

# 19 Trademen v. Colombia

## ABSTRACT<sup>1</sup>

*This case is about the forced disappearance and extrajudicial execution of a group of nineteen traders, who made their living by transporting merchandise between Colombia and Venezuela, passing through the Puerto Boyacá region. The killing was done, mostly for profit reasons, by the Association of Peasants and Livestock Owners of Magdalena Medio (Asociación de Campesinos y Ganaderos del Magdalena Medio), a paramilitary group. The Court found Colombia in violation of several articles of the American Convention.*

## I. FACTS

### A. Chronology of Events

**1984:** A self-defense group known as the Association of Peasants and Livestock Owners of Magdalena Medio (*Asociación de Campesinos y Ganaderos del Magdalena Medio*, “ACDEGAM”) forms in the municipality of Puerto Boyacá.<sup>2</sup> This group initially develops for social purposes and for defense against possible guerilla attacks.<sup>3</sup> Eventually, the group becomes a paramilitary group, which not only aims to defend itself against the guerilla movement, but also to attack and eradicate it.<sup>4</sup> The group, led by Mr. Gonzalo Pérez and his sons Mr. Henry and Mr. Marcelo Pérez, maintains firm control in the municipalities of Puerto Boyacá, Puerto Berrío, and Cimitarra.<sup>5</sup> In addition to other activities, the group imposes a tax on individuals who transit the region with merchandise.<sup>6</sup>

**October 1987:** A group of seventeen merchants (known collectively as

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1. Karina Villa, Author; Alyssa Rutherford, Editor; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. 19 Trademen v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 84(d) (July 5, 2004).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* ¶ 85(b)

the “Tradesmen”) make their living by transporting merchandise between Colombia and Venezuela, passing through the Puerto Boyacá region.<sup>7</sup> The leadership of the ACDEGAM paramilitary group that controls the Puerto Boyacá region holds a meeting.<sup>8</sup> The leaders decide to kill the Tradesmen and seize their merchandise and vehicles because they believe that the Tradesmen did not pay the required “taxes” for transiting the region with merchandise, and because they believe the Tradesmen are selling arms bought in Venezuela to the guerilla groups in the Magdalena Medio region.<sup>9</sup> The meeting is held with the consent of several Army officers who agree to the plan.<sup>10</sup>

**October 6, 1987:** The Tradesmen travel in a caravan of several vehicles.<sup>11</sup> They pass through the hamlet of Puerto Araujo where members of the military search them.<sup>12</sup> The Tradesmen are searched by the lieutenant in charge.<sup>13</sup> The lieutenant in charge allows them to pass through despite the contraband merchandise they are carrying.<sup>14</sup> Members of the ACDEGAM paramilitary group detain the tradesmen near “El Diamante,” a farm owned by a group leader.<sup>15</sup> On either October 6 or October 7, the group murders the Tradesmen, dismembers their bodies, and disposes of the bodies in a nearby stream.<sup>16</sup>

**October 1987:** Several of the Tradesmen’s family members form search committees and travel the same route the Tradesmen traveled.<sup>17</sup> At the Cimitarra Battalion, a soldier notifies them that the Tradesmen had previously passed by.<sup>18</sup> In Campo Capote, several civilians also notify the

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7. *Id.* ¶¶ 85(a)-(b) The seventeen merchants consist of Mr. Álvaro Lobo Pacheco, Mr. Gerson Javier Rodríguez Quintero, Mr. Israel Pundor Quintero, Mr. Ángel María Barrera Sánchez, Mr. Antonio Flórez Contreras, Mr. Víctor Manuel Ayala Sánchez, Mr. Alirio Chaparro Murillo, Mr. Álvaro Camargo, Mr. Gilberto Ortíz Sarmiento, Mr. Reinaldo Corzo Vargas, Mr. Luis Hernando Jáuregui Jaimes, Mr. Luis Domingo Sauza Suárez, Mr. Rubén Emilio Pineda Bedoya, Mr. Carlos Arturo Riatiga Carvajal, Mr. Juan Bautista, Mr. Alberto Gómez (whose second last name was possibly Ramírez), and Mr. Huber Pérez (whose second last name was possibly Castaño). *Id.* ¶ 85(c)

8. *Id.* ¶ 85(b).

9. *Id.*

10. *Id.*

11. 19 Tradesmen v. Colombia, Admissibility Report, Report No. 112/99, Inter-Am. Comm’n H.R., Case No. 11.603, ¶ 8 (Sept. 27, 1999).

12. 19 Tradesmen v. Colombia, Merits, Reparations and Costs, ¶ 85(d).

13. *Id.*

14. *Id.*

15. 19 Tradesmen v. Colombia, Admissibility Report, ¶ 8.

16. 19 Tradesmen v. Colombia, Merits, Reparations and Costs, ¶ 85(f).

17. *Id.* ¶ 85(g).

