

Manuel Cepeda Vargas v. Colombia

ABSTRACT¹

This case is about the assassination of a prominent leftist journalist and member of the State Senate by military and paramilitary forces. The State partially admitted responsibility and some remedies were granted at the domestic level, nonetheless the Court found violations of several articles of the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

1991-1998: Mr. Manuel Cepeda Vargas is a prominent politician for both the Patriotic Union (*Unión Patriótica*, “UP”) and Colombian Communist Party (*Partido Comunista Colombiano*, “PCC”).² Following his 1991-1994 term as an elected official of the House of Representatives, Mr. Cepeda Vargas is elected to serve as a Senator of the Republic for the 1994-1998 term.³ He is also a prominent journalist and an executive editor of the weekly news publication “*Voz*.”⁴ He is outspoken in accusing the government for politically motivated assassinations against the UP and the PCC and for legitimizing paramilitary groups.⁵

October 23, 1992: The Inter-American Commission on Human Rights issues precautionary measures, ordering the State to ensure safety measures to protect Senator Cepeda Vargas and other UP leaders from potential assassination attempts.⁶

During 1993, UP and PCC leaders, including Senator Cepeda Vargas, meet with members of the State government to warn them about a plan by military and paramilitary groups called Coup de Grace (*Golpe*

1. Maximillian Casillas, Author; Justine Schneeweis, Editor; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Manuel Cepeda Vargas v. Colombia, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 12.531, ¶ 39 (Nov. 14, 2008).

3. *Id.*

4. *Id.* ¶ 54.

5. *Id.* ¶ 39.

6. *Id.* ¶ 41.

de Gracia) to assassinate UP and PCC members.⁷

August 9, 1994: Around 9:00 a.m., Senator Cepeda Vargas travels from his home to the Colombian National Congress, along with his driver and bodyguard.⁸ Several people in vehicles intercept the car and fire several shots, instantly killing Senator Cepeda Vargas.⁹ After the father's murder, State agents constantly threaten Senator Cepeda Vargas's children, Ms. María Cepeda Castro and Mr. Ivan Cepeda Castro.¹⁰

August 10, 1994: The paramilitary group Death to Communists and Guerillas (*Muerte a Comunistas y Guerrilleros*, "MACOGUE") claims responsibility for Senator Cepeda Vargas's murder.¹¹ The motive for the killing is Senator Cepeda Vargas's activism as a member of the UP political party, the National Directorate of the PCC, and his work as Senator.¹²

December 29, 1994: A criminal investigation is ordered into the death of Senator Cepeda Vargas.¹³

August 1994 – December 1995: State agents constantly threaten Ms. Cepeda Castro and Mr. Cepeda Castro.¹⁴

November 1994: Mr. Cepeda Castro receives multiple death threats and is forced to flee Colombia, until his return in April 1995.¹⁵

July 1995: Government authorities start a campaign of accusations against Senator Cepeda Vargas, such as charging him with defamation for his criticism of the government.¹⁶ These accusations continue for years after his death and adversely affect his family and his reputation.¹⁷

October 20, 1997: The Human Rights Unit of the Office of the Attorney

7. *Id.* ¶ 42.

8. *Id.* ¶ 52.

9. *Id.*

10. *Id.* ¶ 55.

11. *Id.* ¶ 53.

12. *Id.* ¶ 54.

13. *Id.* ¶ 58.

14. *Id.* ¶ 55.

15. *Id.*

16. *Id.* ¶ 56.

17. *Id.*

General indicts Army Sergeants Hernando Medina Camacho and Justo Gil Zúñiga Labrador for murdering Senator Cepeda Vargas on August 9, 1994.¹⁸ Mr. Carlos Castaño Gil is the only paramilitary member formally charged for partaking in the assassination.¹⁹ The investigations that were launched as to Mr. Hector Castaño Gil, Mr. José Luis Ferrero Arango, and Mr. Edinson Manuel Bustamante are dropped.²⁰

October 15, 1998: General Rudolfo Herrera Luna dies and the investigation into his connection to the assassination of Senator Cepeda Vargas is closed.²¹

September 1999: After Senator Cepeda Vargas' next of kin file two lawsuits under administrative law, the Cundinamarca Administrative Court finds the responsibility of the State, the Ministry of Defense, and the security forces responsible for failing to protect Senator Cepeda Vargas and orders them to pay compensation to the next of kin.²²

November 5, 1999: Mr. Cepeda Castro and his wife, Mrs. Claudia Girón Ortiz, receive threatening phone calls.²³

December 16, 1999: The Third Criminal Court of the Santafé de Bogotá Specialized Circuit sentences Mr. Medina Camacho and Mr. Zúñiga Labrador to forty-three years in prison each, and also acquits Mr. Carlos Castaño Gil.²⁴

January 18, 2001: The Criminal Appeals Court of the Bogotá Superior Court affirms the lower court's sentencing of Mr. Medina Camacho and Mr. Zúñiga Labrador.²⁵

February 8, 2001: The Cundinamarca Administrative Court again finds the responsibility of the State, the Ministry of Defense, and the security forces for failing to protect Senator Cepeda Vargas.²⁶

18. *Id.* ¶ 58.

