

INTER-AMERICAN COURT OF HUMAN RIGHTS

CABALLERO DELGADO AND SANTANA CASE

REPARATIONS

(ART. 63(1) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

JUDGMENT OF JANUARY 29, 1997

In the Caballero-Delgado and Santana case,

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

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Alejandro Montiel-Argüello, Judge
Alirio Abreu-Burelli, Judge
Antônio A. Cançado Trindade, Judge
Rafael Nieto-Navia, Judge *ad hoc*;

also present:

Manuel E. Ventura-Robles, Secretary, and
Víctor M. Rodríguez-Rescia, Interim Deputy Secretary,

pursuant to Articles 29, 55 and 56 of the Rules of Procedure of the Inter-American Court (hereinafter "the Rules of Procedure"), read in conjunction with Article 63(1) of the American Convention on Human Rights

(*) Judge Oliver Jackman recused himself from hearing this case owing to his previous participation in several stages of the case when it was being examined by the Inter-American Commission on Human Rights when he was a member of the Commission.

Judge Máximo Pacheco-Gómez abstained from hearing this stage owing to his absence, for reasons of *force majeure*, from the hearings on reparations held on September 7, 1996.

(hereinafter "the Convention" or "the American Convention") and in compliance with the judgment of December 8, 1995, delivers the following judgment on reparations in the instant case submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Colombia (hereinafter "Colombia", "the State" or "the Government").

I

1. The instant case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") by the Inter-American Commission through an application dated December 24, 1992, accompanied by report Nº 31/91 of September 26, 1991, the final version of which was adopted on September 25, 1992. The case originated in a petition (Nº 10.319) against Colombia, received at the Secretariat of the Commission on April 5, 1989.
2. On December 8, 1995, the Court delivered a judgment on the merits of the case, in which it decided that there was sufficient evidence

to infer the reasonable conclusion that the detention and the disappearance of Isidro Caballero-Delgado and María del Carmen Santana were carried out by persons who belonged to the Colombian Army and by several civilians who collaborated with them ... The fact that more than six years have passed, and there has been no news of Isidro Caballero-Delgado and María del Carmen Santana permits the reasonable conclusion that they are dead. (*Caballero Delgado and Santana Case*, Judgment of December 8, 1995. Series C No. 22, para. 53).

The Court declared in the operative part that it:

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

...

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

...

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

...

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

...

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

...

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

...

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

II

3. Pursuant to Article 62 of the Convention, the Court is competent to rule the payment of reparations, indemnities and expenditures in the instant case, Colombia having ratified the Convention on July 31, 1973, and recognized the contentious jurisdiction of the Court on June 21, 1985.

III

4. Inasmuch as none of the judges called upon to hear the case at the reparations phase were of Colombian nationality, the Court, in accordance with the provisions of Article 55(3) of the Convention, invited the State to appoint a Judge *ad hoc*. On February 15, 1996, the State informed the Court that it had appointed Dr. Rafael Nieto-Navia to serve as Judge *ad hoc*.

5. On March 15, 1996, the President of the Court decided:

1. To grant the Inter-American Commission on Human Rights until May 15, 1996, to submit a brief and the evidence in its possession for purposes of deciding on the indemnities and costs in the instant case.

2. To grant of the Government of the Republic of Colombia until July 18, 1996, to prepare its observations on the brief of the Inter-American Commission on Human Rights referred to in the preceding paragraph.

6. On April 8, 1996, the Inter-American Commission informed the Court of the appointment of Mr. Robert Goldman as its Delegate in the case to replace Mr. Leo Valladares-Lanza, who had been its Delegate during the proceeding on merits, but who had ceased to be a member of the Commission at the end of his term.

7. On May 10, 1996, the Inter-American Commission delivered a brief in which it submitted to the Court the reparations proposed by the "*Commission's advisers*" and "*the petitioners in the case on behalf of the victims*," and which it "*endorsed in all its parts*." The Commission also requested the Court to take into consideration a communication from the attorney for Ingrid Caballero, the daughter of Isidro Caballero. On July 26, 1996, Colombia submitted its observations on those communications.

