

OEA/Ser.L/V/II.169
Doc. 131
October 5, 2018
Original: Spanish

REPORT No. 114/18
CASE 12.722
REPORT ON MERITS

PATRICIO FERNANDO ROCHE AZAÑA ET AL.
NICARAGUA

Approved by the Commission at its session No. 2137 held on October 5, 2018
169th Special Period of Sessions

Cite as: IACHR, Report No. 114/18, Caso12.722. Fondo. Pedro Basilio Roche Azaña y otro.
Nicaragua. October 5, 2018.

REPORT No. 114/18

CASE 12.722

MERITS

PATRICIO FERNANDO ROCHE AZANA ET AL.

NICARAGUA

October 5, 2018

I. SUMMARY

1. On December 23, 1998, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Mr. Patricio Barrera Tello, representing Messrs. Pedro Bacilio Roche Azaña and Patricio Fernando Roche Azaña (“the petitioning party” or “the petitioner”), alleging the international responsibility of the State of Nicaragua (hereinafter “the Nicaraguan State,” “the State,” or “Nicaragua”) to the detriment of Pedro Bacilio Roche Azaña and Patricio Fernando Roche Azaña.

2. The Commission approved Admissibility Report No. 88/09 on August 7, 2009.¹ On September 1, 2009, the Commission notified the parties of that report and offered its good offices to help reach a friendly settlement. The parties had the prescribed deadlines in which to present their additional observations on the merits. The petitioning party presented its observations on the merits on October 26, 2009, expressing its willingness to reach a friendly settlement. For its part, the State presented observations on September 2, 2011, without referring to a potential friendly settlement. All information received was duly forwarded to the other parties.

3. The petitioning party alleged that Nicaraguan police in the municipality of Chinandega fired indiscriminately and in a discriminatory manner at a van in which 30 to 40 migrants were traveling, trying to get to the United States of America. The petitioner indicated that the migrants were abandoned in a deserted area and that on the morning of the next day they received assistance from a group of locals, who took them to the hospital. The petitioner indicated that as a result of that attack, Pedro Bacilio Roche Azaña lost his life and five individuals were seriously wounded, including Patricio Roche Azaña, who states that he was hospitalized for three months, the first of these in a coma, and was subsequently able to return to Ecuador, where he was operated on six times and currently suffers permanent physical impairment. The petitioning party also claimed that the alleged victims did not have access to justice due to the acquittal and release of the defendants, as well as to violations of due process, as the petitioner’s statements were not taken during the criminal prosecution, nor was he informed of any decision.

4. The State alleged that the van went through a police checkpoint after being given multiple warnings to stop, and that the driver ignored the warnings and continued to flee at high speed, forcing the police officers to fire. The State maintained that it was impossible for the police to know that these were migrants. It added that it was the police who, upon being alerted by locals, assisted the migrants and humanely took them to the hospital in Chinandega. Finally, the State maintained that procedural guarantees were respected at all times and that the events in question were analyzed and decided upon by means of a jury verdict. It claimed that Patricio Fernando Roche Azaña’s statement could not be taken before the legal procedural deadline due to his critical medical condition, and that he was not notified of the judgment because he was not a private complainant in the case.

5. Based on the determinations of fact and law, the Inter-American Commission concluded that the State is responsible for violating Articles 4.1 (right to life), 5.1 (right to humane treatment), 8.1 (right to a fair trial), and 25.1 (right to judicial protection) of the American Convention on Human Rights (hereinafter

¹ IACHR. Report No. 88/09. Petition 405-99. Admissibility. Patricio Fernando Roche Azaña et al. Nicaragua. August 7, 2009. The Commission declared the petition admissible with respect to Articles 1.1, 4.1, 5.1, 8.1, and 24 of the American Convention on Human Rights; it also declared the petition inadmissible with respect to Article 22 of the American Convention on Human Rights.

“the American Convention” or “the Convention”), in connection with the obligations established in Article 1.1 thereof. The Commission made the corresponding recommendations.

II. ARGUMENTS OF THE PARTIES

A. PETITIONER

6. The petitioner indicated that the Roche Azaña brothers left their place of origin in the province of Azuay, Ecuador, on April 8, 1996, with the intention of reaching the United States of America. The brothers reportedly headed for the city of Guayaquil, to then leave for Panama, and reached Nicaragua on April 14, 1996. The petitioner indicated that in Managua, the person who was transporting them proceeded to put them together with approximately 30 migrants to be transported to the city of Chinandega, Nicaragua, where they loaded them into a van-type vehicle, completely enclosed, with the aim of taking them to Honduras. They stated that the van had space for only 12 people.

7. The petitioner indicated that at 8 p.m.—suddenly, and simply because they believed them to be immigrants or foreigners—members of the Chinandega Municipal Police fired without warning at the vehicle in which the migrants were traveling. The petitioner maintained that they were unable to get out or do anything to defend themselves, as they were penned in and unarmed. The petitioner added that approximately five individuals were wounded in the attack and were abandoned in a deserted area. One of those individuals, according to the petitioner, was Pedro Bacilio Roche Azaña, who had received a gunshot wound to the head and suffered in agony until midnight of that same day, when he died.

8. The petitioning party recounted that Patricio Fernando Roche Azaña was hit by gunfire at the height of his thoracic cavity, which wounded him severely; however, an individual helped him by binding the wound tightly. The petitioner indicated that on the morning of the next day, locals from the area tried to help them, and they were taken to the hospital in Chinandega, where Patricio Fernando Roche Azaña remained unconscious and in a coma for approximately one month, far away from his family. The petitioner indicated that he remained in the hospital for a total of three months and after that began his return trip to Ecuador.

9. The petitioner alleged that on April 23, 1996, a criminal case was brought against seven members of the Nicaraguan police for the crimes of culpable homicide and grievous bodily harm, but that the police were acquitted and were released via a “Jury Council” ruling not subject to appeal. The petitioning party indicated that no statement was taken from Patricio Roche Azaña during the criminal trial because of his medical condition, and that there was also no opportunity for him to give testimony once he had recovered. The petitioner said that he was not informed of his rights as a victim in the case, that he had no access to any participation in the proceedings, and that he was not directly notified by the State of any judicial decision, but learned of the Nicaraguan court’s decision in August 1998, when his mother informally received a copy of the judgment from the Ecuadorian Foreign Ministry.

10. The petitioner indicated that in Ecuador he began a series of medical treatments but that he has still not achieved recovery to this day, since after “almost seven” surgical interventions he has been left with permanent injuries that have rendered him unable to carry out activities and live a normal and well life. The petitioner indicated that the treatment and the expenses to recover the body of his deceased brother had left his family in “abject poverty.”