19. *Id.* ¶ 60.

20. *Id.*

21. *Id.* ¶ 65.

22. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 213, ¶ 138 (May 26, 2010).

23. Manuel Cepeda Vargas v. Colombia, Petition to the Court, ¶ 55.

24. *Id.* ¶ 58.

25. *Id.*

26. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and

November 10, 2004: The attorneys for Mr. Medina Camacho and Mr. Zúñiga Labrador again appeal the sentences to the Criminal Cassation Chamber of the Supreme Court seeking acquittal, but the appeal fails.²⁷ The court affirms the lower court ruling to exclude evidence of the book *Mi Confesión*, which implicates Mr. Carlos Castaño Gil in the assassination, and thus affirms the lower court decision to acquit him.²⁸

June 26, 2006: Upon Mr. Cepeda Castro and his family's return to the State after four years living abroad, the Commission orders the State to take safety measures to protect them.²⁹

March 31, 2006: Mr. Zúñiga Labrador is granted release on parole after previously obtaining a reduction in his sentence.³⁰

November 20, 2006: The Colombian Constitutional Court holds that the dissemination of accusations against Senator Cepeda Vargas after his death by the government damaged the reputation and honor of Senator Cepeda Vargas and his son, Mr. Cepeda Castro.³¹

May 14, 2007: Mr. Medina Camacho is granted release on parole after previously obtaining a reduction in sentence.³²

November 20, 2008: The State security forces appeal the decision of the Cundinamarca Administrative Court to the Council of State, which affirms the administrative court's ruling.³³

B. Other Relevant Facts

The UP is formed as a political party in 1985 as a result of peace negotiations between the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, "FARC") guerilla

Costs, ¶ 138.

27. Manuel Cepeda Vargas v. Colombia, Petition to the Court, ¶ 58 n.51.

28. *Id.* ¶ 61.

29. *Id.* ¶ 58 n.45.

30. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs, ¶ 151 n.212.

31. Manuel Cepeda Vargas v. Colombia, Petition to the Court, ¶ 56 n.47.

32. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs, ¶ 151.

33. *Id.* ¶ 138.

group and the State government.³⁴ The UP achieves electoral success between 1986 and 1988, including significant representation in the National Congress.³⁵ During its entire existence, UP members are subject to assassination attempts.³⁶ Senator Cepeda Vargas was the last UP politician ever elected to office.³⁷

II. PROCEDURAL HISTORY

A. Before the Commission

December 16, 1993: A petition is brought on behalf of Senator Manuel Cepeda Vargas to the Inter-American Commission on Human Rights as part of Case No. 11.227, *José Bernardo Díaz et al.*, “*Patriotic Union*.”³⁸

March 12, 1997: The Commission adopts Report 05/97 and admits *José Bernardo Díaz et al.*, “*Patriotic Union*” relating to the alleged harassment and extermination of UP activists.³⁹

May 2005: Senator Cepeda Vargas’s representatives ask the Commission to end the friendly settlement phase of the proceedings with the State, which deals with state responsibility, and to continue with the merits proceeding separately from the friendly settlement procedure.⁴⁰

December 5, 2005: The Commission decides to detach the Senator Cepeda Vargas case from the *José Bernardo Díaz et al.*, “*Patriotic Union*” case.⁴¹ The Commission registers Senator Cepeda Vargas’s case as Case No. 12.531 and the Commission continues with the merits proceeding concerning his assassination.⁴²

July 25, 2008: The Commission approves Report on the Merits 62/08, which makes specific recommendations to the State.⁴³ The Commission

34. Manuel Cepeda Vargas v. Colombia, Petition to the Court, ¶ 36.

35. *Id.* ¶ 37.

36. *Id.* ¶ 38.

37. *Id.* ¶ 54.

38. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

recommended to the State that it should conduct an impartial investigation to prosecute all those responsible for the extrajudicial execution of Senator Cepeda Vargas, make reparations to the next of kin of Senator Cepeda Vargas, and adopt the necessary measures to avoid the repetition of similar violations of the Convention.⁴⁴ The State disagrees with the report.⁴⁵

B. Before the Court

November 14, 2008: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴⁶

1. Violations Alleged by Commission⁴⁷

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 11 (Right to Privacy)

Article 13 (Freedom of Thought and Expression)

Article 16 (Freedom of Association)

Article 22 (Freedom of Movement and Residence)

Article 23 (Right to Participate in Government)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* ¶ 3.

