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CASE 12.491

MERITS REPORT (PUBLICATION)

GUSTAVO SASTOQUE ALFONSO
COLOMBIA

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INDEX

I.	SUMMARY	2
II.	ALLEGATIONS OF THE PARTIES	3
	A. Petitioner	3
	B. The State.....	3
III.	FINDINGS OF FACT	4
	A. Concerning the initiation of the judicial investigation against Gustavo Sastoque... 4	
	B. Concerning Regional Justice	6
	C. Regarding Gustavo Sastoque’s Detention and the Criminal Proceedings before the Regional Justice System.....	9
	D. Regarding the trial for perjury and procedural fraud	16
IV.	LEGAL ANALYSIS.....	17
	A. The Right to Personal Liberty (Article 7 of the American Convention, in relation to Article 1.1 of the Same Instrument)	17
	B. The Rights to due Process and Judicial Protection (Articles 8 and 25 of the American Convention in relation to Articles 1.1 and 2 of the Same Instrument). 21	
	1. Right to Competent, Independent and Impartial Judges and Prosecutors.....	21
	2. Right to Prior and Detailed Information of the Charges	22
	3. Right to Defense and to Question Witnesses	22
	4. Principle of the Presumption of Innocence, Reasoned Decisions and Judicial Protection	24
	5. A Reasonable Time	27
	6. Right to Judicial Guarantees and Judicial Protection Regarding the Accusations of Perjury and Procedural Fraud.....	28
	C. Right to Personal Liberty after the Conviction.....	28
	D. Right to Personal Integrity	29
V.	REPORT No. 61/18 AND INFORMATION ON COMPLIANCE	29
VI.	ACTIONS FOLLOWING REPORT No. 46/25 AND INFORMATION ON COMPLIANCE 34	
VII.	FINAL CONCLUSIONS AND RECOMMENDATIONS.....	35
VIII.	PUBLICATION	35

I. SUMMARY¹

1. On August 27, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission", "the Inter-American Commission" or "the IACHR") received a petition from the Association for Alternative Social Promotion - MINGA (hereinafter "the petitioner"), alleging the international responsibility of the Republic of Colombia, (hereinafter "the State", "the Colombian State" or "Colombia") to the detriment of Gustavo Sastoque Alfonso.

2. On February 22, 2005, the Commission approved Admissibility Report No. 5/05.² On September 5, 2005, the IACHR notified the Report to the parties and made itself available in order to reach a friendly settlement. On October 18, 2005, the IACHR held a public hearing on the merits of the case. At that hearing and, subsequently, on September 11, 2007, the petitioner submitted its observations on the merits. On February 21, 2008, the petitioner expressed interest in initiating friendly settlement proceedings. On March 11, 2008, the Commission held a working meeting. On April 7, 2008, the parties sent a communication informing their interest in initiating a friendly settlement procedure. On March 8 and October 25, 2016, Mr. Sastoque sent communications requesting a Merits Report because no agreement had been reached with the State. On September 15, 2017, after verifying that the State had not yet been afforded the four month time period established in the Rules, the IACHR granted it that period. The State did not present additional observations after this communication from the Commission.

3. The petitioner alleged that the State is responsible for the illegal and arbitrary detention in March 1995 of Gustavo Sastoque Alfonso, an administrative officer of the Technical Investigation Corps of the National Attorney General's Office, by state agents in the city of Bogota. It argued that in the criminal proceedings against him for the crime of homicide, which culminated in a 40-year prison sentence, various judicial guarantees were violated. It also noted that the criminal proceedings constituted a set up to hold the alleged victim responsible for the murder of former guerrilla leader Hernando Pizarro.

4. The State maintained that it is not internationally responsible since Mr. Sastoque's arrest was affected on the basis of an arrest warrant. It indicated that the process complied with every judicial guarantee and that Mr. Sastoque's presumption of innocence and his right of defense were respected. It alleged that the conviction was well founded in accordance with its domestic procedure. The State added that the petitioner intends that the IACHR act as a fourth instance in order to review a final judicial decision.

5. The Commission concluded that the State is responsible for the violation of the rights to personal integrity, personal liberty, judicial guarantees and judicial protection, established in Articles 5.1, 7.1, 7.2, 7.3, 7.4, 8.1, 8.2, 8.2(c), 8.2(f) and 25.1 of the American Convention on Human Rights in relation to the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of Gustavo Sastoque Alfonso. The Commission made the respective recommendations.

¹ In accordance with the provisions of Article 17.2 of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate either in the discussion or decision in the present case.

² IACHR, Report No. 5/05, Petition 3156-02, Admissibility, Gustavo Sastoque Alfonso, Colombia, February 22, 2005.

II. ALLEGATIONS OF THE PARTIES

A. Petitioner

6. The petitioner alleged that the State is responsible for the illegal and arbitrary detention of Gustavo Sastoque Alfonso in March 1995, by state agents in the city of Bogota. It argued that the criminal proceedings pursued against him for the crime of homicide and culminating in a 40 year prison sentence violated various judicial guarantees, such as: i) processing of the case by the so-called "regional justice" and not by the ordinary criminal jurisdiction, in which 'faceless' judges were used, affecting the principle of competence, independence and impartiality; ii) the use of anonymous witnesses; iii) the impossibility of cross-examining witnesses and of presenting testimony, affecting his right of defense; and iv) the unreasonable length of the trial.

7. By way of background, the petitioner indicated that at the time of the events Gustavo Sastoque Alfonso was an administrative officer of the Technical Investigation Corps (hereinafter "the CTI") of the National Attorney General's Office. He alleged that state agents had extrajudicially executed Hernán Pizarro, who was allegedly linked to the guerrillas, and for this reason Mr. Sastoque was arrested and prosecuted as a "set up to conceal the real perpetrators and find a scapegoat for the crime." The details of the criminal proceedings will be referred to in the following section.

8. With regard to the right to personal liberty, the petitioner alleged that Mr. Sastoque's detention was illegal and arbitrary. It maintained that the alleged victim was summoned by a message to appear before the Prosecutor's Office to ask for a file. It pointed out that when he arrived, Mr. Sastoque was detained by state agents in an interrogation room without initially being informed of the grounds for his arrest. It added that one hour after his arrest, Mr. Sastoque was shown an arrest warrant, issued the same day, for the murder of Hernando Pizarro. The petitioner explained that there were no grounds to the order merely containing his name, his identity card and his address.

9. With respect to the rights to judicial guarantees and judicial protection, the petitioner alleged a violation of the principles of judicial competence, independence and impartiality. It indicated that the investigation was incorrectly initiated before the so-called "regional justice" and not before the ordinary criminal jurisdiction. It alleged that regional justice used "faceless" judges, a feature that violates the American Convention.

10. The petitioner maintained a violation of Mr. Sastoque's right to a defense, since during the trial, the prosecutors and witnesses remained anonymous, making it impossible to dispute their allegations and statements. It indicated that it became aware that witnesses who participated in the trial had links to the state agents who had murdered Mr. Pizarro. It pointed out that the judicial authorities rejected any type of witness cross-examination and that his conviction was based exclusively on these testimonies.

11. The petitioner indicated that the trial was not held in public, violating the principle of the openness of proceedings. It also indicated that the trial had taken an unreasonable length of time.

12. The petitioner stated that on November 30, 2005, a judicial decision was issued granting him release on bail upon payment of a surety. It added that because Mr. Sastoque now has a criminal record, he has not been able to find employment and his mental and moral integrity has been affected.

B. The State

13. The State argued that it is not internationally responsible because Mr. Sastoque's arrest took place under an arrest warrant. It indicated that after being arrested, the police officers informed him of the reasons for his arrest and showed him the order.

14. It also indicated that the process complied with all the judicial guarantees and respected Mr. Sastoque's presumption of innocence and right of defense. The Colombian State indicated that regional justice

and not the ordinary criminal jurisdiction was applicable according to Article 324.8 of the Criminal Code at the time. It explained that this provision set out the murder of political leaders as an aggravating circumstance, and that such proceedings were subject to the jurisdiction of the regional justice system. Colombia argued that the prosecuting authorities duly based their decision on the applicability of this provision, arguing that Mr. Pizarro's death was motivated by political beliefs because: i) he had expressed his armed revolutionary ideology since 1987; ii) in later years he changed opposition methods to institutionality; and iii) he had a close blood relationship with the well-known leader of the M19 guerrilla group, Carlos Pizarro.

15. It maintained that the notification on the aggravating circumstances of the offense –and the consequent jurisdiction of the Regional Justice System—was carried out in accordance with the rules of criminal procedure then in force, reserving the designation of the qualification for the moment of the judicial indictment of the accused and its issuance.

16. Regarding the testimony of anonymous witnesses, the State emphasized that his conviction was not based solely on those testimonies; rather that the judicial authorities took various elements into account, such as photographic surveys made by witnesses and the searches. It indicated that the right of defense was also guaranteed because Mr. Sastoque was able to present his arguments.

17. The Colombian State emphasized that the conviction was well founded in accordance with domestic law. It indicated that subsequent decisions that upheld the ruling conformed to due process. It explained that merely disagreeing with the resolutions issued by the judicial authorities does not lead to a violation of the American Convention.

18. Finally, the State added that the petitioner intends that the IACHR act as a fourth instance to review a final judicial decision.

III. FINDINGS OF FACT

A. Concerning the initiation of the judicial investigation against Gustavo Sastoque

19. According to the judgment of the Regional Court of Santafé de Bogotá, on February 26, 1995, at around 7:30 p.m., "an operation was begun by the Office of the Attorney General of the Nation" as they entered a house and arrested Hernando Pizarro Leongómez. It indicated that Mr. Pizarro resisted and began to shout that he was the brother of Carlos Pizarro, commander of the guerrilla group M19, and that he would call the press to witness the abuse he was suffering. It added that one of the agents who participated in the operation took out his firearm and shot him several times, causing Mr. Pizarro's death.³

20. The IACHR recognizes the following procedural steps taken by the National Office of the Attorney General:

- February 26, 1995: Search of the property undertaken and fingerprints found on the door windows that were broken to gain access to it were taken. The testimony of a witness that chose not to identify himself was also taken. This individual said he saw four armed individuals getting out of a vehicle and that one of them fired four shots at a man. He also described the physical appearance of the driver of the vehicle.⁴
- February 28, 1995: Statement taken from Sandra Velasco, owner of the place with the address where the events occurred. She indicated that Mr. Pizarro, whom she knew as "Alejandro", was at her house because he was going to meet her husband, Carlos Celis. She stated that she heard the doorbell of her house and saw three armed men through the window. She said that these individuals asked her if her husband, Carlos Celis, lived there. She stated that these men forced the door and managed to enter her home. She indicated that they approached Mr. Pizarro and asked him where Carlos Celis was. She added that they then handcuffed Mr. Pizarro and dragged him out of the house. She indicated that she

³ Judgment of the Regional Court of Santafé de Bogotá, May 26, 1997. Annex to the Initial Petition.

⁴ Search and Registration Procedure, February 26, 1995. Annex to the Initial Petition.

stayed in the house and that after a few minutes she heard three shots in the street. She maintained that she did not see the circumstances of these shots. Mrs. Velasco stated that after what happened, she left her home, saw her husband and "went for a walk" to calm herself down after what occurred. She added that she did not see her husband during the next two days and that he told her that "he had everything sorted out, that they were not going to be arrested or killed and that nothing was going to happen to them, that she could come peacefully to talk about what had happened." Mrs. Velasco maintained that the individuals who entered her home were young and that one of them had short hair and was 1.60 cm tall. She pointed out that she could not offer an identikit sketch of the individuals.⁵

- March 2, 1995: The CTI issued a report indicating that it had taken the testimony of the witnesses José Mendoza and Jaime Barragán, who stated that they saw several individuals entering a house and abruptly removing an individual. They pointed out that he shouted "that if they were going to kill him they should kill him there so that everyone could see". They added that they shot him and fled the scene. The CTI report also indicated that a statement was taken from Carlos Celis, who stated that he was in the corner store when he heard shots near his house. He indicated that upon arriving home he took his wife and son in his car to calm them down. The CTI report concluded the following: i) Hernando Pizarro also resided at the home of Carlos Celis and Sandra Velasco; ii) Mr. Pizarro's body was found handcuffed by one hand and not two, as Mrs. Velasco had indicated; and iii) Carlos Celis is a reintegrated guerilla fighter and an informant for the B2 – Military Forces Intelligence Service.⁶

21. The IACHR observes that according to a National Army official memorandum, on February 27, 1995, Olga Fajardo, who at that time was an officer of the Army Rotary Fund, went to the Army's Counterintelligence Brigade and declared that she was a witness to the murder of Hernando Pizarro. She states in this memorandum that she made an identikit sketch of the individual who shot Mr. Pizarro.⁷ The IACHR observes that in this memorandum, Mrs. Fajardo did not indicate how she witnessed the facts of the case.

22. According to another report of the CTI of March 3 of the same year, officials of the Prosecutor's Office went Mrs. Fajardo's home. They did not find Mrs. Fajardo and took the statement from Rosa N., who refused to identify herself "because she was scared about what had happened." Mrs. Rosa N. stated the following:

[On February 27, 1995] several individuals travelling in cars and carrying long-range weapons proceeded to force both Mrs. OLGA ESTHER GUEVARA FAJARDO, (...) her young children, and Mrs. Claudia Guevara Fajardo (Olga's sister) with her two children to leave the apartment in which they resided. These individuals did not identify themselves nor tell the reason for their actions, but left the area, taking the five children and the two ladies with them(...). The next day Claudia called her and told her that "they were well and that they were with a protection group (...)". Recently and on different occasions there have been people who have said to belong to the Police, DAS, Army, inquiring about Mrs. OLGA GUEVARA and asking if the Prosecutor's Office was providing protection in the building.⁸

23. The petitioner pointed out that on March 1, 1995, Prosecutors No. 35 and No. 38 of the Third Life Unit sent the investigation to the Regional Prosecutors, who were part of the Regional Jurisdiction already described in this Report,⁹ on the basis of Article 71 of the Code of Criminal Procedure.¹⁰ This information was not contested by the State.

24. On March 4, 1995, the Regional Prosecutor issued a document in which he declared the anonymity of the witness Olga Fajardo. The Prosecutor called her "Witness No. 1". The IACHR observes the fact

⁵ Official Statement of Sandra Velasco before the 35th and 38th Prosecutors of the Third Life Unit, February 28, 1995. Annex to the Initial Petition.

⁶ Report No. 008-95 of the Technical Investigatory Body, March 2, 1995. Annex to the Initial Petition.

⁷ Report No. 0390 of the National Army, March 3, 1995. Annex to the Initial Petition.

⁸ Report No. 028 of the Technical Investigatory Body, March 3, 1995. Annex to the Initial Petition.

⁹ Initial Petition.

