INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF GARCÍA LUCERO *ET AL. v.* CHILE

JUDGMENT OF AUGUST 28, 2013
(*Preliminary objection, merits and reparations*)

In the *case of García Lucero et al.*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:*

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice President
Alberto Pérez Pérez, Judge
Roberto F. Caldas, Judge
Humberto Antonio Sierra Porto, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this Judgment structured as follows:

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* Under Article 19(1) of the Rules of Procedure of the Inter-American Court applicable to this case, which establishes that "[i]n the cases referred to in Article 45 of the Convention, national Judges will be unable to participate in the hearing and deliberation of the case," Judge Eduardo Vio Grossi, a Chilean national, did not take part in the processing of this case or in the deliberation and signature of this Judgment.

TABLE OF CONTENTS

I INTRODUCTION OF THE CASE AND SUBJECT OF THE DISPUTE 4
II PROCEEDINGS BEFORE THE COURT 6
III COMPETENCE 8
IV PRELIMINARY OBJECTION: LACK OF TEMPORAL AND MATERIAL COMPETENCE 8
A. ARGUMENTS OF THE PARTIES AND OF THE COMMISSION 8
B. CONSIDERATIONS OF THE COURT 10
B.1.) REGARDING THE LACK OF MATERIAL COMPETENCE 10
B.2.) REGARDING THE LACK OF TEMPORAL COMPETENCE 11
V EVIDENCE 15
A. DOCUMENTARY, TESTIMONIAL AND EXPERT EVIDENCE 16
B. ADMISSION OF THE DOCUMENTARY EVIDENCE 16
C. ADMISSION OF THE STATEMENTS OF THE PRESUMED VICTIMS, AND THE TESTIMONIAL AND EXPERT EVIDENCE 17
VI FACTS 18
A. BACKGROUND: FACTS PRIOR TO THE ACCEPTANCE OF THE CONTENTIOUS JURISDICTION OF THE COURT 18
A.1) CONTEXT 18
A.2.) SITUATION OF LEOPOLDO GARCÍA LUCERO AND HIS FAMILY 19
A.2.1) Regarding Mr. García Lucero and his family 19
A.2.2) Detention, torture and exile of Leopoldo García Lucero (from September 16, 1973, to June 12, 1975) 20
A.2.3) Decree Law No. 2,191 or Amnesty Law 21
A.2.4) National Truth and Reconciliation Commission (Rettig Commission) 21
B. FACTS SUBSEQUENT TO THE ACCEPTANCE OF JURISDICTION 22
B.1. SYSTEM OF REPARATIONS ADOPTED BY THE STATE 22
B.1.1) Law No. 19,123 - National Compensation and Reconciliation Board 22
B.1.2) Laws that regulate the pension and special bonus payment for those "dismissed for political reasons" 23
B.1.3) Laws relating to Chileans who were exiled 23
B.1.4) Human Rights program "No hay Mañana sin Ayer" 24
B.1.5) National Commission on Political Imprisonment and Torture (Valech Commission) 24
B.2) MEASURES OF REPARATION GRANTED TO MR. GARCÍA LUCERO BY THE STATE 25
B.2.1) Benefit as a Person Dismissed for Political Reasons under Law No. 19,234 26
B.2.2) Special compensatory bonus payment under Law No. 20,134 27
B.3.3) One-time bonus payment under Law No. 19,992 27
B.3 CURRENT SITUATION OF MR. GARCÍA LUCERO 27
C. FACTS RELATING TO THE INVESTIGATION OPENED ON OCTOBER 7, 2011 27
VII JUDICIAL GUARANTEES AND JUDICIAL PROTECTION IN RELATION TO THE GENERAL OBLIGATION TO ENSURE HUMAN RIGHTS AND THE OBLIGATION TO ADAPT DOMESTIC LEGISLATION AND THE OBLIGATIONS TO INVESTIGATE AND TO PUNISH ACTS OF TORTURE AND TO GUARANTEE THEIR INTEGRAL REPARATION 34
A. INTRODUCTION 34
B. REGARDING THE INVESTIGATION OF THE FACTS 36
B.1) ARGUMENTS OF THE COMMISSION AND OF THE PARTIES 36
B.2) CONSIDERATIONS OF THE COURT 39
B.2.1) Regarding the immediate opening of an investigation *ex officio* 40

B.2.2) Regarding humane treatment 41
B.2.3) Regarding the measures taken in the investigation opened on October 7, 2011 42
B.2.4) Conclusion 44
C. Regarding the alleged legal obstacles to the investigation 45
C.1) Arguments of the Commission and of the parties 45
C.2) Considerations of the Court 46
C.2.1) Regarding Decree-Law No. 2,191 "granting amnesty" 47
C.2.2) Regarding article 15 of Law No. 19,992 48
C.2.3) Regarding articles 150 A and 150 B of the Criminal Code and 330 of the Code of Military Justice 49
D. Regarding the domestic proceedings to claim measures of reparation 50
D.1) Arguments of the Commission and of the parties 50
D.2) Considerations of the Court 55
D.2.1) The administrative reparation programs and the rights to judicial guarantees and protection 58
D.2.2) Access to remedies to claim measures of reparation in this case 62
D.2.2.1) Measures of compensation and rehabilitation as "rights" to be protected in this case 63
D.2.2.2) The possibilities of filing claims in relation to measures of reparation 65
D.2.2.3) Conclusion 68
VIII FREEDOM OF MOVEMENT AND RESIDENCE 68
A. Arguments of the Commission and of the parties 68
B. Considerations of the Court 68
IX REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION) 69
A. Injured party 70
B. Obligation to investigate the facts and to identify and, as appropriate, punish those responsible 70
B.1) Arguments of the Commission and of the parties 70
B.2) Considerations of the Court 70
C. Measures of satisfaction and rehabilitation 71
C.1) Measure of satisfaction: publication and dissemination of the Judgment 71
C.1.1) Arguments of the Commission and of the parties 71
C.1.2) Considerations of the Court 72
C.2) Rehabilitation 72
C.2.1) Arguments of the Commission and of the parties 72
C.2.2) Considerations of the Court 72
D. Guarantees of non-repetition requested by the Commission and the representatives 73
D.1) Arguments of the Commission and of the parties 73
D.2) Considerations of the Court 73
E. Compensation 74
E.1) Pecuniary and non-pecuniary damage 74
E.1.1) Arguments of the Commission and of the parties 74
E.1.2) Considerations of the Court 74
F. Costs and expenses 76
G. Method of complying with the payments ordered 76
X OPERATIVE PARAGRAPHS 77

I
INTRODUCTION OF THE CASE AND SUBJECT OF THE DISPUTE

1. *Submission of the case and synopsis*. On September 20, 2011, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"), under the provisions of Articles 51 and 61 of the American Convention and Article 35 of the Court's Rules of Procedure, submitted to the jurisdiction of the Court case No. 12,519 relating to García Lucero *et al.* against the Republic of Chile (hereinafter "the State" or "Chile").