2. Violations Alleged by Representatives of the Victims⁴⁸

Same Violations Alleged by the Commission, plus:

Article 2 (Obligation to Give Domestic Legal Effects to Rights)

Article 44 (Right to Petition)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

July 4, 2009: The State submits its answering brief, which contains four preliminary objections.⁴⁹ The first and second objections contest the Court's jurisdiction on procedural grounds.⁵⁰ In its third objection, the State argues that the Court lacks subject matter jurisdiction to declare the existence of a crime against humanity.⁵¹ The State's fourth objection claims that the Court lacks temporal jurisdiction to examine particular contextual and background facts.⁵²

The State's brief also contains a partial acknowledgement of international responsibility for violating Articles 4 (Right to Life), 5 (Right to Humane Treatment), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 23 (Right to Participate in Government), and partial responsibility for violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection).⁵³

April 28, 2009: The Court denies on procedural grounds the State's preliminary petition regarding the facts.⁵⁴

December 22, 2009: The Court holds public hearings for witness testimony and oral arguments on the preliminary objections, merits, and

48. The Manuel Cepeda Vargas Foundation, Mr. Rafael Barrios Mendivil, Mr. Alirio Uribe Muñoz, Mr. Jomary Ortégón Osorio and Ms. Ximena González of the Corporación Colectivo de Abogados "José Alvear Restrepo;" and Ms. Viviana Krsticevic, Ms. Ariela Peralta, Mr. Francisco Quintana, and Mr. Michael Camilleri of the Center for Justice and International Law ("CEJIL") serve as representatives of Mr. Iván Cepeda Castro (son), Ms. María Cepeda Castro (daughter), Ms. Claudia Girón Ortiz (daughter-in-law), Ms. Olga Navia Soto (common-law wife, deceased), and Ms. María Estella Cepeda Vargas, Ms. Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Mr. Álvaro Cepeda Vargas, and Ms. Cecilia Cepeda Vargas (deceased) (siblings). *Id.* ¶¶ 3-4.

49. *Id.* ¶ 5.

50. *See id.* ¶¶ 27-28.

51. *Id.* ¶ 38.

52. *Id.* ¶ 44.

53. *Id.* ¶ 5.

54. *Id.* ¶ 6.

reparations.⁵⁵

February 8, 2010: The *Unión de Organizaciones Democráticas de América* (“UnoAmérica”) submits an *amicus curiae* brief to the Court.⁵⁶

III. MERITS

A. Composition of the Court

Diego García Sayán, President
Leonardo A. Franco, Judge
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

May 26, 2010: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁵⁷

The Court rules on the State’s four preliminary objections.⁵⁸

Regarding the first and second preliminary objections, the State argues the Court lacks jurisdiction to examine the facts of Case No. 11.227 José Bernardo Díaz et al., “Patriotic Union” because it is not directly related in time, means, and place with the murder of Senator Cepeda Vargas since Case No. 11.227 is still pending before the Commission.⁵⁹ The Court declares these preliminary objections inadmissible because the Court needs the historical context that Case No. 11.227 provides, and also there is no danger of prejudgment of Case No. 11.227 since the

55. *Id.* ¶ 8.

56. *Id.* ¶ 10.

57. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs.

58. *Id.* ¶ 27.

59. *Id.*

*instant case only refers to the violations of the rights of Senator Cepeda Vargas and his next of kin in relation to his execution.*⁶⁰

Regarding the third preliminary objection in which the State argues the Court does not have subject matter jurisdiction to charge a state with a crime against humanity,⁶¹ the Court declares the objection inadmissible because the Court does not charge a state with a crime against humanity; rather, the Court only determines the existence of crimes.⁶²

Regarding the fourth preliminary objection, the State argues the Court lacks temporal jurisdiction to examine facts that occurred prior to the State's ratification of the American Convention that established the Court's jurisdiction on June 21, 1985.⁶³ The Court declares this preliminary objection inadmissible because the Court can look to any facts necessary to establish context for the case.⁶⁴

The Court found unanimously that Colombia had violated:

Articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the American Convention, to the detriment of Senator Cepeda Vargas,⁶⁵ because:

*The State did not adequately prevent, protect, and investigate the assassination of Senator Cepeda Vargas.*⁶⁶

Under Article 1(1) (Obligation to Respect Rights), states have a general and specific obligation to guarantee the rights of the Convention by investigating violations of those rights.⁶⁷ States must conduct investigations impartially and effectively in order to guarantee and protect the rights of the Convention.⁶⁸ In complex cases such as this one, the State must direct more resources to investigations in order to sufficiently uncover the complex background and structures that made the human

60. *Id.* ¶ 36.

61. *Id.* ¶ 38.

62. *Id.* ¶¶ 41-43.

63. *Id.* ¶ 46.

