

Judges as human rights defenders: their role and the safeguard of judicial independence. Considerations on the *Villaseñor Velarde y Otros vs. Guatemala case*

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1. – The Inter-American Court of Human Rights (hereinafter the Court) issued the judgment in the case “Villaseñor Velarde y Otros vs. Guatemala”, dated 5 February 2019, which in the meantime is only available in Spanish.

The case concerns facts of external pressure that took place from 1990 to 2013 and constituted a risk for Villaseñor and her family in relation to her role as a judge. During those years she worked on cases of national and international importance involving human rights and for this reason she claimed to have been victim of prolonged acts of intimidations aimed at impeding her to perform her function independently.

The Court ruled unanimously that the State of Guatemala violated, in relation to the obligation stated in Article 1, § 1, ACHR, the right to personal integrity (art. 5, § 1 and 5, § 2, ACHR) and the right to a fair trial and judicial protection (art. 8, §1 and 25, ACHR) of María Eugenia Villaseñor Velarde. At the same time, the Court did not find Guatemala liable for the violation of the right to honour and personal dignity (art.11 ACHR) of the judge and for the violation of the right to personal integrity (art. 5, § 1 ACHR) and of the right to honour and personal dignity (art. 11 ACHR) in prejudice of her next of the kin.

2. – Since there were wide spreading acts of intimidations and threats against judges, in 1994, the “Oficina de Derechos Humanos del Arzobispado de Guatemala” proposed an initial petition to the Inter-American Commission of Human Rights (hereinafter the Commission) and in the meanwhile asked for the adoption of provisional measures in favour of Villaseñor and other judges of the “Sala Tercera de la Corte de Apelaciones”. After determining the case was admissible, the Commission concluded that several human rights violations were committed by Guatemala and issued recommendations to the State, such as repairing the occurred violations, investigating in an independent, effective and impartial manner, implementing measures in order to prevent the commission of such violations and adopting the administrative and

disciplinary measures in respect of the state officials. On 15 March 2017, according to art. 45 of the “Rules of Procedure of the Inter-American Commission of Human Rights” and artt. 51 and 61 of the American Convention and art. 35 of the “Rules of the Court”, the Commission submitted “*la totalidad de los echos y violaciones*” described in the *Informe de Fondo* to the Court, asking the Court to declare the international liability of the State of Guatemala.

The Court found itself to be competent to hear the case considering that Guatemala has been part of the Inter-American Convention since 25 May 1978 and has recognized the jurisdictional competence of the Court since 9 March 1987. (§ 14)

3. – The Court preliminarily narrowed the facts of the case at stake to those that took place during the years between 1990 until 2013 which were related to the activities of Villaseñor as a judge. The facts concerning her alleged destitution were not taken into considerations in the *Informe de Fondo* and so were not brought in front of the Court. (§ 16)

4. – The Court initially considered the context in which the facts took place. The Court was aware that in the years 1990 to 2013 the administration of justice in Guatemala was very complex and problematic, characterized by acts of intimidations against justice operators. (§ 24)

According to the “Comisión para el Esclarecimiento Histórico”, before 1996 judges, lawyers and justice operators were arbitrarily executed. This created a general fear which led to inaction and impunity in tribunals. (§25) In the same years, the Human Rights Committee of the United Nations highlighted that members of the Guatemala judicial system were threatened to death and no measures were taken by the government. (§26) In 1996 the “Acuerdos de Paz” was signed and judicial reforms were undertaken. (§27) The MINUGUA (Director de la Misión de Verificación de las Naciones Unidas en Guatemala) expressed his concerns since violent speeches against judges were spreading (§26) and the “Comisión de Fortalecimiento de la Justicia” referred that there were obstacles to a fair trial, such as threats to the witnesses, lawyers and justice operators. (§26)

During 2000 and 2001, 57 cases of menaces against judges, lawyers and justice operators were reported. (§27) In 2001, the Commission defined the “*difundida situación de amenazas y ataques contra jueces para influir en los procesos judiciales*” as the main problem of Guatemala administration of justice (§28). Similarly, the Human Rights Committee of the United Nations expressed its concern for such a situation through the report named “Observaciones sobre Guatemala” (27-08-2001, §21).

During 2002 -2012, the Commission reported that 640 judges and public prosecutors were victims of acts of menaces and intimidations, 24 were assaulted, 5 were seized and 11 justice operators were murdered. (§29)

In conclusion, in Guatemala during the years 1990-2013, the justice system was very insecure as justice operators were subjected to daily acts of intimidation, aggression and even murders in relation to their roles in the system.