18. *Id.*

family that the Tradesmen had passed by.<sup>19</sup> On their way to Puerto Boyacá, several members of a self-defense group detain them on the road.<sup>20</sup> On another day when other family members search for the Tradesmen, they are notified in Puerto Araujo that the Tradesmen's vehicles were taken by soldiers to the Puerto Araujo base.<sup>21</sup> The family members ask the mayor of Puerto Boyacá for assistance and he tells them to ask Mr. Henry Pérez, commander of the paramilitary personnel, or the Army Commander.<sup>22</sup> Mr. Pérez tells the family that he has not seen anything and makes a threat, stating that if they do not leave the region something might happen to them and their families.<sup>23</sup>

The Tradesmen's family members describe the characteristics of the Tradesmen's vehicles to State authorities that are investigating the disappearances.<sup>24</sup> The ACDEGAM paramilitary group uses the Tradesmen's vehicles at El Diamante, but as a result of the State's investigation, the group destroys the vehicles and puts them in a lake on the El Diamante farm.<sup>25</sup> During this period, family members of the Tradesmen ask various State authorities for help in reporting the disappearances and locating their missing family members, but the authorities do not immediately search for the Tradesmen.<sup>26</sup>

**October 18, 1987:** The group detains and murders two of the individuals searching for the Tradesmen, Mr. Juan Alberto Montero Fuentes and Mr. José Ferney Fernández Díaz.<sup>27</sup>

**October 27, 1987:** The Eighth Judge of Criminal Investigation of Cimitarra initiates an investigation into the victims' disappearances.<sup>28</sup> Despite the statements of several witnesses and other evidence as to which parties are responsible for the acts against the victim, judicial authorities do not perform the judicial inspection required to clarify the facts and do not gather the victims' corpses.<sup>29</sup>

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19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* ¶ 85(j)

25. *Id.*

26. *Id.* ¶ 85(k)

27. *Id.* ¶ 85(h).

28. 19 *Tradesmen v. Colombia*, Admissibility Report, Report No. 112/99, Inter-Am. Comm'n H.R., Case No. 11.603, ¶ 10 (Sept. 27, 1999).

29. *Id.* ¶ 10.

**July 17, 1989:** The Supreme Court of Justice assigns the hearing of the preliminary investigation to the Eighth Criminal Trial Judge of Cimitarra in the Santander Department.<sup>30</sup>

**February 10, 1995:** The Office of the Cúcuta Regional Prosecutor orders the initiation of a formal investigation of four men for kidnapping and homicide.<sup>31</sup> The Prosecutor also issues arrest warrants for the men.<sup>32</sup>

**1996:** The Regional Prosecutor of the Human Rights Unit orders a criminal investigation against five civilians for extortive kidnapping, aggravated homicide, and qualified robbery.<sup>33</sup>

**May 28, 1997:** The Cúcuta Regional Judge convicts three civilians, Mr. Nelson Lesmes Leguizamón, Mr. Marceliano Panesso Ocampo, and Mr. Carlos Alberto Yepes Londoño, for extortive kidnapping and aggravated homicide of the Tradesmen.<sup>34</sup> The sentence imposes thirty years' imprisonment and prohibits them from holding office or exercising public rights for ten years.<sup>35</sup> The three civilians are also ordered to pay 1,000 grams of gold for non-pecuniary damage and 3,000 grams for pecuniary damages to the heirs of the nineteen disappeared Tradesmen.<sup>36</sup>

**April 14, 1998:** The National Court decides on the appeals filed against the judgment delivered by the Cúcuta Regional Judge on May 28, 1997.<sup>37</sup> The National Court reverses the sentences imposed on the three civilians for extortive kidnapping and homicide.<sup>38</sup> Additionally, the civilians are absolved of the charges and from payment of pecuniary and non-pecuniary damage to the heirs of Mr. Montero Fuentes and Mr. Ferney Fernández.<sup>39</sup> The Court also modifies the sentence against Mr. Yepes Londoño, convicting him as an accomplice to aggravated homicide.<sup>40</sup> The Court confirms Mr. Lesmes Leguizamón's and Mr. Panesso Ocampo's sentences as co-authors for aggravated homicide of the sev-

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30. 19 Tradesmen v. Colombia, Merits, Reparations and Costs, ¶ 88(a).

31. *Id.* ¶ 88(b).

32. *Id.*

33. *Id.* ¶ 201(a).

34. *Id.* ¶ 88(f).

35. *Id.*

36. *Id.*

37. *Id.* ¶ 88(h).

38. *Id.*

39. *Id.*

40. *Id.*

enteen Tradesmen.<sup>41</sup>

**May 25, 1999:** The Regional Prosecutor of the National Human Rights Unit issues an order to close the investigation of the five civilians.<sup>42</sup>

**March 23, 2001:** The Criminal Court of the San Gil Specialized Circuit sentences Mr. Waldo Patiño García for aggravated homicide of the seventeen Tradesmen.<sup>43</sup> Mr. Patiño García is sentenced to thirty years' imprisonment and absolved of extortive kidnapping and aggravated homicide against Mr. Montero Fuentes and Mr. Ferney Fernández.<sup>44</sup> Additionally, Ms. Luz Marina Ruiz Gómez is sentenced as an accomplice to aggravated homicide of the seventeen Tradesmen and is absolved of extortive kidnapping and aggravated homicide against Mr. Montero Fuentes and Mr. Ferney Fernández.<sup>45</sup> Mr. Diego Viáfara Salinas is sentenced for aggravated homicide of the seventeen Tradesmen and absolved of extortive kidnapping and aggravated homicide against Mr. Montero Fuentes and Mr. Ferney Fernández.<sup>46</sup>

**October 19, 2001:** The Criminal Chamber of the Superior Court of the San Gil Judicial District delivers a judgment on the appeal filed by Ms. Luz Marina Ruiz Gómez.<sup>47</sup> The Court annuls the March 23, 2001 judgment against Ms. Ruiz Gómez and absolves her of all charges.<sup>48</sup>

### *B. Other Relevant Facts*

By the 1980s paramilitary self-defense groups have close ties to drug trafficking.<sup>49</sup> Many of their key leaders become landowners and turn to violence to protect their drug businesses and economic interests.<sup>50</sup> These groups gain a reputation for massacring civilians.<sup>51</sup> On April 19, 1989, as a result of the violence emerging from these groups'

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41. *Id.*

42. *Id.* ¶ 201(a).