B. STATE

11. The State indicated that on April 14, 1996, approximately 30 Peruvian, Ecuadorian, and Colombian nationals entered Nicaraguan territory “illegally” via the border with Costa Rica, in transit to the United States. It said that on that day they boarded a bus that had tinted windows to conceal the number of passengers inside. According to the State’s account, on the highway the bus came upon a checkpoint where

police officers were working that night to control and prevent contraband activity and other crimes that tend to occur in the area, and that the police signaled to the vehicle to stop but that the signals were ignored by the driver who had been hired by the migrants.

12. The State indicated that the driver deliberately failed to heed the signals to stop made by the police at the checkpoint and that instead he sped up the vehicle and “willfully” fled the scene at full speed, and that consequently “the police authorities were forced to fire on the vehicle in order to halt its escape.” The State added that even with the gunshots, the driver continued on until he reached a deserted area where he came to a stop and then fled again, abandoning the migrants there. The State alleged that Patricio Roche Azaña and four other persons were wounded and that Pedro Bacilio Roche Azaña lost his life, primarily because of the driver’s attitude. It also indicated that it was the National Police, upon being alerted by area residents, that subsequently helped the migrants and humanely took them to the hospital in Chinandega.

13. The State mentioned that, from an objective standpoint, the National Police officers could not know beforehand that there were individuals hiding inside the vehicle, nor that these were migrants, as they were traveling at night, hidden in a completely enclosed microbus and in an unlighted area.

14. The State maintained that procedural guarantees were respected at all times in the context of the case brought as a result of the events in question. It indicated that the Attorney General’s Office determined the responsibility of five police officers and that the citizen who was transporting the migrants and who had fled the scene had been identified. The State indicated that the events in question were the object of an unappealable verdict of the Jury Court, which decided to acquit and release those purportedly responsible. It reiterated that there was no violation of the principle of equality before the law, given that the rights of the alleged victims were protected specifically through the public prosecutor’s representation of them in the proceedings, and that most of the victims in the case did participate directly.

15. The State held that on April 30, 1996, during the legally mandated 10-day period, the First District Criminal Judge of Chinandega went to the facility where Mr. Roche Azaña was hospitalized, for the purpose of taking his statement and informing him of his rights and the fact that he was being represented by the Attorney General’s Office. Nevertheless, the State indicated, because of Mr. Roche Azaña’s critical medical condition, the judge was unable to take his statement before the deadline. The State maintained that neither Mr. Patricio Fernando Roche Azaña nor his mother, either acting on their own behalf or through representatives or through the consular service of the Embassy of Ecuador, came forward as a “private accuser” in the trial—in spite of the broad dissemination and public awareness of the events in question—and that therefore there was no obligation to notify them, under Nicaraguan legislation in force at that time. According to the State, that legislation defined the parties involved in criminal proceedings as the judge, the defendant, the individual accuser and/or the criminal prosecutor, with the latter serving as the victim’s representative through whom notice of judgments and other judicial decisions was to be given. Finally, the State mentioned that it had protected and represented the migrants’ rights by making the necessary arrangements so that they could return to their country of origin.

III. FINDINGS OF FACT

A. Regarding the migration of the Roche Azaña brothers and the use of force by Nicaraguan authorities

16. According to the petitioning party’s account, Pedro Bacilio and Patricio Fernando, both surnamed Roche Azaña, are sons of José Fernando Roche Zhizingo and María Angélica Azaña Tesaca. The family lived in the province of Azuay, in the canton of San Fernando in Ecuador, and worked in agriculture. Both brothers decided to leave their country in search of better opportunities in the United States at the ages of 21 in the case of Pedro and 23 in the case of Patricio. On April 8, 1996, the Roche Azaña brothers left their home in the province of Azuay, Republic of Ecuador, and headed to the city of Guayaquil, to leave from there to the Republic of Panama and then on to Nicaragua, arriving in that country on April 14, 1996. In the city of

Managua, they met up with 30 other migrants, with whom they were transported in a van to the city of Chinandega, Nicaragua.² The State did not dispute this information.

17. The IACHR notes that the visual inspection report on the vehicle shows that the migrants were in a van with a capacity for approximately 12 people. The vehicle also had tinted windows in front and the two front doors, as well as two small windows in the back. The sliding doors on the side were completely enclosed.³

18. On April 14, 1996, the van went through a first police checkpoint that was trying to intercept vehicles that were allegedly bringing illegal merchandise into Nicaragua. According to one testimony,⁴ two pickups loaded with contraband had gone by Lieutenant Germán Pineda, who then notified Lieutenant Garmendia for them to be stopped. Lieutenant Garmendia, for his part, passed on those orders to patrol cars 0142 and 0143.⁵

19. According to testimony provided, the first patrol car, of which Officer Carlos Aguirre was in charge, took position at Villa Quince de Junio, before the bridge. When the van went by, Officer Isaac Melsiades Real, who situated himself at the side of the road, signaled with a traffic baton for the vehicle to stop, but the vehicle accelerated further and did not try to stop, and the police officer had to get out of the way. He asked that the patrol car's lights be turned on, which enabled them to see that the vehicle was a white van. No shots were fired at this first checkpoint, nor was the vehicle pursued.⁶ Officer Carlos Aguirre notified Lieutenant José Carcache Yañez Pineda, who was in a police patrol car three kilometers toward the area of Somotillo, about the vehicle that had just passed and had refused to stop.⁷

20. The second checkpoint was some meters ahead, at the entrance to Las Mercedes, at kilometer 168. According to the police accounts, when they saw the vehicle approaching they signaled it to stop, but the driver made no attempt to do so. On that point, the police officers gave the following descriptions: Francisco Simón Ordoñez Nájera stated that he had fired two shots into the air⁸; Ricardo Javier Salgado Ojeda stated that he had fired three shots into the air⁹; Silvio Antonio Vanegas Blandon, one shot into the air¹⁰; José Marcelino Ramírez Vargas, three to four shots "without authorization" in the direction of the tires on the right side of the vehicle¹¹; and José Reynaldo Pineda Silva maintained that he did not fire any gunshots when the vehicle chase began.

21. Specifically, José Marcelino Ramírez Vargas stated the following:

We observed the lights of a vehicle that was traveling from south to north, so Ricardo and I immediately went out into the road, almost into the middle of the highway, to again use the signals to warn the vehicle to stop. When I'm doing the signals with the lamp and gloves I manage to see that it was a white van [sic], without noticing the glass, and at the same time it's not obeying the traffic signals and just about runs us over. By instinct and without authorization, I fired three to four shots in the direction of the tires on the right side of the vehicle, the same as Ricardo, the other policeman at the entrance to Las Mercedes.¹²

22. In the vicinity of the second checkpoint, one bullet casing was found along the edge of the lane going from south to north, seven casings along the edge of the north-south lane, and one at a distance of

² Initial petition of December 23, 1998.