8. On May 15, 1996, the Commission presented the following documents to the Court: an extrajudicial statement from Mr. Isaías Carrillo-Ayala and Ms. Fanny González, testifying that Mr. Cristóbal Anaya-González and Ms. María del Carmen Santana-Ortiz had been living together permanently under the same roof for two years; a copy of Isidro Caballero-Delgado's teacher's certificate; a copy of the document certifying that Isidro Caballero-Delgado had held a teaching post; the marriage certificate of Natividad Delgado and José Manuel Caballero; a copy of the registration of Iván Andrés Caballero-Parra's birth; and extrajudicial statement from Dexy Pinto-Rangel, José Froylán Suárez-Badillo and Cleotilde Caballero-Delgado to the effect that Mr. Caballero-Delgado and María Nodelia Parra had lived together for the past eleven years; a copy of a Colombian mortality chart, an education project of the Isidro Caballero-Delgado Departmental High School, and documents relating to expenses.

9. On June 28, 1996, the President requested the Government to submit the following documents indicated by the Inter-American Commission: the decree establishing Colombia's legal minimum wage for 1996; certification on the salary that Isidro Caballero-Delgado would have earned in 1996 at the appropriate teacher's grade; the mortality chart of insured persons in Colombia, endorsed by the Office of the Superintendent of Banks on March 19, 1990; and the norms governing relations of kinship in Colombia and the manner in which they are substantiated, all of which were submitted by the Government.

10. On August 27, 1996, the State informed the Court that Mr. Jaime Bernal-Cuéllar would no longer serve as its Agent in the instant case, and on September 5, 1996, it appointed Marcela Briceño-Donn to serve as its Agent, and Felipe Piquero-Villegas as its Alternate Agent.

11. On September 4, 1996, the Inter-American Commission submitted to the Court a copy of a communication it had received from the representatives of the victims in the case, in which the representatives requested the Commission to recuse Judge *ad hoc* Nieto-Navia on the ground that he was not competent to hear the case, his having been a titular Judge of the Court at the time the judgment on the merits was delivered. On September 7, 1996, the Court merely noted the submission of the document, since the Commission had not expressed an opinion on the request in its communication.

12. On September 7, 1996, the Court held a public hearing at its seat to listen to the parties' views on the reparations and costs.

There appeared:

for the State of Colombia:

Marcela Briceño-Donn, Agent;
Felipe Piquero-Villegas, Alternate Agent; and
Luis Manuel Lasso, Adviser;

for the Commission:

Robert Goldman, Delegate;
Domingo Acevedo, Attorney;
Manuel Velasco-Clark, Attorney;
Gustavo Gallón-Giraldo, Assistant;
José Miguel Vivanco, Assistant; and
Ariel Dulitzky, Assistant.

At that hearing, the Government produced the following documentary evidence: information on norm relating to the payment of punitive damages against the Colombian State, draft laws containing the legal definition of the forced disappearance of persons and provisions for its suppression, as well as sundry other illustrative reports and drafts.

13. On November 11, 1996, the President requested the Government and the Commission to provide information concerning the identity of Ms. María del Carmen Santana. The Government responded to that request through communications submitted on November 28, 1996, and

January 14, 1997. The Commission, for its part, submitted to the Court on December 13, 1996, a copy of a communication it had received from the petitioners on behalf of the victims.

IV

14. In operative paragraphs 5 and 6 of the Judgment of December 8, 1995, the Court decided that Colombia "*is obligated to continue judicial proceedings into the disappearance and presumed death of the persons named and to extend punishment in accordance with internal law*" and "*to pay fair compensation to the relatives of the victims and to reimburse the expenses they have incurred in their action before the Colombian authorities in relation to these proceedings.*" Nonetheless, there is disagreement between the parties as to the nature and amount of the reparations and expenses, and in establishing the identity of one of the victims. The dispute over these matters is to be settled by the Court at the present judgment.

15. The provision applicable to reparations is Article 63(1) of the American Convention, which states:

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

This article embodies one of the fundamental principles of general international law recognized repeatedly in the jurisprudence (*Factory at Chorzów*, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21 and *Factory at Chorzów*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29; *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J., Reports 1949, p. 184). It has been thus applied by this Court (*Velásquez Rodríguez Case*, *Compensatory Damages* (Art. 63(1) American Convention on Human

Rights), Judgment of July 21, 1989. Series C No. 7, para. 25; *Godínez Cruz Case, Compensatory Damages (Art. 63(1) American Convention on Human Rights)*, Judgment of July 21, 1989. Series C No. 8, para. 23; *Aloeboetoe et al. Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of September 10, 1993. Series C No. 15, para. 43; *El Amparo Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of September 14, 1996. Series C No. 28, para. 14 and *Neira Alegria et al. Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of September 19, 1996. Series C No. 29, para. 36).

