

Ortiz Hernández v. Venezuela

ABSTRACT¹

This case is about the death of a cadet of the National Guard Training Academy of the State of Tachira, Venezuela, during a military exercise. The State failed to investigate and prosecute properly to determine whether his death was an accident, caused by negligence, or murder. Eventually, the Court found Venezuela in violation of the American Convention for the cadet's death and the failure to adequately investigate and prosecute.

I. FACTS

A. Chronology of Events

February 15, 1998: National Guard Cadet Johan Alexis Ortiz Hernández is in the final stage of his training at the National Guard Training Academy, Cordero in the State of Tachira and is expected to graduate on April 3, 1998.² He is 19 years old.³ He participates in the “1st Anti-Subversive Combat Training Course.”⁴ Students crawl underneath obstacles, including barbed wire, while an instructor fires a machine gun above their heads.⁵ The remaining facts are substantially in dispute.⁶

1. Nicholas Lusk, Author; Raymond Chavez, Editor; Kimberly Barreto, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Ortiz Hernández v. Venezuela, Report on Merits, Report No. 2/15, Inter-Am. Comm'n H.R., Case No. 12.270, ¶ 34 (Jan. 29, 2015) 003; Ortiz Hernández v. Venezuela, Admissibility Report No. 22/05, Inter-Am. Comm'n H.R., Case No. 12.270, ¶ 8 (Feb. 25, 2005).

3. Ortiz Hernández v. Venezuela, Admissibility Report, ¶ 8.

4. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 35.

5. Ortiz Hernández v. Venezuela, Admissibility Report, ¶ 9.

6. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 36 003; Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. L) No. 338, ¶ 64 (Aug. 22, 2017).

The State's Version of Events

The State claims the death was an accident.⁷ According to the State, Cadet Ortiz Hernández stands up during the exercise without explanation.⁸ Instructors, firing 7.62 caliber bullets from a machine gun instead of blanks, strike Cadet Ortiz Hernández twice.⁹ The two bullets lodge near Cadet Ortiz Hernández's right clavicle.¹⁰

Cadet Ortiz Hernández's Family's Version of Events

Cadet Ortiz Hernández's family claims the death was intentional.¹¹ Cadet Ortiz Hernández calls his father, Edgar Humberto Ortiz Ruiz, about two weeks before he is killed and informs him that he is having an affair with the wife of Captain Villasmil Antunez.¹² Captain Antunez is in charge of the training exercise in which Cadet Ortiz Hernández is killed.¹³ Cadet Ortiz Hernández's family points out that, despite the State's theory that Cadet Ortiz Hernández was crawling through barbed wire at the time he was killed, the only injuries he suffered were bullet wounds.¹⁴ A fellow student testifies that Cadet Ortiz Hernández never enters the training course, but arrives already injured.¹⁵

No emergency medical personnel are present at the training course.¹⁶ Drill instructor, National Guardsman Jean Carlos Malpica Calzadilla, the individual operating the machine gun, and another officer, rush Cadet Ortiz Hernández to San Rafael Hospital of El Piñal by military vehicle.¹⁷ The doctors find Cadet Ortiz Hernández is pale, cold in his extremities, has a light pulse, and is bleeding profusely from the bullet wound in his right shoulder.¹⁸ He falls into cardiac arrest, goes into hypovolemic shock and dies.¹⁹

7. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 37.

8. Ortiz Hernández v. Venezuela, Admissibility Report, ¶ 9.

9. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 37.

10. Ortiz Hernández v. Venezuela, Admissibility Report, ¶ 9.

11. *Id.* ¶ 10.

12. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 41; *Inter-American Court Condemns Venezuela for the Death of a Military Cadet (Corte Interamericana Condena a Venezuela por Muerte de Cadete Militar)*, MSN (Oct. 13, 2017), <https://www.msn.com/es-co/noticias/otras/corte-interamericana-condena-a-venezuela-por-muerte-de-cadete-militar/ar-AAtpvGv> (last visited July 27, 2018) (Available only in Spanish).

13. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 41.

14. *Id.*

15. *Id.*

16. Ortiz Hernández v. Venezuela, Admissibility Report, ¶ 11.

17. Ortiz Hernández v. Venezuela, Report on Merits, ¶¶ 38, 68.

18. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 69.

19. *Id.* ¶ 70.