Such a situation deeply compromised judicial independence since no effective action was taken by the State to safeguard the rights of the justice operators. (§32)

5. – During those years (1990-2013), Villaseñor worked as a judge of the Judicial Power of Guatemala.

According to “*las partes*” and to the Commission, some judicial proceedings carried out by Villaseñor are particularly relevant for the case at stake: Villaseñor sentenced a man to prison after finding him responsible for the death of the anthropologist Myrna Mack Chang (an activist dedicated to the protection of

indigenous Maya human rights), the judge also decided in the case “Sikorsky” (a case concerning the overvaluation of the purchase price of three helicopters), and in the case related to the death of a student, Julio Cu Quim. The judge also supported, in collaboration with the Mack Foundation, a reform proposal directed to the Ministerio Público.

She also published a book titled “*Myrna Mack y su encuentro con la justicia*”. And she took part in the case “Plan de Tarea Hunapù, in which some state agents were condemned. (§ 33-42)

The Commission indicated in the *Informe de Fondo* that the intimidating acts which affected Villaseñor during the years mentioned, included acts such as: trespasses in her house; death threats by phone, texts, and unidentified persons outside her property; the attempted kidnapping of her daughter; the abduction of a police agent in charge of protecting her domicile; theft of personal data; attempts to intentionally damage her property by entering her car and attempting to cut phone wires at her home; negative press releases and public declarations and communications from unidentified persons regarding her activity as a judge.

As stated in the *Fondo*, the Court had to decide on the alleged violations of the victim’s human rights and at the same time had to assess whether or not the Judicial independence in Guatemala was adequately safeguarded. (§75)

First, the Court took the task of establishing whether Judge Villaseñor’s right to personal integrity, judicial guarantees, right to honour and dignity and to judicial protection were protected.

The core aspect of this case was to determine if Guatemala is responsible for violating its obligation to ensure and protect judges against the “*pressiones externas*” on judicial activity which was suffered by judge Villaseñor for her activity as a judge. (§79)

The Court was aware that the facts indicated were of various kinds (attempt to kidnap, robbery, threats, malfunctioning of car parts or telephone connection, press releases) and it underlined that its task was not to determine whether these acts were unlawful or not, but to determine whether or not the State had undertaken its conventional obligations to prevent and protect Villaseñor from such acts. (§80-81)

According to the Court, the acts of intimidation indicated by the Commission had to be considered as symptoms of a situation characterized by external pressure in relation to Villaseñor’s activity as a judge.

The recurrence and persistence of these acts of intimidation should have had alerted Guatemala: the State should have had taken action in order to investigate and to identify the source and the reasons for such intimidating behaviours. (§90) The Court had already stated that a State “*a fin de evitar presiones externas que afecten la independencia judicial, con relación a la persona del juez específico, debe prevenir dichas injerencias y debe investigar y sancionar a quienes las cometan*” (Corte IDH, Caso Reverón Trujillo Vs. Venezuela, 30-06-2009 [*Excepción Preliminar, Fondo, Reparaciones y Costas*], §146). In order to do that, it is clear that the State has to be aware of the relevant facts. In the Villaseñor case, the State was actually aware of the intimidating facts that affected Villaseñor, at least until July 1994.

For the Court, there were not enough elements to determine whether the State itself violated Villaseñor’s right, but there were sufficient elements to establish whether the State complied with its obligations to ensure the protection of human rights. The Court had to establish whether the State had adopted investigative and security measures to safeguard the judge’s rights and if it had undertaken investigations.

The Court found that the State had indeed adopted security measures for Villaseñor and her family for a period of nearly 18 years. Even if the judge complained that these measures were lacking, especially for what the guard’s equipment was concerned, it is clear that the State provided effective protection. (§105)

Moreover, no allegation allowed the Court to establish that the State acted in a discriminatory manner in respect of the judge for being a woman. (§ 107-109)

Villaseñor's gender, indeed, could have determined an exasperation of the threats she was subjected to: "women human rights defenders are often at greater risk than their male counterparts, because of sociocultural norms and traditions that script their role in society" and "they are at greater risk of gender-based violence" (*A Research Agenda for the Protection of Human Rights Defenders*, Journal of Human Rights Practice Alice M. Nah, Karen Bennett, Danna Ingleton, James Savage, Volume 5, Issue 3, November 2013, Pages 406-407)