2. According to the Commission, this case concerns the State's alleged international responsibility for the failure to investigate and to make integral reparation for the various acts of torture suffered by Leopoldo Guillermo García Lucero (hereinafter also "Leopoldo García Lucero," "Leopoldo García," "Mr. García Lucero" or "the presumed victim"[1]) from the time of his arrest on September 16, 1973, until June 12, 1975, the date on which he left Chilean territory by a decision of the Ministry of the Interior. Since 1975, Mr. García Lucero has been living in the United Kingdom. According to the Commission, Chile "has failed to provide integral reparation for Mr. García Lucero, from an individualized perspective and taking into account that he lives in exile, as well as the permanent disability he suffers as a result of the torture he endured." In addition, it indicated that the State had failed to comply with its obligation to investigate the said torture, *ex officio*, and had kept Decree-Law No. 2,191, which was incompatible with the American Convention, in force. The Commission added that, while the facts of the case related to the failure to investigate and make reparation for the acts of torture began before Chile had accepted the contentious jurisdiction of the Court on August 21, 1990, these omissions had continued after that acceptance, and continued to this day.

3. The Commission asked the Court to declare the violation of the rights to judicial guarantees and protection and to humane treatment, in relation to the general obligation to guarantee human rights, as well as the obligation to adapt its domestic legislation (Articles 8(1), 25(1), 5(1), 1(1) and 2 of the American Convention) and the obligation to investigate established in Article 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter also "the Inter-American Convention against Torture"), to the detriment of Leopoldo García Lucero and his family; also, the violation of the right to integral, adequate and effective reparation under the general obligation to ensure rights in keeping with Article 5(1) of the American Convention, in conjunction with Article 1(1) of this treaty, to the detriment of Mr. García Lucero. In addition, it asked that the Court declare the violation of the right to humane treatment established in Article 5(1) of the Convention, in relation to the general obligation to ensure human rights established in Article 1(1) of this instrument, to the detriment of Elena Otilia García (hereinafter also "Elena García"), wife of Mr. García Lucero, of her daughters, María Elena Klug and Gloria Klug, and of Francisca Rocío García Illanes.[2] Furthermore, the Commission asked the Court to order the State to adopt specific measures of reparation.

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[1] According to Article 2(25) of the Court's Rules of Procedure, the expression "alleged victim" refers to the person whose rights under the Convention or another treaty of the inter-American system have allegedly been violated." In this case, although the State acknowledged that Mr. García Lucero was a victim of torture, for the purpose of examining this case, the Court will understand that he is a presumed victim of the alleged violations indicated by the Commission and the representatives owing to the State's violation of certain articles of the American Convention and the Inter-American Convention to Prevent and Punish Torture.

[2] See *infra* para. 61 of this Judgment with regard to María Elena and Gloria Klug, and to Francisca Rocío García Illanes.

4. *Proceedings before the Commission*. The proceedings before the Commission were as follows:

a. *Petition*. On May 20, 2002, the organization Seeking Reparation for Torture Survivors (hereinafter "REDRESS") lodged the petition before the Commission.

b. *Admissibility Report*. On October 12, 2005, the Commission adopted Admissibility Report No. 58/05.[3]

c. *Merits Report*. On March 23, 2011, the Commission adopted Merits Report No. 23/11,[4] under Article 50 of the Convention (hereinafter also "the Merits Report" or "Report No. 23/11"), in which it reached a series of conclusions and made several recommendations to the State.

Conclusions. The Commission concluded that the State was responsible for violating:

- Right to justice established in Article XVIII of the American Declaration; the rights to judicial guarantees, judicial protection and humane treatment, in conjunction with the general obligation to ensure human rights, as well as the obligation to adapt domestic legislation (Articles 8(1), 25(1), 5(1), 1(1) and 2 of the American Convention); and the obligation to investigate established in Article 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of [Mr.] García Lucero and his family.

- The right to integral, adequate and effective reparation under the general obligation to ensure rights, in keeping with Article 5(1) of the American Convention, in conjunction with Article 1(1) of this instrument, to the detriment of [Mr.] García Lucero.

- The right to humane treatment established in Article 5(1) of the American Convention, in relation to the general obligation to ensure human rights established in Article 1(1) of this instrument, to the detriment of the wife of [Mr.] García Lucero (Elena García) and their daughters (María Elena, Gloria and Francisca García).

Recommendations. Consequently, the Commission made a series of recommendations to the State:

1. Make integral and adequate reparation to Leopoldo García Lucero and his family for the human rights violations established in the report, mindful of his particular situation of being in exile and suffering a permanent disability.

2. Ensure that Leopoldo García Lucero and his family have access to the medical and psychiatric/psychological treatment necessary for assisting in their physical and mental recovery at a specialized care center of their choice, or the means to obtain such treatment.

3. Adopt the actions necessary to permanently void Decree Law No. 2191 – as it lacks effect in view of its incompatibility with the American Convention, as it may impede or obstruct the investigation and punishment of the persons responsible for gross human rights violations – so that it is not an obstacle to the investigation, prosecution, and punishment of the persons responsible for similar violations that occurred in Chile, and the victims' rights to truth, justice, and reparation.

4. Proceed immediately to investigate the facts impartially, effectively, and within a reasonable time for the purpose of clarifying them completely, identifying the perpetrators, and imposing the appropriate sanctions. In carrying out this obligation, the Chilean State cannot invoke Decree Law No. 2191.

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[3] In which it admitted the case in relation to the presumed violations of the rights recognized in Articles 8 and 25 of the Convention, in conjunction with Articles 1(1) and 2 of this instrument.

[4] Merits Report No. 23/11, Case 12,519, García Lucero and his next of kin, March 23, 2011 (file of annexes to the Merits Report, tome I, folios 12 to 43).

[...]

d. *Notification of the State.* The State was notified of the Merits Report on April 20, 2011, and granted two months to provide information on compliance with the recommendations. On June 21, 2011, the State requested an extension to report on compliance with the recommendations. On July 8, 2011, the Commission granted a two-month extension, asking the State that it present reports on progress in this compliance on August 31 and September 8, 2011. The reports were presented and the Commission considered that their content did not reflect substantial progress in compliance with the recommendations.

e. *Submission to the Court*. On September 20, 2011, the Commission considered that the State had not complied with the recommendations of the Merits Report and submitted the case to the Court. The Commission designated Commissioner José de Jesús Orozco Henríquez, and the Executive Secretary at the time, Santiago A. Canton, as its delegates before the Court, and Elizabeth Abi-Mershed, Assistant Executive Secretary, and Silvia Serrano Guzmán, María Claudia Pulido and Fanny Gómez Lugo, lawyers with the Executive Secretariat, as legal advisers.