16. The obligation to make reparation as ordered by the international tribunals is, consequently, governed by international law in all of its aspects, such as its scope, characteristics, type, and determination of the beneficiaries, none of which shall be subject to modification by the respondent State through invocation of provisions of its own domestic law (*Aloeboetoe et al. Case, Reparations, supra* 15, para. 44; *El Amparo Case, Reparations, supra* 15, para. 15, and *Neira Alegria et al. Case, Reparations, supra* 15, para. 37).

V

17. *Restitutio in integrum* being impossible in the instant case, inasmuch as its concerns a violation of the right to life, it is necessary to seek alternative forms of reparation, such as pecuniary compensation, for the victims' relatives and dependents. Such compensation relates primarily to the damages sustained which, as this Court has ruled on previous occasions, cover both material and moral damage (*Aloeboetoe et al. Case, Reparations, supra* 15, paras. 47 and 49; *El Amparo Case, Reparations, supra* 15, para. 15 and *Neira Alegria et al. Case, Reparations, supra* 15, para. 38).

VI

18. In its communication of May 10, 1996, the Commission requested that the Court order the State to adjust Colombian law to the norms of

the Convention, "*so that acts such as those committed against the persons of Isidro Caballero-Delgado and María del Carmen Santana should never recur in future*," and to amend Colombia's laws governing the remedy of *habeas corpus*, since, in its opinion,

one cannot ignore the fact that the absence of an effective remedy of *habeas corpus* provided for and regulated by the Convention and the Court's jurisprudence, and the lack of codification of the crime of forced disappearance of persons in the country's domestic law facilitated the commission of the crime of forced disappearance of Isidro Caballero-Delgado and María del Carmen Santana.

19. In that connection, the Government stated in its brief of July 26, 1996, that, as the Court had ruled in its Judgment of December 8, 1995, Colombia's internal norms suffice to guarantee enjoyment of the rights protected by the Convention; that Colombia's legislation on *habeas corpus* is in harmony with the provisions of the Convention, and that it is classified as being of "*immediate application ... so that its application would not even require any change in the law*." It further stated that it was making the necessary arrangements for submitting an adoption by Congress the texts of the Inter-American Convention on Forced Disappearance of Persons and a law codifying the crime of forced disappearance.

VII

20. The Commission, in its brief of May 10, 1996, requested that the Court order the State to prosecute those responsible for the disappearance of Isidro Caballero-Delgado and María del Carmen Santana. It further requested that the Court

determine that the judicial proceeding for identification and punishment of the perpetrators and authors of the disappearance and possible execution of Isidro Caballero-Delgado and María del Carmen Santana-Ortiz should be carried out by the civil courts ... in accordance with the requirements of impartiality and independence established in Article 8(1) of the Convention.

21. The Commission also requested the Court to order in its Judgment on reparations that the Government take the necessary measures to localize the bodies of Mr. Caballero-Delgado and Ms. Santana and to allow Isidro Caballero-Delgado's name to be "*duly and lawfully recovered by his comrades*," that the Colombian State accord special attention and "*reasonable*" economic support to "Isidro Caballero-Delgado" departmental college, and develop a program for promotion and dissemination of human rights "*designed for the various strata of society*." Under that heading, the Commission also sought the State's public acknowledgement of its responsibility and its public apology to the victims' relatives and to Colombian society as a whole, "*accompanied by the declaration that such acts should never again occur*."

22. In its reply, the Government affirmed that the Office of the Prosecutor of the Nation was investigating the matter with a view to punishing those responsible for the violations and that the Commission's request for the case to be tried in the civil courts would constitute a breach of its Political Constitution, which entrusts such cases to the military courts. It also pointed out that the Court had previously ruled that the Judgment on the merits was a form of reparation for social damage, which, in any event, should be substantiated with "*sufficient probatory evidence of the existence and extent of such damage*." In conclusion, the State stressed that the promotion and dissemination of human rights was an aim of the Colombian Government, "*which a multiplicity of bodies have been fulfilling for a long time*."

23. On the subject of public acknowledgement of responsibility, in the course of the public hearing held by the Court on September 7, 1996, the Agent of the Government declared that "*[i]f there is a need for further acceptance of responsibility by the Colombian State, this is the time for me to express it on behalf of my Government*."