64. *Id.*

65. *Id.* ¶ 126.

66. *Id.*

67. *Id.* ¶ 116.

68. *Id.* ¶ 117.

rights violation possible.⁶⁹ The Court found that the State did not comply with the obligations under Article 1(1) based on the violations of Articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 5(1) (Right to Physical, Mental, and Moral Integrity).⁷⁰

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) requires states to adopt measures to prevent actors, especially State actors, from depriving individuals of their lives.⁷¹ The State acknowledged responsibility because the main perpetrators were State actors - Army Sergeants Mr. Medina Camacho and Mr. Zúñiga Labrador - and because the State did not adopt the necessary measures to protect Senator Cepeda Vargas from danger.⁷² The State admitted that several State organs were notified of threats against numerous UP members, including Senator Cepeda Vargas, and failed to take sufficient measures to protect against such threats.⁷³ Further, the State acknowledged that investigations into these threats were delayed.⁷⁴ The Court found that the State did not take into account the complex web of actors that participated in the assassination of Senator Cepeda Vargas, and thus did not exercise due diligence to prevent a violation of his right to life.⁷⁵ Not only did the State fail this basic due diligence requirement to investigate, the Court found that the State has a heightened duty for "prompt and immediate" action when death threats are impending.⁷⁶ Specifically, the State did nothing even though it knew that Army Sergeants Mr. Medina Camacho and Mr. Zúñiga Labrador committed crimes before and after murdering Senator Cepeda Vargas, including allegations of committing three other murders.⁷⁷ The State did not investigate the chain of command of perpetrators convicted for Senator Cepeda Vargas's death until many years later.⁷⁸

The Court did not analyze whether the State violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) because the State acknowledged that it was responsible for violating that right to the detriment of

69. *Id.* ¶ 118.

70. *Id.* ¶ 126.

71. *Id.* ¶ 99.

72. *Id.* ¶ 67.

73. *Id.* ¶¶ 88, 96.

74. *Id.* ¶ 99.

75. *Id.*

76. *Id.* ¶ 101.

77. *Id.* ¶ 104.

78. *Id.* ¶ 107.

*Senator Cepeda Vargas.*⁷⁹

Articles 8(1) (Right to a Hearing within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the American Convention, to the detriment of Senator Cepeda Vargas,⁸⁰ because:

The State conducted ineffective disciplinary and administrative proceedings, did not conduct criminal proceedings with due diligence, and the alleged obstacles to the investigation that the State faced during the criminal proceedings were not enough to excuse violations of these rights.⁸¹ Article 25 (Right to Judicial Protection) requires States to provide effective judicial recourse to victims of human rights violations, and such recourse must be provided in conformity with the due process of law in light of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).⁸²

Disciplinary proceedings must serve a complimentary role to ordinary criminal proceedings in a way that protects administrative functions and corrects the behavior of public officials.⁸³ The State conducted ineffective disciplinary proceedings because it failed to execute effective disciplinary procedures regarding other officials in the Army, outside of Army Sergeants Mr. Medina Camacho and Mr. Zúñiga Labrador, who participated in or allowed for the death of Senator Cepeda Vargas.⁸⁴ The disciplinary proceedings only reprimanded Army Sergeants Mr. Medina Camacho and Mr. Zúñiga Labrador and two other government officials.⁸⁵ The disciplinary proceedings did not find other public officials in the Army and government culpable, even though the State acknowledged that there were others who were involved.⁸⁶ Further, the proceedings did not proportionately discipline the aforementioned four officials, because they were temporarily suspended from their positions and they only received verbal admonitions.⁸⁷

79. *Id.* ¶ 69.

80. *Id.* ¶ 127.

81. *Id.* ¶¶ 129, 167.

82. *Id.*

83. *Id.* ¶ 133.

84. *Id.* ¶ 136.

85. *Id.* ¶ 134.

86. *Id.* ¶ 135.

87. *Id.* ¶¶ 134, 137.

*Administrative proceedings must contribute to ending impunity and ensuring that the harmful acts are not repeated.*⁸⁸ *The State conducted ineffective administrative proceedings because the administrative courts did not find the institutional responsibility of State officials in the execution of Senator Cepeda Vargas, even though the administrative courts were aware of the partial results of the criminal proceedings and the disciplinary proceedings.*⁸⁹