The Technical Judicial Police transfer Cadet Ortiz Hernández's body to the morgue at the Central Hospital of San Cristóbal.²⁰ Doctor Cecilia Rincón Brancho performs the autopsy and finds that Cadet Ortiz Hernández's body does not show any indications of emergency medical care.²¹ The body is transported without clothes to be autopsied and the soldier escorting the body states he was unaware of the whereabouts of the clothes.²²

That evening, National Guard Lieutenant Raúl Honorio Martínez Moreno informs Cadet Ortiz Hernández's parents of the accident, claiming he died during an exercise utilizing blanks.²³ When Cadet Ortiz Hernández's parents press for details, Lieutenant Martínez Moreno concedes the exercise used bullets, not blanks.²⁴

The Technical Judicial Police of San Cristóbal and the Military Court of Guasdalito in the State of Apure jointly investigate the death.²⁵ The military personnel alleged to be involved in Cadet Ortiz Hernández's death refuse to testify before the Technical Judicial Police despite numerous summons.²⁶

March 3, 1998: The Commander of the Guasdalito Garrison orders the Permanent Military Judge of the First Instance of Guasdalito to open a preliminary military investigation.²⁷ This order places the death of Ortiz Hernández squarely within the military court's jurisdiction, and consequently prevents ordinary courts from hearing the matter.²⁸

March 5, 1998: The Permanent Military Judge of First Instance of Guasdalito opens a preliminary investigation of Cadet Ortiz Hernández's death.²⁹

March 10, 1998: Edgar Humberto Ortiz Ruiz and Zaida Hernández de Arellano, Cadet Ortiz Hernández's parents, request the Office of the Attorney General open another investigation into their son's death.³⁰ They also complain that they are receiving threatening phone calls and

20. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 39.

21. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 68.

22. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 39.

23. *Id.* ¶ 40.

24. *Id.*

25. Ortiz Hernández v. Venezuela, Admissibility Report, ¶ 12.

26. *Id.*

27. *Id.* ¶ 13.

28. *Id.*

29. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 54.

30. *Id.*

criticize the fact that members of the military are ignoring requests to give statements to investigators.³¹ Cadet Ortiz Hernández's parents make several other requests to the Attorney General and Military Judge to open and continue investigations.³²

March 31, 1998: Cadet Ortiz Hernández's parents request the Inspector General of the National Armed Forces investigate the death.³³

April 3, 1998: The Human Rights Directorate of the Office of the Attorney General informs Cadet Ortiz Hernández's parents that the Ministry of Defense was ordered to inquire into the death.³⁴

April 6, 1998: Cadet Ortiz Hernández's parents appear in the Military Court.³⁵ They request their son's body be exhumed and inform the court of the alleged affair between their son and his superior's wife.³⁶ The judge and prosecuting attorney state the death was a "regrettable accident," that exhumation would not be possible, and the judge asks the parents not to raise the issue of the alleged affair again.³⁷

April 29, 1998: Cadet Ortiz Hernández's parents request that the Minister of Defense appoint an investigating magistrate and a special military prosecutor because the current Military Prosecutor is a member of the National Guard.³⁸ They point to the fact that the Military Court of Guasdualito had made rulings only 22 days after the complaint was filed without basic evidence.³⁹

Approx. May 1998: Cadet Ortiz Hernández's body is exhumed.⁴⁰

May 19, 1998: Cadet Ortiz Hernández's parents request the Chairman of the Standing Human Rights Committee of the Legislative Assembly of the State of Tachira to investigate their son's death.⁴¹

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* ¶ 56.

35. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 57.

36. *Id.*

37. *Id.*

38. *Id.* ¶ 58.

39. *Id.*

40. *Id.* ¶¶ 59-60.

41. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 87.

May 21, 1998: The Legislative Assembly authorizes the committee to open the investigation.⁴²

May 25, 1998: Cadet Ortiz Hernández's parents again ask the Minister of Defense to investigate because the Technical Judicial Police failed to perform a basic investigation and evidence collection, including failing to inspect Cadet Ortiz Hernández's clothing from the day of the accident, refusing to perform a ballistics test, and failing to examine the weapon that killed Cadet Ortiz Hernández.⁴³

June 16, 1998: The Military Trial Court issues an arrest warrant for Guardsman Malpica Calzadilla for negligent homicide.⁴⁴ The order is appealed by the defense and transferred to the Standing Court Martial of San Cristóbal.⁴⁵

June 20, 1998: Guardsman Malpica Calzadilla is released on bond.⁴⁶

October 27, 1998: Cadet Ortiz Hernández's parents submit evidence they collected to the Standing Court Martial of San Cristóbal.⁴⁷

January 16, 1999: The Standing Human Rights Committee of the Legislative Assembly of the State of Tachira submits a report on its investigation to the Legislative Assembly.⁴⁸ The Committee states they were unsuccessful in conducting their investigation because military authorities refused to cooperate or provide information.⁴⁹

January 19, 1999: The Legislative Assembly approved the Committee's report and recommended, among other things, that the report be forwarded to the Inter-American Commission on Human Rights.⁵⁰

April 16, 1999: A motion by Cadet Ortiz Hernández's father requesting information and evidence is denied by the Office of the First Military Prosecutor because he is not a party.⁵¹

42. *Id.*

43. *Id.* ¶ 61.