VIII

24. The Commission estimated the overall expenses incurred in the proceeding at US\$33,681.00 (thirty-three thousand six hundred and eighty-one dollars of the United States of America), "*based on the official exchange rate of the Colombian peso to the dollar on April 23, 1996*," to be paid to Mrs. María Nodelia Parra, Mr. Isidro Caballero-

Delgado's common-law wife. In support of its calculation, the Commission produced documents relating to the money spent on photocopies, telephone calls, faxes, dispatch of correspondence, travel of witnesses, legal assistance, preparation of posters, and a few other items.

25. The Government claimed that there was no evidence that those expenses had been incurred by Mrs. María Nodelia Parra, inasmuch as most of the documents show that the sums were disbursed by the Santander Teachers' Union or the Andean Commission of Jurists. The State further claimed that recognition of expenses should be limited to those incurred for general representations to the Colombian authorities and that the evidence presented by the Commission did not clearly or conclusively establish that link. Lastly, it pointed out that it was not reasonable for the Court to order acknowledgement of sums invested by the interested parties to promote the proceeding before the Court "*without any kind of limitation or parameter.*"

IX

26. In Ms. María del Carmen Santana's case, the Commission estimated the loss of earnings sustained up to the date on which it submitted its brief on reparations at US\$13,754.00 (thirteen thousand seven hundred and fifty-four dollars of the United States of America) plus six percent annual interest, and the future loss of earnings at US\$86,138.00 (eighty-six thousand one hundred and thirty-eight dollars of the United States of America). The Commission based this calculation on the victim's presumed age of 19 at the time of the events; on life expectancy in Colombia, which is 73 years; on the assumption that Ms. Santana was earning the legal minimum wage at the time of her disappearance; and on the supposition that Colombian legislation recognizes additional social security payments of two months salary for each year worked.

27. In the case of Mr. Isidro Caballero-Delgado, the Commission calculated the loss of earnings up to the date on which it submitted its brief on reparations at US\$23,670.00 (twenty-three thousand six hundred and seventy dollars of the United States of America) plus six percent annual interest, and future loss of earnings at US\$112,555.00 (one hundred and twelve thousand five hundred and fifty-five dollars of the United States of America). The Commission based its calculation on Mr.

Caballero's age of 32 at the time of the events; on life expectancy in Colombia which is 73 years; on an update of Mr. Caballero-Delgado's salary at the time of his disappearance, provided by the Santander Teachers' Union; and on the assumption that Colombian law recognizes additional social security benefits of two months salary for each year worked.

28. The Government alleged that those calculations contained probatory defects, *"such as any proof that María del Carmen Santana was in any kind of full employment at the time of the events, or the assumption that she was earning the legal minimum wage, in addition to her social security benefits."*

It also pointed out that no deduction had been made in the calculation for sums the victims would have spent on their own upkeep, which would account for 25 percent to 50 percent of their income; that it had used fourteen-month years, thereby distorting the calculation; that the award of loss of earnings to María del Carmen Santana's companion would only be reasonable if there were children of the union; that it was proper to award it to the parents until such time as the victim would have reached the age of twenty-five, and to children until the beneficiary reached adulthood. The Government also questioned the idea of payment of six percent annual interest, arguing that arithmetical errors had been made in the calculations of both victims' future loss of earnings.

X

29. The Commission requested that the Court award a sum of US\$150,000.00 (one hundred and fifty thousand dollars of the United States of America) per family for moral damage *"directly sustained by the victims themselves,"* which would be *"equitably distributed between the families, depending on the number of beneficiaries and on the distribution criteria already established by the Court in other cases."*

30. In that connection, the Government argued that it was not reasonable to suppose that Isidro Caballero-Delgado and María del Carmen Santana had suffered moral damage, inasmuch as the circumstances of their disappearance or death were unknown.

31. The Commission also requested that the Court grant an indemnity for the moral damage sustained by the victims' relatives and to use "*as a minimum applicable*" to that calculation the maximum judicial assessment for such cases in Colombia, that is, an amount equivalent to one thousand grams of gold for each person, who suffered moral damage, other than the victim.

32. While the Government acknowledged the presumption of moral damages sustained by the victims' relatives, it maintained that if the sums demanded by the Commission were converted, the moral damages for each person affected in the case of María del Carmen Santana would be equivalent to four-thousand seven-hundred grams of gold, and in the case of Isidro Caballero-Delgado to three thousand one hundred and fifty grams of gold. Therefore, in its view, the amounts requested should be reduced.