43. *Id.* ¶ 88(m).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* ¶ 88(n).

48. *Id.*

49. *Report on the Demobilization Process in Colombia*. Inter-Am. Comm'n H.R., Report No. OEA/Ser.L/V/II.120, doc. 60, ch. III, ¶ 37 (Dec. 13, 2004)

50. *Id.*

51. *Id.*

activities, the State government promulgates Decree 0815.<sup>52</sup> This decree suspends Articles 25 and 33(3) of Decree 3398 to ensure that they are not interpreted as legally authorizing the organization of armed civilian groups in violation of the Constitution and statutory laws.<sup>53</sup>

On June 8, 1989 the State issues Decree 1194, which amends Legislative Decree 0180 of 1988, and punishes new forms of criminal conduct, as required for re-establishing public order.<sup>54</sup> The purpose of this decree is to define and punish crimes committed by paramilitary groups and accordingly to restore the country's social stability.<sup>55</sup> Decree 1194 also criminalizes the training of "persons in military tactics, techniques or procedures for undertaking criminal activities."<sup>56</sup> The decree stipulates that the crime is aggravated if any of the aforementioned activities are committed by active or retired members of the military forces or National Police or by state security bodies.<sup>57</sup>

Despite legal prohibitions, the paramilitary groups continue to operate throughout the State in the 1990s and are responsible for a large number of politically motivated killings, extortions, and kidnappings.<sup>58</sup> The groups also participate in drug production and trafficking.<sup>59</sup> In the mid- 1990s, the paramilitary groups consolidate nationwide into an organization called *Autodefensas Unidas de Colombia* ("AUC"). The organization's publicly stated purpose is to stand united and fight against the guerrillas.<sup>60</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**March 6, 1996:** The Colombian Commission of Jurists files a petition with the Commission on behalf of the nineteen victims.<sup>61</sup>

**September 27, 1999:** The Commission issues Admissibility Report No.

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52. *Id.* ¶ 39.

53. *Id.*

54. *Id.* ¶ 40.

55. *Id.*

56. *Id.* ¶ 41.

57. *Id.*

58. *Id.* ¶¶ 42-43.

59. *Id.* ¶ 43.

60. *Id.* ¶ 42.

61. 19 *Tradesmen v. Colombia*, Admissibility Report, Report No. 112/99, Inter-Am. Comm'n H.R., Case No. 11.603, ¶ 1 (Sept. 27, 1999).

112/99 declaring the petition admissible in relation to Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), and 8 (Right to a Fair Trial) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the same instrument.<sup>62</sup>

**March 2, 2000:** The Commission holds a hearing to analyze the possibility of reaching a friendly settlement.<sup>63</sup> The State articulates that it cannot acknowledge responsibility because the definitive judgments of the domestic courts did not demonstrate responsibility of State agents for the reported facts and that the next of kin of the alleged victims would receive reparations if the administrative court so ordered.<sup>64</sup> The petitioners decide to terminate the attempt to reach a friendly settlement.<sup>65</sup>

**October 4, 2000:** The Commission adopts Merits Report No. 76/100 and recommends that the State conduct a complete, impartial, and effective investigation in the ordinary jurisdiction to prosecute and punish those responsible for the extrajudicial execution of the victims.<sup>66</sup> Additionally, the Commission recommends that the State adopt the necessary measures to ensure that the victims' next of kin receive adequate and prompt reparation for the violations.<sup>67</sup>

**January 19, 2001:** The State submits its response to the Commission in which it states it will address the recommendations in good faith.<sup>68</sup> Specifically, the State submits "a project with which it plans to address the requirements of Confidential Report 76/100."<sup>69</sup>

### *B. Before the Court*

**January 24, 2001:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>70</sup>

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62. *Id.* ¶ 23.

63. 19 *Tradesmen v. Colombia*, Preliminary Objection, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 93, ¶ 6 (June 12, 2002).

64. *Id.*

65. *Id.*

66. 19 *Tradesmen v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 10 (July 5, 2004).

67. *Id.*

68. 19 *Tradesmen v. Colombia*, Preliminary Objection, ¶ 24(c).

69. *Id.* ¶ 24(b).

70. *Id.* ¶¶ 1, 9.

### 1. Violations Alleged by Commission<sup>71</sup>

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25 (Right to Judicial Protection)

*all in relation to:*

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

### 2. Violations Alleged by Representatives<sup>72</sup>

Same Violations Alleged by the Commission.