¹⁰ Law 81 of 1993 amending Article 71 of the Code of Criminal Procedure: Competence of Regional Judges. Regional Judges shall have jurisdiction: 5. over offenses of aggravated or blackmail kidnapping by virtue of subparagraphs 6, 8, or 12 of Article 3 of Law 40 of 1993 and over aggravated homicide as set out in Article 324.8 of the Criminal Code.

that the name of the prosecutor who took this decision is included. Mrs. Fajardo stated that she could see the events that occurred on February 26, 1995 from the window of her house and that she identified the physical features of the individual who fired the shots. She maintained that she made identikit sketch and that she saw him again the next day, as he was the same person from the Office of the Public Prosecutor who was picking up the body. Mrs. Fajardo, after receiving a photo album of the members of the CTI, recognized Gustavo Sastoque as the one who had fired the shots.¹¹

25. On March 6, 1995, the Regional Prosecutor issued a document declaring the anonymity of "Witness No. 2". The IACHR does not have information on the name of this individual. The witness stated that he was present at the events that occurred on February 26, 1995. The witness indicated that he saw the person who fired the shots and recognized Gustavo Sastoque from photographs. He also described other individuals who were in the vehicle.¹²

26. On the same day, Mr. Jesús Mejía testified before the Regional Office of the Prosecutor's Office. He indicated that he was assigned to participate in the search for evidence of what happened on February 27, 1995 as a photographer of the Office of the Prosecutor.¹³ The IACHR observes that Mr. Mejía named the agents who participated in this procedural step and made no reference to Mr. Sastoque.

27. In addition, the IACHR observes that the identity of "Witness No. 3" was declared to be anonymous. The IACHR does not have information on the name of Witness No. 3. This witness indicated that he witnessed the events of February 26, 1995, but did not see "exactly the person who (...) fired." The witness could not recognize any of those involved in the events when shown several photographs of the Prosecutor's Office personnel.¹⁴ He was also taken to the DAS and did not recognize anyone from the photographs.¹⁵ Four months later, on July 20, 1995, Witness No. 3 added supplementary testimony and claimed he recognized Gustavo Sastoque from photographs as the one firing the shots since "by references I know he was the one who fired".¹⁶ The IACHR observes that the witness did not explain these "references" and that no questions appear to have been asked in the record of the case about this.

B. Concerning Regional Justice

28. In its Third Report on the Situation of Human Rights in Colombia in 1999, the Inter-American Commission commented on the so-called "regional justice". In relation to the creation and the time limit of said jurisdiction, the IACHR observed the following:

The regional justice system has its origin in the laws and emergency decrees of the 1980s establishing a "public order" jurisdiction. This special jurisdiction was established to handle cases involving particularly serious crimes, (...) which presented special risks to those involved in the administration of justice. Additional emergency decrees issued in 1990 and 1991 restructured the public order jurisdiction and established special measures for the protection of those involved in the process. These new measures included a provision to maintain secret the identity of those involved in the proceedings, including the judges and prosecutors.

(...)

Pursuant to authority granted by a transitory provision of the 1991 Constitution, a special legislative commission converted these decrees into permanent legislation. At the same time, it was established that this special jurisdiction would expire in the year 2002. However, a 1996

¹¹ Order for Anonymity of Witness No.1, March 4, 1995. Annex to the Initial Petition.

¹² Procedural Step taking Official Statement of an anonymous witness denominated Witness No.2, March 6, 1995. Annex to the Initial Petition.

¹³ Official Statement of Eduardo Mejía. Annex to the Initial Petition.

¹⁴ Procedural Step of Photo Recognition held in the Sectional Department of the General Prosecutor's Office. Santa Fe, Bogotá. March 17, 1995. Annex to Initial Petition.

¹⁵ Procedural Step of Photo Recognition held in building of DAS Department of Security. March 27, 1995. Santafé Bogotá. Annex to Initial Petition.

¹⁶ Amplification of official statement of anonymous witness No.3 before the Regional Prosecutor in charge. July 20, 1995. Santafé de Bogotá. Annex to Initial Petition.

law reduced that time period and dictated that the regional justice system must cease to exist on June 30, 1999.

(...)

In practice, a wide array of cases is processed by the regional justice system. (...) Because the jurisdiction of regional justice system is not clearly delineated, many different types of crimes at least begin their processing in this system. (...) The vague description of the jurisdiction of the regional justice system also leads to a situation in which certain individuals with resources or influence may avoid this jurisdiction while less fortunate individuals are unable to do so.¹⁷

29. In that report, the IACHR highlighted that "one of the most criticized aspects of the regional justice system" is the use of "secret" or "faceless" prosecutors, judges and witnesses. On this aspect, the Commission held the following:

The reserve of the identity of crucial actors in the criminal proceeding has been a central element in this jurisdiction. Reforms implemented in 1996 by the Office of the Prosecutor General of the Nation sought to limit the use of anonymity in the proceedings in the regional justice system. The Prosecutor General issued a resolution providing that the use of reserve of the identity for judicial authorities would only be used as an exception measure. In addition, it was established that a conviction could not be based on evidence provided by anonymous witnesses alone. The Commission considers that these restrictions constitute an important, although insufficient, step limiting the arbitrariness imposed by the "faceless" justice system. (...) In the context of Colombia and other countries, the Commission has repeatedly noted that "faceless" justice systems do not provide adequate due process guarantees for criminal defendants.

(...) These dangers, inherent in a criminal system, which provides for the anonymity of its central participants, have had a very real impact in the regional justice system in Colombia. The provisions allowing for the anonymity of witnesses have led to particularly serious anomalies.

(...)

Important information calling into question the credibility of secret witnesses has been revealed as well. For example, certain witnesses who testify against defendants in proceedings in the criminal justice system have received payment from the military according to the number of convictions, which they help to obtain. The State's security forces have also sometimes provided these witnesses with food and lodging during extended periods of time. (...) The due process rights of the defendant are, of course, severely compromised if he is convicted on the basis of this type of testimony, without any opportunity to question the credibility of the witness. Yet, in most cases, the defendant does not have access to information, which would reveal these credibility issues, because the identity of the witnesses is held in reserve.¹⁸

30. Additionally, the IACHR considered that regional justice presents the following problems:

The Commission has received information indicating that members of the State's public security forces sometimes detain suspects without an arrest warrant. (...) The Commission has also received information indicating that Colombian authorities sometimes fail to inform suspects in cases processed by the regional system of the reasons for their capture. According to this information, the suspect may also not be informed of the charge or charges against him within a reasonable time.

(...)

Analysts of the regional justice system have also pointed out due process problems arising from the fact that members of the State security forces carry out much of the preliminary investigation. (...) The initial gathering of evidence by members of the security forces also often includes interviews of witnesses and suspects. These investigative activities often take place

¹⁷ IACHR, Third Report on the Situation of Human Rights in Colombia, February 26, 1999, Ch. V, paras. 82-86.

¹⁸ IACHR, Third Report on the Situation of Human Rights in Colombia, February 26, 1999, paras. 119-126.

without the presence of either a defense attorney or a prosecutor or other judicial authority. The information obtained is then frequently introduced directly into the criminal file and utilized as evidence for issuing pretrial detention orders or even for convictions. These procedures present several serious due process problems.

(...)

In addition, confessions and adverse witness testimony obtained without the presence of a defense attorney in these early stages are placed in the record and utilized to reach important decisions regarding the fate of the defendant.

(...)

The Commission has also detected a serious due process problem in the fact that certain regional prosecutors are based in military installations. These prosecutors work from offices physically placed in military bases and tend to be seen as the prosecutors for the respective military battalion or brigade. They generally work in close cooperation with military authorities. The Commission believes that this situation seriously compromises the objectivity and independence of the prosecutor. Thus, for example, the Commission has received complaints alleging that these regional prosecutors in military installations act as facilitators for the actions which the Army seeks to execute by providing the legal formalities necessary. According to these complaints, they sign arrest and search warrants presented to them by the military without conducting any independent analysis as to whether the legal or factual foundations for those orders exist.¹⁹

31. In view of the foregoing, the IACHR concluded the following:

The Commission thus expresses its most serious concern regarding the lack of due process rights for defendants prosecuted in the regional justice system. The system was instituted as a well-intentioned effort to combat the impunity, which the Commission itself has named as a serious human rights problem. However, the rights of the defendant to due process of law, as guaranteed in the American Convention and other international instruments, may not be sacrificed to achieve this lofty goal. (...) The Commission is aware that legislation has been presented on several occasions to dismantle the regional justice system earlier than the June 1999, date for its automatic elimination. However, such legislation has never been enacted and is now unlikely to be approved and implemented before the automatic deadline. The Commission deeply regrets that the Colombian State has not acted previously to implement the reiterated recommendations of this and other bodies urging that the system be dismantled. The Commission now calls upon the Colombian State to immediately dismantle the regional justice system and to take all measures necessary to ensure that it is not extended in time or reinstated.²⁰

32. In its 1999 Annual Report, the IACHR reported on the information provided by the Colombian State that the *Ley Estatutaria de la Administración de Justicia* established the termination of the Regional Justice System for June 30 of that year. It argued that through Law 504 some modifications were introduced to the Code of Criminal Procedure, such as: i) the abolition of 'faceless' judges; and ii) that, for exceptional cases, the identity of prosecutors and witnesses could be withheld as a protective measure in proceedings conducted for exceptionally serious crimes. In this regard, the Commission considered the following:

The Commission considers the abolition of the "faceless judge" courts to be a positive measure. In addition, (...) it is aware of the problems associated with protecting the personal integrity of judicial officers, witnesses and victims who participate in criminal proceedings. Nevertheless, continuing to retain a "special" jurisdiction for the trial of certain offenses is a source of concern, given the emphasis on the continuing use of measures whose effects could limit the full enjoyment of guarantees such as equality before the law and the courts, the presumption of innocence, and the right to defense. Therefore, the Commission will continue

¹⁹ IACHR, Third Report on the Situation of Human Rights in Colombia, February 26, 1999, paras. 87-111.

²⁰ IACHR, Third Report on the Situation of Human Rights in Colombia, February 26, 1999, para. 130.

to pay close attention to the effects that the interpretation and application of the laws providing for keeping the identity of prosecutors and witnesses under seal may have on respect for due process guarantees of the defendant in particular cases.²¹

33. In the area of the universal human rights system, the Human Rights Committee indicated in its observations on Colombia in 1997 that the "regional judicial system" allows the existence of 'faceless' judges and anonymous witnesses. It indicated that this "is not in accordance with Article 14 of the Covenant, and in particular paragraphs b) and e) of paragraph 3, nor with General Comment 13 (21) of the Committee". The Committee urged Colombia "to abolish the regional judicial system and to (...) ensure that all trials are conducted with due respect for the safeguards of a fair trial stipulated in Article 14 of the Covenant."²²

C. Regarding Gustavo Sastoque's Detention and the Criminal Proceedings before the Regional Justice System

34. There is no controversy between the parties that at the time of the events, Gustavo Sastoque Alfonso was employed as an administrative officer of the CTI in the National Attorney General's Office. According to the statement of his supervisor, Mr. Sastoque handled the case files of the criminal investigation section and was also in charge of correspondence.²³ He added that he wore "informal" clothes because he had not been assigned a uniform or badge of the institution.²⁴ In addition, according to a certificate from the National Office of the Attorney General, Mr. Sastoque did not have a firearm assigned to him for the duties he had to perform.²⁵

35. As to the circumstances surrounding his arrest, Mr. Gustavo Sastoque stated that on March 8, 1995 at 2:00 p.m., he received a message from a colleague telling him to go to the sixth floor of the Regional Prosecutor's Office to enquire about proceeding No. 24.789. He argued that he was not given more information about this proceeding or about the reasons why he should appear. He indicated that he went to the sixth floor and that after talking to the secretary, a man told him to accompany him to a room. Mr. Sastoque stated that this man asked him if he worked in the CTI, to which he replied that he did. He added that the man told him that "he was going to find out why he had been called."²⁶

36. Mr. Sastoque stated that after an hour this same man returned and at that point he was transferred to the room where witness' statements were taken in the investigations of the Prosecutor's Office. He said that after another hour two different individuals handed him a piece of paper "that said arrest warrant for the crime of murder."²⁷

37. The IACHR observes that the arrest warrant dated March 8, 1995 was signed by the Head of the Collective Secretariat of the Regional Prosecutor's Office. The warrant included: i) his name and identity card (Gustavo Sastoque Alfonso); ii) the number of the proceedings (24.789 - Homicide); iii) sex (male), and iv) part of his supposed address (N. 7-55 Puerto Rico, Caquetá). The other boxes (place and date of birth, nationality, name of the parents, physical features, texture and observations) were not filled in.²⁸

38. On March 8, 1995, the National Attorney General's Dissemination and Press Office issued a Public Bulletin indicating the following:

The Special Commission of Regional Prosecutors of Bogotá have found sufficient evidence connecting Gustavo Sastoque Alfonso as a possible participant in the homicide. The

²¹ IACHR, Annual Report, Chapter V – Follow-up on Commission Recommendations, Colombia, paras. 46-50.

²² Human Rights Committee, Final Observations on Colombia, May 5, 1997, paras. 21 and 40.

²³ Official Statement of María Mora to the National Public Prosecutor's Office, September 11, 2003. Annex 1, folios 25-26.

²⁴ Official Statement of María Mora to the National Public Prosecutor's Office, September 11, 2003. Annex 1, folios 25-26.

²⁵ Certificate of the National Public Prosecutor's Office, July 21, 1995. Annex to the Initial Petition.

²⁶ Amplification of Charges against Gustavo Sastoque before the Regional Courts of Santafé de Bogotá, August 13, 1996. Annex to the Initial Petition.

²⁷ Amplification of Charges against Gustavo Sastoque before the Regional Courts of Santafé de Bogotá, August 13, 1996. Annex to the Initial Petition.

²⁸ Capture Order, March 8, 1995. Annex to the Initial Petition.