II
PROCEEDINGS BEFORE THE COURT

5. *Notification of the State and the representatives*. The State and the representatives were notified of the submission of the case on November 10, 2011.

6. *Brief with pleadings, motions and evidence*. On January 10, 2012, Carla Ferstman, Lorna McGregor and Clara Sandoval, members of REDRESS, as representatives of the presumed victims (hereinafter "the representatives"), submitted to the Court their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), pursuant to Article 40 of the Court's Rules of Procedure. In addition to agreeing, in general and in keeping with their own assessment, with the violations alleged by the Commission, in particular, they alleged the violation of the rights established in Articles 8(1) (Right to a Fair Trial), 25(1) (Judicial Protection), 5(1) (Humane Treatment), from the procedural perspective, in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, owing to the absence of access to justice and adequate reparation, and due to inhuman treatment as a result of the inaction of the State and of the system of justice, and Article 2 (Domestic Legal Effects) of the Convention owing to the failure to adapt its domestic law to the Convention, as well as the violation of Articles 6, 8 and 9 of the Inter-American Convention against Torture based on the lack of access to justice and of adequate reparation for the torture suffered by Mr. García Lucero. Consequently, they asked the Court to order various measures of reparation.

7. *Answering brief*. On April 5, 2012, Chile submitted to the Court its brief filing a preliminary objection, answering the brief submitting the case, and with observations on the pleadings and motions brief (hereinafter "the answering brief"). In this brief, the State contested the claims made by the Commission and the representatives, and denied its international responsibility for the alleged violations of the American Convention. In addition, it disputed most of the reparations requested by the Commission and the representatives one by one, and therefore asked the Court to reject them in their entirety. The preliminary objection filed by the State refers to the "the Court's lack of temporal and material competence." Regarding the material limitation, it indicated that the Court's competence should only address the claims made by the Commission and the presumed victims. Regarding the temporal limitation, it argued that, in the instant case, this had been infringed. It indicated that "[t]he jurisdiction of the supervisory organs is accepted from the date of the deposit of the ratification instrument onwards, with the express exclusion of

situations that began to be executed prior to March 11, 1990 (when the first democratic Government after the military regime took office)" and argued that the facts of this case took place precisely when the temporal limitation was in force. The State designated Miguel Ángel González Morales as its Agent, and Luis Petit-Laurent Baldrich and Jorge Castro Pereira as Deputy Agents.

8. *Observations on the preliminary objection*. On May 17 and 18, 2012, the Commission and the representatives, respectively, presented their observations on the preliminary objection filed by the State.

9. *Summoning of a public hearing*. By an Order of February 14, 2013,[5] the President of the Court ordered that various statements be received in this case. In addition, he convened the parties to a public hearing that was held on March 20 and 21, 2013, during the Court's forty-seventh special session, which took place in Medellín, Colombia.[6]

10. *Questions posed to the parties during the public hearing*. In a communication of March 26, 2013, the Secretariat, on the instructions of the Court in plenary, clarified to the parties and the Commission the questions posed by the judges of the Court during the public hearing, so that they would answer them in their final written arguments or observations, respectively. In addition, the State was required to present specific documentation as useful evidence, to be submitted with its final written arguments.[7]

11. *Amici curiae*. The Court received three *amici curiae* briefs presented by: (1) David James Cantor, Director of the Refugee Law Initiative (RLI) of the School of Advanced Study, University of London; (2) Nimisha Patel, of the School of Psychology, University of East London, and (3) Víctor Rosas Vergara, lawyer and Vice President of the NGO, *Unión de Ex Prisioneros Políticos de Chile* (UNExPP).

12. *Final written arguments and observations.* On April 21, 2013, the representatives and the State forwarded their final written arguments and the Inter-American Commission presented its final written observations in this case. Moreover, on that occasion, the representatives, the State, and the Commission answered the questions posed by the judges. In addition, the State presented most of the documentation relating to useful evidence requested by the Court.

13. *Observations of the representatives and the State*. The brief with final written arguments and observations were forwarded to the parties and to the Inter-American Commission on May 7, 2013. The President granted the representatives, the State, and the Commission until May 17, 2013, at the latest, to present any observations they considered pertinent on the documents attached to these final arguments. May 17, 2013, the

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5 *Cf. Case of García Lucero et al. v. Chile*. Order of President of the Court of February 14, 2013. Available at: www.corteidh.or.cr/docs/asuntos/garcíalucero_14_02_13.pdf.

6 The following persons appeared at this hearing: (a) for the Inter-American Commission: Silvia Serrano Guzmán, legal adviser; (b) for the representatives: Lorna McGregor, Juan Pablo Delgado, Clara Sandoval, the presumed victim Elena García and the presumed victims' psychologist Cristian Peña, and (c) for the State: Miguel Ángel González Morales, Agent, and Jorge Castro Pereira, Deputy Agent.

7 Namely: (a) "copy of the substantive and procedural norms that regulate the investigation underway into the acts allegedly suffered by Mr. García Lucero, including those that criminalize the offenses that are being investigated, and those referring to the possibility of filing a civil action during the criminal proceedings; (b) copy of the norms relating to the "finance proceeding" (*finance proceeding*) and any others related to the possibility of claiming from the State or from private individuals, pecuniary compensation or any other type of measure of reparation for acts such as those that the representatives allege that Mr. García Lucero suffered; (c) a complete and updated copy of the actions taken during the investigation of the acts allegedly suffered by Mr. García Lucero."

representatives presented their observations. On May 18, 2013, the Inter-American Commission indicated that it had not observations to make, and the State did not present observations. These communications were forwarded to the parties and to the Commission on May 21, 2013.

14. *Useful evidence*. The Secretariat forwarded to the State the communication of May 27, 2013, in which, pursuant to Article 58(b) of the Rules of Procedure and on the instructions of the President, it asked the State to submit, by June 3, 2013, at the latest, any comments it considered pertinent with regard to the observations submitted by the representatives according to which "[t]he articles of the Criminal Code and of the Code of Criminal Procedure included in the annexes [to the final arguments] are not applicable to the investigation in the case of Mr. García Lucero," and to provide the norms corresponding to the statute of limitations in relation to civil actions. On June 10, 2013, the State presented part of the information requested in that communication.

15. *Other communications.* The representatives forwarded: (a) the brief of May 13, 2013, in which they explained the difference in the numbering of the paragraphs between the Spanish and the English version of a psychological report provided as evidence, and (b) the brief of May 30, 2013, in which they referred to a communication of the Secretariat of May 21, 2013, advising them "that the Court would only take into account [their] observations that referred exclusively to the documents attached [...] to the arguments presented by the parties, or those incorporated into the text of the State's brief with final arguments."