**May 16, 2001:** The State submits its preliminary objections alleging a violation of due process by omitting steps taken in good faith to best comply with the aims of the American Convention.<sup>73</sup> Specifically, the State argues that its due process was violated because the Commission granted the State two months to comply with its recommendations, and after the State submitted its proposal, which contained its commitment to address said recommendations, the Commission immediately filed the case before the Court.<sup>74</sup> Thus, the State argues that the Commission breached its duty under the Convention, which obligated it to assess the proposal submitted by the State.<sup>75</sup>

**June 27, 2001:** The State appoints Rafael Nieto Navia as judge *ad hoc*, following the self-recusal of Judge Carlos Vicente de Roux Rengifo, due to his Colombian nationality.<sup>76</sup>

**June 12, 2002:** The Court dismisses unanimously the preliminary ob-

71. 19 *Tradesmen v. Colombia*, Merits, Reparations and Costs, ¶¶ 2, 113, 157.

72. The Commission designated Ms. Viviana Krsticevic and Ms. Roxana Altholz, of the Center for Justice and International Law ("CEJIL"), as assistants and Mr. Gustavo Gallón Giraldo, Mr. Carlos Rodríguez Mejía, and Ms. Luz Marina Monzón, members of the Colombian Jurists Commission, as representatives of the victims and their next of kin. *Id.* ¶ 13.

73. 19 *Tradesmen v. Colombia*, Preliminary Objection, ¶ 14.

74. *Id.* ¶ 24.

75. *Id.* ¶ 24(c).

76. 19 *Tradesmen v. Colombia*, Merits, Reparations and Costs, ¶ 17.



jections of the State.<sup>77</sup> Regarding the alleged violation of due process, the Court finds that the State failed to show that the Commission did not act in good faith.<sup>78</sup> The Court also finds that the Commission did not impede the State's right to due process.<sup>79</sup> Specifically, under the pertinent procedures of the Convention, if the Commission grants a State a period to comply with recommendations set forth in the report, it must wait until the State has replied to assess whether filing with the Court is the most appropriate step to protect the rights set forth in the Convention.<sup>80</sup> Filing with the Court would not be appropriate if the State takes steps to comply with the Commission's recommendations.<sup>81</sup> The Commission's decision to file with the Court based on the belief that the State did not demonstrate concrete steps towards compliance with the Commission's recommendations was not shown to be made in bad faith; thus filing the case with the Court did not violate the State's due process rights.<sup>82</sup>

**September 8, 2003:** The Court issues an Order in which it decides to suspend the public hearing on the merits and possible reparations and costs due to the Commission's request that Judge *Ad Hoc* Rafael Nieto Navia be disqualified.<sup>83</sup> The Commission request that Judge *Ad Hoc* Nieto Navia be disqualified because of "certain impediments."<sup>84</sup>

**October 6, 2003:** Judge *Ad Hoc* Nieto Navia responds, stating that he does not believe there are any impediments to preventing him from performing his duties as a judge *ad hoc*.<sup>85</sup>

**December 18, 2003:** The State appoints Ernesto Rey Cantor as judge *ad hoc*.<sup>86</sup>

**July 8, 2009:** The Court orders the State to adopt the provisional measures necessary to protect the right to life and personal integrity of

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77. 19 *Tradesmen v. Colombia*, Preliminary Objection, ¶ 41.

78. *Id.* ¶ 37.

79. *Id.* ¶ 38.

80. *Id.* ¶ 35.

81. *Id.*

82. *Id.* ¶¶ 36-37.

83. 19 *Tradesmen v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 39 (July 5, 2004).

84. *Id.*

85. *Id.* ¶ 40.

86. *Id.* ¶ 42.

the following individuals: Mr. Wilmar Rodríguez Quintero, Mr. Yimmy Efraín Rodríguez Quintero, Ms. Nubia Saravia, Ms. Karen Dayana Rodríguez Saravia, Ms. Valeria Rodríguez Saravia, Mr. William Rodríguez Quintero, Ms. Sandra Belinda Montero Fuentes, Mr. Juan Manuel Ayala Montero and Ms. María Paola Casanova Montero, as well as Mr. Salomón Flórez Contrera, Mr. Luis José Pundor Quinter, and their respective next of kin.<sup>87</sup>

### III. MERITS

#### *A. Composition of the Court*<sup>88</sup>

Sergio García Ramírez, President  
Alirio Abreu Burelli, Vice President  
Oliver H. Jackman, Judge  
Antônio Augusto Cançado Trindade, Judge  
Cecilia Medina Quiroga, Judge  
Manuel E. Ventura Robles, Judge  
Ernesto Rey Cantor, Judge *Ad Hoc*

Pablo Saavedra Alessandri, Secretary,  
Emilia Segares Rodríguez, Deputy Secretary

#### *B. Decision on the Merits*

**July 5, 2004:** The Court issues its Judgment on Merits, Reparations and Costs.<sup>89</sup>

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87. 19 *Tradesmen v. Colombia*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (Ser. E) “Considering That” ¶ 6 (August 26, 2010).

88. Judge Diego García-Sayán excused himself from taking part in the deliberation and signing of this Judgment, however, the Judgment does not explain the reason for his excusal. *Id.* at n.\*.

89. 19 *Tradesmen v. Colombia*, Merits, Reparations and Costs.