³ Annex XX. Case File. Visual Inspection Report on Vehicle. April 18, 1996, p. 12.

⁴ Annex XX. Case File. Statement, Germán Pineda Dávila, p. 109.

⁵ Annex XX. Case File. Statement, Germán Pineda Dávila, p. 109.

⁶ Annex XX. Case File. Statement, Isaac Real Reyes, p. 120.

⁷ Annex XX. Case File. Statement, Fernando Antonio Carcache Pineda, p. 114.

⁸ Annex XX. Case File. Statement, Francisco Simón Ordoñez Nájera, p. 175.

⁹ Annex XX. Case File. Statement, Ricardo Javier Salgado Ojeda, p. 173.

¹⁰ Annex XX. Case File. Statement, Silvio Antonio Vanegas Blandon, p. 171.

¹¹ Annex XX. Case File. Statement, José Marcelino Ramírez Vargas, p. 179.

¹² Annex XX. Case File. Statement, José Marcelino Ramírez Vargas, p. 179.

1,500 meters from the police checkpoint, in front of the first house in the Cooperativa Pedro Joaquín Chamorro.¹³ The visual inspection of the vehicle on April 18, 1996, found six bullet holes: two in the front, two in the back, one on the left side, and another in the right door.¹⁴

23. In their testimonies, the migrants said that they had repeatedly asked the driver to stop the vehicle, as some people had been wounded as a result of the gunshots. However, the driver continued on to Marimboro, where he went off onto a dirt road, traveling approximately nine kilometers to a community known as Jucote, where he stopped and got the migrants out of the vehicle, abandoning them there while he continued to flee.¹⁵

24. According to the migrants' testimonies, when the vehicle stopped everyone scattered into the scrub for fear of being arrested. There were five individuals who were injured and Pedro Bacilio Roche Azaña, who was suffering in agony and later died. Some of the migrants helped the wounded to a nearby shack, where local campesinos attended to and helped them.¹⁶

25. Around midnight, Mr. Pedro Bacilio Roche Azaña died of the gunshot wound. The legal medical report states: "It is clear that citizen Pedro Bacilio Roche Azaña died due to external violence, consisting of a penetrating wound caused by a firearm projectile, that this projectile was found to be the type known as AK (a weapon of war)."¹⁷ On April 27, 1996, the procedures to preserve and prepare the body were carried out at the morgue in the Hospital España in Chinandega, so that the body could be transported to the Republic of Ecuador.¹⁸

26. According to the migrants' testimony, some of them helped the wounded, carrying them to a small farmhouse located about 40 meters from the place where the vehicle had stopped. They stayed there, helped by Mr. Ruperto Méndez Méndez, who obtained the assistance of Mr. Luis Guerrero to take them in his personal vehicle to the health-care center in Villanueva. Given their serious condition, an ambulance later arrived and took them to the Hospital España for treatment.¹⁹

27. According to the medical report, Patricio Roche Azaña was gravely wounded, having suffered a perforation of the pelvic floor and an intestinal perforation. He also had an ischiorectal hematoma, perforation of the colon, and due to his serious condition, he underwent another surgery on April 21, 1996. There was also a fracture of the left femur, and it was determined that he was at imminent risk of death.²⁰ In addition, five other individuals received gunshot wounds to different parts of their bodies.²¹

¹³ Annex XX. Case File. Criminal Inspection Report regarding the Case of Homicide followed by grievous bodily harm and abuse of authority. April 14, 1996, p. 207.

¹⁴ Annex XX. Case File. Visual Inspection Report on Vehicle. April 18, 1996, p. 12.

¹⁵ Annex XX. Case File. Statements of: Segundo Juan Izquierdo, Marcos Vicente Querevalú Samaniego, Edith Dora Samaniego, Clarisa Samaniego Soria, Germán Teodoro Campos, Luis Mario Tenecela Naranjo, Edgar Raúl Arévalo Tenecela, Nelly Quinto Flores, Mónica Isabel Yunga Quito, Julio Medrano Peralta Rodríguez, Roberto Huaman Poma, Edison Fernando Camacho Pantonsín, Carlos Ángel Gutiérrez, Luis Alberto Palacio Donaire, María Cecilia Chimbo Ayala, Liliana Palomino Mendoza, Tito Cuero Pertocarrero, Miluzca Pamela Chávez Parreño, Adolfo Castillo Sarmiento, Ana Lucía Villa Cuesta, Ángel María Yupangui, Daniel Henry Samame Alquisal, José Valdez Ayala, María Rosa Junga Guaman, Pio de Usúa Mendoza Sarmiento, Rosario Cajamarca Ruviola, Ángel Bolívar Tenempaguay, Maribel Quispe Pomahuacra, Rómulo Eulogio Gutiérrez Pezante, Marcelo Cajamarca, and Nora Doza Samaniego, pp. 12-81.

¹⁶ Annex XX. Case File. Statements of: Segundo Juan Izquierdo, Marcos Vicente Querevalú Samaniego, Edith Dora Samaniego, Clarisa Samaniego Soria, Germán Teodoro Campos, Luis Mario Tenecela Naranjo, Edgar Raúl Arévalo Tenecela, Nelly Quinto Flores, Mónica Isabel Yunga Quito, Julio Medrano Peralta Rodríguez, Roberto Huaman Poma, Edison Fernando Camacho Pantonsín, Carlos Ángel Gutiérrez, Luis Alberto Palacio Donaire, María Cecilia Chimbo Ayala, Liliana Palomino Mendoza, Tito Cuero Pertocarrero, Miluzca Pamela Chávez Parreño, Adolfo Castillo Sarmiento, Ana Lucía Villa Cuesta, Ángel María Yupangui, Daniel Henry Samame Alquisal, José Valdez Ayala, María Rosa Junga Guaman, Pio de Usúa Mendoza Sarmiento, Rosario Cajamarca Ruviola, Ángel Bolívar Tenempaguay, Maribel Quispe Pomahuacra, Rómulo Eulogio Gutiérrez Pezante, Marcelo Cajamarca, and Nora Doza Samaniego.

¹⁷ Annex XX. Case File. Medical Report of the Chinandega Coroner. April 26, 1996.

¹⁸ Annex XX. Case File. Procedure for the Preparation and Preservation of the Corpse. April 27, 1996, p. 551.

¹⁹ Annex XX. Case File. Statements of Antonio Alejandro López Ríos, José Adrián Madrigal García, Ruperto Méndez Méndez, Martina Alcira Reyes Rocha, Juan Reyes Cruz, and Rigoberto Leonel Morales, pp. 100-106

²⁰ Annex XX. Case File. Medical Report, Patricio Roche Azaña. April 27, 1996

²¹ Annex XX. Case File. Medical Reports on Maribel Quispe Pomaguanare and Nora Doza, April 17, 1996; and on Adolfo Castillo Sarmiento and Marcelo Cajamarca Ruviola, April 18, 1996.

