



IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Case No. 12.658

Luis Gonzálo 'Richard' Vélez Restrepo

v

COLOMBIA

Written Comments

of

ARTICLE 19, Global Campaign for Freedom Expression

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I. Interest of ARTICLE 19

1. The signatory organization respectfully submit this amicus curiae brief for the benefit of the Court's consideration of the salient issues raised by the above- referenced case.
2. ARTICLE 19, Global Campaign for Free Expression, is an international freedom of expression NGO, based in London with regional and national offices in Brasil, Mexico, Bangladesh, Senegal, Kenya, and Tunisia. The organization takes its name from Article 19 of the Universal Declaration of Human Rights, ARTICLE 19 works globally to protect and promote the right to freedom of expression, including access to information and the means of communication. Sections of Part IV were developed based on Interrights materials. Hogan Lovells International LLP also provided legal assistance to this brief.
3. The Amici have extensive experience of working to promote freedom of expression and other human rights around the world. It has contributed to the elaboration and advocacy of international law and standards, and have been engaged in litigation in national and international fora involving states' obligations arising from international law on freedom of expression and other human rights. They are well known for their authoritative work in elaborating the implications of the guarantee of freedom of expression in different thematic areas. The Amici regularly contributes amicus briefs to international and national courts, including this Court in the *Marcel Claude Reyes and Others v. Chile*, *Ulloa and Rohmoser vs Costa Rica*, *Gonzalez and Fries vs. Chile* and other cases.
4. Part II of this brief summarizes the case, Part III reviews some of the international and standards on FOE and impunity and Part IV examines in more detail the actions that should be taken based on the case law of the European Court of Human Rights.
5. The person to contact about this amicus curiae brief are David Banisar, Senior Legal Counsel, ARTICLE 19 at +44 20 7324 2500 or email: banisar@article19.org.

II. Review of the Case

6. This case arises from an attack on journalist Luis Gonzalo Vélez Restrepo in 1996 in Morelia, Colombia and the subsequent harassment, death threats and attempting kidnappings against both him and his family as he sought adequate redress against both his original attackers and the persons and institutions which subsequently threatened him. To date, there has been numerous promises by subsequent governments of Colombia but no adequate redress.

7. The lack of redress has resulted in Mr Vélez Restrepo and his family having to flee his home country and take asylum in the United States to ensure his safety and his family's safety. This has seriously affected his freedom of expression rights to seek and express and the rights of all Colombians to receive information from him.
8. This case was heard by the Inter-American Commission on Human Rights in 2011, which found that Colombia had failed its obligations and ordered it to do the following:
 1. Undertake, within a reasonable time and in the ordinary courts, a diligent investigation of all the acts of violence and harassment against Luis Gonzalo "Richard" Vélez Restrepo and his family, in order to identify, try and punish those responsible for the said acts;
 2. Undertake an investigation in order to identify those eventually responsible for the deficiencies in the investigations and the omissions in the protection of Mr. Vélez and his family, and to apply the corresponding administrative, disciplinary or other type of sanctions;
 3. Make holistic reparations to Luis Gonzalo "Richard" Vélez Restrepo and his family;
 4. Adopt the necessary measures to protect or ensure the Vélez Román family's security in case they decide to return to Colombia on a temporary or permanent basis;
 5. Continue with the adoption and strengthening of the special programs to protect journalists in danger and investigate crimes against them; and
 6. Provide instruction to the military forces on the role that journalists fulfill in a democracy, and the right of journalists to cover freely and in conditions of security any situation related to public order and armed conflict.
9. In failing to act to adequately investigate the crimes noted above, Colombia is in violation of its international obligations to protect freedom of expression, as well as other obligations to protect the right.
10. These type of acts silence more than one journalist. The impact of threats and violence are often felt more widely. As noted by Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, "Impunity creates more impunity. If murders, assaults and psychological violence against journalists prevail, media cannot be free, information cannot be pluralistic and democracy cannot function."¹
11. This case takes place in the context on increasing concern in the region on attacks, harassment and killings of journalists, bloggers and others and the failure by state authorities across the region to respond to the incidents. This is known in international human rights law as "impunity". Impunity is defined by the UN as:

Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.²

¹ Council of Europe Commissioner for Human Rights, Protection of Journalists From Violence, CommDH/IssuePaper(2011)3, 4 October 2011.

² UN Human Rights Commission, Impunity: Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher. Addendum; Updated Set of principles for the protection and promotion of human rights through action to combat impunity. E/CN.4/2005/102/Add.1, 8 February 2005.

12. Article 19 will review international standards, especially emanating from the United Nations and associated bodies and from the European Court of Human Rights relating to the findings of the Inter-America Commission listed above.

III. International Standards on Freedom of Expression and Protection of Journalists

1. Freedom of Expression is an Essential Foundation of Democracy

a) Defining the Right of FOE

13. The right of freedom of expression is one of the bedrock principles of democracy and human rights. It has been described as “essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment”.
14. Under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), freedom of expression is strongly protected. The recently adopted General Comment of the UN Human Rights Committee sets out the authoritative view of Committee on the Article:

This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It may also include commercial advertising. The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.³

15. In addition, the Committee has also stated the importance of the media in the promotion of freedom of expression:

A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.⁴

³ United Nations Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011.

⁴ General Comment No. 34, *ibid.*

16. This strong protection of freedom of expression is common across international human rights bodies. Under the European Convention on Human Rights (ECHR), freedom of expression is considered a core human right especial to democracy:

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.⁵

17. It is not necessary in the brief to repeat to the Court the importance of freedom of expression that the Court has found in its previous decisions under Article 13 of the American Convention on Human Rights. It is sufficient to say that that Court has held that freedom of expression is essential to the functioning of a truly democratic system. This includes "the right of each person to be well informed, thus affecting one of the fundamental basis of a democratic society".⁶ This has included cases of threats against journalists⁷

b) States have a positive obligation to promote and protect freedom of expression and journalists

18. Under international law, state parties have a positive obligation to ensure that crimes designed to silence journalists and freedom of expression are prohibited and are also "vigorously investigated". These obligations reside in obligations under the ICCPR and similar regional instruments as well as the Geneva Convention and other instruments.
19. Article 19 of the ICCPR sets out a broad framework for the protection of freedom of expression that obligates all of the signatory states. The UN Human Rights Committee has stated in General Comment No 34 that Article 19 sets positive obligations on states to ensure that crimes intended to silence freedom of expression are prohibited:

23. States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish

⁵ *Plon (Societe) v France* (Application No. 58148/00), [2004] ECHR 200 (18 May 2004) (European Court of Human Rights).