III
COMPETENCE

16. Chile has been a State Party to the American Convention since August 21, 1990, and accepted the contentious jurisdiction of the Court on the same date. At that time, in accordance with the provisions of Article 62 of the Convention, it declared that it recognized the Court's competence only with regard to "acts that were subsequent to the date on which it deposited this instrument of ratification or, in any case, to acts that began to be executed after March 11, 1990." The State has argued in its preliminary objection that the Court does not have competence to hear no this case (*infra* para. 17). Consequently, first, the Court will decide the preliminary objection filed by Chile and, subsequently, if it is legally admissible, the Court will take a decision on the merits and the reparations requested in this case. The State ratified the Inter-American Convention against Torture on September 30, 1988.

IV
PRELIMINARY OBJECTION
LACK OF TEMPORAL AND MATERIAL COMPETENCE

A. Arguments of the parties and of the Commission

17. The State alleged the "Court's lack of temporal and material competence." It indicated that Chile had ratified the American Convention and accepted the competence of the Inter-American Commission and Court on August 21, 1990, and that, when doing so, it had placed on record that the acceptance of competence [...] referred to acts subsequent to the date on which the instrument of ratification was deposited and, in any case, to acts *that began to be executed after March 11, 1990."* It affirmed that, in the instant case, this "temporal restriction" had been "blatantly violated," because it presented "acts that

occurred […] within [the restricted period].” Regarding the material competence, it indicated that “the Court’s competence should only extend to the claims made by the Commission and the presumed victims.” It also asserted that, when admitting the case, the Commission had indicated that the petitioners at the time had “question[ed], above all, the lack of access to civil redress”; that “the purpose of these proceedings is to determine whether, in this specific case, there has been a violation of the obligation to provide reparation,” and that the representatives “address a series of issues that exceed the sphere of competence *ratione materiae*” of the Court. It added that “the purpose of this case is to examine and decide on the presumed violation of rights of Leopoldo García and his family […], owing to the State’s presumed failure to comply with its obligation to investigate and to provide reparation.” On this basis, as the only “specific petition” concerning the preliminary objection, the State asked that, “before examining the merits,” the Court to declare that “the actual grounds for the right to reparation that had apparently been violated originated in events that had occurred prior to the ratification of the Convention.”

18. The Inter-American Commission clarified that it was not asking the Court to rule on the torture suffered by Mr. García Lucero. To support its position it cited various inter-American treaties, decisions of the Court and of other international organs, in order to affirm that the Court has competence to rule on the insufficiency of the measures of reparation that were established since its competence was accepted, and that “the denial of justice […] has continued from March 11, 1990, to the present.” In this regard, it understood that the “obligations to investigate and to provide reparation were obligations of an autonomous and continuing nature.”

19. It also mentioned some facts that occurred after that date, namely: (a) steps taken by Mr. García Lucero “after 1993”; (b) the forwarding to the State, on November 23, 2004, of the petition concerning this case that had been presented to the Commission; (c) the publication of the report of the National Commission on Political Imprisonment and Torture (hereinafter also “the Valech Commission”) on November 28, 2004; (d) the alleged failure to investigate the facts until October 7, 2011, and the opening of the investigation on that date; (e) the continuation in force of Decree Law No. 2,191; (g) the pension awarded to Mr. García Lucero since 2000, and (h) the reception of bonus payments (*bonos*) by Mr. García Lucero on June 14, 2006, and in 2008. In relation to the State’s arguments regarding the Court’s supposed lack of material competence, the Commission indicated that “it is difficult to understand [its] implications,” because “the State recognizes that the facts that are the subject of the *litis* are those established by the Commission and the representatives.”

20. The representatives argued that Chile had only filed the preliminary objection in relation to “one of the alleged violations, that of the right to adequate and integral reparation” under the Convention, and not:

> In relation to the violation of the procedural element of the right to humane treatment (Article 5(1) [of the Convention]) as a result of the inaction of the State and of the system of justice. Also, Chile has not referred to the alleged violation of the general obligation […] to adapt its domestic law to the Convention (Article 2), or to the applicable provisions of the Inter-American Convention to Prevent and Punish Torture.

21. They also stated that “the rights of access to justice are autonomous in nature, which means that the State must investigate and provide reparation for torture, even when [this] was committed before the Convention was ratified.” They added that, according to the Court’s case law, the Court retains its competence with regard to facts that began to be executed following the acceptance of this competence. In this regard, they indicated that:

> The […] Court should reach the same conclusions it reached in [the judgments in the cases] of *Almonacid Arellano, the Serrano Cruz Sisters,* and *Martín del Campo*; in other words, that the

> acts and omissions related to the implementation of the investigation took place following Chile's acceptance of the Court's jurisdiction, and based on the existence of independent illegal acts that began to be executed also after the said acceptance of its jurisdiction.

22. In this regard, they argued that the autonomous acts that occurred after ratification of the Convention that are subject to the competence of the Court are: (a) the alleged failure to open an investigation into "the torture, arbitrary detention, expulsion and other acts" involving Mr. García Lucero; (b) the alleged haphazard implementation of the investigation, once it was opened in October 2011; (c) the maintenance of Decree Law No. 2,191 in the domestic "legal system"; (d) the adoption of norms "that prevent the system of justice from complying with its obligation to investigate [...], such as article 15 of Law 1992," and (e) the "domestic reparations" awarded to Mr. García Lucero.

23. Lastly, the representatives indicated that even though Chile had not explicitly filed an objection of "failure to exhaust domestic remedies," this was revealed by its arguments. They asked the Court to reject the objection, because the State had not filed the objection on the first procedural occasion before the Commission, which the latter had noted when deciding on the admissibility of the case.

B. Considerations of the Court

24. The Court, as an organ with jurisdictional functions, is empowered to determine the scope of its own competence (*compétence de la compétence/Kompetenz-Kompetenz*). The acceptance of the Court's binding jurisdiction, executed in accordance with Article 62(1) of the Convention, presumes that the State indicating this acceptance recognizes the Court's right to decide any dispute relating to its jurisdiction.[8]

25. The State affirmed the Court's lack of material and temporal competence in a single preliminary objection, and indicated that it was the temporal competence that was "violated most blatantly." The Court will now examine both aspects.

B.1.) Regarding the lack of material competence

26. The Court observes that both the representatives and the Commission have submitted arguments concerning the alleged violation of instruments regarding which the Court has competence: namely, the American Convention and the Inter-American Convention against Torture. Their arguments are related to the alleged lack of adequate investigation and reparation and, as the Commission indicated, the said claims were submitted by the petitioners at the time when the case was admitted.[9] For its part, the State indicated that "the purpose of this case" was related to "the presumed failure by the State to comply with the obligations to investigate and to provide reparation" (*supra* para. 17). Nevertheless, when citing the alleged lack of material competence, Chile did so in general terms by asserting that "the Court's competence should only address the claims

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[8] *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits reparations and costs.* Judgment of June 21, 2002. Series C No. 94, paras. 17 and 18, and *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 35.