The Court found unanimously that Colombia violated:

Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of the nineteen Tradesmen,<sup>90</sup> because:

*The State failed to exercise due diligence to prevent violations of the Convention against the Tradesmen by the paramilitary group and to respond to the violations as required by the Convention.<sup>91</sup> To establish a violation of the rights of the Convention, the guilt or intention of the perpetrators is immaterial.<sup>92</sup> In fact, identification of the individual State agents responsible for the violation is also unnecessary.<sup>93</sup> A showing that public authorities supported or tolerated a violation of the Convention's rights is sufficient to establish State violation of the Convention.<sup>94</sup>*

*The Court found that the State did not comply with its obligations under Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) for several reasons. First, in regards to Article 4 (Right to Life), it has been established that a detention, without a trial, followed by a secret execution in which the corpse is concealed in order to eliminate evidence of the crime and gain impunity, constitutes a violation of the right to life.<sup>95</sup> Here, the right to life was violated because members of the paramilitary murdered the Tradesmen and threw their dismembered bodies into the river.<sup>96</sup>*

*Second, a violation under Article 5 (Right to Humane Treatment) may be found when a threatening situation is created or when an individual is threatened with torture.<sup>97</sup> Here, the Court found that the Tradesmen's right to humane treatment was violated because it is reasonable to infer that they were treated violently during the hours before their death, particularly because the paramilitary group believed the Tradesmen col-*

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90. *Id.* ¶ 156. This group includes the seventeen Tradesmen murdered initially, along with the two victims who were murdered subsequently.

91. *Id.* ¶ 140.

92. *Id.* ¶ 141.

93. *Id.*

94. *Id.*

95. *Id.* ¶ 154.

96. *Id.* ¶ 155.

97. *Id.* ¶ 149.

laborated with the guerilla groups<sup>98</sup> Furthermore, the brutal way in which the Tradesmen's bodies were treated after their execution, adds credence to the idea that they were treated violently while they were alive.<sup>99</sup>

Third, the Tradesmen's' right to personal liberty under Article 7 was violated when they were unlawfully and arbitrarily detained by the paramilitary with the support of State agents.<sup>100</sup> Additionally, State authorities failed to provide the Tradesmen's next of kin any official information or support when they began searching for the Tradesmen.<sup>101</sup>

Lastly, the paramilitary group that was responsible for the disappearance of the Tradesmen was affiliated with and received support from senior law enforcement officers from the Magdalena Medio region long before the Tradesmen disappeared.<sup>102</sup> In regards to the disappearance, there is evidence that members of the Army were present when leaders of the paramilitary group held the meeting in which it was decided to kill the seventeen Tradesmen and seize their merchandise and vehicles.<sup>103</sup> Further evidence of the Army's collaboration in this plan is the fact that during the October 6, 1987 search of the seventeen Tradesmen, the Lieutenant in charge allowed the seventeen Tradesmen to continue their journey despite finding contraband merchandise on them.<sup>104</sup> As a result, the Court determined that the State violated Articles 4 (Right to Life), 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty), to the detriment of the nineteen Tradesmen.<sup>105</sup>

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98. *Id.* ¶ 150.

99. *Id.*

100. *Id.* ¶ 145.

101. *Id.*

102. *Id.* ¶ 135.

103. *Id.*

104. *Id.* ¶ 136.

105. *Id.* ¶ 156.

The Court found by six to one that Colombia violated:

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) (Obligation to Respect Rights) of the American Convention, to the detriment of the Tradesmen and their next of kin,<sup>106</sup> because:

*The State violated the Tradesmen's right to due to process by failing to conduct a proper investigation to find those responsible for the disappearance of the Tradesmen.<sup>107</sup> The State has an obligation to protect those within its borders against impunity.<sup>108</sup> The Court has defined impunity as "the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for the violations of rights protected by the American Convention."<sup>109</sup>*

*The Court found that the State did not comply with its obligations under Article 8(1) (Right to a Hearing within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection) for several reasons. First, in regards to the criminal procedures conducted in the ordinary criminal justice system, the Court found that they were not conducted in a reasonable amount of time.<sup>110</sup> The Court determined that even though this was a complex case, there were key pieces of evidence provided to the judicial authorities that were sufficient to initiate a prompt investigation.<sup>111</sup> Nonetheless, prompt investigations were not conducted nor were any measures taken to promptly identify those responsible for the Tradesmen's disappearance.<sup>112</sup>*

*Second, in regards to the violation of Article 25 (Right to Judicial Protection), it was improper for jurisdiction to be given to the military court system.<sup>113</sup> This was not the proper jurisdiction to hear the case because there was already an ongoing investigation in the ordinary criminal justice system of members of the Army for the disappearance of the*

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106. *Id.* "Operative Paragraphs" ¶ 2.

107. *Id.* ¶¶ 173-174.

108. *Id.* ¶ 175.

109. *Id.*

110. *Id.* ¶ 203.

111. *Id.*

112. *Id.*

113. *Id.* ¶ 173.

*Tradesmen.*<sup>114</sup> Thus, the use of a military court judge to adjudicate on a case involving members of the military casts an image of impropriety.