*Criminal proceedings must be conducted with due diligence.*⁹⁰ *The first phase of the State criminal proceedings were not conducted with sufficient due diligence because they did not take into account all of the individuals who planned and coordinated the assassination of Senator Cepeda Vargas.*⁹¹ *Many of these individuals remained unpunished after the assassination, which led to many death threats against those who investigated the crime, such as Senator Cepeda Vargas's next of kin.*⁹² *Further, the proceedings did not proportionately allocate punishment to those convicted because the sentences imposed on Army Sergeants Mr. Medina Camacho and Mr. Zúñiga Labrador were reduced, and the sergeants were able to leave their place of confinement and commit another crime.*⁹³ *The second phase of the State criminal proceedings occurred much later and, while some progress was made, still did not organize investigations that took into account all of the individuals who planned and coordinated the assassination.*⁹⁴ *Lastly, the State alleged there were obstacles in place that contributed to the climate of impunity.*⁹⁵ *Specifically, the State confused the name of one of the perpetrators of the assassination, which led the perpetrator to benefit from a legal decree that gave benefits to demobilized paramilitary members.*⁹⁶ *The Court found that this was no excuse and there was sufficient information available to the State to determine who the incognito perpetrator was.*⁹⁷

For the foregoing reasons, the State violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) to the detriment of Senator

88. *Id.* ¶ 139.

89. *Id.* ¶ 140.

90. *Id.* ¶ 149.

91. *Id.*

92. *Id.*

93. *Id.* ¶¶ 150, 154.

94. *Id.* ¶ 158.

95. *Id.* ¶ 163.

96. *Id.* ¶¶ 161-163.

97. *Id.* ¶ 164.

Cepeda Vargas.⁹⁸

Articles 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 16 (Freedom of Association), and Article 23 (Right to Participate in Government), in relation to Article 1(1) of the American Convention, to the detriment of Senator Cepeda Vargas,⁹⁹ because:

*The State failed to protect Senator Cepeda Vargas in the exercise of his political rights.*¹⁰⁰

*The Court did not analyze a violation of Senator Cepeda Vargas's Article 11 (Right to Privacy) because the Court already found that the State violated Senator Cepeda Vargas's right to honor and dignity under Article 5(1) (Right to Physical, Mental, and Moral Integrity), and because the State acknowledged these violations.*¹⁰¹

*The Court analyzed Articles 13 (Freedom of Thought and Expression), 16 (Freedom of Association), and 23 (Right to Participate in Government) together because they are interrelated and because Senator Cepeda Vargas exercised all of these rights concurrently while they were being violated.*¹⁰² *A state violates these rights when it, by act or omission, creates conditions that impinge on the right to be elected, the right to associate, and the right to expression, all of which are essential to a functioning democracy.*¹⁰³ *Here, the State did not create the conditions that guaranteed the exercise of Senator Cepeda Vargas's rights because he was killed for his political activism and criticism of various opposition political parties.*¹⁰⁴ *The Court noted that the violation of these rights in turn threatened the freedoms of all those who sympathized with Senator Cepeda Vargas's causes.*¹⁰⁵ *As a result, the State violated Articles 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 16 (Freedom of Association), and 23 (Right to Participate in Government)) to the detriment of Senator Cepeda Vargas.*¹⁰⁶

98. *Id.* ¶ 167.

99. *Id.* ¶ 179.

100. *Id.*

101. *Id.* ¶ 170.

102. *Id.* ¶ 171. The Court also noted that these rights should be analyzed separately in other situations. *Id.*

103. *Id.* ¶ 172.

104. *Id.* ¶ 176.

105. *Id.* ¶ 178.

106. *Id.* ¶ 179.

Articles 5 (Right to Humane Treatment), 11 (Right to Privacy), 22 (Freedom of Movement and Residence), in relation to Article 1(1) of the American Convention, to the detriment of Senator Cepeda Vargas's next of kin,¹⁰⁷ because:

*The State inhibited the freedom of movement of Mr. Cepeda Castro and his wife, and also allowed for the violations of the right to personal integrity and honor of Senator Cepeda Vargas's next of kin.*¹⁰⁸

*The State acknowledged the violation of Article 5 (Right to Humane Treatment) of Senator Cepeda Vargas's next of kin.*¹⁰⁹ *The Court further reiterated that this violation prevented Mr. Cepeda Castro, his wife, and Ms. Estella Cepeda Vargas from promoting the investigation and punishment of all those responsible for the death of Senator Cepeda Vargas.*¹¹⁰

*The Court found a violation of Article 11 (Right to Privacy) by the State against Senator Cepeda Vargas's next of kin based upon the same reasoning the Constitutional Court of Colombia found such a violation in its November 20, 2006 judgment.*¹¹¹ *Specifically, the 2006 re-election campaign of the President of the State, Mr. Álvaro Uribe Vélez, in which he gave a speech that accused, without any evidence, Mr. Cepeda Castro of being a human rights imposter, which had residual negative affects against all Senator Cepeda Vargas's next of kin.*¹¹²

*Under Article 22 (Freedom of Movement and Residence), states must guarantee that individuals are free from threats and harassment that inhibit their ability to move about and reside freely in their respective state, even when the threats and harassment originate from non-state actors.*¹¹³ *The Court did not find an Article 22 (Right to Freedom of Movement and Residence) violation by the State against Ms. Cepeda Vargas because there was not enough evidence to establish a link between the threats she faced due to her affiliations with her brother Mr.*

107. *Id.* ¶ 180.