44. *Id.* ¶¶ 48, 62.

45. *Id.* ¶ 62.

46. *Id.*

47. *Ortiz Hernández v. Venezuela*, Report on Merits, ¶ 64.

48. *Id.* ¶ 88.

49. *Id.*

50. *Id.* ¶ 91.

51. *Id.* ¶ 71.

April 20, 1999: The Standing Court Martial of San Cristóbal issues arrest warrants for National Guard members Captain Eddin Ruben Villasmil Antunez, Second Lieutenant Rafael Antonio Villasana Fernández, and Second Lieutenant Fidel Camilo Rodríguez Barrolleta for failure to obey orders and military negligence based on their involvement in the death and subsequent cover-up.⁵² An arrest warrant is also issued for Guardsman Malpica Calzadilla for negligent homicide.⁵³

July 22, 1999: The Court Martial upholds only the arrest warrant for Guardsman Malpica Calzadilla.⁵⁴

September 30, 1999: Cadet Ortiz Hernández's parents continue to receive threats.⁵⁵ Shots are fired at Cadet Ortiz Hernández's mother's house.⁵⁶

February 28, 2000: The Office of the Military Prosecutor files charges with the Military Court of Guasdalito against National Guard officers Lieutenant Colonel Rafael Antonio Rijana Lucero, Lieutenant Colonel Alexander Flores Lamus, Captain Villasmil Antunez, Second Lieutenant Villasana Fernández and Second Lieutenant Rodríguez Barrolleta for "joint liability for military negligence in the negligent homicide" of Cadet Ortiz Hernández and with disobeying orders.⁵⁷ Guardsman Malpica Calzadilla is charged with negligent homicide.⁵⁸

March 17, 2000: Cadet Ortiz Hernández's parents bring a private criminal complaint in the Military Court against several National Guardsmen for aggravated intentional homicide, the cover-up of the homicide, staging a criminal act, and disobeying military orders.⁵⁹

April 4, 2000: The preliminary hearing is held before the Military Court.⁶⁰ Guardsman Malpica Calzadilla admits to the charges at the preliminary hearing and is sentenced to one year and ten months of prison for negligent homicide.⁶¹ Charges as to all other defendants are

52. *See Id.* ¶¶ 68, 71.

53. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 71.

54. *Id.* ¶ 74.

55. Amnesty Int'l, *Venezuela: Death Threats / Fear for Safety*, AI Index AMR 53/012/1999 (October 6, 1999), <https://www.amnesty.org/download/Documents/144000/amr530121999en.pdf>.

56. *Id.*

57. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 77.

58. *Id.*

59. *Id.* ¶ 79.

60. *Id.* ¶ 80.

61. *Id.*

dismissed.⁶² The private defense attorney and the Office of the Military Prosecutor appeal the decision.⁶³

May 29, 2000: The Court Martial partially grants the appeal and partially vacates the preliminary hearing.⁶⁴ It orders the Military Court to appoint a substitute judge to conduct a new preliminary hearing as to the rest of the military personnel.⁶⁵ The decision also denies the prosecutor's motion to transfer the case to the jurisdiction of San Cristóbal.⁶⁶ The Office of the Military Prosecutor and the private defense attorney appeal the judgment to the Supreme Court.⁶⁷

July 28, 2000: The Military Attorney General, National Guardsman Jaiber Alberto Núñez, files a motion before the Court Martial for the appeal to be denied.⁶⁸

December 13, 2000: The Chamber for Criminal Cassations denies the appeal.⁶⁹

February 23, 2001: A new preliminary hearing is held in front of the Acting Judge of the Standing Military Trial Court of Guasdalito.⁷⁰ Guardsman Malpica Calzadilla admits to the facts of the indictment.⁷¹ The Acting Temporary Military Judge partially allows the case to proceed on only the crime of disobeying military orders.⁷² The charges of the private criminal complaint brought by Cadet Ortiz Hernández's parents are dismissed.⁷³

March 6, 2001: Cadet Ortiz Hernández's parents appeal the February 23 decision based on due process violations.⁷⁴ The Third Office of the Military Prosecutor also appeals for failure to provide a factual basis for

62. *Id.*

63. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 81.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* ¶ 82.

68. *Id.*

69. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 83.