[9] In the Admissibility Report, the Commission, when describing the alleged facts, indicated that "the petition set out issues relating to the supposed denial of justice owing to the failure to provide civil redress to a victim of grave human rights violations, which had been shielded by criminal impunity owing to the application of an amnesty law." It also indicated that, in their presentations to the Commission, the petitioners had clarified that the purpose of their complaint "focused on three issues: (a) the non-derogation – and consequently retaining in force – of Decree Law No. 2,191 [...]; (b) the failure to identify and prosecute those responsible, and to punish the authors of [the] facts [...], and (c) the failure to provide civil redress to victims of torture." Available at: www.cidh.oas.org/annualrep/20055p/Chile350.02pm.htm.

made by the Commission and the presumed victims," while indicating that the representatives "address a series of issues that exceed the sphere of competence *ratione materiae.*"

27. Based on the foregoing, the Court finds that the State's position is unclear and fails to justify how the admissibility of the case would be affected or why the Court would be prevented from hearing it. Consequently, the Court rejects the said preliminary objection filed by the State.

B.2.) Regarding the lack of temporal competence

28. As the Court has indicated previously, in order to decide whether it has competence in relation to a case or any aspect thereof, it must:

> Take into consideration the date of acceptance of this competence by the State, the terms in which this acceptance was executed, and the principle of non-retroactivity established in Article 28 of the 1969 Vienna Convention on the Law of Treaties. Even though the State is obliged to respect and ensure the rights protected by the American Convention from the date on which it ratified this instrument, the competence of the Court to declare a violation of its norms is governed by the said acceptance by the State.[10]

29. When ratifying the American Convention on August 21, 1990, Chile declared that it "accepted the competence of the Court as legally binding [...] with regard to cases relating to the interpretation and application of [the] Convention, [...] placing on record" that this referred to "acts subsequent to the date on which the instrument of ratification was deposited and, in any case, to acts that began to be executed after March 11, 1990." The Court has already indicated that "the 'declaration' made by Chile constitutes a temporal limitation of the acceptance of the competence of this Court,"[11] based on a faculty of the States Parties under Article 62 of the Convention.[12]

30. Despite the foregoing, and even when faced with temporal limitations similar to those of this case, the Court has established that even when a State obligation refers to acts that occurred prior to the date of acceptance of the respective competence, the Court may analyze whether or not the State complied with that obligation as of the date of acceptance.[13] In other words, the Court may make the said examination, to the extent that this is feasible, based on independent facts that took place within the temporal limits of its competence.

31. In this regard, some of the Court's precedents may be recalled. In the case of *Genie Lacayo v. Nicaragua* concerning the death of Jean Paul Genie, on October 28, 1990, the State argued that the Court did not have temporal competence because Nicaragua had "accepted the competence of the Court on February 12, 1991, 'with the reservation that the

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[10] *Case of the Río Negro Massacres v. Guatemala, supra*, para. 36.

[11] The Court also clarified that the "declaration" made by Chile when ratifying the Convention does not constitute a reservation (*Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, paras. 43, 44 and 45).

[12] *Cf. Case of the Serrano Cruz Sisters. Preliminary objections*. Judgment of November 23, 2004. Series C No. 118, para. 73. Similarly, *Case of the Río Negro Massacres v. Guatemala, supra*, para. 35.

[13] *Cf. Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of June 15, 2005. Series C No. 124, para. 43; *Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2009. Series C No. 203, para. 23; *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits reparations and costs*. Judgment of November 24, 2009. Series C No. 211, paras. 47 and 48, and *Case of the Río Negro Massacres v. Guatemala, supra*, para. 39.

cases in which it accepted the competence only covered subsequent acts or acts that began to be executed after the date on which the [respective] declaration was deposited.'" The Court observed that "[t]he 'Purpose of the application' described by the Commission did not, in principle, include petitions that were related to the violation of the victim's right to life or to humane treatment – facts that occurred prior to Nicaragua's acceptance of competence." Consequently, it "found that the preliminary objection was inadmissible and declared itself competent to hear the [...] case."[14] A similar situation occurred in the case of *Moiwana v. Suriname*, the facts of which refer to a massacre committed on November 29, 1986. Suriname had recognized the Court's competence on November 12, 1987. The Court rejected the preliminary objection of lack of temporal competence filed by the State and found that "[t]he examination of the compatibility of the acts and omissions of the State in relation to [the] investigation [of the facts] with Articles 8, 25 and 1(1) of the Convention falls within the competence of this Court."[15] Likewise, in the case of *García Prieto et al. v. El Salvador*, the State filed an objection based on the Court's lack of temporal competence, because it had accepted the Court's competence on June 6, 1995, and the death of Ramón Mauricio García Prieto occurred on June 10, 1994. When recognizing the Court's competence, El Salvador had declared that this competence "covers only and exclusively subsequent legal acts or facts, or legal acts or facts that began to be executed after the date of the deposit" of its acceptance. The Court rejected the preliminary objection partially, finding that, "in light of the content of Articles 8(1) and 25(1) of the Convention, [the Court] had competence to analyze the acts or omissions that occurred during the judicial or police proceedings that can be characterized as 'independent facts' and that took place when the Court had temporal competence."[16]

32. The precedent should also be cited of the case of *Almonacid Arellano et al. v. Chile,* which originated in the extrajudicial execution of Mr. Almonacid Arellano on September 17, 1973. The State, based on the temporal limitation of the Court's competence, filed an objection of lack of temporal competence, which the Court rejected. Among other matters, the Court indicated that it had "considered that, during a proceedings, independent acts may occur that could constitute specific and autonomous violations involving denial of justice," and that certain facts indicated by the Commission and the representatives, "could constitute autonomous violations of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of this instrument." It also stated that "[t]he start of the execution of the supposed failure to comply with Article 2 of the American Convention occurred when the State undertook to adapt its domestic legislation to the Convention; in other words, when it ratified the Convention.[17]

33. More recently, in the case of the *Río Negro Massacres v. Guatemala*, the Court noted that "the State seeks to prevent the Court from examining the human rights violations that took place prior to March 9, 1987, the date on which Guatemala accepted the Court's contentious jurisdiction, that are not of a continuing or permanent nature and that do not persist until [today]." The Court considered that it was competent with regard to certain facts, including "the absence of an impartial and effective investigation into the events [and] the effects on the personal integrity of the next of kin and survivors in relation to the investigation of the facts," and that it could "analyze [...] the arguments concerning the

[14] *Cf. Case of Genie Lacayo v. Nicaragua. Preliminary objections.* Judgment of January 27, 1995. Series C No. 21, paras. 21, 25 and 26.