28. Nicaragua's Directorate of Migration and Nationality authorized the foreigners' departure to their countries of origin without initiating criminal proceedings against them for being migrants with irregular status, which at the time was a crime.²²

B. Regarding the domestic proceedings

29. The assistant criminal prosecutor in Chinandega filed charges against Fernando Antonio Carcache Pineda, José Marcelino Ramírez Vargas, Ricardo Javier Salgado Ojeda, Silvio Antonio Vanegas Blandon, Francisco Simon Ordoñez Nájarez, and José Reynaldo Pineda Silva as alleged perpetrators of the crimes of culpable homicide to the detriment of Pedro Basilio Roche Azaña and willful injury to the detriment of Patricio Roche Azaña, Maribel Quispe Pohanare, Nora Doza Samaniego, Adolfo Castillo Sarmiento, and Marcelino Cajamarca Ruviola.²³

30. On May 6, 1996, the First District Criminal Court issued a formal order for the imprisonment of the defendants Fernando Antonio Carcache Pineda, José Marcelino Ramírez Vargas, Ricardo Javier Salgado Ojeda, Silvio Antonio Vanegas Blandon, and Francisco Simon Ordoñez Nájarez. In addition, José Reynaldo Pineda Silva was cleared of charges, as it could not be determined that he fired shots on the day of the events in question.²⁴

31. A judgment handed down on August 28, 1996, by the Criminal Chamber of the Appeals Court, Western Region, upheld the imprisonment of the defendants, except for Fernando Antonio Carcache, against whom charges were dismissed because when the events in question occurred he was parking the patrol vehicle that he was driving at that moment.²⁵

32. On February 24, 1997, the Jury Court found the defendants innocent of the crimes of culpable homicide and willful injury.²⁶ The Commission notes that this ruling covers only how the decision went but does not include the grounds upon which the jury reached its conclusion. In keeping with the verdict, the First District Criminal Court in Chinandega cleared the defendants on February 27, 1997.²⁷ As with the other ruling, this decision does not include the reasoning behind it. Under the laws of the State of Nicaragua, the decision cannot be appealed.²⁸

33. During the investigation, the procedural steps carried out included the taking of statements of 32 migrants who had been traveling in the van²⁹ and 8 Nicaraguans who either heard the gunshots or helped the wounded³⁰; 22 statements from police officers with knowledge of the events³¹; and the statements of the defendants who indicated they had fired their weapons.³² In addition, a visual inspection was done of the vehicle, which, as mentioned earlier, showed six bullet holes³³; a visual inspection found nine bullet casings³⁴; a diagram was made of the scene³⁵; medical reports were done on the wounded³⁶; and the body

²² Observations from the State of Nicaragua in the information provided by the petitioner and forwarded by the IACHR, dated December 6, 2007.

²³ Annex XX. Case File. Criminal Complaint of the Assistant Prosecutor of Chinandega. April 26, 1996, p. 534.

²⁴ Annex XX. Case File. Judgment of First District Criminal Court of Chinandega. May 6, 1996, p. 625.

²⁵ Annex XX. Case File. Judgment of the Appeals Court. August 28, 1996, p. 683.

²⁶ Annex XX. Case File. Verdict of the Jury Court. February 24, 1997, p. 759.

²⁷ Annex XX. Case File. Judgment of First District Criminal Court of Chinandega. February 27, 1997, p. 765.

²⁸ Article 22 of the Code of Criminal Instruction.

²⁹ Annex XX. Case File. Statements of migrants, pp. 12-81.

³⁰ Annex XX. Case File. Statements of Antonio Alejandro López Ríos, José Adrián Madrigal García, Ruperto Méndez Méndez, Rodolfo Guerrero Zeledón, Martina Alicia Reyes Rocha, Juan Reyes Cruz, Rigoberto Leonel Morales, and Rosa Izuguirre, pp. 100-107.

³¹ Annex XX. Case File. Statements of Germán Pineda Dávila, José Danilo Pérez Chevez, Alberto José Vasquez Gómez, Fernando Antonio Carcache Pineda, Carlos Alberto Aguirre Larios, Isaac Milsiades Real, Ricardo José Vega, Mauricio Rafael Robinson Parrales, José Agustín Siles Luna, Mackely Artur Solono, Sergio Oswaldo Romero Arauz, Jorge Escorcía Moreno, José Asunción Mallano Dávila, Williams Alejandro Romero Santana, José Francisco Garmedia Cruz, Ricardo Ramón González Herrera, William José Noguera Rivas, Sergio Oswaldo Romero, Erundina Hernández López, Manuel de Jesús Peralta García, Eliodoro Marcelino Vega Rojas, and Andrés Real Mendoza.

³² Annex XX. Case File. Statements of José Carcache Pineda, Francisco Simón Ordoñez Najare, Ricardo Javier Salgado Ojeda, Silvio Antonio Vanegas Blandon, José Marcelino Ramírez Vargas, and José Reynaldo Pineda Silva.

³³ Annex XX. Case File. Visual Inspection Report on Vehicle. April 18, 1996, p. 12.

³⁴ Annex XX. Case File. Visual Inspection Report on Vehicle. April 18, 1996, p. 12.

was examined.³⁷ In addition, expert ballistics and chemical tests were done on the AK weapons³⁸ and bullet markings, which established the connection between the weapons and the casings. Finally, tests were done on the blood and hair found in the van,³⁹ which showed that they belonged to the migrants.

C. Regarding Patricio Roche Azaña's lack of participation in the proceedings

34. The Code of Criminal Instruction indicated that the first steps in a criminal inquiry—which include gathering all the evidence to determine whether or not a crime has been committed and establishing whether or not the defendants are responsible—must conclude within a peremptory period of 10 days from the time the resolution was issued initiating the criminal proceedings; otherwise, the accused could be released on grounds of illegal detention.⁴⁰

35. Based on these criteria, it was ordered *ex officio*, as part of the investigation, that statements be taken from the individuals hospitalized at Hospital España and that they be notified that they could intervene in the proceedings. In this context, Maribel Quispe and Nora Doza Samaniego joined the case, providing their respective statements.⁴¹

36. However, when the authorities went to the hospital to take the statement of Patricio Roche Azaña, they were unable to do so because of the medical condition of the alleged victim, who was in a coma.⁴² According to the State, “the absence of the offended party’s testimony was justified because of his state of health and was not essential for the purposes of the proceedings.”⁴³

37. Finally, the decisions made in the case were notified only to the individuals who actively intervened in the proceedings as complainants or private accusers, pursuant to the domestic laws of the Nicaraguan State. The case file shows that the offended parties Nora Doza Samaniego and Maribel Quispe Pomahuanare were notified by means of a posting left up on a notification board.⁴⁴ This is because at that time, both women had already returned to Peru.