⁶ *Palamana-Iribarne v Chile*, Inter-American Court of Human Rights, Judgment of November 22, 2005, paragraphs 79-85.

⁷ *Case of Rios v Venezuela*, Inter-American Court of Human Rights, Judgment of 28 January 2009.

human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.⁸

20. The Committee has also set out the general obligations of states to provide protections under the ICCPR:

The article 2, paragraph 1, obligations are binding on States [Parties] and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3. The Covenant itself envisages in some articles certain areas where there are positive obligations on States Parties to address the activities of private persons or entities. For example, the privacy-related guarantees of article 17 must be protected by law. It is also implicit in article 7 that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of article 26.⁹

21. Other UN Human rights bodies have also issued declarations and reports on the issue of impunity.

22. The Human Rights Council in 2009 issued a resolution on "Freedom of opinion and expression" dedicated to attacks on journalists, was deeply concerned by increasing attacks on journalists which are not punished.¹⁰ It called on all states to:

[T]o investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible in order to combat impunity.

⁸ United Nations Human Rights Committee, General Comment No. 34, *ibid.*

⁹ General Comment No. 31 Nature of the General Legal Obligation Imposed on States Parties to the Covenant: 05/26/2004. CCPR/C/21/Rev.1/Add.13.

¹⁰ Human Rights Council res 12/16. Freedom of opinion and expression, A/HRC/RES/12/16 12 October 2009.

23. The UN Special Rapporteur on Freedom of Expression has extensively commented on the obligations of states to prevent and investigate crimes intended to silence. He first raised the issue in a 2000 joint declaration with the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression.¹¹ The declaration stated:

Attacks such as the murder, kidnapping, harassment of and/or threats to journalists and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information to the public.

States are under an obligation to take adequate measures to end the climate of impunity and such measures should include devoting sufficient resources and attention to preventing attacks on journalists and others exercising their right to freedom of expression, investigating such attacks when they do occur, bringing those responsible to justice and compensating victims.

24. The four Special Rapporteurs reaffirmed the concerns raised in the 2000 declaration in 2010¹², stating:

Violence against journalists remains a very serious threat with more politically motivated killings of journalists in 2009 than in any other year in the past decade.

Particularly at risk are journalists reporting on social problems, including organised crime or drug trafficking, voicing criticism of government or the powerful, reporting on human rights violations or corruption, or reporting from conflict zones. Recognising that impunity generates more violence, we are particularly concerned about:

a) A failure to allocate sufficient attention and resources to preventing such attacks and to investigating them and bringing those responsible to justice when they do occur.

b) The lack of recognition that special measures are needed to address these attacks, which represent not only an attack on the victim but also an attack on everyone's right to receive information and ideas.

c) The absence of measures of protection for journalists who have been displaced by such attacks.

25. In his 2002 report the UN Special Rapporteur continued to monitor developments and make recommendations:

¹¹ International Mechanisms for Promoting Freedom of Expression, JOINT DECLARATION by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, November 2000.

¹² International Mechanisms for Promoting Freedom of Expression The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade, February 2010,

In particular, the Special Rapporteur is extremely concerned at the fact that the attacks against journalists, including killings, because of their professional activity continue to occur in many countries, most often with impunity. He urges Governments to take all necessary measures to protect journalists from attacks, be they from officials, law enforcement officers, armed groups or terrorists, and to provide an enabling environment for their activities. An end to impunity for the perpetrators of such acts and the conduct of serious investigation into these attacks is, in the view of the Special Rapporteur, the first step towards greater security for journalists.¹³

26. He also raised this in his 2004 report¹⁴ where he stated:

[T]here is an urgent need for strong, common action in this regard because such a situation is unacceptable: national and international institutions, together with professional associations, should take the lead and prepare a set of draft measures for increasing the security and protection of journalists and media workers.

64. The Special Rapporteur wishes to recall that Governments have the responsibility of protecting the security of citizens, regardless of their political or social affiliations. Armed conflicts and widespread violence do not provide fertile ground for freedom of opinion and expression. Governments should take all necessary measures to protect journalists, as well as other professional categories at risk, from attacks, be they from officials, law enforcement officers, armed groups or terrorists.

65. In this context, the Special Rapporteur urges national authorities, both civilian and military, and, where applicable, international authorities to conduct inquiries into killings and attacks against media professionals, trade unionists, social workers, students and teachers and artists, wherever they occur, including in war and conflict zones. An end to impunity for the perpetrators of such acts would reinforce the crucial role that the rule of law must play in all societies.

27. In June 2010, he called on states to:

[E]xplore ways to improve compliance with international legal standards on the protection of journalists. This includes ensuring that these rules are known, respected, and enforced, including through proper training of armed forces, personnel of law enforcement agencies, and other armed groups. States should also establish an urgent response mechanism for the protection of journalists in armed conflict.¹⁵

28. The issue has also been raised by the UN Special Rapporteur on the situation of human Rights Defenders in December 2011¹⁶:

118. Journalists and media workers monitoring demonstrations and shedding light on violations and abuses often risk their lives. In most regions, they seem to be targeted

¹³ Report of the Special Rapporteur Mr. Ambeyi Ligabo to the UN Commission on Human Rights, submitted in accordance with Commission resolution 2002/48, E/CN.4/2003/67 30 December 2002.

¹⁴ Report of the Special Rapporteur Ambeyi Ligabo to the Commission on Human Rights, E/CN.4/2005/64, 17 December 2004.

¹⁵ Statement by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Panel on the Protection of Journalists in Armed Conflict, Fourteenth session of the Human Rights Council, Geneva, 4 June 2010.

¹⁶ Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/19/55, 21 December 2011.

by the same State actors that they investigate, except for the Americas where non-State actors and unknown groups emerge as the main perpetrators.

119. The monitoring role of journalists and media workers during demonstrations is essential, as it can provide an impartial and objective account of the conduct of both participants and law enforcement officials. States should grant media access to public assemblies to facilitate independent coverage.