[15] *Cf. Case of the Moiwana Community v. Suriname, supra*, paras. 43 and 44.

[16] *Cf. Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2007. Series C No. 168, paras. 31, 45 and 46.

[17] *Cf. Case of Almonacid Arellano et al. v. Chile, supra*, paras. 48 to 51.

supposed denial of justice in light of the alleged violation of the rights recognized in Articles 8 and 25 of the American Convention, regarding which the Court does have competence."[18]

34. As indicated, Chile declared that it accepted the competence of the Court with regard to "facts subsequent to [August 21, 1990,] or, in any case, to facts that began to be executed after March 11, 1990." Consequently, the cases cited in the preceding paragraph are similar to this one in relation to the existence of the temporal limitations to the competence of the Court, and because the pertinent acts are not of a continuing or permanent nature.

35. In view of the above, the Court will examine whether the facts that occurred after Chile's acceptance of the Court's contentious jurisdiction are independent facts that could constitute autonomous violations.[19] As regards the "political imprisonment," torture and exile suffered by Mr. García Lucero, there is no dispute between the parties and the Commission that these took place between 1973 and 1975, prior to the entry into force for the State of the obligations set out in the treaties that are alleged to have been violated (*supra* para. 16). The Court will only consider these facts as background information; in other words, as useful information to understand the context of this case and the facts to be examined within the temporal competence of the Court.

36. However, when filing this preliminary objection, Chile argued that the "actual grounds for the right to reparation" that it is affirmed has been violated "originated" in events that occurred prior to the ratification of the American Convention. Nevertheless, with regard to torture, based on the Court's case law, it must be indicated that "[e]ach act of torture is executed or completed in the act, and its execution does not extend over time, so that an act or acts of torture [are] instantaneous crimes. Moreover, the aftereffects of torture [...] do not constitute a continuing crime."[20] The "political imprisonment" and exile, as well as their aftereffects and consequences, fall outside the Court's competence, because they originated or began to be executed before March 11, 1990.

37. Based on the foregoing, and owing to their relationship to acts that occurred before 1990, or to the consequences of those acts, this Court will not rule on the following points: the damage derived from the "political imprisonment," torture, and exile of Mr. García Lucero, in relation to either Mr. García Lucero himself or to his family members, or the measures of reparation that might be satisfactory based on these facts.[21] Thus the integral nature or individualization of the reparation can only be evaluated based on an examination of the facts that gave rise to the harm and their effects, and they are excluded from the Court's temporal competence.

38. Following Chile's acceptance of the Court's contentious jurisdiction, on receiving the Commission's communication of December 23, 1993 (*infra* para. 75), the State learned that acts of "political imprisonment" and torture had been committed against Mr. García Lucero, and found that he had been a victim of these acts. The Court is unable to analyze these facts *per se*, or their effects, or the measures of reparation awarded in this regard.

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[18] *Cf. Case of the Río Negro Massacres v. Guatemala, supra*, paras. 35, 38 and 39.

[19] *Cf.* Case of *the Serrano Cruz Sisters v. El Salvador, supra*, para. 84, and *Case of the Las Dos Erres Massacre v. Guatemala, supra*, para. 47.

[20] *Case of Alfonso Martin del Campo Dodd v. Mexico. Preliminary objections.* Judgment of September 3, 2004. Series C No. 113, para. 78.

[21] Such as the measures allegedly needed and that refer to medical or psychological/psychiatric treatment, and to Mr. García Lucero's permanent disability.

However, it is able to examine whether, based on autonomous facts that occurred within its temporal competence, the State complied with its obligation to investigate and whether it provided the appropriate remedies to file claims concerning measures of reparation, pursuant to the American Convention, and also the Inter-American Convention against Torture. In this regard, Article 8 of the Inter-American Convention against Torture expressly indicates the obligation of States "to proceed *ex officio* and immediately to conduct an investigation" when "there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction." Thus, the Court has ruled in cases related to the failure to investigate possible acts of torture that occurred outside the Court's temporal competence based on the knowledge that State authorities had of those acts after the acceptance of the Court's contentious jurisdiction.[22]

39. Consequently, the Court has competence to examine, in light of the right to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the Convention, in relation to the obligations established in Articles 1(1) and 2 of this instrument and of the obligations derived from Articles 1, 6, 8 and 9 of the Inter-American Convention against Torture, as appropriate, the acts or omissions characterized as autonomous facts that occurred when the Court acquired temporal competence. In other words, when examining the merits of the case, it will analyze whether the State guaranteed access to justice[23] in relation to the investigation of the facts, as well as in relation to the existence of remedies to file claims concerning measures of reparation.

40. Furthermore, as indicated in the judgment in the case of *Almonacid Arellano et al. v. Chile*, the Court is competent to examine the arguments related to the alleged failure to comply with international obligations related to the continued existence of Decree Law No. 2,191 (on amnesty).[24]

41. Lastly, taking into account the above-mentioned characteristics of the instant case as regards its relationship to alleged violations based on supposed acts and omissions

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[22] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits reparations and costs.* Judgment of November 27, 2008. Series C No. 191, paras. 93 to 97.

[23] In this regard, the findings of the Court in the *case of the Serrano Cruz Sisters v. El Salvador* should be recalled: "Since the Court lacks competence to examine the facts or acts prior to or that began to be executed before June 6, 1995, [...] the substantial aspect of the dispute in this case before Court is not whether the Serrano Cruz sisters were disappeared by the State, but whether the domestic proceedings guaranteed access to justice in keeping with the standards established in the American Convention." In addition, in this judgment, the Court also recalled that, in its judgment of November 23, 2004, on preliminary objections in this case, it "decided that it [was] not competent to examine the facts or acts that occurred before June 6, 1995, the date on which the State [...] accepted the competence of the Court, and nor was it competent to examine the facts or acts that began to be executed prior to June 6, 1995, and that continued after that date." Furthermore, it decided that it "had competence to examine 'the alleged violations of Articles 8 and 25 of the Convention, in relation to Article 1(1) thereof, and any other violation the facts or start of execution of which were subsequent' to the date on which the State accepted the Court's jurisdiction. [...] Therefore, the Court decided that it would not rule on the supposed forced disappearance of Ernestina and Erlinda Serrano Cruz that allegedly took place in June 1982 and, consequently, on any of the arguments that supported violations related to this disappearance" (*Case of the Serrano Cruz Sisters v. El Salvador. Merits reparations and costs.* Judgment of March 1, 2005. Series C No. 120, paras. 55 and 26, respectively). This Court notes that the said case is analogous to the instant case, because, even though it refers to acts of forced disappearance, in that case the Court did not have competence to refer to acts that "began to be executed" prior to the acceptance of the Court's jurisdiction; in other words, it was not the permanent or continuing nature of forced disappearance that prompted the said affirmation by the Court.