70. *Id.* ¶ 84.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* ¶ 85.

the decision.⁷⁵ The Office of the Prosecutor moves again to transfer the case to the Standing Military Trial Court of San Cristóbal.⁷⁶

August 22, 2001: The Court Martial, in its capacity as an appeals court, overturns the decision, orders a new preliminary hearing, and orders the case file transferred to the Standing Military Trial Court of San Cristóbal.⁷⁷

September 19, 2001: Cadet Ortiz Hernández's father seeks *amparo* relief from the August 22, 2001 decision.⁷⁸ He cites the length of time without progress in the prosecution and the inadequacy of the investigation.⁷⁹

November 9, 2001: The Constitutional Chamber of the Supreme Court of Justice grants the *amparo* petition and agrees to enjoin the preliminary hearing ordered by the Court Martial on August 22, 2001.⁸⁰ The Chamber based its decision on a provision of the Venezuelan Constitution providing ordinary courts with jurisdiction over common crimes.⁸¹ The Chamber orders all proceedings before the military court vacated and the case sent to the Ministry of Public Prosecution to institute proceedings.⁸²

March 7, 2003: The Office of the Seventh Prosecutor orders an investigation opened.⁸³

December 2003: The Seventh Prosecutor's Office brings charges against Guardsman Malpica Calzadilla.⁸⁴ Subsequently, an investigator from the Corps of Scientific, Criminal and Forensic Investigations of the State of Tachira is assigned to the case.⁸⁵

December 2, 2003: Shortly after his assignment, the investigator is removed and assigned to another jurisdiction.⁸⁶

75. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 85.

76. *Id.*

77. *Id.* ¶ 86.

78. *Id.* ¶ 103.

79. *Id.* ¶¶ 103-104.

80. *Id.* ¶ 104.

81. Ortiz Hernández v. Venezuela, Report on Merits, ¶¶ 103-104.

82. *Id.*

83. *Id.* ¶ 107.

84. *Id.*

85. *Id.* ¶ 109.

86. *Id.*

December 11, 2003: Cadet Ortiz Hernández's father brings a complaint to the Office of the Ombudsman stating that the investigator was removed without reason, halting the investigation.⁸⁷ Both the Office of the Prosecutor and the Office of the Ombudsman claim they are unaware of the reason for the removal.⁸⁸

March 3, 2004: Cadet Ortiz Hernández's father brings a complaint before the Directorate of Fundamental Rights Protection of the Ministry of Public Prosecution for delays in the investigation of his son's death.⁸⁹ The complaint is resolved the next month by reinstating the investigation, but only part time.⁹⁰

August 10, 2004: The Office of the Ombudsman of the State of Tachira communicates to the Office of the Chief Prosecutor its concern over the slow progress in the investigation.⁹¹

April 4, 2011: The Fifth Court, at the request of Cadet Ortiz Hernández's father, sets a deadline of 120 days to conclude the investigation.⁹²

July 8, 2011: After an appeal by the Office of the Prosecutor, the deadline is upheld.⁹³

February 2012: The Ministry of Public Prosecution brings charges against Guardsman Malpica Calzadilla for intentional homicide with wanton disregard and improper use of a weapon of war.⁹⁴

October 4, 2012: The preliminary hearing, after being postponed between nine and twelve times because Guardsman Malpica Calzadilla failed to appear, is held.⁹⁵ The indictment is dismissed for failure to conduct a complete investigation and a new 120-day deadline is set for the Prosecution to finish the investigation.⁹⁶

87. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 109.

88. *Id.*

89. *Id.* ¶ 110.

90. *Id.* ¶ 111.

91. *Id.* ¶ 115.

92. *Id.* ¶ 122.

93. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 123.

94. *Id.* ¶ 124.

95. *Id.* ¶ 125.

96. *Id.* ¶ 126.

February 27, 2013: Several Prosecutors from the Ministry of Assistant Prosecutor file an indictment before the Acting First Trial Court of Control of the State of Tachira against Guardsman Malpica Calzadilla, again, for intentional homicide with wanton disregard and improper use of a weapon of war.⁹⁷ The Office of the Prosecutor advances the theory that Guardsman Malpica Calzadilla was in charge of the obstacle course where Cadet Ortiz Hernández was killed.⁹⁸ During the exercise, Guardsman Malpica Calzadilla fired a 7.62 caliber firearm into the obstacle Cadet Ortiz Hernández was traversing and a bullet ricocheted and struck him.⁹⁹ A preliminary hearing is set for April 3, 2013.¹⁰⁰

April 3, 2013: The preliminary hearing is postponed until April 30 because Guardsman Malpica Calzadilla fails to appear.¹⁰¹ The case is postponed several more times throughout 2013.¹⁰²

May 22, 2013: After several postponements of the hearing, the Fifth Court of Control is recused and the case is transferred to the Acting State Criminal Trial Court of San Cristóbal.¹⁰³ A hearing is set for June 20, 2013, and an arrest warrant is issued for Guardsman Malpica Calzadilla.¹⁰⁴

June 20, 2013: The hearing before the Acting State Criminal Trial Court of San Cristóbal is postponed several times.¹⁰⁵

B. Other Relevant Facts

[None]

97. *Id.* ¶ 127.

98. *Id.* ¶ 128.

99. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 129.

100. *Id.* ¶ 131.

101. *Id.*

102. *Id.* ¶¶ 131-132.

103. *Id.*

104. *Id.*

105. Ortiz Hernández v. Venezuela, Report on Merits, ¶ 132.

II. PROCEDURAL HISTORY

A. *Before the Commission*

March 15, 2000: Edgar Humberto Ortiz Ruiz and Zaida Hernández de Arellano, Cadet Ortiz Hernández's parents, file a petition to the Commission on behalf of their son, Cadet Ortiz Hernández.¹⁰⁶

February 25, 2005: The Commission issues Admissibility Report No. 22/05 declaring the petition admissible in relation to Articles 4 (Right to Life), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, all in relation to Article 1(1) (Obligation to Respect Rights) of the same instrument.¹⁰⁷ The State argues that the case is inadmissible due to domestic remedies not being exhausted, but the Commission rebuts this argument by citing the unwarranted delay of over seven years since the death of the victim.¹⁰⁸

January 26, 2014: The petitioners submit information indicating the arrest warrant for Guardsman Malpica Calzadilla remains unexecuted.¹⁰⁹

January 29, 2015: The Commission adopts Merits Report No. 2/15 and recommends that the State conduct a complete, impartial, and effective investigation of the human rights violations.¹¹⁰ The Commission also recommends the State put in place administrative, disciplinary, or criminal measures to respond to actions or omissions by State agents who contribute to the denigration of justice and the impunity surrounding the events in this case.¹¹¹ Finally, the Commission recommends appropriate remedies for the human rights violations and adopting the necessary measures to ensure that the human rights of students at the National Guard Training Academy are protected.¹¹² The State does not respond to the Commission's Merits Report.¹¹³

106. Johan Alexis Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. L) No. 338, ¶ 2 (Aug. 22, 2017).

107. Johan Alexis Ortiz Hernández v. Venezuela, Admissibility Report, Report No. 22/05, Inter-Am. Comm'n H.R., Case No. 12.270, ¶ 48 (Feb. 25, 2005).

108. *Id.* ¶¶ 33-34.

109. *Id.* ¶ 132.

110. *Id.* ¶ 233.

111. *Id.*

112. *Id.*

113. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 2.

B. Before the Court

May 13, 2015: The Commission submits the case to the Court after the State's failure to adopt its recommendations.¹¹⁴

1. Violations Alleged by Commission¹¹⁵

Article 4 (Right to Life)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

2. Violations Alleged by Representatives of the Victims¹¹⁶

Same Violations Alleged by Commission.

January 12, 2016: The State submits its preliminary objection alleging lack of exhaustion of domestic remedies.¹¹⁷

February 9, 2017: The State acknowledges responsibility for the violation of Cadet Ortiz Hernández's right to life.¹¹⁸

III. MERITS

*A. Composition of the Court*¹¹⁹

Eduardo Ferrer Mac-Gregor Poisot, President

Humberto A. Sierra Porto, Judge

Elizabeth Odio Benito, Judge

Eugenio Raúl Zaffaroni, Judge

L. Patricio Pazmiño Freire, Judge

114. *Id.* ¶ 1.

115. Ortiz Hernández v. Venezuela, Report on Merits, ¶¶ 2, 137, 152.

116. Ortiz Hernández v. Venezuela, Admissibility Report, ¶ 2.

117. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 6.

118. *Id.* ¶¶ 8, 14.

119. President Roberto F. Caldas did not participate in this decision for reason of force majeure. Vice-President Eduardo Ferrer Mac-Gregor Poisot assumed the position of the President for this decision. Deputy Secretary Emilia Segares Rodríguez did not participate in this decision for reason of force majeure. *Id.* n*.

Pablo Saavedra Alessandri, Secretary

B. Decision on the Merits

August 22, 2017: The Court issues its Judgment on Merits, Reparations and Costs.¹²⁰

The Court decided unanimously to accept the State's partial acknowledgment of responsibility for the death of Cadet Ortiz Hernández.¹²¹ The State also partially recognized its responsibility for the violation of rights to judicial guarantees and judicial protections to the detriment of Mr. Ortiz Ruiz and Mrs. Hernández de Arellano.¹²²

The Court found unanimously that Venezuela had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) of the Convention, to the detriment of Cadet Ortiz Hernández,¹²³ because:

The State violated Cadet Ortiz Hernández's right to life.¹²⁴ When analyzing the scope of the right to life, the Court considers the circumstances, including the fact that Cadet Ortiz Hernández was in training for the National Guard.¹²⁵ The Court has found three duties that the State bears under these circumstances: (1) safeguard the health and wellbeing of service members; (2) ensure training does not surpass necessary levels of suffering; (3) and provide a satisfactory explanation for both voluntary and compulsory training exercises.¹²⁶ The State must not deprive a human being arbitrarily of life and the State must also "take the necessary measures to create an adequate regulatory framework that deter[s] any threat to the right to life."¹²⁷

The Court found the State violated Cadet Ortiz Hernández's right to life in several ways.¹²⁸ First, the State used live ammunition as opposed to blanks as had been previously ordered used.¹²⁹ Second, the State did not

120. See generally *id.*

121. *Id.* ¶ 14.