38. Due to the foregoing, no judicial decision handed down in this case was notified to Patricio Roche Azaña or his family members. The first he learned of the judicial ruling was in August 1998, when his mother informally received a copy of the judgment issued by the Chinandega District Criminal Jury Court from an official at the Ecuadorian Foreign Ministry.

[... continuation]

³⁵ Annex XX. Case File. Diagram of the Scene, p. 11.

³⁶ Annex XX. Case File. Legal Medical Reports on Patricio Roche Azaña, Maribel Quispe Pomahuacre, Nora Doza Samaniego, Adolfo Castillo Sarmineto, and Marcelo Cajamarca Riulova, pp. 88-99.

³⁷ Annex XX. Case File. Report on Inspection of Corpse. Legal Medical Report on Pedro Roche Azaña, pp. 85-88.

³⁸ Annex XX. Case File. Expert Report related to ballistics chemical tests; expert ballistics report on 22 AK weapons; expert report related to ballistics chemical tests on 12 AK weapons; expert report related to chemical test of metal; expert report related to chemical test of paint; expert report related to ballistics tests (chemical) on 6 firearms; expert ballistics report on 6 AK weapons; expert report related to chemical ballistics tests on 6 AK weapons; expert ballistics report on 6 AK weapons; expert report related to chemical ballistics tests on 14 AK weapons; expert ballistics report on 14 AK weapons; expert report on 5 casings, pp. 210-249.

³⁹ Annex XX. Case File. Expert Report on Blood and Hair, p. 220.

⁴⁰ Communication from the State of October 26, 2009.

⁴¹ Annex XX. Case File. Statement of Nora Doza Samaniego, 616, Statement of Maribel Quispe, p. 570.

⁴² Annex XX. Case File. Judgment of First District Criminal Court of Chinandega. May 6, 1996, p. 631

⁴³ Annex XX. Communication from the State of October 26, 2009 on the merits of the case, para. 16.

⁴⁴ Annex XX. Case File. Notifications of the judgment of the First District Criminal Court of Chinandega, p. 665; Notifications, p. 689.

IV. ANALYSIS OF LAW

A. Right to life⁴⁵ (Article 4.1) and right to humane treatment⁴⁶ (Article 5.1), in connection with Article 1.1 of the American Convention, with respect to Pedro Bacilio and Patricio Fernando Roche Azaña

1. General considerations and burden of proof (“satisfactory explanation”) in cases involving the use of force and firearms by State agents

39. Both the Inter-American Commission and Court have held that the use of force must be examined in all cases in which force has been deployed and in which State agents have killed or injured anyone.⁴⁷ In that connection, the Commission will examine the facts of the case taking into account what inter-American case law has stated regarding the right to life, in connection with the obligations to respect and guarantee rights and in the matter of use of force. In so doing, the IACHR will consider various relevant international instruments and specifically the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials (hereinafter “Principles on the Use of Force” and “Code of Conduct,” respectively).

40. When allegations are made that a death was the result of the use of force, both the IACHR and the Inter-American Court have established clear rules on the burden of proof. The Inter-American Court has indicated that “...whenever the use of force [by state agents] results in the death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements.”⁴⁸

41. Similarly, the UN Human Rights Committee has held that in cases where further clarification of the facts depends on information exclusively in the hands of the State, allegations may be considered substantiated in the absence of satisfactory evidence or explanation to refute the claims of the complainants.⁴⁹ This is in line with the holding of the European Court to the effect that in cases of death as a consequence of the use of lethal force, the strictest test must be used to determine whether the use of force is of compelling necessity.⁵⁰

42. As such, for an explanation of the use of deadly force to be deemed satisfactory, it must be the product of an investigation that is compatible with guarantees of independence, impartiality, and due diligence and, additionally, must meet certain requirements under inter-American legal precedent in order to justify the use of force. These are:

- i. Legitimate purpose: the use of force must be aimed at achieving a legitimate purpose....

⁴⁵ Article 4 of the American Convention establishes the following, in the pertinent section: 1. Every person has the right to have his life respected... No one shall be arbitrarily deprived of his life....

⁴⁶ Article 4 of the American Convention establishes the following, in the pertinent section: 1. Every person has the right to have his physical, mental, and moral integrity respected.

⁴⁷ I/A Court H.R. Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 123; IACHR. Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, para. 123.

⁴⁸ I/A Court H.R. Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 108; Case of Cruz Sánchez et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292, para. 291; and Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 132.

⁴⁹ UN. Human Rights Committee. Case of Irene Bleier Lewenhoff and Rosa Valiño de Bleier v. Uruguay. Communication No. 30/1978, UN Doc. CCPR/C/OP/1, of March 29, 1982, para. 13.3; Case of Albert Womah Mukong v. Cameroon. Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991, of July 21, 1994, para. 9.2; and Case of Turdukan Zhumbaeva v. Kyrgyzstan. Communication N^o 1756/2008, UN Doc. CCPR/C/102/D/1756/2008, of July 29, 2011, para. 8.7.

⁵⁰ ECHR, Case of McCann and Others v. the United Kingdom. Application No. 27229/95, September 27, 1995, § 149.

ii. Absolute necessity: it is necessary to verify whether other less harmful means exist to safeguard the life and integrity of the person or situation that is sought to protect, according to the circumstances of the case....

iii. Proportionality: the level of force used must be in accordance with the level of resistance offered, which implies striking a balance between the situation that the agent is facing and his response, considering the potential harm that could be caused.⁵¹

43. Along the same lines, the Commission notes that the Principles on the Use of Force provide for the use of firearms “to arrest a person presenting such a danger and resisting their authority.”⁵² Nevertheless, as part of the requirements to authorize the use of force in that hypothetical situation, the Principles establish that: i) it may be used only when other, less extreme means are insufficient to achieve this purpose; ii) it should be used only “when strictly unavoidable in order to protect life”; iii) officers must “give a clear warning of their intent to use firearms”; and iv) this warning must be given with sufficient time for the warning to be observed, except when such a warning would unduly place the officer at risk or create a risk of death or serious harm to other persons.