XI

33. The Commission also requested the Court to order in its Judgment on reparations the adoption of certain measures relating to its main petitions, namely that Colombia recognize interest on the final amounts of the compensation from the date of the Judgment until the time of the actual payment, on the basis of the bank interest rate in effect in Colombia on the date the Judgment is delivered, that the payments be made in cash and not in public bonds or credit instruments, and that the Court decide to supervise fulfillment of the reparations and payment of the compensation, and that only after complete compliance has been verified would the case be closed.

XII

34. On May 10, 1996 the Commission submitted to the Court an application from the minor child Ingrid Carolina Caballero-Martínez, requesting that the Judgment to be issued by the Court "*recognize the minor INGRID CAROLINA CABALLERO-MARTINEZ as the daughter of the victim*

ISIDRO CABALLERO-DELGADO" (capitals in the original). To that end, the attorney submitted documents substantiating the kinship between his client and the victim and describing the moral and material damage she had sustained as a result of her father's disappearance. He also pointed out that the victim had been responsible for his daughter's upkeep, for which purpose "*25 percent of his salary, social security benefits and bonuses were withheld, by agreement reached with the child's mother in the Bucaramanga Second Minors Civil Court.*"

35. At the public hearing held by the Court on September 7, 1996, the Government requested the Commission to refer to the situation of the youth Caballero-Martínez, to which the Commission replied that "*the proper course [would be] for the Court to reserve her rights in the event they were substantiated.*"

XIII

36. During that same public hearing, the Alternate Agent of the Government informed the Tribunal of his concern regarding the identity of Ms. María del Carmen Santana-Ortiz: of the sixteen registrations in that name in the National Registry of the Colombian Civil State, none appeared to match the data or supposed age of the victim in the instant case.

37. The Commission, for its part, stated that in that regard it had "*beeded*" the statements made to the Court by "*a number of persons*" and that this criterion must prevail over formal criteria of the existence or otherwise of State-established records.

38. For the above reasons, on November 11, 1996 the President requested the parties to the case to inform him of any significant progress made in the investigation into the identity of Ms. Santana and her relatives, particularly Mrs. Vitelma Ortiz, referred to by the Commission at this reparations stage as Ms. Santana's mother. In response to that request, on November 28, 1996 the Government submitted a copy of a letter from the National Civil Registry of Colombia stating that the department files "*contained no evidence that any certificate of citizenship*

had ever been issued in the name of Santana-Ortiz María del Carmen or Ortiz Vitelma." The Government also sent the Court a copy of the thirteen existing records relating to María del Carmen Santana. On December 13, 1996 the Commission submitted a copy of a communication it had received from the representatives of the petitioners in the case, declaring that the statements contained in the probatory evidence "conclusively established both María del Carmen Santana's existence and her emotional ties to Mr. Cristóbal Anaya-González."

XIV

39. In calculating the compensation for material damage suffered by the relatives of the victims, the Court decided that the amount should be one which, invested at a nominal interest rate, would have a monthly yield equivalent to the amount of the income the victims would have received during their probable lifetime. In this regard, the Court ruled that the material damage referred to the "*present value of an income from their monthly earnings for the rest of their probable lifetime and is, perforce, less than the simple sum of their earnings*" (*Neira Alegria et al. Case, Reparations, supra* 15, para. 46).

40. To the figure obtained by this procedure should be added interest from the date of the victims death to that of the judgment, with a deduction for the personal expenses the victims would have incurred during their probable lifetime -estimated in this case at one quarter of their income- as accepted by the Government at the public hearing on September 7, 1996.

41. In the specific case of Isidro Caballero-Delgado, the Court accepts as the basis for the calculation the updated statistics submitted by the Santander Teachers' Union and by the Government concerning the salary the victim would have received in 1996, that is, 244,595.00 (Two hundred and forty-four thousand five hundred and ninety-five) Colombian pesos per month, at an exchange rate of 1,054.00 (one thousand and fifty-four) pesos to US\$1.00 (one dollar of the United States of America), which would amount to US\$232.06 (two hundred and thirty-two dollars of the United States of America and six cents).

42. According to the Commission, two bonuses equivalent to one half of a monthly salary should be added for each year at the end of each semester, and one month's salary for each year worked, recognized as unemployment benefit; in other words, that the yearly calculation should comprise fourteen months' salary. The Government, invoking provisions of labor law, contested the inclusion of the unemployment benefit. However, this Court does not share the Government's view and considers that the benefit should be included as part of the salary due.