Commission designated for the joint investigation by different bodies of the Judicial Police, that is to say, the DAS, the National Police and the CTI itself, detained Gustavo (...) who until now has not been able to explain his presumed participation in the events, since his status as an administrative employee prevents him from performing operational duties. It is clear that the death of Pizarro Leongómez was not due to a lawful operation conducted by the National Attorney General's Office, but to irregular actions of individuals who are currently under investigation.²⁹

39. On March 10 and 16, 1995, Mr. Sastoque participated in a procedural step involving an identity parade.³⁰ Both Mrs. Guevara - known as Witness No. 1 - and Witness No. 2 recognized Gustavo Sastoque as the perpetrator of the homicide.³¹

40. On March 13, 1995, Gustavo Sastoque's defense attorney filed a brief with the Director of the Regional Prosecutor's Office, indicating that the authorities in charge of the identity parade informed him of its time and place "with very little time in advance". He added in the brief that the judicial authorities did not allow him to cross-examine or question the statements of Witness No. 1, which violated Mr. Sastoque's right of defense.³²

41. On the same day, a statement was taken before the Regional Prosecutor's Office of Santafé de Bogotá from an individual named José Rey, known as "Javier Delgado". He indicated that he was being detained and maintained that he had known Mr. Pizarro since 1968 when they were members of the guerrillas and added the following:

The only ones that I see have to do with the death of Hernando Pizarro, and who are and would be interested in order to silence all information Hernando Pizarro (...) had about the State terrorism, about the execution on the part of the military intelligence of the number of missions linked to the dirty war is the military intelligence B-2 of the Army.³³

42. On March 14, 1995, the Regional Public Prosecutors Office of Santafé de Bogotá issued an interlocutory resolution ordering Mr. Sastoque's detention as the alleged perpetrator of the crime of homicide, established in Article 323 of the Criminal Code,³⁴ with aggravating circumstance set out in Article 324.8 of the same Code. The IACHR observes that this document does not include the name of the prosecutor who issued the resolution.

43. The Prosecutor indicated the following:

It was not a whim of the officials who decided to accuse this individual merely to find a scapegoat (...). It was precisely because of the seriousness of the witnesses and their statements. (...) My office gives sufficient credibility to these anonymous witnesses' testimony. (...) While the witnesses protected by anonymity openly describe the alleged perpetrators of the act, other witnesses refrain from doing so (...). Any unsuspecting reader can observe with perfect clarity that all the testimonies converge in one point in which circumstances of manner, time and place, are almost exact in the description of these circumstances, that is to

²⁹ Bulletin No. 019 of the Outreach and Press Office of the National Public Prosecutor's Office, March 8, 1995. Annex to the Initial Petition.

³⁰ Record of Identity Parade Lineup of the National Public Prosecutor's Office, March 10, 1995. Annex to the Initial Petition. Identity Parade Lineup of the Regional Prosecutor's Office, March 16, 1995. Annex to the Initial Petition.

³¹ Record of Identity Parade Lineup of the National Public Prosecutor's Office, March 10, 1995. Annex to the Initial Petition. Identity Parade Lineup of the Regional Prosecutor's Office, March 16, 1995. Annex to the Initial Petition.

³² Alirio Caycedo Gutiérrez before the Regional Director of Public Prosecutors. From the Petitioner. Initial Petition.

³³ Official Statement of José Rey to the Regional Prosecutors Office of Santafé de Bogotá, March 13, 1995. Annex to the Initial Petition.

³⁴ Article 324.8 of the Criminal Code (Aggravating circumstances in the crime of homicide) For terrorist purposes, in the development of terrorist activities or by an individual who is or has been a public servant, journalist, candidate for popular election, leader, community, union, politician or journalist, candidate for popular election, for community leader, union, political or religious leader; member of the Security Forces, university professor, diplomatic or consular agent in the service of the Nation or accredited before it, for cause or by reason of their positions or charges or by reason of the exercise of their functions, or against any inhabitant of the national territory for their beliefs or political opinions; or due to their close relationship within the fourth degree of consanguinity, second of affinity or first civil. Referred to in: State's Brief dated March 18, 2003.

say they endorse, confirm and corroborate each other, that is why for this Office these testimonies are credible and as such must be given their due evidential weight.

(...)

Misael Sastoque Alfonso corroborated the alibi or exoneration statement put forward by Gustavo Sastoque, yes, as --in part-- his partner Roberto corroborates it, as well as other relatives of his. But if we analyze all these testimonies obviously we deduce that there is an interest which to save their relative and friend from this judicial mess in which he is involved and that therefore if there is an interest due to an emotional attachment this evidence must not be rejected or ignored but it cannot override the testimonies that point to the authorship of the act.³⁵

44. On May 19, 1995, a new identity parade was undertaken. On this occasion two police officers, Wander Trullo and José Roncancio, took part. Both said they were on duty when two individuals from the Prosecutor's Office arrived on February 27, 1995 to examine the place where Mr. Pizarro's murder took place.³⁶ Officer Trullo could not recognize any of the individuals³⁷ while Officer Roncancio did recognize Mr. Sastoque as an official of the Prosecutor's Office who was at the scene on February 27.³⁸

45. On May 23, 1995, the Regional Prosecutor took the statement from anonymous "Witness No. 4". The IACHR observes that the name of the prosecutor in charge of this procedural step has not been provided. This person indicated that he knew Hernando Pizarro and that he was living in Carlos Celis' house for security reasons as they had captured alias "Javier Delgado", who had been part of the guerrilla with him. He maintained that Carlos Celis was aware that Mr. Pizarro was going to receive the sum of two million pesos on February 27, 1995, as he was planning to leave the country. He also stated that Carlos Celis sold a white Toyota van, the same model as that used on February 26, 1995, to agents of the B-2 unit of the Army.³⁹

46. On August 25, 1995, Witness No. 1 responded to a written questionnaire submitted by Mr. Sastoque's defense attorney. According to the declaration statement, the Prosecutor in charge, who was present during this procedural step, told the witness that "at the moment of answering them, take special care so that the answers do not reveal their identity." Witness No. 1 indicated the following:

The individual that I could see well and that I am describing is the one that shot Mr. Pizarro. (...) What happened is that I had a good view [and the one who fired was] just under a streetlight, also because I know about weapons and I have good observational skills. (...) The [physical] characteristics that I have given have remained the same.⁴⁰

47. On October 3, 1995, the Regional Prosecutor sent an official letter to the Regional Director of the Prosecutor's Office indicating that Witness No. 1 presented an "express and voluntary statement" to have her identity lifted. The IACHR observes that in said letter the name of the prosecutor is not revealed. The Regional Prosecutor maintained that an order was drawn up to carry out with the corresponding procedure.⁴¹ Three days later, the Regional Prosecutor declared the investigation in which Mr. Sastoque appears as a defendant for the crime of homicide, closed.⁴² The IACHR observes that on December 16, 1996, further testimony was given by Witness No. 1 whose name, as indicated above, is Olga Esther Guevara Fajardo. On this occasion, Mr. Sastoque's defense attorney was present. The Commission observes that Mrs. Guevara confirmed what was said in her previous statements.⁴³

³⁵ Interlocutory Decision, March 14, 1995. Annex to the Initial Petition.

³⁶ Official Statement given by Wander Trullo Carlos, to the Regional Prosecutor's Office, Santafé de Bogotá, March 8, 1995. Annex to the Initial Petition. Official Statement given by Roncancio Lopez José Wilson to the Regional Prosecutor's Office, Santafé de Bogotá, May 9, 1995. Annex to the Initial Petition.

³⁷ Identity Parade Lineup, Wander Trullo Claros, with the Regional Prosecutor's Office, Santafé de Bogotá, May 19, 1995. Annex to the Initial Petition.

³⁸ Identity Parade Lineup, José Wilson Roncancio Gómez, with the Regional Prosecutor's Office, Santafé de Bogotá, May 19, 1995. Annex to the Initial Petition.

³⁹ Anonymous Statement of Witness No.4, before the Regional Prosecutor, May 23, 1995, Annex to the Initial Petition.

⁴⁰ Amplification of Anonymous Statement of No.1, August 25, 1995. Annex to the Initial Petition.

⁴¹ Decision rendered by Regional Prosecutor to lift anonymity of Witness No.1, October 3 1995. Annex to the Initial Petition.

⁴² Decision rendered by Regional Prosecutor closing the Investigation, October 6, 1995. Annex to the Initial Petition.

⁴³ Amplification of Statement by Olga Esther Guevara Fajardo, December 16, 1996. Annex to the Initial Petition.

48. On October 18, 1995, Custodio Mora, Deputy Prosecutor before the Municipal Criminal Judges, gave an official statement before the National Office of the Prosecutor General. He indicated that he was in charge of the procedural step for the removal of Mr. Pizarro's body and that he was not aware that Mr. Sastoque had participated. He added that the National Director of the CTI could provide information about the matter.⁴⁴ This is how Carlos Solórzano, National Director of the CTI, gave his statement and indicating the following:

[Gustavo Sastoque] never undertook intelligence functions since he did not carry out police duties, as he was merely an administrative official, clarifying that no employee can perform intelligence or investigation duties without a posting given by a prosecutor or a judge of the Republic.⁴⁵

49. On August 3, 1996, Gustavo Sastoque testified before the Regional Courts of Santafé de Bogotá and indicated the following:

If I were a murderer I would not have surrendered so childishly in such an illogical way (...), what I wonder is why (...) they got me involved in something I never did. (...) There was never a preliminary investigation or perhaps reading the proceedings' documents I understand that the false witness testified on March 4 and an agent on March 8, the day of my arrest, so I ask myself whether an investigation was conducted in such a short a time? I do not think it was done, the only purpose was merely to have a scapegoat (...) Another question is why I did not have an atomic absorption test (...). Another question is about the man who the Prosecutor allowed to remain free, Mr. Celis, I cannot explain why having searched that man's house and found compromising evidence against him, I cannot explain why the Prosecutor let him escape.⁴⁶

50. In addition, the IACHR observes that the following statements were taken, which were referred to in the judgment of first instance on May 26, 1997, as detailed below:⁴⁷

- Gustavo Sastoque indicated that on the afternoon of February 26, 1995, he was with his brother buying shoes, and that around 6:30 p.m. he arrived at his house and met his colleague Roberto Bermúdez.
- Misael Sastoque, Mr. Sastoque's brother, indicated that he was with Gustavo buying shoes on the afternoon of February 26, 1995.
- María Alfonso, Mr. Sastoque's, indicated that her son was buying shoes on the afternoon of February 26, 1995.
- Roberto Bermúdez, an official of the Prosecutor's Office, stated that he was with Mr. Sastoque at his home until 7:30 p.m.
- Néstor Sabogal maintained that in the afternoon of February 26, 1995, an individual came to the store he owns and bought a pair of shoes with a credit card. When he was shown a photo of Mr. Sastoque he indicated that he was not sure but that he looked like that person.
- Hadisolamy Rojas, a worker at Néstor Sabogal's shoe store, did recognize Gustavo Sastoque as the person who bought shoes on the afternoon of February 26, 1995.
- Gladys Polania de Sastoque and Mayreli Sastoque Polania, mister Sastoque's sister-in-law and niece, indicated that on the morning of February 26, 1995, they were watching television with Gustavo. They indicated that around 1 pm they left the house to go shopping and returned at around 4:30 pm or 5:00 pm, and saw that Gustavo was there.

⁴⁴ Sworn Statement of Custodio Jacinto Mora Medina to the National Public Prosecutor's Office, October 18, 1995. Annex to the Initial Petition.

⁴⁵ Judgment of the Regional Court of Santafé de Bogotá, May 26, 1997. Annex to the Initial Petition.

⁴⁶ Extension of Charges against Gustavo Sastoque before the Regional Courts of Santafé de Bogotá, August 13, 1996. Annex to the Initial Petition.

⁴⁷ Judgment of the Regional Court of Santafé de Bogotá, May 26, 1997. Annex to the Initial Petition.

51. On May 26, 1997, the Regional Court of Santafé de Bogotá issued guilty verdict against Gustavo Sastoque as co-author for the offense of aggravated homicide of Hernando Pizarro Leongómez. The IACHR observes that this judgment contains no name and it only says "regional judge". The Court imposed a prison sentence of 41 years and an accessory sentence of a prohibition on exercising public functions for a period of ten years.⁴⁸ Within the grounds of the judgment are the following considerations:

The court has sufficient evidence to fully satisfy the requirements of the procedural rule invoked to find Gustavo Sastoque Alfonso liable to conviction since --contrary to what the defense states--in order to reach certainty or the full verification of the punishable acts, as well as the responsibility of the defendant or defendants, it is not always necessary to collect a certain amount of evidence, because the interesting thing is whether --either with a large or a small number-- after their study in light of sound criticism, they have the virtue to lead to the conviction that a conduct that was externalized, fully complies with the abstract description made by the legislator in the law and who performed it.

(...)

Regarding the subjective aspect or criminal responsibility attributable to the defendant Gustavo Sastoque Alfonso, there is no difficulty in pointing to him as one of the individuals who killed Hernando Pizarro Leongómez, since we rely on the reiterated version of the Witness No. 1 who subsequently decided to disclose her identity that corresponds to Olga Esther Guevara Fajardo, which leads us to the conviction that he was the one who, in the company of other individuals, took the victim out of his residence and the reluctance to board the Toyota exclaiming that he was Hernando Pizarro Leongómez, that he would not get into the car, that they should call the Police, the journalists, as well as his lawyer so that it was known that the people was being killed, and he shot him five times in the head, causing his death instantly.

(...)

This version, that as analyzed by the prosecutor, (...) is from an exceptional witness, who in a coherent, clear, emphatic way has narrated in detail the facts that he was able to perceive by his senses on the night of February 26, 1995 and the morning of the same month and year, pointing to who has said to be Gustavo Sastoque Alfonso, as the person who shot the defenseless body of Pizarro Leongómez.

(...)

The testimony of Mrs. Guevara Fajardo has become a fundamental piece of the indictment, not only because of its precision and because of its detailed nature, but also because the facts she perceived thanks to her privileged location at the moment of the events.

(...)

The attribution of the criminal action made by the witness against Sastoque is free from any pressure of any harmful or unhealthy intent and is lacking of any desire to harm or blame an innocent. There is not the slightest evidence that it is a false statement, on the contrary, it is the reflection of a real perception of what happened, there was consideration of the privileged location of the witness in the crime scene that as shown in the record, was less than a meter away from the place. (...) On the other hand, the personality of the deponent, his cultural level, her capacity of observation, her degree of perception, allow this office to affirm that she is a serious, objective witness, with credibility in her statements. (...) The file of the cases includes (...) testimonies of a plurality people who in one way or another were aware of the occurrence of events, such as (...) the statements with reservation of identity, numbers 2, 3 and 4, which as a whole coincide in the description of the tragic episode. (...)