6. – As it is renowned, international law distinguishes among negative and positive obligations: a negative obligation entails the State duty to refrain from committing human rights violations; while a positive obligation can be declined on two levels. First the State have the positive obligation to implement human rights rules, in particular conventional rules, and then have to take effective action in order to safeguard the rights provided by these rules. The Court recognizes such positive duty based on the general obligations of Articles 1(1) and 2 of the American Convention on Human Rights (ACHR), which have been further specified by the Court in the case *Velásquez Rodríguez vs. Honduras* (Corte IDH, *Caso Velásquez Rodríguez vs. Honduras*, 29-07-1988, [*Excepción preliminar, fondo, reparaciones y costas*]). More specifically, the Court has established the positive obligation to prevent and repress human rights violations, the failure to comply with such obligation can lead to assessing the international responsibility of State in the light of the principle of due diligence.

As for the State's duty to carry out adequate investigations, the Court had previously stated that "*la investigación de la violación de determinado derecho sustantivo puede ser un medio para amparar, proteger o garantizar ese derecho*" (Corte IDH, *Caso Perozo y otros Vs. Venezuela*, 28-02-2009 [*Excepciones Preliminares, Fondo, Reparaciones y Costas*], §298) (§110). According to the Court, indeed, every person that has suffered for a human rights violation has the right to obtain from the competent organs an "*esclarecimiento*" (clarification) of the facts through effective investigations of the facts of the case (Corte IDH, *Caso Chitay nech y otros Vs. Guatemala*, 25-05-2010 [*Excepciones Preliminares, Fondo, Reparaciones y Costas*], §206).

The Court emphasized that compliance with the obligation to investigate can be a means of guaranteeing fundamental rights: every person that considers himself to be the victim of a violation has the right to access to justice, and this right has to be guaranteed by the State (Corte IDH, *Caso del Caracazo Vs. Venezuela*, 29-08-2002, [*Reparaciones y Costas*] §110). In addition, the State has to fulfil the obligation to investigate since it is not just an international obligation, but it is also provided by the national legislation itself (§111).

Even if the Court did not have the competence to establish whether or not the facts that affected Villaseñor were licit or not, it affirmed that the State had the obligation to investigate them (§113) within a reasonable time and developing an efficient line of investigation (§115). Since the alleged violation was linked to Villaseñor's activity as a judge, the State should have taken into consideration her activity in order to determine which interests could be affected by her work. (§115)

For the Court it is clear that the continuous and persistent acts of intimidation against Villaseñor have to be seen in the light of the broader context of undue pressure and terrorization against judges in Guatemala.

It is obvious that this situation required an exhaustive and comprehensive investigation: indeed, only through a methodical and structured inquiry could be possible to identify the perpetrators and to end this scenario characterized by obstructive and intimidatory acts (§116).

As for the perpetrators is concerned, they may be “state and non-state actors, such as the police, military, members of the judiciary, local authorities, state authorities, security services, paramilitary and other armed groups, right-wing groups, the media, and corporations” (*A Research Agenda for the Protection of Human Rights Defenders*, Journal of Human Rights Practice Alice M. Nah, Karen Bennett, Danna Ingleton, James Savage, Volume 5, Issue 3, November 2013, p.402).

The Court recognized that there was no notice of investigations conducted in relation of most of the episodes of intimidation that affected Villaseñor and so it concluded that Guatemala did not investigate in an effective manner. The Court was not able to establish every single act that should have been investigated, but it affirmed that the State, in general, should have adopted actions in order to determine the sources of the intimidation and the responsible parties.

Since the intimidating acts had continuously occurred over a prolonged period of time, posing a significant risk on the free exercise of jurisdictional functions, the investigation of these acts was relevant in order to ensure not only Villaseñor’s independence but to protect judicial independence itself, as a core value in a democratic society.

Judicial independence is not a privilege, but it is a right and at the same time a guarantee for justice operators. (§130). As a constitutional value, it can be defined as a status that relies on particular conditions and guarantees. In the framework of the American Convention, it is enshrined in article 8.1.