43. In accordance with the above, and bearing in mind the salary that Caballero-Delgado would have received between the date of his disappearance on February 7, 1989 and the time to which he would have expected to live; his age, 32, at the time of his disappearance, and life expectancy in Colombia, with a deduction of 25 percent for personal expenses, and adding interest at the rate of six percent per annum from the date of his disappearance up to the time of the present Judgment, the Court arrives at the sum of US\$59,500.00 (fifty-nine thousand and five-hundred dollars of the United States of America) due to the relatives of Isidro Caballero-Delgado as compensation for the material damages caused by his death.

44. In the specific case of María del Carmen Santana, there is no indication in the docket that the Commission had presented any indisputable proof of her identity. The representative of the Government declared at the public hearing that there was no information on María del Carmen Santana-Ortiz in the Civil Registry and that, disregarding her second surname, there were sixteen registrations, thirteen of which were current documents, none of which appeared to fit the description of the victim in the instant case, or her age, which the Commission claimed to be nineteen, albeit failing to produce her birth certificate. With regard to Mrs. Vitelma Ortiz, the presumed mother of María del Carmen Santana, the Commission had not produced any proof of kinship and, according to the Government, neither did her name appear in the Colombian Civil Registry. As regards Mr. Cristóbal Anaya-González, her presumed constant companion, an extrajudicial statement made by witnesses Isaías Carrillo-Ayala and Fanny González to a Notary on the Bucaramanga Circuit, in which they declared that they had known and had dealings with Cristóbal Anaya-González for 20 and 15 years respectively and were aware that he and Ms. María del Carmen Santana Ortiz

had been living under the same roof as man and wife. Mention should also be made here of an earlier statement to the Attorney commissioned by the National Human Rights Unit of the Office of the Prosecutor, in which Ms. Fanny González stated that Cristóbal Anaya-González was her brother on their mother's side, that she "*had known MARÍA DEL CARMEN for approximately eight months, knew nothing about her relatives or origin, or of what could have become of her*" (capital letters in the original).

Bearing in mind that during the trial before the Colombian authorities, all mention of Anaya-González had been merely incidental and that this Court only became aware of his existence at the reparations stage; the vagueness of the statements by the witnesses, who had not even indicated the duration of the presumed cohabitation or where it had occurred, the Court considers that Cristóbal Anaya-González's status of constant companion has not been substantiated.

45. Consequently, as regards the compensation for material damage occasioned by the death of María del Carmen Santana, about whom the Commission admits in its petition to "*ha[ving] very little information*," and considering that no evidence of her real identity, age or kinship was produced for determining the amount of the damages, or of her potential beneficiaries, this Tribunal is not in a position to order payment of compensation under that heading. Given these special circumstances, the question of the victim's identity must be resolved under domestic law, and fulfillment of the part of the Judgment below (*infra* para. 52(b)) awards compensation for moral damage to the closest relative of the person referred to during this phase of the proceeding as María del Carmen Santana-Ortiz.

46. Regarding the reimbursement of the expenses incurred by the relatives of the victims in their representations concerning this proceeding, the Commission has requested the sum of US\$33,681.00 (thirty-three thousand six hundred and eighty-one dollars of the United States of America) and attached copies of some documents it produced as evidence of those expenses.

47. Following a detailed examination of the documents concerning those expenses, the Court considers that a substantial portion covers

travel expenses and telephone calls outside of Colombia, newspaper articles, and preparation of posters and placards by the Santander Teachers' Union and the Andean Commission of Jurists, and not by Mrs. Nodelia Parra-Rodríguez. Accordingly, they cannot be included in the reimbursable expenses covered in operative paragraph 6 of the Judgment on merits as issued by the Court, which only recognizes expenses relating to the relatives' representations to the Colombian authorities. The Court, however, considers that Ms. María Nodelia Parra-Rodríguez must have incurred expenses with the Colombian authorities and fixes at US\$2,000.00 (two thousand dollars of the United States of America) the sum to be paid directly to her.

XV

48. The Commission, endorsing a communication from one of the representatives of the victims' relatives, requested payment of US\$125,000.00 (one hundred and twenty-five thousand dollars of the United States of America) for each of the relatives of the victims as compensation for moral damages, basing its calculation on the criterion of the Court in the *Velásquez Rodríguez and Godínez Cruz Cases, Compensatory Damages* (*supra* 15).

49. For its part, the Government accepted the existence of moral damage, but contested the amount of that damage, alleging that the recent jurisprudence of the Court established that the calculation should be based on principles of equity and not on rigid criteria.