It is a true fact --and the court does not ignore it-- that as argued by the defense other evidence was attached to the file, specifically, testimony that try to corroborate with Sastoque Alfonso that at the time the events occurred he was at a distant location from where they took place, in his own residence. However, weighing this body of evidence and confronting it with the position of charge, it does not have the potential to weaken it or, as it were, make it uncertain; because all these attestations in the first place come from people with an interest in favoring

⁴⁸ Judgment of the Regional Court of Santafé de Bogotá, May 26, 1997. Annex to the Initial Petition.

him, because of their own bond of consanguinity with some and friendship with others (...); the versions are somewhat suspicious, to the point that they do not have the potential to distort the testimonial evidence of charges that incriminate Sastoque.⁴⁹

52. In an undated brief, a special agent of the Public Prosecutor's Office filed an appeal against the first instance judgment. The IACHR observes that this document does not include the name of said agent who believed that the conviction was based exclusively on the testimony of an anonymous witness and that multiple statements or testimony were not taken in account to discard the possibility that Mr. Sastoque was present at the scene on February 26, 1995 and shot Mr. Pizarro. He added the following:

(...) revoke the condemnatory sentence (...) because, thanks to the interrogations, the questioning, to the contradictions that exist in the criminal indictment, there is a doubt that until now it has been possible to eliminate (sic) and the *indubio pro reo* principle must be applied in favor of the accused.⁵⁰

53. On March 6, 1998, the Decision Chamber of the National Court issued a judgment upholding the first instance decision and only modified Gustavo Sastoque Alfonso's main sentence to 40 years and 6 months in prison. The Court held the following:

As for Olga Esther, this is a case of a normal person without visual or auditory alterations, she does not suffer from physical or mental illnesses that prevent or hinder her from appreciating the events. Her statements are clear, serious, concrete, coherent and reliable; moreover, there are no indications of having any specific interest in being untruthful or in harming innocent people. (...) The testimony of Olga Esther Guevara Fajardo found full support in other means of proof, since much of her story was corroborated by other eyewitnesses, which is more important, people other than herself also recognized Gustavo Sastoque Alfonso as a one of the members of the group of individuals.

(...)
[T] here is no inconsistency on the subject, because if the witnesses were located in different places it is obvious that not all were able to see the totality of what happened.⁵¹

54. On July 29, 1998, Mr. Sastoque's defense attorney filed a *cassation* appeal against the second instance judgment. The appeal once again reiterated Mr. Sastoque's lack of involvement in Hernando Pizarro's death. It was alleged, without prejudice to this, that the case should have been subject to the ordinary criminal jurisdiction and not to that of the Regional Justice System, because one of the reasons for applying the latter is that a murder is motivated by the political beliefs of the victim, which was absent in this case. The defense attorney explained that the case did not involve such an element given that Mr. Pizarro had withdrawn from politics eight years before his murder. Additionally, the defense attorney argued that the conviction was based exclusively on the testimony of anonymous witnesses. He added that "there was never any real procedural opportunity to cross-examine the testimony of Olga Esther Guevara Fajardo."⁵²

55. On February 22, 2000, Gustavo Sastoque filed a complaint with the Deputy Prosecutor of the Specialized Criminal Circuit Judges that Eduardo Umaña Mendoza, his private defense attorney, had been murdered on July 18, 1998, after his conviction in the first instance. Mr. Sastoque explained the following:

[Mr. Umaña told me] I know that you were not the one who murdered Hernando, I'm sure of your innocence, we kept talking and he told me that behind the death of Mr. Pizarro there were powerful people involved in military intelligence and that the witness that pointed to me, that is, Mrs. Olga Esther Guevara, was a member of military intelligence. The day that the Court issued the guilty verdict, Dr. Umaña came here to La Picota (...), I spoke with him that day and he told me not to worry, that he was already tired of so much injustice and that it would all

⁴⁹ Judgment of the Regional Court of Santafé de Bogotá, May 26, 1997. Annex to the Initial Petition.

⁵⁰ Opinion No. 34, brief of the Office of the Criminal Judicial Procurator, undated. Annex to the Initial Petition.

⁵¹ Judgment of the National Tribunal, Santafé de Bogotá. March 6, 1998. Annex to the Initial Petition.

⁵² Motion for *Cassation* appeal, March 29, 1998. Annex to petitioner's communication received on November 6, 2002.

come out in the Supreme Court, that was the last thing we talked about, and then they murdered him.⁵³

56. The IACHR does not have information on the investigation carried out into Mr. Umaña's death.

57. On July 5, 2000, the CTI's Special Prosecutor sent an official brief to the Criminal Cassation Chamber of the Supreme Court of Justice –which, at that time, had yet to rule on the *cassation* appeal filed against the second instance conviction— enclosing a statement by Mercedes Yolima Guaqueta Hernandez. Mrs. Guaqueta indicated that she had worked in the National Army for fourteen years and stated that she had participated in the operation culminating in Mr. Pizarro's death. She stated that six public agents participated in the operation and that the person who shot Mr. Pizarro was an official of the Prosecutor's Office, whom she described physically. She added that she did not know the name of that person but that his nickname was "Hermes" and he worked with the Director of the CTI, Hernán Jiménez.⁵⁴

58. Mrs. Guaqueta reported that the purpose of the operation was to capture Hernando Pizarro and obtain a journal in which he had evidence against the Army and the Prosecutor's Office. She maintained that Carlos Celis was an Army informant who was aware that Mr. Pizarro had such documentation. She confirmed that the Director of the CTI chose three workers from the Prosecutor's Office "of limited resources (...) so that they could have no defense" and finally Gustavo Sastoque was chosen to be prosecuted in order to hold him responsible for the murder of Pizarro.⁵⁵

59. She also stated that the Army paid 20 million pesos to Olga Esther Guevara, known as Witness No. 1, to memorize Sastoque's features and to state that he was the one who shot Mr. Pizarro. She indicated that the Army undertook to provide protection to Mrs. Guevara. She added that the Army gave the order to assassinate Mr. Sastoque's lawyer, Eduardo Umaña, since he had "a lot of information".⁵⁶ The IACHR does not have information on whether an investigation was initiated in this regard.

60. On November 9, 2000, Ángel Junca gave a statement before the National Attorney General's Office. He indicated that at the time of Mr. Pizarro's death he was employed as a local prosecutor. He stated that two days before Mr. Pizarro's death, he handed over a white Toyota truck to the Director of the CTI, Hernán Jiménez. This was the same model used by the individuals who murdered Mr. Pizarro.⁵⁷

61. On February 13, 2003, the Criminal *Cassation* Chamber of the Supreme Court of Justice decided the *cassation* appeal filed by Mr. Sastoque's defense attorney and decided "not to review the contested judgment." The Chamber indicated the following:

The appellant should not only have to identified the evidence and made reference to its content, but also, in order for the substitution decision to be issued, he should have provided the truth as established with the effectiveness of the omitted or alleged evidence and the ineffectiveness of the evidence that determined the orientation of the contested judgment.⁵⁸

62. On August 8, 2003, the Civil *Cassation* Chamber of the Supreme Court of Justice decided a *tutela* remedy filed by Mr. Sastoque. The Chamber highlighted the following allegations made by Mr. Sastoque:

The appellant in summary argues that the conviction is arbitrary and ignores his fundamental rights, since it was based on irregularly obtained evidence and as a result of a framing against him in the previous investigation, with the regional prosecutor omitting the legality review on the testimonies obtained and failing to consider the reports concluding that he had no relationship whatsoever with the facts investigated, as well not acting with impartiality to

⁵³ Amplification to Complaint of Gustavo Sastoque Alfonso, February 22, 2000. Annex to the Initial Petition.

⁵⁴ Sworn Statement of Mercedes Yolima Guaqueta Hernandez. December 14, 1999. Annex to the Initial Petition.

⁵⁵ Sworn Statement of Mercedes Yolima Guaqueta Hernandez. December 14, 1999. Annex to the Initial Petition.

⁵⁶ Sworn Statement of Mercedes Yolima Guaqueta Hernandez. July 6, 2000. Annex to the Initial Petition.

⁵⁷ Statement by Ángel Humberto Junca Guzmán, Human rights group of the CTI, November 9, 2000. Annex to the Initial Petition.

⁵⁸ Judgment of the Criminal Cassation Chamber of the Supreme Court of Justice, February 13, 2003. Annex State's Brief of August 15, 2003.

establish the motives and material and intellectual authors of the homicide under investigation. He also complains that the judgment fails to analyze or deepen the assessment of the evidence submitted by the defense, especially the testimonies produced, which were disqualified, and giving credibility to the anonymous deponents.

63. The Chamber concluded the following:

Subjecting a resolution issued by the supreme body of the ordinary jurisdiction, within a judicial proceeding, to a new examination by a different jurisdiction, generates legal uncertainty (...). In short, it would render nugatory the constitutional and legal postulates of due process, including the fundamental guarantee of *res judicata* (...). Hence, the foregoing allows us to conclude that the ruling issued by the Criminal Cassation Chamber of the Supreme Court of Justice (...) can not be challenged by way a tutela action (...).

64. On September 3, 2003, the Fifth Court for the Execution of Penalties and Security Measures of Bogotá "reduced the sentence of imprisonment" on Mr. Sastoque to 25 years and three months in prison.⁵⁹ On October 27, 2005, the prison sentence was reduced in two years, six months and nine days.⁶⁰

65. On November 30, 2005, the Fifth Court for the Execution of Penalties and Security Measures of Bogotá issued an order granting Mr. Sastoque conditional release.⁶¹ The Court indicated the following:

Due to the facts underlying the conviction, the inmate has been deprived of his liberty since March 8, 1995, a total of 10 years, 8 months and 21 days in prison, plus 2 years, 6 months and 9 days for the aforementioned reduction, making a total of 13 years, 3 months in prison (...). The sentenced person has maintained good relations with the prison authorities and with the other convicts, which has allowed him to be recognized for his good behavior (...).⁶²

D. Regarding the trial for perjury and procedural fraud

66. On June 20, 1999, while in custody at La Picota prison, Mr. Sastoque filed a complaint against Olga Esther Guevara Fajardo, her sister Claudia, and Germán Ramírez, who he considered to have been Witness No. 2, for the offenses of perjury and procedural fraud.⁶³ The IACHR observes that the investigation was taken up by i) the Office of the Deputy Prosecutor before the Supreme Court of Justice on August 24, 2000; ii) the Terrorism Subunit on June 21, 2001; and iii) the National Human Rights and International Humanitarian Law Unit on January 27, 2006.⁶⁴

67. According to a report from the 28th Specialized Prosecutor's Office of the National Office of the Attorney General, "it was only on September 1, 2006, that the production of testimony was ordered - among them those of Olga Esther Guevara, the judicial officers who participated in the removal operation of the corpse, the complainant's co-workers." On August 10, 2007, the investigation came under the jurisdiction of the above mentioned Specialized Prosecutor's Office and that production of the said procedural steps was again requested. Likewise, in this brief, he requested an inquiry be made as to whether a disciplinary investigation was carried out against the personnel of the National Army and Brigade 20 involved in the events and that Germán Ramírez's whereabouts be ascertained, which had not been done. The Office of the Prosecutor added the following:

⁵⁹ Decision of the Fifth Judge for Execution of Sentences and Security Measures of Bogota, November 30, 2005. Annex State's Brief of February 1, 2006.

⁶⁰ Decision of the Fifth Judge for Execution of Sentences and Security Measures of Bogota, November 30, 2005. Annex State's Brief of February 1, 2006.

⁶¹ Decision of the Fifth Judge for Execution of Sentences and Security Measures of Bogota, November 30, 2005. Annex State's Brief.

⁶² Decision of the Fifth Judge for Execution of Sentences and Security Measures of Bogota, November 30, 2005. Annex State's Brief of February 1, 2006.

⁶³ National Public Prosecutor's Office, Nation Human Rights and Humanitarian Law Unit, February 25, 2008, Annex to State's brief of April 9, 2008.

⁶⁴ National Public Prosecutor's Office, Nation Human Rights and Humanitarian Law Unit, February 25, 2008, Annex to State's brief of April 9, 2008.

Taking into account the chronological events that have led this preliminary investigation, it has been on going for more than eight years (...) without any of the prosecutors in charge making a decision on the merits to opt for a formal opening of an investigation, or by the issuance of an inhibitory resolution, and given the silence in connection with the production of evidence (...) the veracity of the statement by the witnesses of the charge was not truly verified (...). The criminal action is time barred but the application of this legal fiction cannot be blamed on the complainant, who has always or regularly (...) protested his innocence (...). We must not forget that due to these alleged false testimonies, one of the most fundamental universal rights was violated, that is, a person's liberty and his human dignity, as principles above our constitutional order.⁶⁵

68. Based on the foregoing, the General Attorney's Office issued a formal order opening an investigation for the crime of perjury and procedural fraud, and requested that the three persons under investigation be indicted.⁶⁶

69. On July 1, 2010, Special Prosecutor's Office 28 decided to preclude the investigation indicating the following:

(...) Article 232 of Law 600 of 2000 requires, for a possible transcendence at the trial stage and subsequent conviction, the existence of evidence that leads to the certainty of the punishable conduct (...) and the responsibility of the individuals under process, as objective requirements (...) which have not proven before this plenary. That is, neither the innocence of the complainant, nor the responsibility of the (...) accused (...), coupled with the legal phenomenon of the statute of limitations for criminal action, provide sufficient grounds for the adoption of this determination.

70. The State made it clear that said decision was appealed by Mr. Sastoque's defense attorney and that it was sent to the Deputy Prosecutor's Office before the Court of Bogotá to be resolved.⁶⁷

71. According to a press release, at the beginning of 2011 the Office of the Deputy Prosecutor before the Superior Court of Bogotá reversed the decision to terminate the investigation and issued an indictment against the three persons under investigation.⁶⁸ According to another press release, on October 4, 2012, the trial against the aforementioned persons began before the Fifth Criminal Court of the Adjunct Circuit of Bogotá. This press release also indicated that the Guevara sisters had fled and that Mr. Ramírez admitted that he was threatened by agents said to be from the Prosecutor's Office in order that he identify Gustavo Sastoque as the person who shot Hernando Pizarro.⁶⁹

72. The IACHR does not have information on the current status of said proceedings.

IV. LEGAL ANALYSIS

A. The Right to Personal Liberty (Article 7⁷⁰ of the American Convention, in relation to Article 1.1 of the Same Instrument)

⁶⁵ National Public Prosecutor's Office, Nation Human Rights and Humanitarian Law Unit, February 25, 2008, Annex to State's brief of April 9, 2008.

⁶⁶ National Public Prosecutor's Office, Nation Human Rights and Humanitarian Law Unit, February 25, 2008, Annex to State's brief of April 9, 2008.

⁶⁷ State's Brief dated October 26, 2010.

⁶⁸ Press Release "A juicio testigos de asesinato de ex M-19 Hernando Pizarro", published in *El Espectador* on May 21, 2011. Available at: <https://www.elespectador.com/content/juicio-testigos-de-asesinato-de-ex-m-19-hernando-pizarro>

⁶⁹ Press Release "Juicio por complot contra Sastoque", published in *El Espectador* on October 4, 2012. Available at: <https://www.elespectador.com/noticias/judicial/juicio-complot-contra-sastoque-articulo-379426>

⁷⁰ Article 7. Right to Personal Liberty.

[continues ...]