According to the Court:

“(…) los jueces, a diferencia de los demás funcionarios públicos, cuentan con garantías reforzadas debido a la independencia necesaria del Poder Judicial, lo cual la Corte ha entendido como “esencial para el ejercicio de la función judicial”. Dicho ejercicio autónomo debe ser garantizado por el Estado tanto en su faceta institucional, esto es, en relación con el Poder Judicial como sistema, así como también en conexión con su vertiente individual, es decir, con relación a la persona del juez específico. El objetivo de la protección radica en evitar que el sistema judicial en general y sus integrantes en particular se vean sometidos a posibles restricciones indebidas en el ejercicio de su función (...)” (Corte IDH, *Caso Herrera Ulloa Vs. Costa Rica*, 2-06-2004 [*Excepciones Preliminares, Fondo, Reparaciones y Costas*], §171).

From the considerations developed above, it appears that the Inter-American Commission and the Inter-American Court have repeatedly highlighted that the individual guarantees in favour of judges, which are derived from the principle of judicial independence, include the appointment process, a pre-established role duration and the safeguard against external pressures. Thus, they seem to share the same standards and embrace the same guarantees recognized by the Council of Europe. (European Charter on the Statute for Judges, Strasbourg, 8-10 July 1998).

In relation to the case at stake, it could be interesting to recall the Recommendation (94)12 of the Committee of Ministers on the independence, efficiency and role of judges, which provides the principle of “freedom from undue external influence”. It means that judges in their decision-making process should be independent and free from any restriction, improper influence, inducements, pressures, threats or interferences; consequently “the law should provide for sanctions against persons seeking to influence judges in any such matter”. (Recommendation (94)12, Principle I.2.d)

However, the analysis of the relevant ECHR (European Court of Human Rights) case law on the matter of judicial independence (Kleyn and Others v. the Netherlands, Sramek v. Austria Le Compte, Van Leuven and De Meyere v. Belgium, Beaumartin v. France Sovtransavto Holding v. Ukraine, Flux v. Moldova (no. 2), Agrokompleks v. Ukraine Oleksandr Volkov v. Ukraine, Micallef v. Malta [GC],

Mežnarić v. Croatia, Baka v. Hungary [GC]) revealed that the European Court of Human Rights did not deal with cases regarding the protection of judges from external pressures. So, it's not possible to establish any interesting parallelism among the OAS and ECHR system. In fact, as stated above, Villaseñor case concerns the State's failure to comply with its positive obligation to investigate any situation, in particular deriving from the private actors, that could entail a threat for the judge's independence, while the ECHR case law focus only on the protection of judges from internal pressure, meaning a pressure which derives from the same State bodies.

The Court then recognized that “the autonomous exercise of judicial function has to be granted by the State since judicial independence is one of the main objectives of the separation of powers. (Corte IDH, *Caso del Tribunal Constitucional Vs. Perú*, 31-01-2001, [Fondo, Reparaciones y Costas], § 73 y 75). Judicial independence includes the guarantee against external pressures: States have to abstain from any form of interference and must adopt measures to prevent private actors from committing these acts of undue interferences against justice operators. (Corte IDH, *Caso Apitz Barbera y otros* (“Corte Primer de lo Contencioso Administrativo”) *Vs. Venezuela*, 5-08-2008, [Excepción Preliminar, Fondo, Reparaciones y Costas], § 55)

The Basic Principles of the United Nations have set that the judges have to decide cases without any direct or indirect restrictions, influence, pressures, threats, intrusions, for whatever reason (Corte IDH, *Caso López Lone y otros Vs. Honduras*, 5-10- 2015 [Excepción Preliminar, Fondo, Reparaciones y Costas], §197).

The Commission noted that attacks against justice operators are connected to the work they do and aim to create a sense of fear and pressure to undermine their impartiality and independence. The attacks are intended to send judges the message that their safety will be at risk if they decide the case impartially (Guarantees for the Independence of Justice operators, towards strengthening access to Justice and the Rule of Law in the Americas, OEA/Ser. I./V/II, Doc. 44, Dec. 5 2013, §160).

It has been highlighted that these attacks to justice operators tend to be more intense when the cases they are prosecuting encompass interests of national importance and concern serious human rights violations. In many instances, the murders of human rights defenders are preceded by threats addressed not to the justice operator themselves but to their family. The threats are made in different forms: “in writing, published in pamphlets or sent by e-mail, having strange persons follow the intended victim, taking photographs of the home or car, and through illegal searches of offices” (Guarantees for the Independence of Justice operators..., OEA/Ser. I./V/II, §161). When there is the possibility of irreparable harm to life or personal integrity, the Commission has the power to adopt precautionary measures. (Guarantees for the Independence of Justice operators..., OEA/Ser. I./V/II, §162).