[24] In paragraph 50 of that judgment, the Court indicated: "Regarding the continued existence of Decree Law No. 2,191, it cannot be argued that the start of execution of the supposed failure to comply with Article 2 of the American Convention occurred with the promulgation of this law in 1978 and that, consequently, the Court does not have competence to examine that fact. The start of execution of the supposed failure to comply with Article 2 of the American Convention occurred when the State undertook to adapt its domestic legislation to the Convention; that is, when it ratified the Convention." *Case of Almonacid Arellano et al. v. Chile, supra*, paras. 49 and 50.

concerning access to justice, in this case, the Court does not find it pertinent to examine the arguments related to the obligation to ensure the right to humane treatment (in relation to torture, "political imprisonment," or any other act that began to be executed prior to March 11, 1990), based on Articles 5 and 1(1) of the American Convention.[25]

42. Based on the above, and in the terms indicated, the preliminary objection filed by the State is partially rejected.

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43. The Court notes that the arguments submitted by the State did not mention the failure to exhaust domestic remedies[26] in relation to the merits of the case; nor did the State explicitly classify the said arguments as a preliminary objection. Nevertheless, the representatives submitted several arguments concerning the supposed objection of failure to exhaust domestic remedies (*supra* para. 23).

44. The Court finds it pertinent to indicate that, during the proceedings before the Commission, the State did not argue the failure to exhaust domestic remedies.[27] According to this Court's consistent case law, "an objection to the exercise of the Court's jurisdiction based on the supposed failure to exhaust domestic remedies must be presented at the appropriate procedural stage; namely, during the admissibility proceedings before the Commission."[28] Therefore, the filing of this objection is not admissible in the proceedings before the Court. Despite this, in view of the fact that the State's argument does not seek to prevent the Court from hearing the case, but rather was presented by the State in relation to its substantive aspect, it will be assessed by the Court in relation to the merits of the matter in Chapter VII of this Judgment.

V
EVIDENCE

45. The Court will examine and assess the probative elements provided to the case file, whether documents, testimony or expert opinions, in accordance with the pertinent regulations[29] and its consistent case law,[30] observing the principles of sound judicial

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[25] The Court ruled similarly when delivering judgment in the *case of the Río Negro Massacres v. Guatemala, supra*, para. 39.

[26] In this regard, it indicated that "when the presumed victims lodged their petition before the Commission ([on] May [20,] 2002), the Valech Commission had not yet published its report [...] (November 28, 2004), so that, in the absence of a denunciation of the facts by the victim, at that date there were no grounds that would have allowed the State [...] to be aware of the crimes perpetrated against Leopoldo García [Lucero] and, based on this information, to open *ex officio* the respective judicial proceedings. In addition, it indicated that Mr. "García [Lucero] has preferred to have direct recourse to the inter-American system, disregarding its subsidiary nature."

[27] The Admissibility Report in this case indicated that "[t]he State did not allege the failure to exhaust domestic remedies [...] during the initial stages of the proceedings" before the Commission. *Cf.* Report No. 58/05. Petition 350/02. Admissibility. *Leopoldo García Lucero.* Chile. October 12, 2005, para. 43. Available at: www.cidh.oas.org/annualrep/20055p/Chile350.02pm.htm

[28] *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012 Series C No. 259, para. 34. See also, *Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 88; *Case of Grande v. Argentina. Preliminary objections and merits.* Judgment of August 31, 2011. Series C No. 231, footnote 14, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits reparations and costs.* Judgment of June 26, 2012. Series C No. 244, para. 114.

[29] Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure.

discretion and taking into account the whole body of evidence and the arguments submitted in the case.

A. Documentary, testimonial and expert evidence

46. The Court received documents presented by the Inter-American Commission, the representatives, and the State. In addition, the Court received the statements of the presumed victims proposed by the representatives, namely: (1) Leopoldo García Lucero and (2) Elena Otilia García. It also received the testimony of the witness María Luisa Sepúlveda, proposed by the representatives, and the witnesses José Antonio Ricardi Romero[31] (hereinafter also "Mr. Ricardi"), Paula Godoy Echegoyen and Claudio Valdivia Rivas, proposed by the State; the expert witnesses Nora Sveaass and Cath Collins,[32] proposed by the representatives and the expert witness Felícitas Treue, proposed by the Commission. The State advised that the witness Claudia Villalobos Pino could not provide her testimony for reasons beyond her control.

B. Admission of the documentary evidence

47. In this case, as in others,[33] the Court admits the probative value of those documents provided by the parties at the appropriate procedural stage, which were not contested or opposed, and the authenticity of which was not questioned, exclusively insofar as they are pertinent and useful to determine the facts and their eventual legal consequences.

48. Regarding the newspaper articles, this Court has considered that they may be assessed when they refer to well-known public facts or declarations of State officials, or when they corroborate aspects related to the case.[34] Accordingly, the Court decides to admit the newspaper articles that are complete or that, at least, allow their source and date of publication to be established, and will assess them taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.[35]

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[30] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 25, 2001. Series C No. 76, para. 51, and *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits and reparations*. Judgment of May 21, 2013. Series C No. 261, para. 30.

[31] During the meeting preceding the hearing, the State advised that, for reasons beyond his control, the witness José Antonio Ricardi Romero was unable to attend the public hearing, contrary to the decision in the Order of the President of February 14, 2013. Accordingly, it was decided that Mr. Ricardi would provide his testimony by affidavit. In a communication of March 21, 2013, on the instruction of the President of the Court, the representatives were granted until April 1, 2013, to forward to the Court in writing any questions they considered it pertinent to ask the deponent, and the State was required to submit the affidavit by April 10, 2013, at the latest. The representatives submitted their questions on March 28, 2013, and on April 2, 2013, they were forwarded to the State, for the witness to answer them. On April 10, 2013, the State presented this affidavit.

[32] On February 26, 2013 the representatives advised the Court that, for reasons beyond her control, Cath Collins would be unable to attend the public hearing and asked that she provide her expert opinion by affidavit. In a communication of March 1, 2013, the Secretariat, on the instruction of the President, decided that she could provide her opinion by affidavit and the State was granted until March 6, 2013, to forward to the Court in writing any questions they considered it pertinent to ask her; however, it did not submit any questions. On March 13, 2013, Ms. Collins presented the affidavit.

[33] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Suárez Peralta v. Ecuador, supra*, para. 32.

[34] *Cf. Case of Velásquez Rodríguez*, Merits, *supra*, para. 146, and *Case of Suárez Peralta v. Ecuador, supra*, para. 33.