1. The Right not to Be Unlawfully Detained and to Know the Grounds for Detention

73. The Inter-American Court has indicated that Article 7.2 of the American Convention "recognizes the main guarantee of the right to physical liberty: the legal exception, according to which the right to person liberty can only be affected by a law."⁷¹ The legal exception that is required to affect the right to personal liberty in accordance with Article 7.2 of the Convention is that it must necessarily be accompanied by the principle of specificity, which obliges States to establish, as concretely as possible and "beforehand", the "causes" and "conditions" of the deprivation of physical liberty.⁷²

74. With regard to Article 7.4 of the Convention, the organs of the Inter-American system have indicated that information about "motives and reasons" for arrest must be provided "once it occurs," thereby constituting a mechanism for avoiding illegal or arbitrary detentions from the very moment of deprivation of liberty and, in turn, ensuring the individual's right to a defense.⁷³ Likewise, the Court has indicated that the agent who carries out the arrest must inform the individual in simple language, free of technical terms, about the essential legal reasons and facts on which the arrest is based.⁷⁴ The Inter-American Court has specified that Article 7.4 of the Convention refers to two aspects: i) information in oral or written form about the reasons for the detention, and ii) the notification, which must be served in writing, of the charges.⁷⁵

75. Applying the above standards to the present case, Article 28 of the Political Constitution of Colombia states: "Every person is free. No one shall be disturbed in his person or family, or be subjected to imprisonment or arrest, or detained, or his address registered, but by virtue of a written order from a competent judicial authority, with the legal formalities and for a reason previously defined in the law (...)."

76. In the present case, there is no dispute that Mr. Sastoque was arrested on March 8, 1995, by state agents. The IACHR observes that Mr. Sastoque was informally summoned by a colleague and detained for at least three hours in two rooms of the Regional Prosecutor's Office, without being informed during that period of time of the reasons why he was being held there. He was not shown an arrest warrant issued by a competent authority. After three hours Mr. Sastoque received a document called a "arrest warrant" dated the same day. The Commission observes that said order only contains Mr. Sastoque's name and identity card and the indication that he was being charged for the crime of homicide, with several sections left blank, as indicated in the proven facts.

77. The Commission emphasizes that States must demonstrate that the actions of their agents affecting an individual's liberty fit the parameters established by domestic law. This is especially relevant in this case, where the deprivation of liberty in the terms described by Mr. Sastoque and in the light of an assessment of the entire file, shows signs of irregularity.

78. The IACHR observes that the State has not satisfactorily explained the reasons why Mr. Sastoque was informally summoned to the offices of the Regional Prosecutor's Office, and why he was held for three hours in such a situation of uncertainty and without any information. Likewise, the Commission considers that the Colombian State has also failed to demonstrate that the document presented to Mr. Sastoque three

1. Every person has the right to personal liberty and security (...).

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

⁷¹ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 56.

⁷² IACHR. Report on Citizen Security and Human Rights. December 31, 2009, paras. 144-146.

⁷³ IACHR. Report No. 76/11. Case 11.769 A. J. Peru. July 20, 2011, para. 166. I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 82; and *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. French Version. Series C No. 180, para. 107.

⁷⁴ I/A Court H.R., *Case of Cabrera García and Montiel-Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010 Series C No. 220, para. 105.

⁷⁵ IACHR. Report No. 76/11. Case 11.769 A. J. Peru. July 20, 2011, para. 166. I/A Court H.R., *Case of Cabrera García and Montiel-Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010 Series C No. 220, para. 106.

hours after being detained was actually an arrest warrant issued by a competent authority complying with all legal and conventional requirements on information as to the reasons for arrest and the respective charges. The State has also failed to explain the various empty sections in said document. In this regard, the IACHR recalls that in similar circumstances, in the *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador* the Court considered that Mr. Lapo's detention was illegal despite the existence of a warrant for his detention. The Court noted that this warrant was issued on the same day of his arrest and that the State had not "provided a reasonable explanation" about "the existence of judicial authorization prior to Mr. Lapo's arrest that would comply with domestic laws."⁷⁶

79. Based on the foregoing, the Commission considers that Mr. Gustavo Sastoque Alfonso's deprivation of liberty was illegal and that he was not duly informed of the reasons for his detention. Consequently, the State of Colombia has violated the guarantees relating to the right to personal liberty established in Articles 7.1, 7.2 and 7.4 of the American Convention, in connection with the obligations established in Article 1.1 of the same instrument, to the detriment of Mr. Sastoque.

2. The right not to be arbitrarily detained

80. The Commission and the Court have emphasized that pretrial detention is limited by the principles of legality, presumption of innocence, necessity and proportionality.⁷⁷ They have also indicated that it is a precautionary measure and not a punitive one⁷⁸ and is the most severe that can be imposed on an accused and should be applied only in exceptional circumstances. In the views of both organs of the Inter-American system, the rule must be the freedom of the accused while his or her criminal responsibility is decided.⁷⁹

81. Both bodies of the system have emphasized that the personal circumstances of the alleged perpetrator and the seriousness of the offenses against him are not, in themselves, sufficient justification for pretrial imprisonment.⁸⁰ Regarding the reasons that may justify such detention, the organs of the system have interpreted Article 7.3 of the American Convention to the effect that the indications of responsibility are a necessary but not sufficient condition to impose such a measure. In the words of the Court:

(...) there must be sufficient evidence to allow reasonable suspicion that the person committed to trial has taken part in the criminal offense under investigation.⁸¹ Nevertheless, even in these circumstances, the deprivation of liberty of the accused cannot be based on general preventive or special preventive purposes, which could be attributed to the punishment, but can only be based (...) on a legitimate purpose, which is: to ensure that the accused does not prevent the proceedings from being conducted or elude the system of justice.⁸²

82. Accordingly, any decision restricting the right to personal liberty through the application of pretrial detention must contain sufficient and particularized grounds to assess whether such detention fulfills the necessary preconditions for its application.⁸³

⁷⁶ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 66.

⁷⁷ IACHR. Report on the Use of Pretrial Detention in the Americas. OEA/Ser.L/V/II. December 30, 2013, para. 20. I/A Court H.R., *Case of López Álvarez v. Honduras*. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, para. 67; *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 106; *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 197; and *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 74.

⁷⁸ I/A Court H.R., *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35, para. 77.

⁷⁹ IACHR. Report on the Use of Pretrial Detention in the Americas. OEA/Ser.L/V/II. December 30, 2013, para. 21; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 67; *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 196; and *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 74.

⁸⁰ IACHR. Report on the Use of Pretrial Detention in the Americas. OEA/Ser.L/V/II. December 30, 2013, para. 21; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 69.

⁸¹ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, para. 111.

⁸² I/A Court H.R., *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 103.

⁸³ IACHR. Report on the Use of Pretrial Detention in the Americas. OEA/Ser.L/V/II. Doc. 46/13. December 30, 2013, para. 21.

83. In addition to its effects on the exercise of the right to personal liberty, both the Commission and the Court have indicated that the improper use of pretrial detention may have an impact on the principle of the presumption of innocence contained in Article 8.2 of the American Convention. Respect for the right to the presumption of innocence requires the State to support and provide evidence in a clear and motivated manner, according to each specific case, on the existence of valid requirements for the imposition of pretrial detention.⁸⁴ Therefore, the principle of presumption of innocence is also violated when pretrial detention is imposed arbitrarily; or, when its application is essentially determined, for example, by the nature of the crime, the expected punishment or the mere existence of reasonable indications linking the accused person to the offense.⁸⁵

84. In the present case, the Commission observes that the document presented to Mr. Sastoque Alonso three hours after being detained on March 8, 1995, lacks an indication of the procedural purposes justifying his deprivation of liberty. The IACHR observes that on the same day, the Office of Dissemination and Press of the Office of the Attorney General of the Nation issued a communiqué indicating that Mr. Sastoque was under arrest as the alleged perpetrator of the murder of Hernando Pizarro. This communiqué indicated that "there was sufficient evidence to indict Gustavo (...) Sastoque (...) who until now has failed to explain his alleged participation in the events".

85. Likewise, on March 14, 1995, the Regional Directorate of Prosecutors of Santafé de Bogotá issued a decision imposing a custodial measure against Mr. Sastoque. This decision indicated that the measure was based "on the seriousness of the witnesses and their statements." This, in as much as the anonymous testimonies "converge in (...) terms of circumstances of manner, time and place". Regarding the testimony of Mr. Sastoque's relatives and other witnesses indicating that he was buying shoes during the events, the decision observed that "obviously [it] is inferred that there is an interest which is to save their relative and friend from the judicial mess in which he is involved".

86. The Commission emphasizes that neither of the two documents ordering –first the arrest and second the pretrial detention— indicate the procedural purposes justifying Mr. Sastoque deprivation of liberty. On the contrary, the Commission emphasizes that above quoted considerations refer to the credibility of the testimony in the proceedings and Mr. Sastoque's alleged responsibility. In addition, the testimonies taken into account were anonymous, and the March 14 decision was issued by a Prosecutor whose name was not disclosed.

87. In light of the foregoing, the Commission concludes that Mr. Sastoque's pretrial detention was arbitrary and failed to have non-procedural purposes, thus violating the principle of the presumption of innocence. Consequently, the State of Colombia is responsible for the violation of Articles 7.1, 7.3, and 8.2 of the American Convention, in relation to Article 1.1 of the same instrument, to the detriment of Gustavo Sastoque Alfonso. The Commission emphasizes that this violation began with the victim's deprivation of liberty and continued throughout the time while he was in pretrial detention; the case file does not show any periodic review for continuing with this measure, nor that at any later time the lack of procedural purposes was rectified.

⁸⁴ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 144.

⁸⁵ IACHR, *Report on the Use of Pretrial Detention in the Americas*. OEA/Ser.L/V/II. December 30, 2013, para. 137.

B. The Rights to due Process and Judicial Protection (Articles 8⁸⁶ and 25⁸⁷ of the American Convention in relation to Articles 1.1 and 2 of the Same Instrument)

1. Right to Competent, Independent and Impartial Judges and Prosecutors

88. In the present case, the IACHR observes that the trial of Mr. Sastoque took place before the Regional Justice System. As indicated in the section on the Findings of Fact, both the Commission and organs of the United Nations have expressed their concern about the application of said jurisdiction, due in large part to the use of anonymous judges and prosecutors.

89. The Commission has repeatedly pointed out that the trial by "faceless courts" violates the right of every individual to know the identify of the judge or judges who are going to hear their case, whether or not they are competent to try it; and whether or not they have any interest in its outcome, in such a way that it may affect the right to be tried by an impartial judge. When the identity of the judge is not known, the possibility of ascertaining their independence and impartiality is compromised.⁸⁸ In the words of the IACHR:

Keeping secret the identity of the 'faceless' judges and prosecutors prevents them from guaranteeing the independence and impartiality of the courts. The anonymity of the judges deprives the defendant of the basic guarantees of justice. He does not know who is judging him or whether that person is qualified to do so. Thus the defendant is prevented from having a trial by a competent, independent and impartial court, as guaranteed by Article 8 of the American Convention.⁸⁹

90. For its part, the Court has also indicated that trials before "faceless" or reserved identity judges violate Article 8.1 of the American Convention, as this prevents defendants from knowing the identity of the judges and, therefore from assessing their suitability and competence, as well as determining if grounds exist for a recusal, in order to exercise their defense before an independent and impartial tribunal.⁹⁰ The IACHR emphasizes that the guarantees of independence and impartiality extend to other non-judicial officials who are involved in the trial, such as prosecutors.⁹¹

91. Based on the foregoing, the Commission considers that the prosecution and trial of Gustavo Sastoque Alfonso by "faceless" judges and prosecutors in the criminal proceedings conducted before the regional justice then in force constituted a violation of his right to be judged by a competent, independent and impartial tribunal provided for in Article 8.1 of the American Convention, in relation to the obligations established in Articles 1.1 and 2 of the same instrument.

⁸⁶ Article 8. Right to a Fair Trial.

1. 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.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

(...)

b) prior notification in detail to the accused of the charges against him;

c) adequate time and means for the preparation of his defense;

(...)

f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts (...).

⁸⁷ Article 25. Right to Judicial Protection.

1. 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

(...).

⁸⁸ IACHR. Complaint to the Inter-American Court of Human Rights. *Case of García Asto and Ramírez Rojas v. Peru* of June 22, 2004, para. 114. See also: IACHR. *Report on the Situation of Human Rights in Colombia*, February 26, 1999, paras. 121 and 122.

⁸⁹ IACHR. Annual Report of the Inter-American Commission on Human Rights, 1996, Chapter V, Peru, II State of Emergency.

⁹⁰ I/A Court H.R., *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 185.

⁹¹ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 133.

2. Right to Prior and Detailed Information of the Charges

92. In general terms, the Court has pointed out that the right to defense must be necessarily exercised from the moment a person is accused of being a possible perpetrator or participant of a illegal act and that it only ends when the proceedings are finished.⁹²

93. Specifically, regarding the guarantee enshrined in Article 8.2.b of the American Convention, the Court has established that in order to be satisfied:

(...) the State must notify the accused on only of the charges against him, that is, the crimes of offenses he is charged with, but also the reasons for them, and the evidence for such charges and the legal definition of the facts. The defendant has the right to know, through a clear, detailed and precise description, all the information of the facts in order to fully exercise his right to defense and prove to the judge his version of the facts (...) timely compliance with Article 8(2)(b) is essential for the effective exercise of the right to defense.⁹³

94. Regarding strict compliance with this guarantee from the moment a person is considered to be under suspicion of having committed a crime, the Inter-American Court has indicated that:

The opposite would imply to subordinate the conventional guarantees that protect the right to defense, including Article 8(2)(b), to that the person under investigation finds, at certain procedural [sic] allowing the possibility that, previously, part of his rights be violated by acts of the authority that he disregards or which he cannot control or effectively object to, which is evidently contrary to the Convention. In fact, to prevent a person from exercising his right to defense from the moment the investigation begins and the authority in charge orders or executes actions entailing an infringement of rights is to magnify the investigative powers of the State to the detriment of the fundamental rights of the person under investigation.⁹⁴

95. In the present case, it is not disputed that Mr. Sastoque Alfonso became aware for the first time that he was a suspect in the murder of Mr. Pizarro, in the context of his detention on March 8, 1995. However, from the sequence of events described in the findings of fact, it is clear that the investigative authorities already considered him a suspect days before and that statements were received from witnesses who referred to Mr. Sastoque Afonso, as well as other procedural steps such as photo recognition in which he was allegedly identified. These steps relating to his alleged participation in the crime under investigation were carried out without Mr. Sastoque knowing that he was a suspect or, consequently, having the opportunity to defend himself in these initial investigative steps.

96. Based on the foregoing, the Commission concludes that the Colombian State is responsible for the violation of the right established in Article 8.2.b of the American Convention, in relation to the obligations established in Article 1.1 of the same instrument, to the detriment of Gustavo Sastoque Alfonso.

3. Right to Defense and to Question Witnesses

⁹² I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, para. 29; and *Case of Heliodoro-Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 148.

⁹³ I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, para. 225; *Case of Acosta Calderón v. Ecuador*. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, para. 118, and *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 187.

⁹⁴ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 29.