108. *Id.* ¶ 210.

109. *Id.* ¶ 181.

110. *Id.* ¶ 195.

111. *Id.* ¶ 208.

112. *Id.* ¶¶ 205-209.

113. *Id.* ¶ 197.

*Cepeda Vargas and her decisions to leave the country.*¹¹⁴ *The Court did find an Article 22 (Freedom of Movement and Residence) violation by the State against Mr. Cepeda Castro and his wife, because the State failed to protect them from threats they faced as a result of their political activism in the search for truth of Senator Cepeda Vargas's death, and because there was a sufficient connection between their decision to leave the country and the threats.*¹¹⁵ *The lack of investigation by the State into all of the perpetrators of the death of Senator Cepeda Vargas led to a situation where threats were constantly looming for years.*¹¹⁶

*Based on the foregoing reasons, the State violated Articles 5 (Right to Humane Treatment), 11 (Right to Privacy), and 22 (Freedom of Movement and Residence), to the detriment of Senator Cepeda Vargas's next of kin.*¹¹⁷

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Diego García-Sayán

Judge Diego García-Sayán concurred with the Court's majority as to how it calculated the reparations by viewing positively the domestic measures taken by the State.¹¹⁸ Judge García-Sayán concluded that the Court determined the reparations using three fundamental factors: first, the principle of the subsidiarity of the American Convention and international law; second, the relevant juridical considerations concerning compensation for pecuniary harms; and third, the Court's verification of compensation domestically in line with the international obligation to provide necessary reparations.¹¹⁹

The principle of the subsidiarity found in the American Convention and international law derives from the principle of exhaustion of domestic resources, which shows that international reparations should play a complementary role to the domestic reparations.¹²⁰ Thus, it is not appropriate to require more compensation if the State has already de-

114. *Id.* ¶ 190.

115. *Id.* ¶ 196.

116. *Id.* ¶ 201.

117. *Id.* ¶ 180.

118. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Diego García-Sayan, Inter-Am. Ct. H.R. (ser. C) No. 213, ¶ 33 (May 26, 2010).

119. *Id.* ¶ 3.

120. *Id.* ¶ 4.

terminated fair compensation.¹²¹

The relevant juridical considerations concerning compensation for pecuniary harms establish that the primary mechanism to calculate damages stems from the principle of fairness, which helps to determine reasonable damages without rigid criteria.¹²²

The Court's verification of compensation domestically is in line with the international obligation to provide necessary reparations, because the Court cannot ignore State reparations if just compensation has been paid.¹²³

Judge García-Sayán then elaborated on the interaction between the Court and domestic courts by stating the Court's method of determining reparations in this case was in line with the principle that international law is supposed to improve national protection mechanisms.¹²⁴

2. Concurring Opinion of Judge Eduardo Vio Grossi

Judge Eduardo Vio Grossi concurred with the Court's majority and made three main observations. First, compensation should only be awarded if appropriate or fair.¹²⁵ Second, the State should verify domestic compensation in line with the principle of subsidiarity.¹²⁶ Third, compensation is only appropriate if the State has committed an international wrong.¹²⁷ Judge Vio Grossi concluded that since the Court found domestic reparations to be fair, it was unnecessary for the Court to proceed in a subsidiary manner by verifying the compensation to which the parties agreed.¹²⁸

3. Partially Dissenting Opinion of Judge Manuel E. Ventura Robles

Judge Manuel E. Ventura Robles partially dissented with how the Court determined reparations.¹²⁹ He asserted that the Court should have

121. *Id.* ¶ 14.

122. *Id.* ¶ 22.

123. *Id.* ¶ 24.

124. *Id.* ¶ 32.

125. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 213, ¶ 1 (May 26, 2010).

126. *Id.* ¶ 2.

127. *Id.* ¶ 3.

128. *Id.* ¶ 4.

129. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Partially Dissenting Opinion of Judge Manuel E. Ventura Robles, Inter-Am. Ct. H.R. (ser. C) No. 213, first ¶ (May 26, 2010).

determined the amount of the reparation for loss of earnings based on the Court's jurisdiction, as opposed to the domestic court's jurisdiction, whose criteria for determining reparations serves other jurisdictional purposes.¹³⁰

4. Partially Dissenting Opinion of Judge Alberto Pérez Pérez

Judge Alberto Pérez Pérez partially dissented with how the court determined reparations because the Court has a different formula to calculate reparations than the State, and thus should not have adopted the State's formula.¹³¹ Specifically, he argued that the Court erred where it did not grant Ms. Navia Soto any amount additional to what the State awarded for her loss of earnings, which deprived compensation to all other people considered "injured parties" who would have inherited her compensation.¹³²

IV. REPARATIONS

A majority of the Court, five votes for and two votes against, ruled that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Investigate, Prosecute, and Punish Those Responsible

The Court ordered the State to undertake all necessary means to continue conducting investigations with due diligence in order to hold all those responsible for the death of Senator Cepeda Vargas, as well as to remove all material and legal obstacles that contribute to impunity.¹³³

The results of any proceedings relevant to this case must be publicized so that Colombian society knows of the facts.¹³⁴ The State must also guarantee the safety of Senator Cepeda Vargas's next of kin so they do not have to relocate or leave the country due to threats against

130. *Id.* last ¶.

131. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Partially Dissenting Opinion of Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. (ser. C) No. 213, ¶ 8 (May 26, 2010).

132. *Id.* ¶ 4.

133. Manuel Cepeda Vargas v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 213, ¶ 216 (May 26, 2010).

134. *Id.* ¶ 217.

them.¹³⁵

2. Publish of the Judgment

The Court ordered the State to publish this judgment for at least one year on an official web page, within two months of this judgment.¹³⁶

3. Publicly Acknowledge International Responsibility

The Court ordered the State to conduct a public ceremony acknowledging international responsibility.¹³⁷

4. Measures to Commemorate and Render Homage to the Victims

The Court ordered the State to publish, in coordination with the next of kin, an audiovisual documentary on the political life, journalism, and political role of Senator Cepeda Vargas.¹³⁸

5. Creation of the “Manuel Cepeda Vargas” Grant

The Court ordered the State to award a one-time grant named after Senator Cepeda Vargas, which must be administered by the Manuel Cepeda Vargas Foundation to journalists of the weekly publication, *Voz*.¹³⁹ The grant must cover the total cost of obtaining a degree in communication sciences or journalism at a State public university chosen by the beneficiary.¹⁴⁰

6. Provide Medical Treatment

The Court ordered the State to provide free medical and psychological treatment required by Senator Cepeda Vargas’s next of kin.¹⁴¹

135. *Id.* ¶ 218.

136. *Id.* ¶ 220.

137. *Id.* ¶ 224.

138. *Id.* ¶ 228.

139. *Id.* ¶ 233.

140. *Id.*

141. *Id.* ¶ 235.

B. Compensation

1. Pecuniary Damages¹⁴²

The Court did not award much pecuniary damages, because Senator Cepeda Vargas's next of kin obtained a reasonable amount of compensation from the State administrative courts.¹⁴³ However, the Court awarded damages that were not covered in State proceedings of \$40,000.00 to be split among Mr. Iván Cepeda and his wife, as well as \$10,000 to be split among his daughter, Ms. Cepeda Castro, and his deceased wife, Ms. Olga Navia Soto.¹⁴⁴

2. Non-Pecuniary Damages

The Court awarded \$80,000.00 for the non-pecuniary damage suffered by Senator Cepeda Vargas, the total amount to be delivered in equal part to the Senator Cepeda Vargas's children, Mr. Iván Cepeda Castro and Ms. Cepeda Castro.¹⁴⁵

The Court also awarded \$70,000 to Mr. Iván Cepeda; \$40,000 to Ms. Cepeda Castro; \$35,000 to Ms. Girón Ortiz; and \$20,000 to Ms. Estrella Cepeda Vargas.¹⁴⁶

3. Costs and Expenses

The Court awarded costs and expenses to the representatives in the amount of \$35,000 to CEJIL, the "José Alvear Restrepo" Legal Cooperative, and the Manuel Cepeda Vargas Foundation.¹⁴⁷

4. Total Compensation (including Costs and Expenses ordered):

\$ 490,000

142. Pecuniary damages is the only form of reparation that was not a unanimous vote; instead the Court determined, by five votes to two, to award pecuniary damages in this way. *Id.* "And Orders" ¶ 15.

143. *Id.* ¶ 246.

144. *Id.* ¶ 247.

145. *Id.* ¶ 251.

146. *Id.* ¶ 253.

147. *Id.* ¶¶ 256, 259.

*C. Deadlines*¹⁴⁸

The State must publish the Judgment within six months of notification of the Judgment.¹⁴⁹

The State must publicly acknowledge international responsibility within one year of notification of the Judgment.¹⁵⁰

The State must publish the audiovisual documentary to pay homage to the victims within two years of notification of the Judgment.¹⁵¹

The State must provide payment of the compensation for pecuniary damages, non-pecuniary damages, and costs and expenses within one year of notification of this Judgment.¹⁵²

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 30, 2011: The Court found that the State fully and partially complied with certain obligations stipulated in the Judgment on Preliminary Objections, Merits, Reparations and Costs.¹⁵³

First, the Court found that the State partially complied with its duty to continue to conduct the domestic investigations effectively.¹⁵⁴ The State needed to continue investigations further to determine the collaboration between State agents and paramilitary members, and also continue the collaboration between the State and extradited persons who have important information to finding the truth behind the death of Senator Cepeda Vargas.¹⁵⁵ The State has been fulfilling this obligation, but it was necessary for the State to present information on continued compliance in the next report.¹⁵⁶

Second, the Court found that the State fully complied with its duty

148. The Court did not provide a specific deadline for the State to investigate, prosecution and punish those responsible or for the creation of the grant.