122. *Id.*

123. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, "Resolves," ¶ 2.

124. *Id.* ¶ 103.

125. *Id.* ¶ 104.

126. *Id.* ¶ 107.

127. *Id.* ¶ 110.

128. *Id.* ¶¶ 109-118.

129. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 109.

*follow procedures to guarantee timely medical treatment for students injured on the anti-subversive course.*¹³⁰ *The Court also noted that, whether or not this was an intentional homicide, the circumstances of using real ammunition for training here denotes that intentional crimes were encouraged, committed, and concealed during the training.*¹³¹ *Because of the lack of appropriate protections for soldiers resulting in Cadet Ortiz Hernández's death, the State is responsible for violating Article 4.1 (Prohibition of Arbitrary Deprivation of Life).*¹³²

*The State also violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) as to Cadet Ortiz Hernández.*¹³³ *The Court has determined that Article 4 (Right to Life) and Article 5 (Right to Humane Treatment) are linked by attention to human health, or a lack thereof which may lead to a violation of Article 5(1) (Right to Physical, Mental, and Moral Integrity.)*¹³⁴ *The Court states that "among the security measures that need to be taken within the framework of the processes of formation of the military forces, is that of having adequate medical attention and quality in the course of military training . . ."*¹³⁵

*The Court found, despite an order establishing adequate procedures, Cadet Ortiz Hernández did not receive medical treatment until he arrived at the hospital.*¹³⁶ *Moreover, an ambulance was not nearby to transport anyone injured during the training to a hospital.*¹³⁷ *Either of these measures, had they been followed, could have stabilized Cadet Ortiz Hernández's health.*¹³⁸ *Finally, the hospital to which Cadet Ortiz Hernández was transported was not one equipped to handle such an injury.*¹³⁹ *Therefore, the State violated Article 5(1) (Right to Physical, Mental, and Moral Integrity.)*¹⁴⁰

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic

130. *Id.* ¶ 111.

131. *Id.* ¶ 117.

132. *Id.* ¶ 118.

133. *Id.* ¶ 126.

134. *Id.* ¶ 119.

135. *Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs*, ¶ 119.

136. *Id.* ¶¶ 120-121.

137. *Id.* ¶ 121.

138. *Id.* ¶¶ 122, 124.

139. *Id.* ¶ 123.

140. *Id.* ¶ 126.

Legal Effect to Rights) of the Convention, to the detriment of Mr. Ortiz Ruiz and Mrs. Hernández de Arellano,¹⁴¹ because:

The State improperly exercised military court jurisdiction to investigate the death of Cadet Ortiz Hernández.¹⁴² Military courts exist to preserve order in the armed forces.¹⁴³ Only those active members of the military who have committed crimes that affect military order should fall under the jurisdiction of military courts.¹⁴⁴ Thus, a military court may not have jurisdiction even where both the perpetrator and victim of the crime are members of the military.¹⁴⁵

In this case, Cadet Ortiz Hernández's parents raised concerns with the State's Attorney General that their son's death was intentional.¹⁴⁶ Because an intentional homicide is not a crime related to military discipline, the military court should not have had jurisdiction to hear the case.¹⁴⁷ Not only was the military jurisdiction here contrary to the Convention, it was also contrary to the State's Constitution.¹⁴⁸ As such, the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal.)¹⁴⁹

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court) in relation to 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Ms. Hernández de Arellano and Mr. Ortiz Ruiz,¹⁵⁰ because:

The military court was incompetent to exercise jurisdiction over the investigation of this case and, additionally, failed to investigate with due diligence.¹⁵¹ Whether an investigation was carried out with due diligence depends on the veracity of the claim and whether facts were eventually discovered and a legal outcome reached.¹⁵² Here, appropriate measures

141. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 154.

142. *Id.* ¶ 151.

143. *Id.* ¶ 148.

144. *Id.*

145. *Id.* ¶ 149.

146. *Id.* ¶ 150.

147. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 151.

148. *Id.* ¶ 152.

149. *Id.* ¶ 154.

150. *Id.* ¶ 175.

151. *Id.* ¶ 155.