50. The Court, bearing in mind all the special circumstances of the case and its own decision in similar cases (*El Amparo Case, Reparations, supra* 15 and *Neira Alegria et al. Case, Reparations, supra* 15), considers it fair to award compensation for moral damages caused to the relatives of Isidro Caballero-Delgado in the amount of US\$20,000.00 (twenty thousand dollars of the United States of America).

51. The Court considers it fair to award compensation for moral damage caused by the death of María del Carmen Santana in the amount of US\$10,000.00 (ten thousand dollars of the United States of America) to

her nearest relative, pursuant to paragraphs 45 and 52(b) of this Judgment.

XVI

52. The Court shall now deal with the distribution of the amounts awarded for the various reparations and considers it fair to employ the following criteria:

- a. The reparation for material and moral damages in the case of Isidro Caballero-Delgado shall be divided as follows: one-third to his son Iván Andrés Caballero-Parra, one-third to his daughter Ingrid Carolina Caballero-Martínez, and one-third to his common-law wife María Nodelia Parra, who shall also be reimbursed for expenses.
- b. In the case of María del Carmen Santana, the compensation for moral damages shall be awarded to her nearest relative, as indicated in paragraphs 45 and 51 of this Judgment.

XVII

53. As regards non-pecuniary reparations, the Commission requested reform of the Colombian legislation on the remedy of *habeas corpus* and codification of the crime of forced disappearance of persons, and that the judicial proceedings on the disappearance of Isidro Caballero-Delgado and María del Carmen Santana should remain within the jurisdiction of the ordinary courts and not be transferred to the military courts.

54. On the first point, it claims that provision for the remedy of *habeas corpus* exists in the 1991 Political Constitution of Colombia in exceedingly broad terms, but that Article 430 of the Criminal Code has not been brought into line with the new Constitution or with the American Convention, insofar as it restricts judicial activity to a merely formal ascertainment of the fact that the disappeared person is not in

detention. At the public hearing before this Court, the Agent of the Government said that the regulation on *habeas corpus* was currently to be found in Law 15 of 1992; that the Constitutional Court had declared that law to be consistent with the Political Constitution, and that the Ministry of Justice, together with other governmental bodies, would establish a working group to review that law. He also stated that the National Government had undertaken to enact a law on the forced disappearance of persons.

55. In that connection, the Court observes that in operative paragraph 3 of its Judgment on the merits of December 8, 1995, it was ruled that Colombia had not violated Articles 2, 8 or 25 of the Convention concerning the duty to adopt measures to give effect to the rights and freedoms ensured by the Convention, right to a fair trial and the judicial protection of rights, so that it could not now reopen consideration of that question, which, in any event, had been raised not in the petition, but at the reparations stage. At the same time, examination of domestic legislation was not something to be undertaken at the reparations stage of a proceeding, in addition to which, since in the instant case it had been impossible to prove that the disappeared persons were being held in any of the official detention establishments, the judicial authorities could not, in the absence of pertinent information as to the disappeared persons' whereabouts, take any measure under the remedy of *habeas corpus* nor could they have prevented the deaths of the victims.

56. The Court considers the codification of the crime of forced disappearance of persons into law in the terms of the 1994 Inter-American Convention to be desirable, but is of the opinion that its non-codification does not prevent the Colombian authorities from pursuing its efforts to investigate and punish the crimes committed to the detriment of the persons referred to in the instant case.

57. Lastly, the Commission claims that the forced disappearance of persons and extrajudicial execution are crimes that cannot be considered to have been committed in exercise of military duties; accordingly, pursuant to Article 9 of the Inter-American Convention on Forced Disappearance of Persons, such cases could only be tried in the civil courts -although it recognizes the existence of military courts- but "*it is the direct responsibility of the Government of Colombia to ensure that the instant case remains within the jurisdiction of the civil courts.*" In that

connection, this Court considers that the question of the competence of military tribunals and their compatibility with international human rights instruments calls for a review of Colombian legislation, which it would be inappropriate to undertake in an incidental manner and at the reparations phase, let alone when it has been submitted by the Commission by way of hypothesis.

58. In conclusion, the Commission asked the Government to acknowledge its responsibility publicly, to apologize to the victims' relatives and to society, to accord special attention and economic support to the college that bears Caballero-Delgado's name, and to conduct a program for the promotion and dissemination of human rights. In connection with that request, this Court considers that its Judgment on the merits in the instant case -in which it ruled that Colombia was responsible for violating human rights- and Colombia's recognition of that responsibility reiterated by the Agent at the public hearing (*supra* 23) constitutes adequate reparation and that it would be improper to order further reparations (*El Amparo Case, Reparations, supra* 15, para. 62), without prejudice to its ordering the Government to continue its efforts to locate the victims' remains and hand them over to their relatives.