120. Restrictions on media and press freedom, and impunity around violations against journalists and media workers defending human rights can foster a climate of intimidation, stigmatization, violence and self-censorship that can have a chilling effect on their work. States should publically recognize the role of these defenders and ensure prompt and impartial investigations and the prosecution of those responsible for violations against them.

122. The protection of journalists and media workers active on human rights issues should not be limited to those formally recognized as such, but should include other relevant actors, such as community media workers, bloggers and those monitoring demonstrations.

29. UNESCO has been at the forefront of promoting the safety of journalists. In 2007, UNESCO supported the development of the *Medellin Declaration*¹⁷ which calls on member states to fully adopt and enforce measures combatting impunity. In 2011, UNESCO coordinated a UN Interagency Meeting on “Safety of Journalist and the Issue of Impunity” which created a plan of action on fighting impunity to coordinate international bodies efforts on fighting impunity.¹⁸

30. There are also significant regional instruments at the Organisation of American States, Council of Europe, Organisation for Economic Cooperation and Development, and African Union which oppose impunity.

31. Article 9 on the Declaration of Principles on Freedom of Expression of the Organisation of American States sets out strong principles and a positive obligations on the state to act to fight impunity:

The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.¹⁹

32. Similarly, the African Commission on Human Rights of the African Union has expressed similar protections.²⁰ Principle 11 on “Attacks on Media Practitioners” states:

1. Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.

¹⁷ Medellin Declaration: Securing the Safety of Journalists and Combating Impunity, 2007.

¹⁸ See UNESCO, Press Freedom, safety of journalists and impunity, 2011.

¹⁹ Organisation of American States, Declaration of Principles on Freedom of Expression, 2000

²⁰ African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia.

2. States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.

3. In times of conflict, States shall respect the status of media practitioners as non-combatants.

33. The European Court of Human Rights has extensively addressed the issues of impunity in its case law on Article 2 and Article 10 under the European Convention on Human Rights. This will be reviewed in detail below.

34. In addition, the Council of Europe has also addressed this issue. In 2007 the Parliamentary Assembly of the Council of Europe issued a resolution stating: “The Assembly recalls the legal obligation of member states, in accordance with Articles 2 and 10 of the ECHR, to investigate any murders of journalists as well as acts of severe physical violence and death threats against them. This obligation stems from the individual journalists’ rights under the Convention as well as from the necessity for any democracy to have functioning media free from intimidation and political threats. Where attacks against journalists can be carried out with impunity, democracy and the rule of law suffer.”²¹

35. In 2010, the Assembly recommended that the Committee of Ministers ²² :

- assist member states in training their judges, law enforcement authorities and police in respecting media freedom, in particular as regards protection of journalists and media against violent threats;
- give its full support to the mechanism proposed by the Steering Committee on the Media and New Communication Services for promoting compliance with Article 10 of the European Convention on Human Rights and other Council of Europe standards on media freedom; and
- call on the Government of the Russian Federation to ensure that the high number of murders of critical journalists are investigated and brought to justice.

36. In 1994, the participating States of the Conference on Security and Co-operation (now the OSCE), which range from North America to Central Asia, “condemn[ed] all attacks on and harassment of journalists and will endeavor to hold those directly responsible for such attacks and harassment accountable.”²³

37. Beyond the obligations set above, there are special obligations for states for protection of journalists in situations of conflict. Article 79 of the Additional Protocol I to the Geneva Conventions regarding the protection of journalists engaged in dangerous professional missions in areas of armed conflict sets out specific protections for journalists in conflict zones, requiring that journalists be treated as civilians and protected under the Convention.²⁴

38. The US Security Council Resolution 1738, issued in 2006, specifically addressed the concern of the Council to threats to journalists nothing that they were “[d]eeply

²¹ Parliamentary Assembly of the Council of Europe, Resolution 1535 (2007), ‘Threats to the lives and freedom of expression of journalists’

²² Recommendation 1897 (2010, Assembly Debate on 27 January 2010)

²³ Towards a Genuine Partnership in a New Era Chapter VIII, Human Dimension Budapest CSCE Summit, 1994.

²⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

concerned at the frequency of acts of violence in many parts of the world against journalists, media professionals and associated personnel in armed conflict, in particular deliberate attacks in violation of international humanitarian law". The Council stated that:

1. Condemns intentional attacks against journalists, media professionals and associated personnel, as such, in situations of armed conflict, and calls upon all parties to put an end to such practices;
2. Recalls in this regard that journalists, media professionals and associated personnel engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and shall be respected and protected as such, provided that they take no action adversely affecting their status as civilians. This is without prejudice to the right of war correspondents accredited to the armed forces to the status of prisoners of war provided for in article 4.A.4 of the Third Geneva Convention;
3. Recalls also that media equipment and installations constitute civilian objects, and in this respect shall not be the object of attack or of reprisals, unless they are military objectives;
4. Reaffirms its condemnation of all incitements to violence against civilians in situations of armed conflict, further reaffirms the need to bring to justice, in accordance with applicable international law, individuals who incite such violence, and indicates its willingness, when authorizing missions, to consider, where appropriate, steps in response to media broadcast inciting genocide, crimes against humanity and serious violations of international humanitarian law;
5. Recalls its demand that all parties to an armed conflict comply fully with the obligations applicable to them under international law related to the protection of civilians in armed conflict, including journalists, media professionals and associated personnel;
6. *Urges* States and all other parties to an armed conflict to do their utmost to prevent violations of international humanitarian law against civilians, including journalists, media professionals and associated personnel;
7. *Emphasizes* the responsibility of States to comply with the relevant obligations under international law to end impunity and to prosecute those responsible for serious violations of international humanitarian law;
8. *Urges* all parties involved in situations of armed conflict to respect the professional independence and rights of journalists, media professionals and associated personnel as civilians;
9. *Recalls* that the deliberate targeting of civilians and other protected persons, and the commission of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security, and *reaffirms in this regard its readiness* to consider such situations and, where necessary, to adopt appropriate steps;

39. The Office of the UN High Commissioner for Human Rights has also issued the "Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions" setting out general standards on prohibiting and investigating extra-legal, arbitrary and summary executions done in war times, which also apply to journalists.²⁵

²⁵ Office of the High Commissioner of Human Rights, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council resolution 1989/65 of 24 May 1989.