44. It follows from this that legitimate purpose, absolute necessity, and proportionality of the use of lethal force must be substantiated by the State in light of the particular circumstances of the specific case involved. Additionally, as a consequence of these principles, the Commission recalls that State agents who intervene in such operations must apply the criteria of “differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control or use of force, as required.”⁵³

45. Regarding the use of force in migration-related operations, the Court has held the following, in the *Nadege Dorzema* case, on the need to implement less harmful means:

...in this case, less harmful means could have been used for the traffic control sought and to avoid a violent pursuit; for example, by setting up traffic controls, with barricades, speed bumps, tire puncturing devices, and/or cameras that permit the non-violent recording and identification of those involved and an improved control of the flow of traffic in the area. Mainly, measures that are in keeping with the daily transit of migrants in the area.⁵⁴

46. In the same case, the Court specified that the migrants did not represent a real danger or threat, and consequently, the use of lethal force was not absolutely necessary; and that the State could have established less extreme means to achieve the same end, and therefore there was no proportionality.⁵⁵

2. General standards on the right to life, the right to humane treatment, and the right to personal liberty in cases related to alleged illegitimate use of lethal force

47. The Commission calls to mind that the right to life is a prerequisite for the enjoyment of all other human rights and that without the respect for this right, all other rights are meaningless.⁵⁶ Compliance with Article 4 of the American Convention, in connection with Article 1.1 thereof, does not only presuppose

⁵¹ I/A Court H.R. Case of *Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 134.

⁵² Principles 9 and 10 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba), August 27 to September 7, 1990.

⁵³ I/A Court H.R. Case of *Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 85.

⁵⁴ I/A Court H.R. Case of *Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 88.

⁵⁵ I/A Court H.R. Case of *Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, paras. 85-91.

⁵⁶ IACHR. Case 12.270, Report No. 2/15, Merits, *Johan Alexis Ortiz Hernández, Venezuela*, January 29, 2015, para. 185.

that no person can be arbitrarily deprived of his or her life but also requires that the States adopt any and all necessary measures to protect and preserve the right to life, based on their obligation to guarantee the full and free exercise of the rights of all individuals under their jurisdiction.⁵⁷

48. In keeping with the foregoing, the Commission has established that “extrajudicial or summary executions [involve] the deliberate, illegitimate deprivation of life on the part of State agents, usually acting on orders or at least with the consent and acceptance of the authorities. Therefore, extrajudicial executions are illegal acts committed by precisely those persons who have been invested with the power originally conceived to protect and guarantee [people’s security and lives].”⁵⁸

49. Moreover, the Commission calls to mind that in the inter-American system, cases involving extrajudicial executions, depending on their characteristics, can reveal violations of other human rights, such as the right to humane treatment. In these terms, the Inter-American Court has determined that “it is reasonable to assume that, during the moments before they were deprived of their life, [those executed] suffered profound fear in the face of the real and imminent danger that events would culminate in their death, as effectively occurred,”⁵⁹ a situation that involves a violation of the right to humane treatment established in Article 5 of the American Convention.

50. In *Nadege Dorzema et al. v. Dominican Republic*, the Court elaborated on the use of force and humane treatment and established that “if anyone is injured owing to the use of force, assistance and medical aid should be ensured and rendered, and relatives or close friends should be notified at the earliest possible moment.”⁶⁰

3. Determination of legitimacy of the deprivation of life of Pedro Roche Azaña and the bodily harm of Patricio Roche Azaña through use of lethal force, and analysis of the “satisfactory explanation” standard of the State

51. There is no dispute over the fact that Pedro Roche Azaña died and Patricio Roche Azaña was a victim of grievous bodily harm because of the use of lethal force by the State. The dispute revolves around whether, as the State maintains, the death and the impacts to physical integrity were the result of legitimate acts by police officers who were forced to fire when the van began to flee or whether, as the petitioner states, this was an illegitimate use of force. Based on the standards described above, it is incumbent upon the Commission to examine whether the State has satisfactorily explained that the death of Pedro Roche Azaña resulted from a legitimate use of lethal force.

52. At the time of the events in question, Nicaragua’s Organic Law of the National Police was not yet in force; it was published on August 28, 1996. However, Executive Decree 45-92 of 1992, which defined the functions and organization of the National Police, established that the police would employ weapons only in situations in which there was a reasonably serious risk to their life or physical integrity or that of others, or when a serious risk to public order was involved. Despite this provision, the State has not demonstrated that at the time of the events in question there were clear regulations in place with a prevention policy on use of force, in keeping with its international obligations in this area. Moreover, there is no information in the case file on whether there were protocols for oversight or control of operations to ensure a valid use of force.

53. The State argued that “the police authorities were forced to fire on the vehicle in order to halt its escape; even so, it continued on until it reached a sparsely populated area.”⁶¹ However, there are no indications in the case file that the migrants or the driver were armed or that they carried out some act of

⁵⁷ IACHR. Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, para. 186; I/A Court H.R. Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 80.

⁵⁸ IACHR. Report No. 25/02, Case 11.763, Plan de Sánchez Massacre, Guatemala, February 28, 2002, para. 114.

⁵⁹ I/A Court H.R. Case of Cantoral Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 99.

⁶⁰ I/A Court H.R. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 100.

⁶¹ Communication from the State received on July 5, 2007.

aggression that could have been interpreted as a threat to the State or engaged in violent acts that could pose a risk to life and therefore would warrant the use of lethal armed force as a last and necessary resort in that situation. In that regard, the Inter-American Commission calls to mind that the only legitimate use of firearms in cases of flight risk is when the life of a person is in jeopardy, a situation that does not arise in this case as there is no evidence that would point to the existence or indications of risk to the lives of the policemen who were manning the checkpoints.

54. The statements of the police officers themselves indicate that at both checkpoints the authorities signaled the vehicle to stop. At the first, the policemen stated, the signal to stop was made by waving a traffic baton and asking that the patrol car lights be turned on; at the second, they stated that they had signaled the vehicle to stop and that subsequently three police officers said they had fired into the air (Francisco Simón Ordoñez Nájera, Ricardo Javier Salgado Ojeda, and Silvio Antonio Vanegas Blandon) and one officer, José Marcelino Ramírez Vargas, said he had fired three to four times without authorization in the direction of the tires on the right side of the vehicle.

55. Even though the police officers stated that all the shots were fired into the air or at the vehicle's tires, the visual inspection report in the case file shows that no shots hit the tires or the motor to stop the vehicle, but rather that the gunshots were directed at the upper part of the vehicle, hitting individuals inside the van, as was effectively proved with the death of one of the alleged victims and the grievous bodily harm to the other and to another group of people.

56. In any case, even accepting the police officers' account regarding the use of less lethal means to stop the vehicle, based on the standards cited earlier the use of firearms should have been avoided at all cost by taking other types of preventive action, especially considering that there is a constant flow of illegal merchandise and human trafficking in that area. This is even more evident considering, as mentioned earlier, that there is no evidence suggesting that the alleged victims and those who were inside the van represented any type of threat to the lives of the police officers or of others.