59. Costs had been denied in the Judgment on the merits, in which the Court had declared that "*the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs. The operation of the human rights organs of the American system is funded by the Member States by means of their annual contributions.*" (*Caballero Delgado and Santana Case*, Judgment of December 8, 1995. Series C No. 22, para. 70). The same applies in this phase of reparations.

XVIII

60. In order to comply with the present Judgment, the State must pay, within six months of its notification, the indemnities awarded to the adult relatives and, if any of them have died, to their heirs.

In the case of María del Carmen Santana-Ortiz, the term for payment of the compensation shall start on the date on which the provisions contained in paragraph 52(b) are fulfilled.

61. The Government shall pay the amount of compensation decreed for the minor children by creating, within six months of notification of this Judgment, trust funds in a solvent and sound Colombian banking institution, on the most favorable conditions permitted by banking laws and practice, for each of the minor children, who shall receive the interest accrued on a monthly basis. Once the children become of age, they shall receive the total owing to them. In the event of their death, their rights herein shall pass to their heirs.

62. The State may fulfill this obligation through payments in dollars of the United States of America, or of an equivalent amount in the local currency of Colombia. The rate of exchange used to determine the equivalent value shall be the exchange rate for the dollar of the United States of America and the Colombian currency quoted on the New York market on the day before the date of payment.

63. If after one year from the date of notification of this Judgment any of the adult beneficiaries fail to claim the payment of the compensation to which they are entitled, or if the judicial decision referred to in paragraph 52(b) is not complied with, the State shall deposit the sum due in a trust fund, on the terms set forth in the paragraph 61. If, after ten years from the establishment of the trust fund the indemnity has not been claimed by those persons or their heirs or the aforementioned document has not been presented, the amount shall be returned to the State and this judgment shall be deemed to have been fulfilled.

64. The compensation payments shall be exempt from any tax currently in force or any that may be decreed in the future.

65. Should the Government be in arrears with its payments, it shall pay interest on the total of the capital owing at the current bank rate in Colombia during the period of arrears.

XIX

66. Now, therefore,

THE COURT,

DECIDES:

Unanimously,

- 1) To set at US\$89,500.00 (eighty-nine thousand five hundred dollars of the United States of America) or its equivalent in the national currency the amount that the Colombian State must pay to the relatives of the Isidro Caballero-Delgado and María del Carmen Santana by July 31, 1997. These payments shall be made by the State of Colombia in the proportion and conditions set forth in the consideranda of this judgment.

Unanimously,

- 2) To set at US\$2,000.00 (two thousand dollars of the United States of America) the amount that the State must pay directly to Mrs. María Nodelia Parra-Rodríguez as reimbursement of the expenses incurred in her representations before the Colombian authorities.

By five votes to one,

- 3) That the non-pecuniary reparations requested are inadmissible,

Judge Cançado Trindade dissenting.

Unanimously

- 4) That the Colombian State is obliged to continue its efforts to locate and identify the remains of the victims and deliver them to their next of kin.

Unanimously,

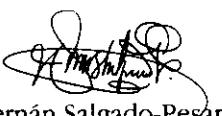
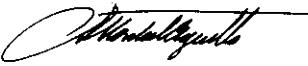
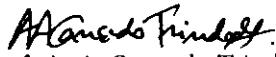
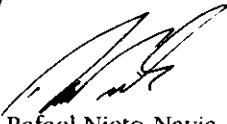
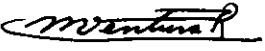
- 5) To supervise compliance with this Judgment and that only after verification of such compliance shall the case be closed.

Judge Cançado Trindade informed the Court of his dissenting opinion, and Judge Montiel-Argüello of his concurring opinion, both of which are attached hereto.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on the twenty-ninth day of January, 1997.



Héctor Fix-Zamudio
President

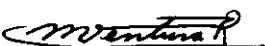

Hernán Salgado-Pesantes
Alejandro Montiel-Argüello
Alirio Abreu-Burelli
Antônio A. Cançado Trindade
Rafael Nieto-Navia
Manuel E. Ventura-Robles
Secretary

Read at a public session at the seat of the Court in San José, Costa Rica, on January 31, 1997.

So ordered,



Héctor Fix-Zamudio
President


Manuel E. Ventura-Robles
Secretary