As a result, the Court determined that the State violated Articles 8(1) (Right to a Hearing within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), to the detriment of the Tradesmen and their next of kin.<sup>115</sup>

The Court found unanimously that Colombia violated:

Article 5 (Right to Humane Treatment), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of the next of kin of the Tradesmen,<sup>116</sup> because:

*The State violated the next of kin's right to humane treatment by causing them suffering and uncertainty.*<sup>117</sup> The Court has previously stated that a violation of the right to mental and moral integrity towards a victim's direct next of kin can result as a consequence of violations that occur against the direct victim.<sup>118</sup> In the present case, the Court found that the next of kin suffered profound grief and anguish which negatively impacted their mental and moral integrity as a result of the State's conduct following the Tradesmen's disappearance<sup>119</sup>

*The Court found that the State did not comply with its obligations under Article 5 (Right to Humane Treatment) for several reasons. First, the State failed to provide support for the search of the initial seventeen victims.*<sup>120</sup> Accordingly, their next of kin conducted their own search, which meant risking their lives by going through the same route as the initial seventeen victims.<sup>121</sup> While the next of kin were conducting the search, they were confronted by paramilitary groups who demanded that they seize the search.<sup>122</sup> In fact, two of the next of kin suffered the same fate as the original seventeen victims while they were searching.<sup>123</sup> Thus, it

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114. *Id.*

115. *Id.* ¶ 177.

116. *Id.* ¶ 217.

117. *Id.* ¶ 212.

118. *Id.* ¶ 210.

119. *Id.* ¶ 211.

120. *Id.* ¶ 213.

121. *Id.*

122. *Id.*

123. *Id.*

was clear that if the next of kin continued the search they would also be murdered by the paramilitary group.<sup>124</sup> Second, the next of kin felt impotence since State authorities did not conduct a genuine search for the Tradesmen.<sup>125</sup> Lastly, by not knowing the whereabouts of the Tradesmen's bodies, the next of kin were not able to honor the Tradesmen's remains according to their beliefs and customs.<sup>126</sup> As a result, the Court determined that the State violated Article 5 (Right to Humane Treatment), to the detriment of the next of kin.<sup>127</sup>

### C. Dissenting and Concurring Opinions

#### 1. Partially Dissenting Opinion of Judge Cecilia Medina Quiroga

Judge Medina Quiroga wrote separately to discuss the State's violations of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection). Judge Medina Quiroga agreed with the Court's finding that the State violated Article 8 (Right to a Fair Trial), but disagreed with the Court's reasoning. In regards to Article 25 (Right to Judicial Protection), Judge Medina Quiroga disagreed with the Court's finding that the State committed a violation.<sup>128</sup>

Overall, Judge Medina Quiroga disagreed with the Court that Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) are the source of the Tradesmen and their next of kin's right to require the State to prosecute the perpetrators of human rights violations.<sup>129</sup> Although Judge Medina Quiroga acknowledges that victims have this right, she believes that this right does not exist in either Article 8 (Right to a Fair Trial) or Article 25 (Right to Judicial Protection).<sup>130</sup> Nevertheless, the Judge noted that there is not a better Article to cite which requires the State to investigate, try, and punish violators and thus, although she considers Article 8 (Right to a Fair Trial) a procedural tool rather than a substantive one, she found a violation of Article 8.<sup>131</sup>

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124. *Id.*

125. *Id.*

126. *Id.* ¶ 212.

127. *Id.* ¶ 217.

128. *See generally* 19 *Tradesmen v. Colombia*, Merits, Reparations and Costs, Partially Dissenting Opinion of Judge Cecilia Medina Quiroga, Inter-Am. Ct. H.R. (ser. C) No. 109 (July 5, 2004).

129. *Id.* ¶ 6.

130. *Id.*

131. *Id.* ¶¶ 11-13.

Additionally, Judge Medina Quiroga disagreed with the Court's interpretation of Article 25 (Right to Judicial Protection).<sup>132</sup> According to Judge Medina Quiroga, the Court interpreted Article 25 (Right to Judicial Protection) as requiring a right to the opening of an investigation and consequently a trial in which a remedy will be administered.<sup>133</sup> However, in the Judge's opinion, Article 25 (Right to Judicial Protection) does not confer this obligation upon the State; instead Article 25 requires the State to provide a "simple, prompt, and effective remedy [of *amparo* (protection)]."<sup>134</sup>

#### IV. REPARATIONS

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

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

###### 1. Judgment as a Form of Reparation

The Court found that the Judgment itself constitutes a form of reparation.<sup>135</sup>

###### 2. Investigate, Prosecute, and Punish Those Responsible

The State shall further investigate the facts of this case in order to identify and punish all of the perpetrators who committed violations against the Tradesmen.<sup>136</sup>

###### 3. Conduct a Further Search for Remains

The State shall conduct a search to determine the whereabouts of the Tradesmen's remains, and if feasible return them to their next of kin.<sup>137</sup>

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132. *Id.* ¶ 4.

133. *Id.*

134. *Id.*

135. *Id.* "Operative Paragraphs" ¶ 4.

136. *Id.* "Operative Paragraphs" ¶ 5.

137. *Id.* "Operative Paragraphs" ¶ 6.