57. The Commission reiterates that the use of lethal weapons at police or immigration checkpoints will always prove to be arbitrary and contrary to the principles of legality, absolute necessity, and proportionality when a vehicle tries to flee, unless there is aggression involved or indications that someone's life is in danger. In this case, the use of legitimate force was not substantiated, and the grave consequence was the death of Mr. Pedro Roche Azaña and the serious condition of Patricio Roche Azaña. The unnecessary and disproportionate use of force can be attributed to the Nicaraguan State owing to the actions of law enforcement officials.⁶² This conclusion is sufficient to establish the State's international responsibility for that use of force.

58. Moreover, in terms of the details of the harm to the two brothers' physical integrity, the petitioning party referred to "the now-deceased Pedro Bacilio Roche Azaña, who in a desperate state remained in agony until midnight (approximately) of that same day, when he died as a result of the fatal wound reportedly caused by the bullet hitting his skull."⁶³ In addition, with respect to Patricio Fernando Roche Azaña, the petitioner indicated that he received a gunshot wound and was without medical attention until the following morning; as a result, he remained in a coma for approximately two weeks and later had to stay in the hospital for another three months. Patricio Roche was operated on three times in Nicaragua and two more times in Ecuador, and "has been left with permanent injuries that have made him unable to carry out any economic activity that would allow him to live well and normally; and on top of this ongoing and desperate pain there is the bitter loneliness and anguish at having lost Pedro Bacilio Roche Azaña, a member of his family."⁶⁴

⁶² I/A Court H.R. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 91.

⁶³ Initial petition, Patricio Roche Azaña, December 23, 1998.

⁶⁴ Initial petition, Patricio Roche Azaña, December 23, 1998.

59. Based on the foregoing, the Commission concludes that Nicaragua is responsible for violating the rights to life and humane treatment established in Articles 4.1 and 5.1 of the American Convention, in connection with the obligations established in Articles 1.1 and 2 thereof, to the detriment of Pedro Bacilio Roche Azaña. The Commission also concludes that the Nicaraguan State is responsible for violating the right to humane treatment established in Article 5.1 of the American Convention, in connection with the obligations established in Articles 1.1 and 2 thereof, to the detriment of Patricio Fernando Roche Azaña.

B. Rights to a fair trial, judicial protection, and humane treatment (Articles 8,⁶⁵ 25.1,⁶⁶ and 5.1), in connection with Article 1.1 of the American Convention

1. General considerations

60. The Court has held that the States have an obligation to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8.1), all in keeping with the States' general obligation to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1.1).⁶⁷ The guarantees of Article 8.1 protect the right of the accused to due process and also safeguard the rights of access to justice of the victim of a crime or his or her next of kin, and the right of the next of kin to know the truth.⁶⁸

61. Both the IACHR and the Court have established that in cases involving extrajudicial executions, the State has the duty to undertake a serious, impartial, and effective investigation, *ex officio* and without delay.⁶⁹ Along this same line of precedents related to deaths involving agents of the State, “[the] investigation must be conducted using all available legal means to determine the truth and to investigate, prosecute and punish all those responsible for the facts, especially when State agents are or may be involved.”⁷⁰ Thus, the duty to investigate must be undertaken in a serious manner and not as a mere formality preordained to be ineffective, and it must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests.⁷¹ The IACHR also calls to mind that the obligation to investigate and punish every act that entails a violation of rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds.⁷²

62. Case law has also established that in cases involving deprivation of the right to life where there may be contradictory accounts, beyond ensuring that certain evidentiary steps are followed, “due

⁶⁵ Article 8 of the American Convention establishes the following, in the pertinent section: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

⁶⁶ Article 25 of the American Convention establishes the following, in the pertinent section: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

⁶⁷ I/A Court H.R. Case of Velásquez-Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 91; Case of Gutiérrez and Family v. Argentina. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 97; and Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 215.

⁶⁸ I/A Court H.R. Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 8, 2018, para. 218.

⁶⁹ IACHR. Report No. 41/15, Cases 12.335, 12. 336, 12. 757, 12.711. Merits. Gustavo Giraldo Villamizar Durán et al. Colombia. July 28, 2015, para. 195; and I/A Court H.R. Case of the “Mapiripán Massacre” v. Colombia. Judgment of September 15, 2005. Series C No. 122, para. 219.

⁷⁰ I/A Court H.R. Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260, para. 218. See also: Cf. Case of Velásquez-Rodríguez v. Honduras. Merits, para. 177, and Case of the Santo Domingo Massacre v. Colombia, para. 157.

⁷¹ I/A Court H.R. Case of Velásquez-Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C, No. 6, para. 177.

⁷² IACHR. Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 109. Also: I/A Court H.R. Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, para. 123; I/A Court H.R. Case of Blake v. Guatemala, Reparations and Costs. Judgment of January 22, 1999, Series C No. 48, para. 65.

diligence in the investigation must be evaluated in connection with the need to determine the veracity of the versions of events considered in the context of the proceedings, in other words, whether it was possible to obtain judicial clarification about what happened and eventual legal characterization of the facts consistent with the events in question.”⁷³

63. Along the same lines, in order to ensure due diligence in the conduct of a thorough and impartial investigation into a death under suspicious circumstances that involves agents of the State, the Commission takes note of some of the standards in the Minnesota Protocol, an instrument that establishes some of the minimum steps to take in an investigation. Such steps include: identification of the victim; the collection and preservation of evidence related to the death to assist in the potential prosecution of those responsible; the identification of possible witnesses and the taking of their statements related to the death; the determination of the cause, manner, place, and time of death, as well as any pattern or practice that may have led to the death; the distinction between natural death, suicide, and homicide; the identification and arrest of the person or persons involved in the death; and the presentation of the alleged perpetrators before a competent court established by law.⁷⁴ As these standards state, “When necessary, and subject to the consent of the individual(s) concerned, investigators should take steps to protect an interviewee and others from ill-treatment or intimidation as a consequence of providing information.”⁷⁵

64. The Commission has stated that the duty to provide grounds for a decision is a corollary of due process guarantees, not only in terms of the very legitimacy of the decision and the defense of the person accused, but also in terms of the expectation of access to justice of victims whose rights have been violated. Moreover, the duty to provide grounds for decisions is a guarantee connected with the proper administration of justice; it also shows that the parties have been heard.⁷⁶ In the same vein, the Inter-American Court has established that the duty to provide grounds is one of the “due guarantees” included in Article 8.1 to safeguard the right to due process.⁷⁷ In this regard, the grounds “are the exteriorization of the reasoned justification that allows a conclusion to be reached” and include an exposition of the rationale that led the judge to adopt a decision.