97. The Commission has indicated that the right to judicial guarantees includes the right to have adequate time and means to prepare a defense, which is established in general terms in Article 8.2.c of the Convention.⁹⁵

98. Likewise, one of the specific manifestations of this right is set out in Article 8.2.f of the Convention, relating to the right of the defense to question witnesses present in court and to compel the appearance, as witnesses or experts, other individuals who can shed light on the events. The IACHR has emphasized that the guarantee enshrined in this article constitutes one of the basic guarantees to which all persons are entitled, with full equality, in any criminal case prosecuted against him/her, as it is directly related to the adequate time and means to defend against the charges against him/her, which is essential to ensuring a fair trial.⁹⁶

99. Specifically, referring to regional justice in Colombia, the IACHR indicated the following in its Third Report on the Human Rights Situation in Colombia:

The defendant is also prevented from carrying out any effective examination of the witnesses against him. The defendant cannot adequately examine a witness if he does not possess any information regarding the witness's background or motivations and does not know how the witness obtained information about the facts in question. The 'faceless' justice system thus also leads to the violation of Article 8(2)(f) of the American Convention, guaranteeing the right of the defense to examine witnesses.⁹⁷

100. The IACHR has indicated that recourse to secret judicial systems, including recourse to anonymous witnesses, constitutes, in principle, a violation of the due process guarantee to question witnesses.⁹⁸ For its part, the Inter-American Court has indicated that among the guarantees granted to the accused is that of examining the witnesses for and against them, under the same conditions in order to defend themselves.⁹⁹ In each case there should be an analysis as to whether the measures of preserving witness anonymity was adopted subject to judicial review, based on the principles of necessity and proportionality, taking into account that this is an exceptional measure and verifying the existence of a situation of risk for the witness.¹⁰⁰ The IACHR has indicated that in certain circumstances the identity of the witnesses can be protected, provided that this does not adversely affect the judicial guarantees of the accused.¹⁰¹

101. In this regard, with respect to the safeguards required in these exceptional cases, the Court, taking into account case-law of the European Court of Human Rights, has maintained that such reservation must be sufficiently offset by counterbalancing measures, such as:

a) the judicial authority must be aware of the identity of the witness and be able to observe his demeanor under questioning in order to form its own impression of the reliability of the witness and of his testimony, and b) the defense must be granted every opportunity to examine the witness directly at some stage of the proceedings on matters that are not related to his identity or actual residence; this is so that the defense may assess the demeanor of the witness while under cross-examination in order to be able to dispute his version or, at least, raise doubts about the reliability of the testimony.
(...)

⁹⁵ IACHR, Report No. 76/11. Case 11.769. Merits. J. Peru. July 20, 2011, para. 248; and Report No. 78/15. Case 12.831. Merits (Publication). Kevin Cooper. United States. October 28, 2015, para.129.

⁹⁶ IACHR, Report No. 176/10. Cases 12.576, 12.611 and 12.612. Merits. Segundo Norín Catrimán and others. Chile. November 5, 2010, para. 236.

⁹⁷ IACHR, Third Report on the Situation of Human Rights in Colombia, February 26, 1999, para. 123.

⁹⁸ IACHR, Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Chapter V, paras. 121-127. IACHR, Annual Report 1996, Chapter V, paras. 32 and 85 (Colombia). IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 233.

⁹⁹ I/A Court H.R., *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279, para. 242.

¹⁰⁰ I/A Court H.R., *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279, para. 245.

¹⁰¹ IACHR, Report No. 8/14. Case 12.617. Merits. Luis Williams Pollo Rivera. Peru. April 2, 2014, para. 289.

Even when counterbalancing procedures have been adopted that appear to be sufficient, a conviction should not be based either solely or to a decisive extent on anonymous statements. To the contrary, it would be possible to convict the accused by the disproportionate use of a probative measure that was obtained while impairing this right of defense. Since this is evidence obtained in conditions in which the rights of the accused have been limited, the testimony of anonymous witnesses must be used with extreme caution, must be assessed together with the body of evidence, the observations and objections of the defense, and the rules of sound judicial discretion.¹⁰²

102. In the instant case, the IACHR observes that during the proceedings against Mr. Sastoque, the statements of up to four anonymous witnesses were taken. Of these four individuals, two identified him as the person who shot Hernando Pizarro and one did not recognize him at first, but later identified him "by references".

103. In the present case, firstly, the use of anonymous witnesses was established in the legislation governing the Regional Justice System, without major safeguards to ensure that their use was compatible with the international standards described. In fact, in this case, neither has the State justified before the IACHR, nor the judicial authorities explained in an individualized manner, the overriding reasons for the use of anonymity for said persons or why such a measure was the least harmful to Mr. Sastoque's right to defense.

104. Secondly, it is not apparent from the decisions relying anonymity that the respective counterweight measures were adopted. The Commission considers that the written questioning of one of the anonymous witnesses fails to compensate the impact on the right of defense, particularly taking into account that the identity of the prosecutorial and judicial authorities remained anonymous, in the terms already analyzed.

105. Thirdly, as will be developed in the next section, Mr. Sastoque's conviction was grounded almost exclusively on the statements of the anonymous witnesses. Although Witness No. 1's anonymity was lifted, this occurred with respect to one person only and the State failed to show how the impact on the right of defense was subsequently compensated due to the anonymity. In effect, Mr. Sastoque's defense attorneys argued that there was no real opportunity to cross-examine this person's statements and the State has not demonstrated otherwise.

106. Based on the foregoing, the Commission considers that the situation in this case fits squarely with the previous section on the use of anonymous witnesses within the framework of Regional Justice System in Colombia, which is a violation of the right of defense established in the American Convention. Consequently, the IACHR concludes that the State is responsible for the violation of the right established in Articles 8.2.c and 8.2.f of the American Convention, in relation to Articles 1.1 and 2 of the same instrument, to the detriment of Gustavo Sastoque Alfonso.

4. Principle of the Presumption of Innocence, Reasoned Decisions and Judicial Protection

107. Another fundamental element of due process is the principle of the presumption of innocence, which is closely related to the right to have duly reasoned decisions.

108. The presumption of innocence implies that the accused enjoys a legal status of innocence or of lack of guilt while his criminal liability is being established, in such a way that the State must treat him in accordance with his status as an un-convicted person.¹⁰³ The Court has held that this implies that the accused does not have to prove that he has not committed the offense of which he is accused, because the *onus probandi* is on those who have made the accusation.¹⁰⁴ In this way, the IACHR has emphasized that an authentic

¹⁰² I/A Court H.R., *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279, paras. 246-247.

¹⁰³ I/A Court H.R., *Case of Ruano Torres et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 303, para. 126.

¹⁰⁴ I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 154.

demonstration of guilt constitutes an indispensable requirement for criminal sanctions, so that the burden of proof rests with those making the accusation and not with the accused.¹⁰⁵

109. In accordance with the foregoing, international human rights law establishes that no person can be sentenced until there is clear proof of his criminal responsibility. In the words of the Court, "if the evidence presented is incomplete or insufficient, he/she must be acquitted, not convicted".¹⁰⁶ In the same sense, the Commission has considered that the lack of clear proof of criminal responsibility in a conviction constitutes a violation of the principle of the presumption of innocence.¹⁰⁷

110. In its recent ruling in the *Case of Zegarra Marín v. Peru*, the Court referred to the guarantee of reasoned decisions in relation to the principle of the presumption of innocence, in the following terms:

(...) the relevance of reasoning, in order to guarantee the principle of presumption of innocence, mainly in a condemnatory sentence, which must express the sufficiency of proof of charge to confirm the accusatory hypothesis; the observance of the rules of sound criticism in the assessment of the evidence, including those that could raise questions of criminal responsibility; and the final judgment that derives from this assessment. In each case, it must reflect the reasons why it was possible to ascertain the imputation and the criminal responsibility, as well as the evaluation of the evidence to distort any hypothesis of innocence, and only in this way to confirm or refute the accusatory hypothesis. The foregoing would allow to disprove the presumption of innocence and determine criminal liability beyond any reasonable doubt. When in doubt, the presumption of innocence and the principle in dubio pro reo, operate as a decision criterion at the moment of issuing the judgment.¹⁰⁸

111. In the present case, the IACHR emphasizes firstly that the first instance judgment was based almost exclusively on the statements of anonymous witnesses, in particular on those of Witness No. 1. In this regard, the Commission points out that the court of first instance considered that these statements had credibility on the grounds that "there is not the least evidence that this is an untruthful statement". Likewise, the court took into account "their cultural level, their observational capacity [and] their degree of perception". It is clear from the findings of fact that this individual, as well as Witness No. 2, were the ones who identified Mr. Sastoque as the person who had fired the gun. Witness No. 3 did not identify Mr. Sastoque at first in the proceedings. It was several months later that he referred to Mr. Sastoque, only indicating that he knew "by references" that he was the perpetrator of the crime. On the other hand, witness No. 4 did not identify Mr. Sastoque as the perpetrator. Despite this, the conviction indicates that witnesses No. 2, 3 and 4 corroborated witness No. 1's testimony, without taking into account the differences in the statements, at least, of Witnesses No. 3 and 4.

112. It follows from the foregoing that the testimony of Witness No. 1 constituted the fundamental identification evidence implicating Gustavo Sastoque Alfonso as the perpetrator of the crime. In this regard, the Commission reiterates that it is not responsible for assessing the evidence of Mr. Sastoque's criminal responsibility. However, it is for the Commission to evaluate –in light of the principle of the presumption of innocence, the right of defense and the guarantee of reasoned decisions— whether the evidence produced with limitations in the enjoyments of such rights had a fundamental impact in the conviction.

113. The Inter-American Court and the European Court have indicated that a sentence cannot be based "solely or to a decisive extent" on witness statements in which the rights of the accused have been limited.¹⁰⁹ In the case of *Luca v. Italy*, the European Court ruled on the conviction of a person based on the statement of a witness given during the investigation, without the presence of the defense counsel of the accused. In this

¹⁰⁵ IACHR. Report No. 82/13. Case 12.679. Merits. José Agapito Ruano Torres and family. El Salvador. November 4, 2013, para. 118.

¹⁰⁶ I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 120; *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 153.

¹⁰⁷ IACHR. Report No. 82/13. Case 12.679. Merits. José Agapito Ruano Torres and family. El Salvador. November 4, 2013, para. 130.

¹⁰⁸ I/A Court H.R., *Case of Zegarra Marín v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331, para. 147.

¹⁰⁹ I/A Court H.R., *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279, para. 247. ECHR. *Doorson v. The Netherlands*. Judgment of March 26, 1996, para. 76.

case, the aforementioned Court considered that the State violated the right of defense and the right to the presumption of innocence, since such evidence could not be refuted by the defense and was a substantial probative element for the conviction of the victim.¹¹⁰ For its part, the IACHR has found that the consideration of a written statement as a fundamental piece of evidence for a conviction violates the right of defense when such piece of evidence has been admitted despite the impossibility to question it during the entire proceedings.

111

114. For this reason there is a violation of the principle of the presumption of innocence whenever strong probative value is given to evidence obtained with limitations on the right of defense - as in the case of anonymous witnesses - and a conviction is fundamentally grounded on that evidence, when there are no other elements of corroboration on essential aspects to determine that individual's criminal responsibility. This violation is more serious when, as will be explained, there were various elements that were favorable to Mr. Sastoque and in respect of which no legal reasoning was offered to clarify why they failed to cast a doubt on his criminal responsibility, as indicated by the Inter-American Court in the *Case of Zegarra Marín v. Peru*, already cited.

115. In the second place, with respect to the testimony indicating that Mr. Sastoque was in a store buying shoes at the time of the murder, the Commission emphasizes that the local Court did not consider the storeowner's statement nor the direct and specific identification by the person who served him. On the contrary, it indicated that everything related to this point "comes from people with an interest in favoring him, by his close blood ties with some and friendship with others". Based on this argument, it undermined the credibility of these potentially exculpatory elements which, in accordance with the jurisprudence cited, imposed on the judge an additional burden of reasoning to establish Mr. Sastoque's criminal responsibility. It is appropriate to mention that it is not true that all the statements about the presence of Mr. Sastoque in the shoe store were from people interested in exonerating him. Both the owner of the store and the assistant are unaffected by this assessment; despite this, the court did not consider this situation.

116. Thirdly, the Commission considers that in its decision, the Court failed to consider other proof submitted by Mr. Sastoque's defense, such as i) the documentation that bore witness that he carried out administrative functions and had no access to weapons; and ii) the existence of a payment receipt certifying the purchase of shoes at the time the crime occurred. Nor was an assessment made of the statements of at least two people who questioned the version of Witness No. 1 regarding the presence of Mr. Sastoque during the removal of the body that according to the anonymous witness, made possible his identification as the perpetrator of the shotguns.

117. From the two previous points, the Commission emphasizes that not only were potentially exculpatory elements arising during the criminal proceedings not taken into account in the light of the principle of presumption of innocence, but there was also an omission in gathering additional corroborative elements indicated by two of the anonymous witnesses. For example, it is not apparent that technical tests were carried out to determine whether Mr. Sastoque actually fired the firearm. On the contrary, as previously indicated, these procedural steps were carried out in the initial stage, without the presence or participation of Mr. Sastoque and his defense attorney.

118. Additionally, faced with a guilty verdict, Mr. Sastoque's defense lawyer filed an appeal and the Decision Chamber of the National Court upheld the first instance decision, reducing his sentence from 41 years to 40 years and six months. This court emphasized the importance of Witness No. 1's statements by indicating that she was "a normal person without visual or auditory impairments [and] does not suffer from physical or mental illnesses that would prevent or impede the appreciation of events". For its part, the Criminal Cassation Chamber of the Supreme Court of Justice decided not to review the contested judgment, on the grounds that Mr. Sastoque had failed to "provide [the] truth (...) with the effectiveness of the omitted or alleged evidence and the inefficiency of those that determined the orientation of the contested judgment."

¹¹⁰ ECHR. *Luca v. Italy*. Judgment of February 27, 2001, para. 40.

¹¹¹ IACHR. Report No. 82/13. Case 12.679. Merits. José Agapito Ruano Torres and family. El Salvador. November 4, 2013, para. 141.

119. The Commission considers that the decisions of both courts enhanced the violations of the right of defense, including that relating to the use of anonymous witnesses, and the principle of the presumption of innocence, in the terms analyzed. Therefore, the Commission considers that the second instance and *cassation* appeal did not constitute effective remedies in connection with the violations of due process to the detriment of Gustavo Sastoque Alfonso, which constituted an additional violation of the right to judicial protection.

120. Finally, in this case, Mr. Sastoque's defense attorney filed a *tutela* action after the rejection of the *cassation* appeal. The Civil Cassation Chamber of the Supreme Court indicated that the decision on the *cassation* appeal could not be challenged by way of a *tutela* action since it is a "different jurisdiction" and would therefore generate "legal uncertainty".