IV. Addressing the Commissions Recommendations

In this section, ARTICLE 19 submits that the following criteria established by the European Court could be of particular relevance to the Inter-American Court when considering the present case.

a) Effective Investigation and remedies under international law

a. Violation of the right to life in cases when the victims has not been deprived of life

40. ARTICLE 19 observes that under the case law of the European Court of Human Rights (“European Court”), the issues of the protection of the right to life under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”) can arise even although no actual death has occurred and the victim does not need to be dead for Article 2 to apply. This means that individuals who find that their right to life is directly threatened may also claim to be a “victim”. The European Court has specifically accepted that a violation of the right to life can be claimed also by those whose have received death threats and those who have been victims of attempts to kill, whether by state or non-state actors. A violation may also be alleged by an individual who has been the subject of an attempted homicide (see *Osman v United Kingdom*²⁶).

41. Moreover, Article 2 may be applicable even when not only did a victim survive but there was no intention to kill them. When such cases involve use of force by state agents, the choice between Articles 2 and 3 of the European Convention depends on the degree and type of force used and the intention or aim behind the use of that force. Article 2 will apply when the force was potentially deadly and the conduct of the officers applying it put the applicant’s life at risk (see *Vasil Sashov Petrov v Bulgaria*²⁷).

b. Substantive obligations under the right to life when victims call upon the authorities to provide protection

42. In its jurisprudence, the European Court has also clarified that Article 2 may require the State to take steps to safeguard the lives of those within its jurisdiction. Such guarantee may imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another (while also recognizing that this obligation should not put a disproportionate or impossible burden on the State authorities). Additionally, state authorities such as the police are required to exercise their powers in a manner consistent with other European Convention requirements.

43. The state's positive obligation to take preventive measures to protect a certain individual or individuals may arise where the authorities know or ought to have known of the existence of a “real and immediate risk to life of an identified individual or individuals from the criminal acts of third parties.” Failure to take measures within the scope of their powers that might be expected to avoid that risk may thus constitute a violation of the right to life. An applicant must be able to show that the authorities did not do all that

²⁶ *Osman v United Kingdom*, Application no. 23452/94, [1999] 1 F.L.R. 193.

²⁷ *Vasil Sashov Petrov v Bulgaria*, Application no. 63106/00, judgment of 10 June 2010.

could reasonably be expected of them to avoid a real and immediate risk to life of which they have or ought to have had knowledge. The following cases are of particular relevance in this case.

- In *Kilic v Turkey*,²⁸ the applicant claimed that his brother, Kemal Kiliç, a journalist working for the newspaper *Özgür Gündem*, was killed by or with the complicity of State agents on 18 February 1993. Kemal Kiliç had repeatedly complained of death threats made against the distributor of the newspaper and the owner and driver of the taxi used for deliveries. He requested measures to be taken to protect the safety of the people working in his office. No such measures were taken. Kemal Kiliç was shot dead after having disembarked a public coach near the village of Kuyubaşı. The police subsequently investigated the case, and the Diyarbakır National Security Court chief public prosecutor opened an investigation into the killing and required the local gendarmerie command to report to him every three months concerning any evidence obtained about the Kiliç murder. Although some investigative steps were taken at the scene of the killing and shortly afterwards, no investigative step was taken subsequent to the transferral of the case to the local public prosecutor. A court case against an alleged perpetrator of the offence did not hear witnesses on the Kiliç death nor did the accused make any admission in this respect. The local public prosecutor issued a decision of non-jurisdiction in respect of the incident.

The European Court considered the reaction of the Government to Kemal Kiliç's request for protection in the light of the situation in south-eastern Turkey at the time. It considered that Kiliç as a journalist for *Özgür Gündem* was at particular risk and that the authorities were aware of this risk. It found that the court system (complemented by an administrative council system, often staffed by gendarmes linked to units concerned in violent incidents) did not provide effective protection under the criminal law. There was no evidence that the Government took any steps in response to Kiliç's request for protection either by applying reasonable measures of protection or by investigating the extent of the alleged risk to *Özgür Gündem* employees with a view to taking appropriate measures of prevention.²⁹

Hence, the European Court found that the right to life in Article 2 of the European Convention also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual or individuals whose life is/are at risk from the criminal acts of another individual.³⁰ The Court found that the limited scope and short duration of the investigation in this case meant that there had been a breach of Article 2.

- In *Gongadze v Ukraine*,³¹ the applicant brought a case on behalf of her husband, Georgiy Gongadze, a former political journalist and editor-in-chief of *Ukrayinska Pravda*, an online newspaper. Gongadze was known for his criticism of those in power and his publicity of the problems of freedom of speech in Ukraine. He had made complaints of threats and had told friends and relatives that he thought that he was under surveillance. He wrote a letter to the Prosecutor General on 14 July 2000 complaining that his friends and relatives had been interviewed about him by law enforcement officers and that he had been followed by unknown individuals in a car. He requested the Prosecutor General to take protective measures to protect him and

²⁸ *Kiliç v Turkey*, Application no. 22492/93, 28 March 2000.

²⁹ *Ibid.* para 62.

³⁰ *supra*

³¹ *Gongadze v Ukraine*, Application No. 4451/70, judgement of 22 March 2005

to find those involved. Gongadze disappeared on 16 September 2000. An investigation was initiated on 18 September 2000 including the analysis of a decapitated body which was found on 2 November 2000. From mid-November 2000 to June 2002, the investigation continued sporadically with some doubt expressed over the identity of the body, little information provided when requested, and a number of changes in the prosecutor general. The disappearance of Gongadze happened in the context of the killing of 18 journalists in Ukraine between 1991 and 2005. There was some evidence implicating the President and some other high-level State officials in his disappearance.

In its review of the application, the European Court found that the Gongadze's complaints to the authorities and subsequent evidence revealing the possible involvement of State officials in his disappearance and death were neglected or simply denied for a considerable period of time without proper investigation. This amounted to a substantive breach of Article 2 of the Convention.