#### 4. Erect a Monument

The State shall erect a monument in memory of the Tradesmen and, in a public ceremony in the presence of the next of kin, shall place a plaque with all of the Tradesmen's names.<sup>138</sup>

#### 5. Publicly Acknowledge International Responsibility

The State shall organize a public act, in the presence of the next of kin, to acknowledge its international responsibility for the violations committed against the Tradesmen and to make amends to the memory of the Tradesmen.<sup>139</sup> Additionally, members of the highest State Authorities must be present<sup>140</sup>

#### 6. Provide Medical Treatment

The State shall provide free medical and psychological treatment to the Tradesmen's next of kin.<sup>141</sup>

#### 7. Aid Family's Return to the State from Exile

The State shall provide the necessary conditions and pay the expenses for the victim, Mr. Antonio Flórez Contreras' family to return to Colombia from exile if he wishes.<sup>142</sup>

#### 8. Protect Those Who Spoke Before the Court

The State shall guarantee the lives, safety, and security of those who made statements before the Court and for their next of kin.<sup>143</sup>

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138. *Id.* "Operative Paragraphs" ¶ 7.

139. *Id.* "Operative Paragraphs" ¶ 8.

140. *Id.*

141. *Id.* "Operative Paragraphs" ¶ 9.

142. *Id.* "Operative Paragraphs" ¶ 10.

143. *Id.* "Operative Paragraphs" ¶ 11.

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$55,000 to each of the Tradesmen for the loss of income.<sup>144</sup>

The Court awarded \$2,000 for the expenditure incurred by the next of kin of the victims when they were searching for the whereabouts of the Tradesmen.<sup>145</sup>

#### 2. Non-Pecuniary Damages

The Court awarded \$80,000 to the Tradesmen as compensation for non-pecuniary damage.<sup>146</sup>

The Court awarded \$50,000 to each of the Tradesmen's children and parents.<sup>147</sup>

The Court awarded \$80,000 to each of the Tradesmen's spouse and companion.<sup>148</sup>

The Court awarded \$85,000 to each of the Tradesmen's siblings.<sup>149</sup>

#### 3. Costs and Expenses

The Court awarded \$10,000 to the Colombian Jurists Commission.<sup>150</sup> The Court awarded \$30,000 to CEJIL.<sup>151</sup>

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

\$13, 972,000 plus reparations made to any next of kin found belonging to Mr. Juan Bautista Alberto Gomez (whose last name is probably Ramírez) and Mr. Huber Pérez (whose last name is probably Castaño), in accordance with the requirements of the Judgment.

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144. *Id.* "Operative Paragraphs" ¶ 12.

145. *Id.* "Operative Paragraphs" ¶ 13.

146. *Id.* "Operative Paragraphs" ¶ 14.

147. *Id.* "Operative Paragraphs" ¶¶ 15(a), 15(c).

148. *Id.* "Operative Paragraphs" ¶ 15(b).

149. *Id.* "Operative Paragraphs" ¶ 15(d).

150. *Id.* "Operative Paragraphs" ¶ 16.

151. *Id.*

*C. Deadlines*<sup>152</sup>

The State must investigate, prosecute, and punish those responsible and conduct a further search for the remains of the victims within a reasonable time.<sup>153</sup>

The State must comply with the order of the Court to adopt the measures set forth above and pay the damages, reimbursements and expenses ordered within one year of this Judgment.<sup>154</sup>

The State shall provide the Court with a report on the measures taken to comply with this order within one year of this Judgment.<sup>155</sup>

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

**February 2, 2006:** The Court noted that the State complied with locating the victim Mr. Juan Bautista Alberto Gomez's (whose last name is probably Ramírez) next of kin.<sup>156</sup> The Court found that the State also complied with its obligation to organize a public act that demonstrates acknowledgment of the State's responsibility in the crimes against the Tradesmen and to make amends to the Tradesmen's memory.<sup>157</sup>

The Court found that the State has not yet complied with its obligations to: (1) investigate, identify, and persecute all perpetrators; (2) conduct a search to determine what happened to the Tradesmen's remains; (3) erect a monument in memory of the victims; (4) provide the next of kin medical and psychological treatment; (5) provide the necessary conditions so that Mr. Antonio Flórez Contreras' family can return to the State from exile; (6) protect the safety of those who made statements before the Court; (7) pay all amounts due to the next of kin; (8) find the next of kin of Messrs. Juan Bautista Alberto Gomez and Huber Pérez and pay amounts due to them; and (8) to reimburse all costs and

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152. The Court does not determine a deadline for the State's obligations to erect a monument or publicly acknowledge international responsibility.

153. *Id.* "Operative Paragraphs" ¶¶ 5-6.

154. *Id.* "Operative Paragraphs" ¶ 19.

155. *Id.* "Operative Paragraphs" ¶ 23.

156. 19 *Tradesmen v. Colombia*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1(a) (Feb. 2, 2006).