65. The Court has had the opportunity to address the subject of juries and has established that while intimate conviction is not an arbitrary criterion for reaching a verdict, the entire criminal proceeding should be examined to see whether it offered safeguards against arbitrariness that allow the reasons for the verdict to be understood, not only for the defendant but also for the victim or the accuser. In this sense, “the need for the defendant and the victim of the crime or the accusing party to understand the reasons for the decision of guilt or innocence adopted by the jury in its verdict remains in full force as a guarantee against arbitrariness.”⁷⁸ What is essential in these cases for the Court is to determine whether the proceedings in their entirety offer sufficient guarantees against arbitrariness, so that the parties can understand the result of the process as a rational result of the evidence.⁷⁹

66. Finally, the Inter-American Court has indicated that the right to due process of law must be ensured to migrants without discrimination of any kind, irrespective of their migration status. This right must be genuine and not merely formal.⁸⁰ In its Advisory Opinion 18/03, the Inter-American Court established that migrants are in a vulnerable situation as subjects of human rights; they are in an individual situation of

⁷³I/A Court H.R. Case of García Ibarra et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series S No. 306, para. 143.

⁷⁴I/A Court H.R. Case of Ortiz Hernández et al. v. Venezuela. Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338, para. 161.

⁷⁵UN. The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017, para. 86.

⁷⁶I/A Court H.R. Case of V.R.P., V.P.C. et al. v. Nicaragua, March 8, 2018, para. 210.

⁷⁷I/A Court H.R. Case of V.R.P., V.P.C. et al. v. Nicaragua, March 8, 2018, para. 271.

⁷⁸I/A Court H.R. Case of V.R.P., V.P.C. et al. v. Nicaragua, March 8, 2018, para. 263.

⁷⁹I/A Court H.R. Case of V.R.P., V.P.C. et al. v. Nicaragua, March 8, 2018, para. 266.

⁸⁰Inter-American Court of Human Rights. Advisory Opinion OC-18/03, September 17, 2003, para. 121.

absence or difference of power with regard to non-migrants (nationals or residents).⁸¹ This implies that in some cases States must take affirmative action to reverse or change discriminatory situations.⁸²

2. Analysis of the case

67. In this case, the investigation began after the events of April 14, 1996, and ended on February 24, 1997, with a verdict and acquittal in sole instance. With respect to the gathering of evidence in this case, covered in the section on findings of facts, the IACHR does not have the elements available to determine whether there was a failure to meet an obligation of due diligence.

68. Nevertheless, the Commission observes that given the total absence of grounds for the verdict and acquittal, it is not possible to establish whether the proceedings as well as the final determination aimed to establish whether the use of lethal force was legitimate by the standards of legitimate purpose, necessity, and proportionality examined above. To the contrary, it is clear from the conclusions established in the prior section that the individuals in the van did not pose a risk to the lives of the police officers or others. Given the absence of grounds for the verdict, the Commission rightly infers that such fundamental valuations under international standards on use of force were not considered in determining the defendants' criminal responsibility. In this case, it is reasonable to conclude that the verdict that rejected the defendants' guilt could not have been predicted by the victims, as it showed no correlation with the events in question, the elements of proof in the accusation, and the evidence received in the domestic proceedings.⁸³

69. Thus, the absence of grounds for the verdict not only implied that the State failed to offer a satisfactory explanation regarding the use of lethal force, as it should have, but that this also constituted a source of denial of justice for Patricio Roche Azaña and his mother and father.

70. In terms of the victims and their next of kin being sufficiently and adequately heard in a criminal proceeding related to human rights violations, the Commission observes that Nicaraguan legislation itself established that it was impossible to appeal the Jury Court verdict, and therefore the proceeding did not offer sufficient guarantees to scrutinize the decision and ensure that it was not arbitrary and did not violate those individuals' right to a fair trial and to judicial protection.

71. Along similar lines, with respect to the right to a hearing, while it is true that it was not possible to take Mr. Patricio Roche Azaña's statement during the 10 days established in Nicaraguan law, due to his medical condition, it is also true that there were still possibilities for him to participate in the proceedings later on, a situation that was not taken into account by the courts. To the contrary, he was never notified that a proceeding existed, how he could participate, and the repercussions this could have for him, even though he had been able to emerge from his coma and it would have been possible for him to participate in the case.

72. In this regard, it is worth considering that migrants are at considerable disadvantage in terms of defending their rights due to various barriers to access to justice, among them the lack of knowledge about the laws and judicial system of the country they find themselves in. Therefore, the right to information in that respect has special value because of the weight it can have in migrants' access to justice. The Nicaraguan State did not notify Mr. Roche Azaña at any time about his right to participate during the proceedings. This situation affected his right and that of his mother and father to a hearing with due guarantees and their right to be kept informed of the progress and results of the case.

73. Consequently, the Commission considers that the State violated the rights to a fair trial and to judicial protection established in Articles 8.1 and 25 of the American Convention, in connection with the obligations established in Article 1.1 thereof, to the detriment of Patricio Roche Azaña and his mother and father. The Commission also considers that the State violated the right to humane treatment established in

⁸¹ Inter-American Court of Human Rights. Advisory Opinion OC-18/03, September 17, 2003, para. 112.

⁸² Inter-American Court of Human Rights. Advisory Opinion OC-18/03, September 17, 2003, para. 104.

⁸³ I/A Court H.R. Case of V.R.P., V.P.C. et al. v. Nicaragua, March 8, 2018, para. 269.

Article 5.1 of the American Convention, in connection with the obligations established in Article 1.1 thereof, to the detriment of the mother and father of the Roche Azaña brothers.

V. CONCLUSIONS AND RECOMMENDATIONS

74. Based on the determinations of fact and law, the Inter-American Commission concluded that the State is responsible for violating Articles 4.1 (right to life), 5.1 (right to humane treatment), 8.1 (right to a fair trial), and 25.1 (judicial protection) of the American Convention, in connection with the obligations established in Articles 1.1 and 2 thereof, to the detriment of those individuals indicated throughout this report.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF NICARAGUA:

1. Provide full reparation, in both material and moral terms, for the human rights violations laid out in this report. The State should adopt measures of financial compensation and satisfaction to the benefit of Mr. Patricio Roche Azaña and his parents.

2. Reopen the criminal investigation—diligently, effectively, and within a reasonable period—to fully clarify the facts, identify any possible responsibility, and impose the appropriate penalties for the human rights violations laid out in this report. Considering the seriousness of the stated violations and the inter-American standards involved, the Commission underscores that the State may not put forth the argument that the guarantees of *ne bis in ídem*, *res judicata*, or statutes of limitation justify a failure to comply with this recommendation.

3. Provide the necessary physical and mental health-care measures for the rehabilitation of Mr. Patricio Roche Azaña and his parents, if they so wish and in consultation with them.

4. Provide non-repetition mechanisms that include the training of authorities on the use of force, in keeping with the standards described in this merits report, as well as training on the human rights of migrant persons.