The European Court also found that there had been a procedural breach of Article 2 because, along with a series of delays and deficiencies in the investigation, the State authorities appeared preoccupied with proving the lack of involvement of State officials rather than with discovering the truth about Gongadze's disappearance.³²

Further, the European Court reiterated the duty in Article 2(1) to take appropriate steps to safeguard the lives of those within its jurisdiction, which also extends, in appropriate circumstances, to a positive obligation on the authorities to take preventive operational measures to protect individuals whose lives are at risk from the criminal acts of another individual.³³ It stated that for this positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party, and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.³⁴

44. Additionally, ARTICLE 19 observes that the European Court found a violation of Article 2 in the case of *Hrant Dink v Turkey*,³⁵ which concerned the murder of the journalist Hrant Dink. He had written extensively about Turkish–Armenian relations and as a consequence had been prosecuted and had been the victim of threats by extremist Turkish nationalists, before he was shot dead in 2007. The Court found not only that the Turkish security forces had known of the intense hostility towards the applicant from within the ultra-nationalist community, but also that the police and the gendarmerie had been informed about the likelihood of an assassination attempt, and even the identity of the suspected instigators. Nevertheless, the authorities were found to have failed to take the requisite steps to protect Hrant Dink's life even though he had not requested police protection.

45. Similar conclusions about the state obligations have been reached by the European Court in other cases concerning the threats against the life of other individuals than journalists. For example:

³² *Ibid.*, paras. 178-179.

³³ *Ibid.*, para. 164.

³⁴ *Ibid.*, para. 165.

³⁵ *Dink v Turkey*, Applications No. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09.

- In *Akkoc v Turkey*,³⁶ a husband and wife of Kurdish origin had received numerous death threats by phone, threats which had been reported to the prosecutor's office. No action had been taken, and the husband was killed on his way to work. The Court determined that the failure to respond in the circumstances constituted a violation of Article 2.
- In *Osman v United Kingdom*,³⁷ the applicants, the wife and a son of a man murdered by the son's teacher, claimed that the police failed to take adequate steps to protect their family from the real and known danger that this teacher posed. However, while emphasising that such a positive obligation existed, the Court considered that the applicants had failed to point to any decisive stage in the sequence of events leading up to the incident in which the attacks took place where it could be said that the police knew or ought to have known that their lives were in real and immediate danger. The suggestion that the police could have prevented the threat from materialising by arresting the teacher beforehand failed to take into account the absence of adequate suspicion against the teacher of having committed any offence justifying deprivation of liberty.
- In *Opuz v Turkey*,³⁸ the Court was called upon to examine the national authorities' response to domestic violence. On a number of occasions spanning over several years, the applicant and her mother complained to the police about being assaulted and threatened by the applicant's one-time husband. While the authorities were not entirely passive, none of the instances had been properly investigated. On some occasions, the criminal proceedings were discontinued because the women withdrew their complaints. On others, the prosecutor deemed that there was no sufficient evidence to open proceedings at all. When the assailant did get convicted following a particular serious attack which had caused the applicant's mother life-threatening injuries, the punishment was disproportionately mild: the initial sentence of 3 months in prison was commuted to a small fine. Tragically, this series of assaults culminated in the fatal shooting of the applicant's mother. The European Court examined the issues arising out of her killing under Article 2, whereas the violence against the applicant herself was examined under Article 3. The Court referred to the general principles formulated in its previous case law which demand the existence of effective criminal-law provisions for purposes of deterrence and the adoption of preventive operational measures to protect an individual when the authorities can be reasonably expected to be aware the real and immediate risk to that individual's life. However, the European Court emphasised that in applying these principles it would bear in mind the gravity of the problem of domestic violence. The European Court also pointed out that when the authorities decide what preventive measures to adopt in order to protect victims of domestic violence, the rights of perpetrators cannot supersede victim's rights to life and to physical and mental integrity.

c. State's obligation to undertake "effective investigation" into acts of violence and harassment

46. ARTICLE 19 is aware that there were various judicial and disciplinary proceedings initiated at the domestic level in relation to the acts of aggression suffered by Mr. Vélez Restrepo on 29 August 1996, and the subsequent threats against him and his family.

³⁶ *Akkoc v Turkey*, Applications nos. 22947/93 and 22948/93, judgement of 10 October 2000.

³⁷ See above, *supra*

³⁸ *Opuz v Turkey*, Application no. 33401/02, judgment of 9 June 2009.

However, when reviewed under international standards on the state obligations to ensure the protection of the rights of Mr. Vélez Restrepo and his family, these procedures were not effective in the sense that they were neither capable of punishing those responsible, nor could they provide redress to the victims.

47. Combating impunity for human rights violations under international law requires that there be an effective investigation in cases of serious human rights violations. This duty has an absolute character.

48. ARTICLE 19 notes that the most developed body of jurisprudence dealing with the duty to investigate has been produced by the European Court in its jurisprudence under procedural requirements of the right to life (Article 2 para 1 in combination with Article 1 of the European Convention) and the right to freedom from inhuman and degrading treatment (Article 3 of the European Convention). This jurisprudence has established that the obligation to protect the right to life requires, *inter alia*, that there should be an effective investigation when individuals have been killed, whether by state agents or private persons, and in all cases of suspicious death. This duty also arises in situations in which it is uncertain whether or not the victim has died, and there is reason to believe the circumstances are suspicious, such as in the case of enforced disappearances. Similarly, the prohibition of torture and inhuman or degrading treatment or punishment requires that states are under a procedural obligation to carry out an effective investigation into credible claims that a person has been seriously ill-treated, or when the authorities have reasonable grounds to suspect that such treatment has occurred. The failure to properly investigate respective violations constitutes a violation of these articles. In the European contexts, this position has been supported by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in their general report.³⁹ It also features in the EU Council Framework on the Standing of Victims in Criminal Proceedings.⁴⁰

49. The review of the European Court's jurisprudence demonstrates that in order to comply with their positive obligation to carry out the effective investigation under Articles 2 and 3 of the Convention, a state must have a system of investigation which incorporates a number of safeguards. In summary, the states are obliged to undertake a prompt, expeditious, thorough, diligent and comprehensive investigations into the deaths, threats to life and ill-treatment in which the victim's relations may participate, carried out by a body independent of the persons implicated in the events, and in a manner guaranteeing sufficient public scrutiny. The procedural aspect of this obligation is specifically important in cases where state officials have been responsible for the violations, or where it is alleged that they have colluded with others in the violations. The European Court has also reiterated that this is "not an obligation of result, but of means" in that the investigation should help secure the accountability of officials and ensure that they cannot act with impunity. While it is not for the Court to specify in detail what procedures should be adopted, nor to conclude that one unified procedure which combines fact-finding, criminal investigation and prosecution is necessary, certain crucial features are indispensable for maintaining public confidence in the rule of law and helping prevent suggestions of official collusion in or tolerance of unlawful acts.