152. *Id.* ¶ 156.

were not taken to preserve the crime scene or evidence.¹⁵³ Not only was evidence not preserved, facts suggest evidence was purposefully destroyed by state actors who may have been involved in Cadet Ortiz Hernández's death.¹⁵⁴ Moreover, officials ignored the hypothesis proposed by Cadet Ortiz Hernández's parents that his death may have been a homicide instead of an accident.¹⁵⁵ Additionally, the state made inadequate efforts to effect the arrest of accused parties in relation to this case.¹⁵⁶ For these reasons, the State violated Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal.)¹⁵⁷

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Hernández de Arellano, Mr. Ortiz Ruiz, Saúl Arellano Mora, Maritza González Cordero, Jackson Edgardo Ortiz González, Greysi Mariel Ortiz González, Gregory Leonardo Ortiz González, Zaida Dariana Arellano Hernández and Saúl Johan Arellano Hernández,¹⁵⁸ because:

*The State ignored the circumstances of the death of Cadet Ortiz Hernández, which, in turn, caused his parents frustration, sorrow and uncertainty.*¹⁵⁹ *Ms. Hernández de Arellano's family suffered social and economic difficulties as a result of their allegations.*¹⁶⁰ *Her family also received threats on multiple occasions requiring them to relocate.*¹⁶¹ *Moreover, Ms. Hernández de Arellano left her husband, Cadet Ortiz Hernández's father, and her children to continue the investigation during this period of hardship.*¹⁶²

*Mr. Ortiz Ruiz, Cadet Ortiz Hernández's father, also received threats stemming from Cadet Ortiz Hernández's death.*¹⁶³ *Additionally, relatives of both of Cadet Ortiz Hernández's parents were physically attacked both in public and in their homes.*¹⁶⁴ *Accordingly, the State violated Article*

153. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 163.

154. *Id.* ¶ 165.

155. *Id.* ¶ 170.

156. *Id.* ¶ 172.

157. *Id.* ¶ 175.

158. *Id.* "Resolves," ¶ 5.

159. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 178.

160. *Id.* ¶ 179.

161. *Id.* ¶ 180.

162. *Id.* ¶ 179.

163. *Id.* ¶ 180.

164. *Id.* ¶ 181.

5(1) (Right to Physical, Mental, and Moral Integrity) as to Cadet Ortiz Hernández's relatives.¹⁶⁵

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

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

1. Continue Diligent Investigation and Criminal Process 192-195

The State must effectively and diligently continue investigations and court proceedings involving Cadet Ortiz Hernández's death.¹⁶⁶ It must also open new investigations and punish those responsible for Cadet Ortiz Hernández's death.¹⁶⁷ Additionally, the Court ordered the State to adopt all measures necessary to find Guardsman Malpica Calzadilla and involve him in the court proceedings.¹⁶⁸ The State must also ensure that Cadet Ortiz Hernández's family is able to access and act in all stages of the investigations and proceedings into his death, including gaining access to the case file.¹⁶⁹

Moreover, the Court ordered the State to find the officials who contributed to the delays in the court proceedings and investigations and punish them accordingly.¹⁷⁰ Finally, the Court opined that the State must provide security measures to protect Cadet Ortiz Hernández's family so they may safely continue to investigate his death.¹⁷¹

2. Provide Mental Health Treatment to the Victims

The State must provide, free of charge, suitable mental health treatment to the victims who have suffered psychologically as a result of this incident.¹⁷² The treatment must begin within two months from a request by a victim to provide the treatment in a location as near as possible to the victim's home.¹⁷³

165. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 182.

166. *Id.* ¶ 192.

167. *Id.* ¶ 192.

168. *Id.* ¶ 193.

169. *Id.*

170. *Id.* ¶ 194.

171. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 195.

172. *Id.* ¶ 199.

173. *Id.*

3. Publish Portions of the Judgment

The Court determined that the judgment is a *per se* form of reparation.¹⁷⁴ The State must publish the official summary of the Judgment in the Official Gazette, in a newspaper of national circulation, and on an official state website for one year.¹⁷⁵ The State must also publicize the official summary of the Judgment on a radio station with national coverage.¹⁷⁶

4. Publicly Recognize International Responsibility

The State must carry out a public act of recognition of international responsibility for the facts of this case in Venezuela.¹⁷⁷ The act should reference the human rights violations found in the Judgment and be carried out in a public ceremony with State officials and the victims present.¹⁷⁸

5. Promote Graduates of the National Guard Training School with the Name of the Victim

The State must promote a class of graduates from the school at which Cadet Ortiz Hernández was killed with his name as an act of honor and recognition.¹⁷⁹

6. Adopt Security Measures to Protect the Right to Life and Personal Integrity of Students at the National Guard Training School

The State must expressly establish the type of ammunition to be used during training and use live ammunition only when strictly justified.¹⁸⁰

B. Compensation

The Court awarded the following amounts:

174. “Resolves,” ¶ 6.

175. *Id.* ¶ 203.

176. *Id.* ¶ 204.

177. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 209.