149. *Id.*

150. *Id.* ¶ 225.

151. *Id.* ¶ 229.

152. *Id.* ¶ 260.

153. Manuel Cepeda Vargas v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1, 2 (Nov. 30, 2011).

154. *Id.* "Considering That" ¶ 13.

155. *Id.* "Considering That" ¶ 12.

156. *Id.* "Considering That" ¶ 13.

to publish the Judgment in newspapers and on the Internet.¹⁵⁷

Third, the Court found that the State partially complied with its duty to guarantee the safety of Senator Cepeda Vargas's next of kin from threats so they do not have to relocate, but it was necessary for the State to present information on continued compliance in the next report.¹⁵⁸

Fourth, the Court found that the State fully complied with its duty to organize a public act of acknowledgement of international responsibility because the State carried out the act in the State Congress in a sufficiently public and respectful manner amenable to the victims.¹⁵⁹

Fifth, the Court found that the State partially complied with the duty to publish an audio-visual documentary on the life of Senator Cepeda Vargas, but it was necessary for the State to present information on continued compliance in the next report.¹⁶⁰

Sixth, the Court found that the State partially complied with its duty to award a grant bearing the victim's name, but that the State must present information on continued compliance in the next report.¹⁶¹

Seventh, the Court found that the State fully complied with its duty to compensate the relevant parties.¹⁶² However, the Court determined that the State still had a continuing duty to provide the medical and psychological treatment that the victims require.¹⁶³

February 8, 2012: The Court found that the State partially complied with its duty to provide the medical and psychological treatment that the victims require, but that it must present information on continued compliance and coordination with the victims on February 23, 2012.¹⁶⁴

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

157. *Id.* "Considering That" ¶ 17.

158. *Id.* "Considering That" ¶ 21.

159. *Id.* "Considering That" ¶ 27.

160. *Id.* "Considering That" ¶ 30.

161. *Id.* "Considering That" ¶ 34.

162. *Id.* "Considering That" ¶ 37.

163. *Id.* "Declares" ¶ 2(e).

164. *Manuel Cepeda Vargas v. Colombia*, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. "Decides" ¶ 1 (Feb. 8, 2012).

2. Decisions on Merits, Reparations and Costs

[Manuel Cepeda Vargas v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 213 \(May 26, 2010\).](#)

[Manuel Cepeda Vargas v. Colombia, Judgment, Concurring Opinion of Judge Diego García-Sayan, Inter-Am. Ct. H.R. \(ser. C\) No. 213 \(May 26, 2010\).](#)

[Manuel Cepeda Vargas v. Colombia, Judgment, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 213 \(May 26, 2010\)](#)

[Manuel Cepeda Vargas v. Colombia, Judgment, Partially Dissenting Opinion of Judge Manuel E. Ventura Robles, Inter-Am. Ct. H.R. \(ser. C\) No. 213 \(May 26, 2010\).](#)

[Manuel Cepeda Vargas v. Colombia, Judgment, Partially Dissenting Opinion of Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. \(ser. C\) No. 213 \(May 26, 2010\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Manuel Cepeda Vargas v. Colombia, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Feb. 8, 2012\).](#)

[Manuel Cepeda Vargas v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 30, 2011\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Manuel Cepeda Vargas v. Colombia, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.531 \(Nov. 14, 2008\).](#)

2. Report on Admissibility

[Manuel Cepeda Vargas v. Colombia, Admissibility Report, Report No. 5/97, Inter-Am. Comm'n H.R., Case No. 11.995, \(Mar. 12, 1997\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

Resumen de la Sentencia Caso Manuel Cepeda Vargas vs. Colombia, CORPORACIÓN COLECTIVO DE ABOGADOS JOSÉ ALVEAR RESTREPO (June 23, 2010), www.colectivodeabogados.org/nuestro-trabajo/noticias-cajar/Resumen-de-la-sentencia-caso.

Caso Manuel Cepeda Vargas vs. Colombia, PODER JUDICIAL DEL ESTADO DE NAYARIT, www.tsjnay.gob.mx/caso-manuel-cepeda-vargas-vs-colombia/.

Corte Interamericana de Derechos Humanos Condenan a Colombia por muerte de senador, JUSTICIAPORCOLOMBIA (June 23, 2010), justiciaporcolombia.org/node/170.