³⁹ See CPT General Report No. 14. CPT/Inf (2004) 28, para 36; available at <http://www.cpt.coe.int/en/annual/rep-14.htm>.

⁴⁰ European Union, Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, 2001/220/JHA, Article 4, para 2;

50. These elements of the requirements of an effective investigation are outlined in a greater detail below with the references to respective case-law.

i. The investigation must be carried out by a body independent from those implicated in the events

51. Generally, an effective investigation requires that the persons responsible for, and carrying out, the investigation should be independent from those implicated in the event. This means not only a lack of hierarchical or institutional connection, but also a practical independence.

- In *Güleç v Turkey*,⁴¹ the European Court found the lack of this requirement since two investigating officers appointed to conduct the investigation into the death of the victim killed during a demonstration mounted by Kurds in south-east Turkey were hierarchically superior to the police officers whose conduct they had to investigate. Moreover, the investigating officers did not question the version of events supplied to them by the police officers. They failed to interview crucial witnesses, including an eyewitness who was standing at the victim's side when he was hit by the bullet fragment causing death.
- In *Hugh Jordan v the United Kingdom*,⁴² the investigation of the killings by police officers was headed and carried out by other police officers from the same police force. The Court held that this deficiency was not remedied either by the fact that the investigation was supervised by an independent police monitoring authority or by the power the authority had to require the chief police officer of the force to refer the investigating report to the prosecutor for a decision whether to instigate criminal or disciplinary proceedings, as neither provided a sufficient safeguard where the investigation itself has been for all practical purposes conducted by police officers connected with those under investigation.
- In *McShane v the United Kingdom*,⁴³ the soldier whose acts were under scrutiny had been acting on the orders of a police force which subsequently conducted the investigation into the loss of life. Since the investigation was conducted by police officers connected, albeit indirectly, with the operation under investigation, this cast doubt on its independence.
- In *Finucane v the United Kingdom*,⁴⁴ the European Court found a failure to conduct an independent effective investigation since police officers carrying out investigation and inquest had colluded with a loyalist paramilitary group which had claimed responsibility for the murder.
- Most recently, in *Al-Skeini and Others v the United Kingdom*,⁴⁵ the Court found that the official investigations into the killing of several Iraqi civilians in an area controlled by the British military had not been sufficiently independent. It was particularly obvious in the case of the first three applicants, for the investigation process remained entirely within the military chain of command and was confined to taking

⁴¹ *Güleç v Turkey*, Application no. 54/1997/838/1044, judgment of 27 July 1998.

⁴² *Hugh Jordan v. the United Kingdom*, application no. 24746/94, judgment of 4 May 2001,

⁴³ *McShane v United Kingdom*, application No.: 00043290/98, judgment of 28 May 2002.

⁴⁴ *Finucane v. The United Kingdom*, application no. 29178/95, judgment of 1 July 2003

⁴⁵ *Al-Skeini and Others v the UK*, Application no. 55721/07, Grand Chamber judgment of 7 July 2011.

statements from the soldiers involved. In the case of two other applicants, the relevant investigative unit belonged formally to a chain of command separate from that of the investigated soldiers. However, at the relevant time, it was not operationally independent from the latter. If the unit decided to open an investigation, it could be closed at the request of the military chain of command. Hence, this set of investigations too failed to meet the independence requirement.

ii. The investigation must be prompt, and the investigating authorities must make efforts to expedite the investigation

52. The European Court has emphasized at a number of cases that prompt response by the authorities in investigating violations of the European Convention under Articles 2 and 3 of is essential in maintaining public confidence in the states' adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. Where the investigations are delayed by adjournments or extend through several years, this calls into question whether the inquiry system is structurally capable of providing both speed and access to remedies for the victims.

53. The European Court has also reiterated that the authorities must act as soon as an official complaint has been lodged. Even if there has been no official complaint lodged, they should act on their own motion if there are sufficiently clear indications that torture or inhuman or degrading treatment took place.

- In *McShane v the United Kingdom*,⁴⁶ most of the statements were taken in the two weeks following the killing of the victim, but it was not until some eleven months later that the file was sent to the prosecutor. Further unspecified enquiries took place, and the final report was submitted almost nineteen and a half months after the incident. While the European Court acknowledged that it had been necessary to obtain forensic reports, it was not apparent that there had been any difficulty in compiling these. The apparent long periods of inactivity were inexplicable, including the lapse of five and a half months between taking the first and second statements from the driver of the army vehicle that had been involved in the killing. The European Court concluded that the investigation was not conducted with reasonable expedition.
- In *Kelly and Others v the United Kingdom*,⁴⁷ eight years had elapsed before the opening of an investigation by the authorities. Moreover, there had been many adjournments, some of which were requested by the applicants. In the circumstances the European Court held that the enquiry in this case met neither the requirement of promptness nor expedition, even although certain adjournments had been requested by the applicants.
- In *Paul and Audrey Edwards v United Kingdom*,⁴⁸ the decision to hold an enquiry into the death of a prisoner had been taken eight months after his death. Proceedings opened ten months later. Evidence was heard during a ten month period and the report was finally issued three and a half years after the death. The Court held that the enquiry, which was complex, involving the attendance of more than 150 witnesses and investigations covering numerous public services, had required a considerable amount of preparation and that it had been reasonable to allow witnesses to comment on the draft findings, given that these involved censure of public practices and

⁴⁶ See above, supra

⁴⁷ *Kelly and Others v. the United Kingdom*, Application no. 30054/96), judgment of 4 May 2001.

⁴⁸ *Paul and Audrey Edwards v United Kingdom*, Application No 4647/99, judgment of 14 March 2002.

individual professional performance. While the time which elapsed before holding the enquiry might be open to criticism, it was not an unreasonable period in the circumstances. There was accordingly no violation of Article 2 in this respect.