In order to identify the pattern and the sources of such threats and in order to design effective protective measure, according to the Commission, the States should “create a record of incidents in which justice operators are attacked and/or intimidated” (Guarantees for the Independence of Justice operators..., OEA/Ser. I./V/II, §165).

The Villaseñor Case, which has to be seen as an index of an endemic problem in Guatemala, reveals this exact pattern: Villaseñor appears to have been threatened for her involvement in cases concerning human rights violations and also the methods of intimidation that were used correspond to those identified in the Report cited above.

7. – From the previous considerations, it clearly emerges that for a judge judicial independence constitutes a fundamental requisite to exercise his or her function as a human rights defender.

Primarily, we should reflect on the question whether a judge can be considered as a human rights defender.

It has previously been discussed whether or not the right to defend human rights constitutes itself an independent right (*El derecho a defender los derechos humanos como un derecho autónomo*, Marta González Domínguez, Revista IIDH, vol. 63, 2016, pp.106-145).

The UN General Assembly in the “Declaration on the right and the duty of individuals, groups and institution on promoting and protecting human rights and fundamental freedoms universally recognized” (A/RES/53/144, 8 March,1999) has highlighted that every person has the right to individually or collectively promote and obtain the protection and the realization of human rights and fundamental freedoms at national and international level. The Court has also determined that human rights defenders contribute in a very essential manner to the observance of human rights (*El derecho a defender los derechos humanos...*, Marta González Domínguez, p. 109). The Court also referenced the assertion of international bodies such as the the UN Human Rights Commissioner, the Council of Europe, the EU Parliament and the Commission which have also enhanced this role of human right defenders. (Corte IDH, *Caso defensor de derechos humanos y otros vs. Guatemala*, 28-08-2014, [Fondo, Reparaciones y Costas], §129).

A human rights defender realizes his work through a series of activities which are strictly connected to his capacity as a human rights defender. The right to defend human rights necessarily encompasses other fundamental rights, such as the right to freedom of expression, the right to reunion, the right to association, political rights, and the right to access to justice (Corte IDH, *Caso Defensor de derechos humanos y otros vs. Guatemala*, 28-08-2014, [Fondo, Reparaciones y Costas], §129).

Indeed, Latin America appears to be the most dangerous region to exercise this right. This is especially true in cases where people stand for the rights of indigenous people, and for land and environmental rights.

(Front Line Defenders. Informe Anual 2016: Basta de asesinatos de defensores/as de derechos humanos. p.12).

Murder constitutes the most serious way in which the right to defend human rights is impeded, but it is not the only one. Persecutions, threats, harassments, retaliations, with or without public acquiescence are other forms used to obstruct a person’s exercise of the right to defend the human rights of others. Such acts generate a sense of fear in the society and discourage people to pursue the fight against human rights violations, silencing the victims, perpetuating the impunity and the impossibility of establishing the rule of law and democracy. (CIDH, Segundo informe sobre la situación de las y los defensores de derechos humanos en las Américas, OEA/Ser.L/V/II. Doc. 66. 31 de diciembre de 2012, p.21)

For this reason, in order to encourage and promote the exercise of the right to protect and defend human rights, human rights defenders have to be guaranteed effective access to justice, not only to denounce the human rights violations: this right is recognized by art. 9 of the Declaration on Human Rights Defenders and by art. 25 ACHR. (OACNUDH, Folleto informativo No. 29: Los Defensores de Derechos Humanos:Protección del Derecho a Defender los Derechos, Geneva 2004, p. 23.)

Moreover, the most effective way to guarantee the protection to human rights defenders who are victims of aggressions, threats, assassinations, criminalization, or obstructions is to realize an effective investigation of the facts (CIDH, Segundo informe sobre la situación de de las y los defensores de derechos humanos en las Américas, OEA/Ser.L/V/II., Doc. 66. 31 de diciembre de 2012, § 233).

Particularly, when the State investigates acts of aggression against human rights defender, it has to “take into consideration their activity in order to identify the interests that might be affected and establish an “investigation line” and hypothesis regarding the responsible party (*El derecho a defender los derechos humanos...*, Marta González Domínguez, p. 129).