121. In its decision, the Civil Cassation Chamber did not analyze the violations of constitutional and Convention rights alleged by Mr. Sastoque's defense attorney. Based on the foregoing, the IACHR considers that the *tutela* action was not an effective judicial means to remedy the violations of due process noted throughout this report.

122. In view of the foregoing, the Commission concludes that the State of Colombia is responsible for the violation of the principle of the presumption of innocence, the right to have duly reasoned decisions and the right to judicial protection, established in Articles 8.1, 8.2 and 25.1 of the American Convention, in relation to Article 1.1 of the same instrument, to the detriment of Gustavo Sastoque Alonso.

5. A Reasonable Time

123. Article 8.1 of the American Convention establishes as one of the elements of due process that the courts decide the cases filed before them within a reasonable time. In this sense, a prolonged delay may, by itself, constitute a violation of judicial guarantees.¹¹² It is for the State to explain and prove why it has required more time than would be reasonable to deliver a final judgment in a specific case.¹¹³ In that sense, the reasonableness of the period must be assessed in relation to the total duration of the criminal proceedings¹¹⁴ and in light of the four elements that the Court has considered in its case law, namely: i) the complexity of the matter; ii) the procedural activity of the interested party; iii) the conduct of the judicial authorities; and iv) the general effects on the legal situation of the person involved in the proceeding.¹¹⁵

124. With regard to complexity, the IACHR considers that in order for a complexity argument to be appropriate, it is necessary for the State to present specific information linking the elements of complexity invoked directly with the delays in the proceedings. This has not happened in the present case.

125. Regarding the participation of the interested parties, the Commission observes that Mr. Sastoque's actions are framed within the exercise of his right of defense in accordance with the mechanisms established by law in his favor. There is nothing in the file indicating that Mr. Sastoque's defense obstructed the proceedings or was responsible in any way for the delay due to abuse of that right. Only in such circumstances would it be possible to take into consideration the procedural activities of an individual in criminal proceedings, as it is primarily the State's responsibility to ensure procedural impulse and reasonableness in its duration. In relation to the conduct of the judicial authorities, the Commission highlights the delays in deciding the appeals, which have not been justified by the State. In particular, the IACHR observes that no justification has been provided for the five years, which elapsed between the second instance decision and the resolution of the *cassation* appeal.

¹¹² I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 25, 2005. Series C No. 137, para. 166.

¹¹³ I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 142.

¹¹⁴ IACHR, Report No. 77/02, Case 11.506, Merits, Waldemar Gerónimo Pinheiro and José Víctor dos Santos, Paraguay, December 27, 2002, para. 76.

¹¹⁵ I/A Court H.R., *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series No. 259, para. 164.

126. With regard to the fourth element, the Commission emphasizes that the fact that Mr. Sastoque Alfonso had been deprived of his liberty without a definitive conviction imposed a duty of diligence on the State in deciding the appeals. In that sense, the delay of five years had a considerable impact on Mr. Sastoque's right to personal liberty while he remained in pretrial detention.

127. Based on the foregoing, the Commission considers that the more than eight years between the beginning of the investigation until his sentence became definitive after the decision in the *cassation* appeal, constituted an excessive period that has not been justified by the State. Consequently, the Commission considers that the State violated the reasonable time guarantee established in Article 8.1 of the American Convention, in relation to Article 1.1 of the same instrument, to the detriment of Gustavo Sastoque Alfonso.

6. Right to Judicial Guarantees and Judicial Protection Regarding the Accusations of Perjury and Procedural Fraud

128. The Commission observes that in June 1999, Mr. Sastoque filed a complaint for perjury and procedural fraud against the anonymous Witnesses No. 1 and No. 2. The IACHR states that this investigation expired ten years later. In accordance with the information received from the parties, the Commission observes that the Colombian authorities failed to take further procedural steps to determine the corresponding responsibilities, despite the various indications described in the findings of fact that the trial against Mr. Sastoque Alfonso could have been a set up by multiple state agents and, therefore, an arbitrary use of criminal law in order to cover up the events. These indications are strongly supported by the numerous violations of due process already mentioned in this report, particularly those relating to the principle of the presumption of innocence.

129. It was only in 2011 that the investigation was reopened. The IACHR observes that the time elapsed constitutes an additional violation of due process and judicial protection of the victim, because these proceedings failed to provide an adequate and effective remedy to clarify what happened regarding the alleged false testimony, to determine the respective criminal liabilities, as well as the implications for Mr. Sastoque's criminal record and for the corresponding reparations for the alleged judicial error.

130. The IACHR observes that no information was presented as to whether investigations were undertaken into the death of Mr. Sastoque's lawyer, Eduardo Umaña. In particular, the Colombian State did not indicate whether an investigation was conducted and whether it investigated the possible links between this death and the criminal proceedings against Mr. Sastoque, including the public officials who implicated him in the death of Mr. Hernando Pizarro.

131. Consequently, the Commission declares that the Colombian State violated the rights to due process and judicial protection established in Articles 8.1 and 25.1 of the American Convention, in relation to Article 1.1 of the same instrument, to the detriment of Gustavo Sastoque Alfonso.

C. Right to Personal Liberty after the Conviction

132. In this report, the Commission has already established that both Mr. Sastoque's initial arrest as well as his pretrial detention violated the American Convention. At this point, the IACHR will consider the deprivation of liberty as a consequence of the sentence imposed on the victim.

133. The Commission has argued that, in certain circumstances, violations of human rights committed when adopting decisions where a person's liberty is at stake can make arrest or imprisonment resulting from such decisions arbitrary.¹¹⁶ In a similar sense, the Court has considered that the violation of judicial guarantees can have the effect rendering the proceedings defective, as well as the consequences derived from it, including the detention of an individual.¹¹⁷ For example, one of the criteria taken into account by the

¹¹⁶ IACHR. Report No. 172/10. Case 12.561. Merits. César Alberto Mendoza and others (Juveniles Sentenced to Life Time Imprisonment). Argentina. November 2, 2000, para. 175.

¹¹⁷ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Judgment of November 20, 2009. Series C No. 207, para. 148.

United Nations Working Group on Arbitrary Detention to determine when a deprivation of liberty can be considered arbitrary, is defined in the following terms:

When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.¹¹⁸

134. In this way, the Commission finds that although the deprivation of liberty considered here was based on a conviction issued by a judicial authority, it became arbitrary.¹¹⁹ The Commission has indicated that individuals can only be subject to a restriction on their liberty by means of a sentence established as a result of a trial during which they had the opportunity to defend themselves,¹²⁰ a situation absent in the present case in which, in addition, multiple violations of due process, including the principle of the presumption of innocence, as considered throughout this report, have taken place. In this regard, the Commission concludes that Mr. Sastoque Alfonso's deprivation of liberty after final conviction against him was also arbitrary, for which reason the State continued to violate to his detriment Articles 7.1 and 7.3 of the American Convention, in relation to Article 1.1 of the same Treaty.

D. Right to Personal Integrity¹²¹

135. In the circumstances of this case the Commission considers that there has also been a violation of Mr. Sastoque Alfonso's right to personal integrity. The victim remained deprived of liberty for more than ten years as a consequence of a criminal trial conducted in violation of fundamental due process guarantees. Thus, he was subjected to an illegal and arbitrary deprivation of liberty, both before and after the final conviction. In addition, since the outset of the investigations, Mr. Sastoque was totally defenseless due to the total lack of information about being a suspect in a criminal investigation.

136. He was also investigated and tried by faceless courts and prosecutors, which, in turn, based their decisions on anonymous witnesses. In the sentencing trials, the presumption of innocence was violated in the terms already analyzed, and the appeals filed were ineffective. In addition, there was the complaint filed by Mr. Sastoque for the crimes of perjury and procedural fraud, which did not receive a response or produce a substantive result. Finally, given indications of the existence of a judicial set up against him, the State also failed to respond with a serious and diligent investigation, even though this was essential to establish the existence of a judicial error against him.

137. Based on all these elements taken as a whole, the Commission considers that there are sufficient elements to establish the violation of the right to personal integrity established in Article 5.1 of the American Convention, to the detriment of Mr. Gustavo Sastoque Alfonso.

V. REPORT No. 61/18 AND INFORMATION ON COMPLIANCE

138. The Commission adopted Merits Report No 61/18, on May 8, 2018, comprising paragraphs 1 to 137 above and transmitted it to the State on July 19 of the same year. In said report, the Commission recommended to the Colombian State:

1. Adopt the necessary measures to overturn the sentence against Gustavo Sastoque Alfonso.

¹¹⁸ Working Group on Arbitrary Detention of the Office of the High Commissioner of the United Nations for Human Rights. Fact Sheet No. 26: "No one shall be subjected to arbitrary arrest, detention or exile".

¹¹⁹ For more information, see: IACHR. Report No. 172/10. Case 12.561. Merits. César Alberto Mendoza and others (Juveniles Sentenced to Life Time Imprisonment). Argentina. November 2, 2000, para. 179.

¹²⁰ IACHR. Report No. 64/99. Case 11.778. Merits. Ruth del Rosario Garcés Valladares. Ecuador. April 13, 1999, para. 51.

¹²¹ Article 5.1 of the American Convention establishes that: "Every person has the right to have his physical, mental, and moral integrity respected".

2. Provide complete reparation for the human rights violations declared in this report, both pecuniary and non-pecuniary. To this end, the State must adopt measures of economic compensation and satisfaction in favor of the victim, which must be consistent with the violations declared in this Merits Report. In addition, if the victim so wishes, the State must provide in concert measures of physical or mental health care.
3. Continue the investigations and internal proceedings into the allegations of perjury and procedural fraud. They must be carried out with due diligence, in a serious and effective manner and within a reasonable time. The Colombian State must also open, *ex officio*, criminal, administrative or any other investigations related to the human rights violations declared in this Merits Report.
4. Arrange for the necessary measures to avoid the repetition of the violations declared in this Merits Report, including: i) the measures to ensure that use of pretrial detention complies with the standards described in this Report; ii) appropriate training for prosecutorial and judicial authorities on the Inter-American standards of due process, particularly those related to the use of anonymous witnesses and the presumption of innocence; iii) strengthening of accountability mechanisms against officials who through actions or omissions commit violations of due process; iv) reducing the time limits for decisions on appeals against criminal convictions, including ordinary and *cassation* appeals; and v) the necessary measures so that throughout the criminal process, there are adequate and effective mechanisms to obtain judicial protection against possible violations of due process that may have been committed during the proceedings, including those that may arise in the judicial decisions themselves.

139. In the proceedings subsequent to the notification of the Merits Report, the IACHR received reports from the State on compliance with the recommendations established and observations from the petitioner. During this period, the Commission granted 14 extensions to the State for the suspension of the time period provided for in Article 51 of the American Convention. Likewise, the State reiterated its willingness to comply with the recommendations and expressly waived its right to file preliminary objections with respect to compliance with the deadline established in the aforementioned Article, in accordance with the provisions of Article 46 of the Commission's Rules of Procedure.

140. Among the progress in compliance with the recommendations, the State informed that the National Agency for the Legal Defense of the State (ANDJE) made the payment of what was ordered by Resolution No. 369 of October 10, 2020, whereby it complies with and orders the payment of a judicially approved conciliation in compliance with the conciliation agreement entered into between the parties on February 19, 2020.

141. The Commission notes that on March 24, 2022, the parties signed an "Agreement on Compliance with Recommendations. In said agreement, the State reports on the progress in compliance and three commitments were reached regarding: first, the follow-up of the review action; second, the pre-judicial conciliation and labor claims; and third, the measures of satisfaction, as detailed below:

142. With respect to the first recommendation, the State indicated that the 17th Judicial II Criminal Prosecutor of Bogotá filed, after the corresponding analysis, an action for review before the Criminal Chamber of the Supreme Court of Justice under the fourth ground of Article 12 of Law 906 of 2004, against the judgment of March 6, 1998. It indicated that this action, identified with file number 54.517, was admitted by means of an order dated November 13, 2020. Likewise, it indicated that PGN informed on December 27, 2021, of the presentation of a request for priority to the processing and ruling of the process to be made by the 17th Judicial II Criminal Prosecutor of Bogotá before the Supreme Court of Justice, in accordance with Article 63 (a) of Law 270 of 1996. As a first commitment, the State undertakes that the ANDJE will follow up on the review action.

143. Regarding the second recommendation, the State indicated that the ANDJE undertook to pay pecuniary reparation to the victim as a consequence of the violation of the right to humane treatment as a result

of the illegal deprivation of his liberty as established in the Merits Report, and in accordance with Law 288 of 1996.

144. The State and the petitioner, as a second commitment, declared that the payment made by the ANDJE to Mr. Sastoque Alfonso by virtue of what was ordered in Resolution No. 369 of October 19, 2020, corresponded to the violations declared by the IACHR in its Report on the Merits.

145. It was also agreed that in the event that the Supreme Court of Justice declares the judgment of March 6, 1998 to be invalid, the victim could initiate the administrative or judicial actions that he considers pertinent, in accordance with the domestic legal system, to obtain the reinstatement to the job that Mr. Sastoque held at the time he was deprived of his liberty due to the criminal proceeding and to claim his labor rights. It was agreed that a copy of the Compliance Agreement will be sent to the Attorney General's Office (FGN) for its knowledge and will request that, once the sentence is issued, the Attorney General's Office will hold a meeting with the victim and his representative.

146. As a third commitment, regarding measures of satisfaction, the State undertook to carry out an Act of Acknowledgment of Responsibility, in which it will acknowledge international responsibility for the violation of the rights established in Articles 7, 8, and 25 of the American Convention with respect to the obligations established in Article 1(1) and 2 of said instrument to the detriment of Mr. Sastoque Alfonso, once the Supreme Court of Justice resolves the action for review.

147. Likewise, the State undertook to grant financial assistance to María Alejandra Sastoque Roberto, in order to finance an academic program at a professional technical, technological or university level in an institution of higher education in Colombia. The financial aid will cover the tuition for the semesters for a semester value of up to 11 SMMLV and a semester support resource of two SMMLV or four SMMLV if the Higher Education Institution is located outside the municipality of residence. The same must begin to be used within a term not to exceed five years from the signing of the Agreement.

148. In the agreement on compliance with the recommendations, both parties requested that the mechanism for verifying compliance with the agreement be carried out through the IACHR by virtue of the powers granted under Article 51 of the American Convention and Articles 47 and 48 of the Rules of Procedure of the IACHR.

149. Regarding the third recommendation, the State stated that the investigation into the crimes of procedural fraud and false testimony against Olga Esther Guevara Fajardo, German Ramírez González and Claudia Magdalena Guevara Fajardo is inactive due to the acquittal issued in September 2015 and that the criminal action is time-barred. It also reported that the Special Jurisdiction for Peace (JEP) is making early contributions to the truth and that the FGN has informed that it will await the decision made by the JEP on the statements made by the FARC-EP regarding the murder of Hernando Pizarro León-Gómez, for which Mr. Sastoque Alfonso was convicted.