157. *Id.* "Declares" ¶ 1(b).

expenses.<sup>158</sup>

**July 10, 2007:** The Court found that the State complied with paying 90% of the reparations owed to each of the nineteen victims for loss of earnings, expenses incurred by the next of kin of eleven of the victims, and compensation for non-pecuniary damages.<sup>159</sup>

The Court found that the State has not yet complied with the remaining 10% owed.<sup>160</sup> The State also has not yet complied with its obligations to: (1) conduct an investigation to identify and persecute all perpetrators; (2) conduct a search to determine what happened to the Tradesmen's remains; (3) erect a monument in memory of the victims; (4) provide the next of kin medical and psychological treatment; (5) provide the necessary conditions so that Mr. Antonio Flórez Contreras' family can return to the State from exile; (6) to protect the safety of those who made statements before the Court; (7) pay all amounts due to the next of kin; (8) find the next of kin of Messrs. Juan Bautista Alberto Gomez and Huber Pérez and pay amounts due to them; and (8) to reimburse all costs and expenses. Lastly, the State is ordered to distribute the compensation ordered by the Court to Mr. Rubén Emilio Pineda Bedoya and Mr. Jorge Enrique Pineda Bedoya.<sup>161</sup>

**November 26, 2008:** The Court ordered a hearing to take place on January 20, 2009 to determine whether it is feasible for the State to comply with its obligation to provide the necessary condition for some of the victims' family to return to the State from exile.<sup>162</sup>

**July 8, 2009:** The Court found that the State complied with its obligation to deposit the compensation ordered, for the beneficiaries who are minors, into a bank account.<sup>163</sup> The State also complied with the order to locate the next of kin for Messrs. Juan Bautista Alberto Gomez and Huber Pérez.<sup>164</sup> Additionally, the State complied with its obligation to re-

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158. *Id.* "Declares" ¶¶ 2(a)-(j).

159. 19 Tradesmen v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1 (July 10, 2007).

160. *Id.*

161. *Id.* "Declares" ¶ 3.

162. 19 Tradesmen v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Resuelve" ¶ 1 (Nov. 26, 2008).

163. 19 Tradesmen v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1 (July 8, 2009).

164. *Id.*

imburse costs and expenses.<sup>165</sup>

The Court found that the State has not yet complied with its obligations to: (1) conduct an investigation to identify and persecute all perpetrators; (2) conduct a search to determine what happened to the Tradesmen's remains; (3) erect a monument in memory of the victims; (4) provide the next of kin medical and psychological treatment; (5) provide the necessary conditions so that Mr. Antonio Flórez Contreras' family can return to the State from exile; (6) pay all amounts due to the Tradesmen for their loss of earnings and reimburse the expenses incurred by the next of kin of eleven victims.<sup>166</sup>

**February 8, 2012:** The Court ordered a hearing to take place on February 23, 2012 to obtain information from the State on compliance with measures of reparation regarding medical and psychological attention ordered in nine cases.<sup>167</sup>

**June 26, 2012:** The Court found that the State has not yet complied with the obligations to: (1) conduct an effective investigation to identify and prosecute all those who committed violations against the Tradesmen; (2) conduct a search to determine what happened to the Tradesmen's remains; (3) erect a monument in memory of the Tradesmen; (4) provide free medical and psychological treatment to the next of kin; (5) provide the necessary conditions so that Mr. Antonio Flórez Contreras' family can return to the State from exile; and (6) pay the loss of earnings for each of the Tradesmen and the expenses incurred by the next of kin of eleven victims.<sup>168</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[19 Merchants v. Colombia, Preliminary Objection, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 93 \(June 12, 2002\).](#)

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165. *Id.*

166. *Id.* "Declares" ¶¶ 2(a)-(f).

167. 19 *Tradesmen v. Colombia*, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. "Decides" ¶ 1 (Feb. 8, 2012).

168. 19 *Tradesmen v. Colombia*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1 (June 26, 2012).

## 2. Decisions on Merits, Reparations and Costs

[19 Tradesmen v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 109 \(July 5, 2004\).](#)

[19 Tradesmen v. Colombia, Merits, Reparations and Costs, Partially Dissenting Opinion of Judge Cecilia Medina Quiroga, Inter-Am. Ct. H.R. \(ser. C\) No. 109 \(July 5, 2004\).](#)

## 3. Provisional Measures

[19 Tradesmen v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(June 26, 2012\).](#)

[19 Tradesmen v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Aug. 26, 2010\).](#)

[19 Tradesmen v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(July 8, 2009\).](#)

[19 Tradesmen v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(May 12, 2007\).](#)

[19 Tradesmen v. Colombia, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Feb. 6, 2007\) \(Available only in Spanish\).](#)

[19 Tradesmen v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(July 4, 2006\).](#)

[19 Tradesmen v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Apr. 28, 2006\) \(Available only in Spanish\).](#)

[19 Tradesmen v. Colombia, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Sept. 3, 2004\).](#)

## 4. Compliance Monitoring

[19 Tradesmen v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 26, 2012\).](#)

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

[19 Tradesmen v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 8, 2009\).](#)

[19 Tradesmen v. Colombia, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Nov. 26, 2008\) \(Available only in Spanish\).](#)

[19 Tradesmen v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 10, 2007\).](#)

[19 Tradesmen v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 2, 2006\).](#)

#### 5. Review and Interpretation of Judgment

[None]

#### *B. Inter-American Commission*

##### 1. Petition to the Commission

[None]

##### 2. Report on Admissibility

[19 Tradesmen v. Colombia, Admissibility Report, Report No. 112/99, Inter-Am. Comm'n H.R., Case No. 11.603 \(Sept. 27, 1999\).](#)

##### 3. Provisional Measures

[None]

##### 4. Report on Merits

[None]

## 5. Application to the Court

19 *Tradesmen v. Colombia*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.603 (Mar. 6, 1996).

## VIII. BIBLIOGRAPHY

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