- In *Opuz v Turkey*,⁴⁹ the killer of the applicant's mother was tried and convicted six years after the event and the criminal case was still pending before an appeal court at the time of the Court's judgment. The Court found that in the given circumstances, when the perpetrator had already confessed to the crime, the criminal proceedings were not prompt.

iii. Investigation must be thorough and rigorous, and capable of imputing responsibility for violation

54. In order to comply with the European Convention requirements, the investigations into violations must be "effective in practice" that is conducted in a manner that ensures that all aspects of the crime are fully explored. Where agents of the state are implicated in the act of violation, the investigators are obliged to explore such allegations and fully. It is not sufficient simply to ask those implicated in the allegations, such as the police, for their version of events. All witnesses, whether supporting or opposing the official version of events, must be questioned with a view to ascertaining the truth.

55. The authorities must take reasonable steps to secure evidence concerning the incident. The European Court has declined to give a shortlist of the procedures the authorities should adopt to ensure a proper examination of the circumstances of an unlawful killing. However, it is clear that the state authorities should at the very least take all reasonable steps available to them to secure the evidence concerning the incident. This may include, for example, securing appropriate forensic evidence, interviewing officers who dealt with the victim and with all eyewitnesses (including police and members of the armed forces) to ascertain the circumstances of the and so on.

- In *McCann and Others v United Kingdom*,⁵⁰ an inquest was conducted into the killing of three suspected terrorists in which the applicants were legally represented. As part of a detailed review of events surrounding the killings, a significant number of witnesses including members of the military and police personnel involved in the planning and conduct of the anti-terrorist operation were heard and subject to examination and cross examination by lawyers acting on behalf of next of kin. In these circumstances, there was no breach of Article 2 in this regard.
- In *Ergi v Turkey*,⁵¹ the victim was killed during an ambush of a village conducted by the security forces during an attempt to capture members of a terrorist organization. The public prosecutor in his investigation placed heavy reliance upon a report prepared by a superior police officer who had not been present during the ambush and who had also been unaware of the identities of those taking part in the operation. The prosecutor thereafter concluded that terrorists had been responsible for the killing although he had failed to take any statements from members of the victim's family, villagers, or military personnel. The conduct of the investigation became the responsibility of the prosecutor of the National Security Court where the matter remained pending for some years. No consideration was ever given to the question of

⁴⁹ See above, supra

⁵⁰ *McCann and Others v. The United Kingdom*, judgment of 27 September 1995, ,

⁵¹ *Ergi v. Turkey*, Application no. 66/1997/850/1057, judgment of 28 July 1998.

whether the security forces had conducted their operation in a proper manner, and consequently the Court ruled that there had been a violation of Article 2.

- In *Kilic v Turkey*,⁵² the investigation into the applicant's brother's death lasted just one month. While a person was charged and tried for the murder, there was no direct evidence linking the suspect with the crime and he was acquitted of the murder. No other investigations were subsequently held, nor was there any enquiry into the possible targeting of the victim on account of his job as a journalist or into the possibility of collusion by security forces in the incident. The Court concluded that on account of the limited scope and short duration of the investigation, the duty to investigate under Article 2 had been violated.
- In *Ekinici v Turkey*,⁵³ while an investigation had been carried out into the death of a lawyer, no such enquiry had been undertaken into a linked death of a former client who had been killed in similar circumstances just one month previously. The European Court considered this a “striking omission”, particularly since official reports had reinforced the importance of the connection between the two victims. Nor had there been an investigation into the possibility that State agents might have been involved in the death. The criminal investigation was thus neither adequate nor effective.
- In *NurayŞen v Turkey*,⁵⁴ the Court concluded that the investigation into the killing of the applicant's husband whom the applicant claimed had been abducted and killed by State agents was neither adequate nor effective as required by Article 2. There had been striking omissions in the investigation as well as a lack of co-ordination between the different police authorities involved. One of the prosecutors had not taken statements from the eyewitnesses to the abduction while ballistic enquiries had been ordered late and had been incomplete.

iv. There must be sufficient public scrutiny of the investigation and the victim or next-to-kin must always be afforded effective access to the procedure

56. The nature and degree of scrutiny necessary to satisfy the minimum standard of an investigation's effectiveness will depend on the circumstances of each particular case. An investigation need not be carried out in one unified procedure. What is important is that the investigations pursued provided for the necessary safeguards in an accessible and effective manner. At the very least the victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests. In most instances, this will require giving access to certain parts of the proceedings and also to the relevant documents to ensure participation is effective.

57. With regard to public scrutiny of the police investigations, the European Court has found that disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects to private individuals or other investigations. The requisite access of the public or the victim's relatives may be provided for in other stages of the available procedures. Domestic arrangements must therefore strike an appropriate balance when seeking to take into account other legitimate interests

⁵² See above, supra

⁵³ *Ülkü Ekinici v Turkey*, Application no. 27602/95, judgment of 16 July 2002.

⁵⁴ *NurayŞen v Turkey*, Application no. 41478/98, judgment of 17 June 2003.

such as national security or the protection of material relevant to other investigations in ensuring that the required safeguards are provided in an accessible and effective manner.

58. ARTICLE 19 also notes that the European Court has not stated categorically that state authorities must give reasons for all decisions declining to prosecute in respect of unlawful killings. However, it has noted that where an investigation is compromised by a lack of independence or in some other relevant way, reasons for failure to prosecute should be given, particularly in high profile cases where the maintenance of public confidence is important. In any event, the European Court has stated that there is a duty to give reasons at least where requested to do so by a victim or next-to-kin.

- In *Oğur v Turkey*,⁵⁵ during the administrative investigation, the victim's close relatives had no access to the case file or to any part of the proceedings. The domestic court which upheld the lower courts' findings that it was impossible to identify the killers and ruled on the sole basis of the papers in the case. Since these had been inaccessible to the victim's relatives, the European Court found a violation of the obligation to carry out an effective investigation.
- In *Hugh Jordan v United Kingdom*,⁵⁶ the applicant was not informed of the reasons why his son's killing by the police was regarded as not disclosing a criminal offence or as not meriting a prosecution of the officer concerned. No challenge by way of judicial review existed at the time which would have required the prosecutor to give reasons. In noting that that the police investigation procedure was itself open to doubts of a lack of independence and was not amenable to public scrutiny, the European Court held that in such circumstances, it was of increased importance that the officer who decided whether or not to prosecute also gave an appearance of independence in his decision-making. Where no reasons are given in a controversial incident involving the use of lethal force, this may in itself not be conducive to public confidence. It also denies the family of the victim access to information about a matter of crucial importance to them and prevents any legal challenge of the decision. Here, the failure to reassure the public that the rule of law had been respected was deemed incompatible with the requirements of Article 2 since this information had not been made available in any other manner.
- In *McShane v United Kingdom*,⁵⁷ the Director of Public Prosecutions, while not legally required to give reasons for refusing to prosecute, did in this case do so. The applicant claimed they were insufficient and initiated judicial review proceedings but which she later dropped. The Court stated that while it was “not persuaded that Article 2 automatically requires the provision of reasons” by the prosecutor, “it may in appropriate cases be compatible with the requirements of Article 2 that these reasons can be requested by the victim's family, as occurred in this case”. The failure to pursue the judicial review proceedings meant that there was no violation of Article 2 in this regard.

d. State's obligation to ensure that the victim obtains “holistic reparations” for the violations suffered

⁵⁵ *Oğur v Turkey*, Application no. 21594/93, Grand Chamber judgment of 20 May 1999.