150. With regard to the fourth recommendation, the State highlighted, as progress in measures of non-repetition, Legislative Act No. 03 of 2002, which amended the Political Constitution in order to move from the old system of criminal procedure to one with an accusatory tendency, in accordance with the postulates of the conventions agreed to by Colombia. It considered that, in this way, the criminal regime in force in Colombia is limited to Law 599 of 2000, which issued the Criminal Code and Law 906 of 2004, which issued the Code of Criminal Procedure. It indicated that this procedure establishes a freedom regime based on the constitutional control of the deprivation of liberty measures requested by the prosecutor, which must be subject to evaluation by the judge of control of guarantees. It indicated that the supervisory judge in Colombia is not only in charge of deciding on the release of the accused, but also on any activity that affects the human and conventional rights of the subjects within the criminal process.

151. On the other hand, regarding control mechanisms against officials who violate due process, the State reported that the legal system has Law 734 of 2002, which establishes the Single Disciplinary Code. It pointed out that this law considers as a disciplinary offense the commission of any of the conducts set forth in said law that entail: the breach of duties, the excess in the exercise of rights and functions by public servants,

as well as the violation of a prohibition, inability, incompatibility and/or conflict of interest. It informed that said law establishes as very serious misconduct the obstruction of investigations carried out by the judicial authorities, illegally depriving a person of his freedom, violating the confidentiality of the criminal investigation, among others, which give rise to dismissal or disqualification from the exercise of public functions if they are carried out with malice or very serious misconduct.

152. Likewise, it highlighted Law 1952 of 2019, which would have entered into force on March 29, 2022, which contemplates as a very serious offense the incurring in serious violations of Human Rights or International Humanitarian Law in accordance with the international instruments signed and ratified by Colombia. It also alleged that this law provides that all public servants are prohibited from failing to comply with the duties contained in international treaties ratified by Congress.

153. After evaluating the information on the status of compliance with the recommendations, the Commission decided on April 19, 2022 not to send the case to the Inter-American Court and to proceed with the publication of the Merits Report as established in Articles 51 of the American Convention and 47 of the Rules of Procedure of the IACHR.

154. On February 20, 2025, the State informed that on January 22 of the same year, the Criminal Cassation Chamber of the Supreme Court of Justice (CSJ) issued its decision in the review action filed, in which it declared the grounds for review established in numeral 3 of Article 220 of Law 600 of 2000 invoked by the Public Ministry, with the scope given by the Constitutional Court of Colombia in Decision C-004/03 (numeral 4 of section 192 of Law 906 of 2004).

155. The State indicated that, consequently, the Office ordered the annulment of the first and second instance sentences handed down by the Regional Court of Bogotá on May 26, 1997, and the National Court on March 6, 1998, in which Mr. Sastoque Alfonso was convicted of the aggravated homicide of Mr. Hernando Pizarro Leongómez. Likewise, the Criminal Cassation Chamber of the CSJ ordered to backtrack the proceedings up to and including the issuance of the first instance sentence, so that the sentence could be issued in accordance with the recommendations of the IACHR.

156. It added that this decision established, *inter alia*, the referral of the case file to the Criminal Judge of the Bogotá Circuit that hears cases under Law 600 of 2000 (distribution), different from the one who issued the first instance judgment, in order for him to take cognizance of the case and issue a new judgment in accordance with the evidence that has been produced to date, including that produced in the review action, in accordance with the recommendations made by the IACHR. It emphasized that this decision was notified to the petitioner on February 5, 2025, and that, within the framework of the Compliance Agreement, the ANDJE will move forward with compliance with the measures subject to this decision, in particular, the act of acknowledgment of international responsibility.

157. The Commission appreciates the measures adopted by the State to reach a compliance agreement reached with the petitioning party and the progress made in complying with the recommendations. With regard to the **first recommendation**, the Commission notes that the conviction handed down against Mr. Sastoque Alfonso was rendered null and void by the judgment of January 22, 2025, issued by the Criminal Cassation Chamber of the Supreme Court of Justice, ordering the proceedings to be brought back to the first instance judgment for sentencing. Therefore, the Commission considers that the State has complied with this recommendation.

158. In relation to the **second recommendation**, the Commission notes that compliance with the pecuniary reparation carried out by the ANDJE. However, compliance with the measures of satisfaction is still pending; therefore, the Commission considers that the State has partially complied with this recommendation.

159. In relation to the **third recommendation**, the Commission notes the acquittal judgment issued in 2015, the statute of limitations on the action, and that the FGN is awaiting the decision made by the JEP on the statements made regarding the homicide of Hernando Pizarro León- Gómez, for which Mr. Sastoque Alfonso was convicted. Therefore, the Commission considers that this recommendation has not yet been

complied with. issued by the Criminal Cassation Chamber of the CSJ, and it was ordered that the proceedings be carried back to the issuance of the first instance judgment in order for a sentence to be handed down. Therefore, the Commission considers that the State has complied with this recommendation and remains attentive to the judgment that is pending to be issued.

160. With regard to the **fourth recommendation**, the Commission takes into account the modification of the criminal justice system towards an accusatory one; that the regime of liberty and all activities that affect the human and conventional rights of the subjects within the criminal process are subject to the evaluation of the supervisory judge. Therefore, and with respect to points i) and v) of this recommendation, the IACHR considers that the State has made progress in ensuring that the use of preventive detention meets the standards described in this report and that, throughout the criminal process, there are suitable and effective mechanisms to obtain judicial protection against possible violations of due process. The Commission remains attentive that the State provides specific information on compliance with these paragraphs.

161. With regard to subparagraph ii) of this recommendation, the Commission notes that the State has not presented specific information on its compliance. The IACHR also notes that prior to the agreement, the petitioner considered that, despite developments in constitutional jurisprudence and some legal reforms, pretrial detention is not exceptional, it remains the rule and retains the character of anticipation of the custodial sentence, affecting the right to presumption of innocence. Likewise, it stated that the tendency to extend the time of preventive detention is maintained and, in fact, through legislation of 2016 and 2018 it had been extended to some types of crimes. Therefore, the IACHR considers that the State has not yet complied with this subparagraph.

162. With regard to paragraph iii) of this recommendation, the Commission notes the norms reported by the State that establish the Single Disciplinary Code and the General Disciplinary Code. First, and in view of its relationship with these norms, the IACHR recalls that in its Judgment in the case of *Petro Urrego v. Colombia*, the Inter-American Court of Human Rights concluded that the State failed to comply with its obligations under Article 23 of the American Convention, in relation to its Article 2, due to the existence and application of the norms of the Single Disciplinary Code that authorize the Office of the Attorney General to impose sanctions of dismissal and disqualification on democratically elected public officials, and ordered it to adapt its domestic legal system to the parameters established in that judgment¹²². Likewise, in its compliance resolution with the judgment in the aforementioned *Petro Urrego* case of November 25, 2021, the Court established that Law 2094 of 2021, a law that amended Law 1952 of 2019 that issues the General Disciplinary Code, "continues to allow an organ other than a judge in criminal proceedings to impose restrictions on the political rights of democratically elected officials, in a manner incompatible with the literal meaning of Article 23.2 of the American Convention and with the object and purpose of said instrument¹²³".

163. In this regard, the IACHR understands that the recommendation in paragraph ii) is aimed at ensuring that officials who, through their actions or omissions, commit due process violations have an accountability system. The Commission notes that, as reported by the State, Colombia has an accountability mechanism that allows for the sanctioning of officials for due process violations, which can result in dismissal or disqualification from holding public office if carried out with malice aforethought or gross negligence (see *supra* para. 151). This mechanism provides for the dismissal or disqualification of democratically elected officials, in a manner incompatible with the Convention. The Commission observes that this recommendation addresses the due process violations declared in this report, and these could be related to the aforementioned grounds for dismissal or disqualification. Given that the mechanism does not comply with inter-American accountability standards, the Commission considers this recommendation to be partially fulfilled and will begin monitoring its implementation.

¹²² I/A Court H.R. *Case of Petro Urrego v. Colombia*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of July 8, 2020. Series C No. 406, para. 113 y dispositive point 8.

¹²³ I/A Court H.R. *Case of Petro Urrego v. Colombia*. Supervision of Compliance of Judgment. Resolution of the I/A Court H.R. of November 25, 2021, para. 22.

164. The Commission adopted Merits Report (Final) No. 46/25 on April 21, 2025. In that report, the IACHR reiterated its recommendations:

1. Provide complete reparation for the human rights violations declared in this report, both pecuniary and non-pecuniary. To this end, the State must adopt measures of economic compensation and satisfaction in favor of the victim, which must be consistent with the violations declared in this Merits Report. In addition, if the victim so wishes, the State must provide in concert measures of physical or mental health care.

2. Continue the investigations and internal proceedings into the allegations of perjury and procedural fraud. They must be carried out with due diligence, in a serious and effective manner and within a reasonable time. The Colombian State must also open, *ex officio*, criminal, administrative or any other investigations related to the human rights violations declared in this Merits Report.

3. Arrange for the necessary measures to avoid the repetition of the violations declared in this Merits Report, including: i) the measures to ensure that use of pretrial detention complies with the standards described in this Report; ii) appropriate training for prosecutorial and judicial authorities on the Inter-American standards of due process, particularly those related to the use of anonymous witnesses and the presumption of innocence; iii) strengthening of accountability mechanisms against officials who through actions or omissions commit violations of due process; iv) reducing the time limits for decisions on appeals against criminal convictions, including ordinary and *cassation* appeals; and v) the necessary measures so that throughout the criminal process, there are adequate and effective mechanisms to obtain judicial protection against possible violations of due process that may have been committed during the proceedings, including those that may arise in the judicial decisions themselves.

VI. ACTIONS FOLLOWING REPORT No. 46/25 AND INFORMATION ON COMPLIANCE

165. The Commission transmitted the Merits Report (Final) No. 46/25 to the State on April 23, 2025, granting it a period of three weeks to report on the measures taken to comply with the outstanding recommendations. On June 12, 2025, the Commission received the State report, which was forwarded to the petitioner for its information.

166. Regarding the public act of recognition of State responsibility, the State maintained that it held a meeting with the victim and the Office of the Attorney General, which is responsible for carrying out said act, and that, upon formal request, the Office of the Attorney General expressed its willingness to carry out the act of recognition on August 4, 2025. It indicated that arrangements are being made with the victim and her representative regarding the logistical details of the event. Therefore, the Commission considers that the measure of satisfaction is still pending fulfillment.

167. Regarding the investigations, the State reported that the Attorney General's Office is awaiting the decision to be taken by the JEP regarding the statements related to the murder of Mr. Hernando Pizarro León Gómez. It indicated that the JEP reported on the progress of the criminal proceedings for the murders of Mr. Pizarro and others and invited the participating family members to submit observations on the jurisdiction of the JEP and invited those who consider themselves victims to come forward so that they can participate. Regarding the legal situation of Mr. Sastoque, it reported that regardless of the decision taken by the SRVR regarding the JEP's jurisdiction to hear the case of the murder of Mr. Hernando Pizarro, the Attorney General's Office retains jurisdiction over the investigation, as do the other judicial operators. It indicated that the ordinary courts continue to exercise jurisdiction and must continue with the investigation and inquiry into the facts. Therefore, the IACHR considers that this recommendation has not been fulfilled.

168. Regarding subsection (ii) of the non-repetition measures relating to the proper training of prosecutorial and judicial authorities, the State reported that a series of virtual and in-person courses and seminars will be offered to prosecutors between 2022 and 2025. These included courses on: judicial police and prosecutorial and forensic investigation, protection and risk assessment of witnesses and victims, international humanitarian law, interrogation and cross-examination techniques, early evidence practice, skills and abilities

for intervention in hearings, human rights applied to the judicial function, fundamentals of the role of the prosecutor, security measures, and inter-American standards for the investigation of serious human rights violations. The State indicated that it is awaiting information on training for judges from the Superior Council of the Judiciary.

169. The Commission emphasizes that training should be provided on inter-American standards of due process and should focus particularly on the use of confidential witnesses and the presumption of innocence. The Commission awaits information on compliance with the measures of non-repetition and considers that subparagraph (ii) of the recommendation has been partially complied with.

170. The State did not provide information on compliance with the other recommendations that are still pending.

VII. FINAL CONCLUSIONS AND RECOMMENDATIONS

171. The Commission concludes that the State is responsible for the violation of the rights to personal liberty, judicial guarantees and judicial protection, established in Articles 5.1, 7.1, 7.2, 7.3, 7.4, 8.1, 8.2, 8.2.b, 8.2.c, 8.2.f and 25.1 of the American Convention on Human Rights in relation to the obligations established in articles 1.1 and 2 of the same instrument, to the detriment of Gustavo Sastoque Alfonso.

172. Based on the arguments of fact and law set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF COLOMBIA:

4. Provide complete reparation for the human rights violations declared in this report, both pecuniary and non-pecuniary. To this end, the State must adopt measures of economic compensation and satisfaction in favor of the victim, which must be consistent with the violations declared in this Merits Report. In addition, if the victim so wishes, the State must provide in concert measures of physical or mental health care.

5. Continue the investigations and internal proceedings into the allegations of perjury and procedural fraud. They must be carried out with due diligence, in a serious and effective manner and within a reasonable time. The Colombian State must also open, *ex officio*, criminal, administrative or any other investigations related to the human rights violations declared in this Merits Report.

6. Arrange for the necessary measures to avoid the repetition of the violations declared in this Merits Report, including: i) the measures to ensure that use of pretrial detention complies with the standards described in this Report; ii) appropriate training for prosecutorial and judicial authorities on the Inter-American standards of due process, particularly those related to the use of anonymous witnesses and the presumption of innocence; iii) strengthening of accountability mechanisms against officials who through actions or omissions commit violations of due process; iv) reducing the time limits for decisions on appeals against criminal convictions, including ordinary and *cassation* appeals; and v) the necessary measures so that throughout the criminal process, there are adequate and effective mechanisms to obtain judicial protection against possible violations of due process that may have been committed during the proceedings, including those that may arise in the judicial decisions themselves.

VIII. PUBLICATION

173. In accordance with the foregoing and pursuant to Article 51(3) of the American Convention and Article 47(3) of its Rules of Procedure, the Inter-American Commission on Human Rights decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the rules established in the instruments that regulate its mandate, will continue to evaluate whether the State of Colombia has provided full reparation to the victims as set forth in the above recommendations, until it determines that they have been fully complied with.

Approved by the Inter-American Commission on Human Rights on July 15, 2025. (Signed): José Luis Caballero Ochoa, President; Andrea Pochak, First Vice President; Arif Bulkan, Second Vice President; Roberta Clarke and Edgar Stuardo Ralón Orellana, Members of the Commission.