178. *Id.*

179. *Id.* ¶ 212.

180. *Id.* ¶ 217.

1. Pecuniary Damages

The Court awarded \$64,000 for loss of income to be distributed equally between Ms. Hernández de Arellano and Mr. Ortiz Ruiz.¹⁸¹

The Court awarded \$535 for funeral expenses and court costs to be distributed between Ms. Hernández de Arellano and Mr. Ortiz Ruiz.¹⁸²

2. Non-Pecuniary Damages

The Court awarded \$65,000 for non-pecuniary damage to be distributed between Mr. Ortiz Hernandez's parents for fear and anguish suffered.¹⁸³

The Court awarded Mr. Ortiz Ruiz and Ms. Hernández de Arellano each \$35,000 for non-pecuniary damage for threats and harassment.¹⁸⁴

The Court awarded Maritza González Cordero and Saúl Arellano Mora \$20,000 each for non-pecuniary damages.¹⁸⁵

The Court awarded the siblings of Cadet Ortiz Hernández each \$20,000.¹⁸⁶

3. Costs and Expenses

The Court awarded \$40,0000 for costs and expenses to be distributed equally between Ms. Hernández de Arellano and Mr. Ortiz Ruiz.¹⁸⁷ The Court ordered reimbursement of the Victim's Legal Assistance Fund by the State in the amount of \$11,604.03.¹⁸⁸

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

\$ 331,139.03

181. *Id.* ¶ 235.

182. *Id.* ¶ 239.

183. *Ortiz Hernández v. Venezuela*, Merits, Reparations, and Costs, ¶ 246.

184. *Id.* ¶ 247.

185. *Id.* ¶ 248.

186. *Id.*

187. *Id.* ¶ 255.

188. *Id.* ¶ 259.

C. Deadlines

The State must open and continue effective investigations into the death of Cadet Ortiz Hernández and punish those responsible within a reasonable time.¹⁸⁹

The State must find and punish those officials who helped delay court processes and deny justice to Cadet Ortiz Hernández's family within a reasonable time.¹⁹⁰

The State must provide free psychiatric or psychological treatment immediately after a victim so requests.¹⁹¹

The State must publish the judgment in the State's official newspaper and another nationally-circulated newspaper within six months.¹⁹² It must also make the judgment available on a state website for one year.¹⁹³ Additionally, the State must broadcast the judgment on a national radio station within six months.¹⁹⁴ Finally, the State must immediately notify the Court when it has complied with the publication of the judgment.¹⁹⁵

The State must acknowledge international responsibility for its human rights violations in a public ceremony within one year.¹⁹⁶

The State must promote graduates of the National Guard Training School under Cadet Ortiz Hernández's name within two years.¹⁹⁷

The State must reimburse the Victim's Legal Assistance fund within six months.¹⁹⁸ It must make all other payments within one year.¹⁹⁹

The State must submit a report to the Court in one year detailing its compliance with this judgment.²⁰⁰

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

189. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, "Resolves," ¶ 7.

190. *Id.* "Resolves," ¶ 8.

191. *Id.* "Resolves," ¶ 10.

192. *Id.* ¶ 203.

193. *Id.*

194. *Id.* ¶ 204.

195. Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, ¶ 205.

196. *Id.* ¶ 209.

197. *Id.* ¶ 212.

198. *Id.* ¶ 259.

199. *Id.* ¶ 260.

200. *Id.* ¶ "Resolves," ¶ 17.

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Johan Alexis Ortiz Hernández v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. L\) No. 338 \(Aug. 22, 2017\).](#)

3. Provisional Measures

[Johan Alexis Ortiz Hernández, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. L\) \(Dec. 20, 2016\).](#)

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Johan Alexis Ortiz Hernández v. Venezuela, Admissibility Report, Report No. 22/05, Inter-Am. Comm'n H.R., Case No. 12.270 \(Feb. 25, 2005\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Johan Alexis Ortiz Hernández v. Venezuela, Report on Merits, Report No. 2/15, Inter-Am. Comm'n H.R., Case No. 12.270 \(Jan. 29, 2015\).](#)

5. Application to the Court

[Johan Ortiz Hernández v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.270 \(May 13, 2015\).](#)

VIII. BIBLIOGRAPHY

[Amnesty Int'l, *Venezuela: Death Threats / Fear for Safety*, AI Index AMR 53/012/1999 \(October 6, 1999\), <https://www.amnesty.org/download/Documents/144000/amr530121999en.pdf>.](#)

[Inter-American Court Condemns Venezuela for the Death of a Military Cadet \(*Corte Interamericana Condena a Venezuela por Muerte de Cadete Militar*\), *MSN* \(Oct. 13, 2017\), <https://www.msn.com/es-co/noticias/otras/corte-interamericana-condena-a-venezuela-por-m>](#)