Additionally, the Court underlined that: “en determinados contextos, los Estados tienen la obligación de adoptar todas las medidas necesarias y razonables para garantizar el derecho a la vida, libertad personal e integridad personal de aquellas personas que se encuentren en una situación de especial vulnerabilidad, especialmente como consecuencia de su labor, siempre y cuando el Estado tenga conocimiento de un riesgo real e inmediato en contra de éstos y toda vez que existan posibilidades razonables de prevenir o evitar ese riesgo” (Corte IDH, *Caso defensor de derechos humanos y otros vs. Guatemala*, 28-08-2014, [*Fondo, Reparaciones y Costas*], §24] (in certain contexts, States have the obligation to take all necessary and reasonable measures to guarantee the right to life, personal liberty and personal integrity of those persons who are in a situation of special vulnerability, especially as a result of their work, provided that the State is aware of a real and immediate risk against them and that there are reasonable possibilities to prevent or avoid such a risk)

According to the Court, in addition to investigating and acknowledging the facts, the State also has the obligation to adopt effective and adequate measures of protection. When it comes to human rights defenders, the measures have to be adequate in respect to the activity which is carried by the defenders, the risk level has to be valued in an objective manner and the measures have to be adaptable in case of risk variation (Corte IDH, *Caso defensor de derechos humanos y otros vs. Guatemala*, 28-08-2014, [*Fondo, Reparaciones y Costas*] §157).

In the “*Caso Defensor de derechos humanos y otros vs. Guatemala*”, even if the State had acknowledged the facts, it did not adopt any protection measures. Therefore, the Court concluded that in that case the State did not comply with its obligation to guarantee the personal integrity of B.A. (a human right activist in Guatemala) and her family, violating art. 5.1 of the American Convention.

Therefore, on the grounds of the jurisprudence and the reports consulted, it is possible to conclude that, without any doubt, justice operators in the OAS system have been considered as human rights defenders.

The question then is whether or not judges are considered justice operators in the OAS system.

To determine this, it is essential to look at how justice operators are defined in relation to judges. First, the Commission “has used the concept of justice operators to refer to State officials and employees who play a role in the justice systems and perform functions that are essential to respecting and ensuring the rights to protection and due process”. (Guarantees for the Independence of Justice operators..., OEA/Ser. I./V/II, §15)

The term ‘justice operators’ is also used to refer to judges – who play the paramount role in the determination of rights - and to prosecutors and public defenders who, in their respective roles, are part of the process through which the State guarantees access to justice (Guarantees for the Independence of Justice operators..., OEA/Ser. I./V/II, §15). Judges are considered to be “lead actors in ensuring judicial protection of human rights in a democratic State and the due process that must be observed all judicial proceedings” (Guarantees for the Independence of Justice operators..., OEA/Ser. I./V/II, §16).

Thus, from these references, it can be concluded that under the OAS system judges are justice operators who defend human rights.

For these reasons, the Villaseñor judgement can be seen as a step forward in the Inter-American Court of Human rights jurisprudence. In fact, in the case “*Caso defensor de derechos humanos y otros vs. Guatemala*” the Court had recognized the right of human rights defender to defend human rights as an independent right and the consequent obligation of the State to adopt protection measures to defend them.

Now, as a result of the Villaseñor judgement, it clearly appears that the Court has also acknowledged that even judges, as human rights defenders, have the

autonomous right to defend human rights. However, as stated above, such a right can only be effectively exercised if judges are granted judicial independence.

The question is what entails for a judge to be considered as a human rights defender and whether such a status can enhance judges position.

As pointed out above, being a judge in Latin America can be very risky due to the interference, intimidation and threats against their lives so, even if judges already have guarantees and immunity, recognizing them as human rights defender constitute an additional form of protection.

Indeed, when a State has to investigate on the alleged violation of the rights to personal integrity and liberty of judges, due to their qualification as human rights defender, will adopt a different approach, modelled on their status, that will likely result on a more organic and effective inquiry.

From this point of view, it is evident that classifying judges as human rights defender is not just a superfluous and redundant etiquette, but it represents an additional substantial means through which security is provided.

8. – The State's failure to comply with its obligation to investigate the acts of intimidation perpetrated against Villaseñor generated in her a sensation of imminent risk and fear that affected her private life and personal integrity. (§131)

Thus, the consequence of the lack of investigations, which were necessary to safeguard her judicial independence, also entailed the violation of Villaseñor right to personal integrity. (§132)

Indeed, human rights can be defended only if human rights defenders are not themselves victims of menaces, physical or moral aggressions, or other acts of harassment. It emerges that States have to adopt measures in order to protect human rights defenders and this duty cannot be fulfilled without a systematic investigation in order to identify those who are responsible and to eradicate the risk for the victims.