⁵⁶ See above, *supra*

⁵⁷ See above, *supra*

59. The right to remedy for abuses of human rights is a recognised principle in international law. ARTICLE 19 notes that provisions of the International Covenant on Civil and Political Rights (Article 23) and the Convention Against All Forms of Torture (Article 14) as well as other treaties stipulate that where an individual's human rights have been violated, they are entitled to an adequate and effective remedy.

60. Declarations, resolutions and other non-treaty texts as well as norms adopted in the area of crime prevention also address the right to a remedy. In some instances, the issue is raised by human rights organs when issuing "general comments".

- In 1998, the Working Group on Involuntary or Enforced Disappearances issued a General Comment to Article 19 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance.⁵⁸ The Working Group elaborated on the obligation to provide adequate compensation. Compensation is deemed "adequate" if it is "proportionate to the gravity of the human rights violation (e.g. the period of disappearance, the conditions of detention, etc.) and to the suffering of the victim and the family." Amounts shall be provided for any damage, including physical or mental harm, lost opportunities, material damages and loss of learnings, harm to reputation, and costs required for legal or expert assistance. In the event of the death of the victim, as a result of an act of enforced disappearance, the victims are entitled to additional compensation. Measures of rehabilitation should be provided, including medical and psychological care, rehabilitation for any form of physical or mental damage, legal and social rehabilitation, guarantees of non-repetition, restoration of personal liberty, family life, citizenship, employment or property, return to the place of residence, and similar forms of restitution, satisfaction and reparation that may remove the consequences of the enforced disappearance.
- The UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power⁵⁹ contains broad guarantees for those who suffer pecuniary losses, physical or mental harm, and "substantial impairment of their fundamental rights" through acts or omissions, including abuse of power. Victims are entitled to redress and to be informed of their right to seek redress. The Declaration specifically provides that victims of public officials or other agents who, acting in an official or quasi-official capacity, violate national criminal laws, should receive restitution from the state whose officials or agents are responsible for the harm inflicted. Abuse of power that is not criminal under national law but that violates internationally recognized norms relating to human rights should be sanctioned and remedies provided, including restitution and/or compensation, and all necessary material, medical, psychological, and social assistance and support.

61. Regional instruments also contain provisions requiring legal remedies for violations of human rights. In particular, similar to its jurisprudence on the nature and requirements of an effective investigation into violations suffered, the European Court has produced extensive case law⁶⁰ on the question of effective remedies. According to the European Court "rigorous scrutiny" of an arguable claim is required because of the irreversible nature of the harm that might occur.⁶¹ The remedy must be effective in practice as well

⁵⁸ Available at http://www.ohchr.org/documents/Issues/Disappearances/GeneralCommentsDisappearances_en.pdf.

⁵⁹ UN General Assembly, "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power," UN Doc. A/40/53, Nov. 29, 1985

⁶⁰ See, for example, *Delcourt v. Belgium*, judgment of 17 January 1970; *König v. Germany*, judgment of 28 June 1978; *Öztürk v. Germany*, judgment of 21 February 1984.

⁶¹ *Jabari v. Turkey*, Appl. No. 40035/98, para 50.

as in law. It must take the form of a guarantee, and not a mere statement of intent or a practical arrangement,⁶² and it must have automatic suspensive effect.⁶³ Moreover, in *Eckle v. Germany*, in terms of the maintaining the victims status, the European Court stated that the states must ensure that a) the national authorities have acknowledged a violation of the Convention; b) the applicant received satisfaction with regard to the past damage suffered as a result of the violation; and c) the applicant has been treated in such a way that there are sufficient grounds to allow an assessment of the extent in which the violation was taken into account by the authorities.

62. Based on these standards, it can be concluded that the obligation of the Government of Colombia to provide “holistic reparations” should be satisfied from remedies such as restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.⁶⁴ We note that under the standards listed above, compensation is understood to include any economically assessable damage resulting from the crime, including “physical or mental harm, including pain, suffering and emotional distress; lost opportunities, including education; material damages and loss of earnings, including loss of earning potential; harm to reputation or dignity; and costs required for legal or expert assistance, medicines and medical services, and psychological and social services.” Rehabilitation is said to include medical and psychological care as well as legal and social services, and satisfaction and guarantees of non-repetition will include such individual and collective elements as revelation of the truth, public acknowledgment of the facts and acceptance of responsibility, search for the disappeared and identification of remains, the restoration of the dignity of victims through commemoration and other means, activities aimed at remembrance and education and at preventing the recurrence of similar crimes.

63. However, nothing to this extent has occurred in the case of Vélez Restrepo and his family, even though some procedures have been initiated and are pending.

V. Conclusions

64. The vast bulk of international laws finds that states need to take effective measures to both prevent and promptly investigate crimes against journalists. The actions of Colombia in failing to follow these measures by providing adequate remedies is a violation of international law.

65. Amici suggests that the court should require the full implementation of the order of the Commission and set forward a strong statement that attacks on journalists should not be tolerated.

⁶² Čonka v. Belgium Application No. 51564/99, ECtHR, 5 February 2002, para. 83

⁶³ Gebremedhin [Gaberamadhien] v. France, Application no. 25389/05, judgment of 26 April 2007, para. 66.

⁶⁴ E/CN.4/2000/62

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Respectfully submitted,

For ARTICLE 19, Global Campaign for Freedom of Expression

A handwritten signature in black ink that reads "D. Banisar".

David Banisar
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