumstances before September, 1994.

36. The conclusion the Court adopted on the obligation to investigate, based on these factual circumstances, is not clear. Note that the Judgment (as stated in paragraph 34 of this opinion) said that the State "did not investigate events prior to September 1994 that had clear implications for the safety of Mrs. Villaseñor," "nor did it respond" to other cases, including those described (emphasis added).

37. This difference in terminology (the potential implications of which, again, are not clear in the text of the Judgment) would appear to draw a distinction between two separate ways to understand the obligation to investigate: one, with a substantive basis, in view of the seriousness of the facts that need to be investigated (in this case, the facts prior to September 1994); the other, with a strictly formal basis, grounded in the existence orders to investigate, regardless of the facts to which these actions refer.

38. This distinction, in turn, could have a correlation (not explicitly stated in the Judgment) with two different ways to understand the foundations of the obligation to investigate: as a concrete realization of the obligation to guarantee as given in substantive law, or as a manifestation of the right to have "access to justice."

39. Nevertheless, I am of the view that, if the Court had wished to draw this distinction, it would have been advisable to explain it more fully. In any case, beyond

this, I understand that it is impossible to conceive of the right of "access to justice" in a strictly formal sense. It would be overreach to adopt a view suggesting that, by mandate of international law, the States are not obliged to investigate any complaint filed, regardless of how serious or believable the reported facts are.

40. In short, I understand that the right of access to justice, insofar as it entails the obligation to investigate possible human rights violations, cannot be understood in a strictly formal sense, divorced from the facts that need to be investigated. The right to have access to justice becomes meaningful as a guarantee to individuals that they can activate government mechanisms that will allow them to ensure the effective exercise of human rights. At the same time, examining the matter from the standpoint of the obligation to guarantee, a State cannot be held internationally liable for not investigating facts when first, they were not fully demonstrated, and second, it is not clear how serious or injurious they are to human rights.

IV. Conclusion

41. In conclusion, I understand that the incident on August 29, 1994, as described, was the only one that, given the failure to investigate, would incur State responsibility. Regarding this incident and the lack of investigation, it is appropriate for the Court to hold that the breach of the duty to investigate placed Mrs. Villaseñor in a position of uncertainty and anxiety that affected her personal integrity.

Humberto A. Sierra Porto
Judge

Pablo Saavedra Alessandri
Registrar