For these reasons the Court concluded that Guatemala violated the articles 5.1, 8.1 and 25.1 of the American Convention.

On the other hand, this conclusion was not extended to Villaseñor's next of the kin. According to the Court, the risk for Villaseñor was related to her activity as a judge. Her family, however, did not suffer from the lack of investigations and the fear to be subjected to the same threats received by the judge did not meet the burden to establish that Guatemala violated their right to personal integrity. (§ 143-146)

This conclusion may be criticized due to the fact that the Court seems to have failed to consider that, as in the case at stake, in many instances pertaining to these types of intimidation the threats are not made directly against the justice operator but to his or her family. It is inevitable that a judge, like every person subjected to any form of intimidation, is concerned about his or her family safety: the threats have necessarily an impact on the family life, entailing a constant sense of insecurity and also the need of changing family habits. "There are the anxieties about how to keep families safe from attack. Because activists' opponent know that their families are so important to them, they often try to get them through their children, sisters, partners or parents. For many activists, a threat or attack against a family member is often the final straw" (*Insiste, Resiste, Persiste, Existe: Women Human Rights Defenders' Security Strategies. Urgent Action Fund for Women's Human Rights*, Barry, J., and V. Nainar, Canada, 2008, p.44). Although it should also be noted that in this particular case, the Commission and "las partes" did not offer specific elements and only put forth generic complaints which assumed that also the next of the kin suffered for the same situation of intimidation to which Villaseñor was subjected. More specific allegations could have brought the Court to rule differently.

9. – Furthermore, the Court did not find the State liable for the violation of Villaseñor's right to protection of honour and personal dignity. (§133-139) Acts that offend these rights have serious consequences for human rights defenders: they feel stigmatized, put in danger and, in some cases, forced to abandon their job. In the case at stake, the representatives stated that Villaseñor's honour was violated in two cases: when she was accused through a mail sent to the Supreme Court President of taking part in a corruption case and of being paid for the release one of the suspects and when she was accused of being involved with a criminal organization

According to the Court, in the first case, Villaseñor was not persecuted for such acts. The fact that she was not involved was not properly publicized by the State, however, and she was recognized the "*derecho constitucional de respuesta*". In the second case, instead, the Court could not find any State action contrary to the principle of due diligence since those acts were investigated.

10. – In summary, due to the lack of effective actions to investigate the facts, the Court concluded that Guatemala failed in its duty to guarantee the right to personal integrity of Mrs. Villaseñor, who was affected in relation to her judicial independence. It also undermined her rights to judicial guarantees and judicial protection. Therefore, the Court declared that Guatemala violated, to the detriment of María Eugenia Villaseñor Velarde, Articles 5.1, 8.1 and 25.1 of the American Convention on Human Rights, in relation to Article 1.1 of the same treaty.

11. – Lastly, in accordance with art. 63, par. 1 of the Convention, the San José Court emphasized the importance of providing adequate remedies in these situations." (§ 390). The violation of an international obligation entails the obligation to provide an adequate reparation. (Corte IDH, *Velásquez Rodríguez vs. Honduras*, 21-7-1989, [*Reparaciones y costas*]). The Court has to decide on the damages taking into consideration the facts which emerges during the proceeding, (Corte IDH, *Ticona Estrada y otros vs. Bolivia*, 27-11-2008, [*Fondo, reparaciones y costas*], § 110), the violations stated by the parties, the nature and the extent of the obligation to repair. (Corte IDH, *Acost y otros vs. Nicaragua*, 25-3-2017, [*Excepciones preliminares, fondo, reparaciones y costas*], § 210).

First of all, the judgment itself represents a means of reparation. The Court ordered the State, as reparation measures, to publish the Judgment of the Court and its summary. It also ordered the State to pay an established amount as a restoration for the psychological and immaterial damage suffered by the victim and to deposit the amount established by the Court to the "*Fondo de asistencia legal de víctimas de la Corte*".

The State also has to inform the tribunal of the measures taken in order to conform to the present judgment and the Court will monitor the implementation of this judgement: the case will be deemed to be definitely closed when the State of Guatemala will have been in compliance with the judgments.