[3535] The representatives provided a newspaper article from "*Emol*", dated January 26, 2011, entitled "*Fiscal de la Corte de Apelaciones presenta más de 700 querellas por violaciones a DD.HH*" [Appeals Court prosecutor files more than 700 complaints for human rights violations] (file of annexes to the pleadings and motions brief, tome II, fs. 2366 and 2367). In addition, during the proceedings before the Commission, they provided a newspaper article

49. In the case of documents indicated by the parties by means of electronic links, the Court has established that if a party provides, at least, the direct electronic link to the document cited as evidence, and it is possible to access this, neither legal certainty or procedural balance are impaired, because the Court and the other parties can locate it immediately.[36] In this case, the other parties did not oppose or submit observations on the content and authenticity of such documents.

50. Furthermore, with their final written arguments the representatives and the State forwarded various documents as evidence that had been requested by the Court based on the provisions of Article 58(b) of the Court's Rules of Procedure and the parties were granted an opportunity to present any observations they deemed pertinent. The Court incorporates these documents as evidence, and they will be assessed as pertinent, taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.

51. Regarding the representatives' communication of May 30, 2013, referring to a communication of the Secretariat of May 21, 2013, and, in particular, to the new information presented by the State (*supra* para. 15), the Court admits it insofar as it refers to the determination of the facts that are the purpose of the case or to the assessment of specific evidence concerning the facts.

C. Admission of the statements of the presumed victims, and the testimonial and expert evidence

52. In relation to the affidavits and the statements presented during the public hearing, the Court admits them and considers them pertinent insofar as they are in keeping with the purpose defined by the President of the Court in the Order requiring them (*supra* para. 9). These statements will be assessed in the corresponding chapter, together with the other elements of the body of evidence and taking into account the observations of the parties.[37]

53. According to the Court's case law, the statements of the presumed victims cannot be assessed in isolation, but rather must be evaluated together with all the evidence in the proceedings, because they are useful to the extent that they may provide further information on the alleged violations and their consequences.[38]

54. Regarding the affidavit prepared by the witness José Antonio Ricardi Romero, presented after the public hearing had been held, this was forwarded to the representatives and the Commission, so that the former could present any observations they deemed pertinent with their final written arguments. The Court admits this testimony insofar as it refers to the purpose defined by the President of the Court in the Order requiring it (*supra* para. 9), because the Court considers it useful for this case and it was not contested, nor was its authenticity or truth questioned.

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dated December 10, 2004, published in "*Liberación,*" entitled: "*Entregan los nombres de mil 900 torturadores y cómplices*" [Names of 1,900 torturer and accomplices handed over] (file before the Commission, tome I, f. 520).

[36] *Cf. Case of Escué Zapata v. Colombia. Merits reparations and costs.* Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of the Santo Domingo Massacre v. Colombia, supra*, para. 43.

[37] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of May 14, 2013. Series C No. 260, para. 54.

[38] *Cf. Case of Loayza Tamayo, v. Peru. Merits, supra,* para. 43, and *Case of Suárez Peralta v. Ecuador, supra*, para. 37.

VI
FACTS

55. The related facts, which occurred prior to the date on which Chile ratified the Court's contentious jurisdiction (August 21, 1990) and which are described in section (A), are only included as background information to provide a context to those indicated in section (B), which took place after that date. These facts were not contested by the parties or the Commission, with the exception of those relating to the return of the amount deducted for taxes which are referred to below (*infra*, footnote 79).

A. Background: facts prior to the acceptance of the contentious jurisdiction of the Court

A.1) Context

56. As the Court indicated in its judgment in the case of *Almonacid Arellano et al. v. Chile,* "on September 11, 1973, a military regime emerged in Chile which overthrew the Government of President Salvador Allende. 'The armed and law enforcement institutions, through the Government Junta, took over first the Executive Power (Decree Law No. 1) and then the constituent and legislative powers (Decree Law No. 128).' The new President of the Republic/Commander-in-Chief was endowed 'with an accumulation of power that had never before been seen in Chile. The holder of the office not only governed and administered the country, but was also a member of, and presided, the Government Junta – consequently, it was impossible to legislate or to amend the Constitution without him – and commanded all the Armed Forces.' Decree Law No. 5 of September 22, 1973, 'declared that the state of emergency owing to the internal unrest that reigned in the country should be understood as "a state or time of war."[39]

57. "Widespread repression against alleged opponents of the regime [...], was a State policy from that date until the end of military rule on March 10, 1990, 'although with varying degrees of intensity and different levels of selectivity when choosing its victims.' This repression was characterized by systematic and mass summary executions and shootings, torture (including rape, mainly of women), arbitrary deprivation of liberty in clandestine facilities, enforced disappearances, and other human rights violations committed by State agents, sometimes assisted by civilians. The repression was implemented in almost all regions of the country."[40]

58. "The first months of the *de facto* Government were the most violent phase of the whole repressive period. Of the 3,197 victims of execution and enforced disappearance during the military government who have been identified, 1,823 took place in 1973. Meanwhile, '61% of the 33,221 detentions that were considered by the National Commission on Political Imprisonment and Torture, correspond to detentions carried out in 1973.' This Commission indicated that 'more than 94% of the victims of political imprisonment' said that they had been tortured by State agents."[41]

59. "The victims of all these violations were distinguished officials of the regime that had been overthrown and prominent left-wing figures, as well as ordinary militants; political, trade union, community, student (university and high school) and indigenous leaders;

[39] *Case of Almonacid Arellano et al. v. Chile, supra*, para. 82.3.

[40] *Case of Almonacid Arellano et al. v. Chile, supra*, para. 82.4.

[41] *Case of Almonacid Arellano et al. v. Chile, supra*, para. 82.5.

representatives of grass-roots organizations that participated in social movements. 'Political sympathies were often inferred from the 'conflictive' behavior of the victim in strikes, work stoppages, occupation of lands or properties, street demonstrations, etc.' The execution of these individuals 'took place under the prevailing climate [...] of a 'clean-up operation' of those who were regarded as dangerous owing to their ideas and their activities, and to instill fear into their colleagues who might eventually be a 'threat.' Nevertheless, at the initial phase of repression the selection of victims was largely carried out arbitrarily."[42]

60. According to the National Commission on Political Imprisonment and Torture, torture "was a recurrent practice during the military regime. [... T]he method used [...] during the first years was characterized by its brutality and by inflicting evident aftereffects, often seriously endangering the life of the victims; however, subsequently, there was greater specialization in the type of physical pressure applied to the detainee." Regarding the detainees, "[s]ome of them [...] were tried by courts-martial. Others, even though they were never tried, were kept for different lengths of time in stadiums, detainee camps set up for this purpose, prisons or army barracks." The arrests, "especially in the days immediately following September 11, [1973]," were conducted by means of "raids" that began in the early morning hours and lasted several hours." Those involved "were forced to remain lying face down on the ground, with their hands on their neck [and m]any were beaten. [...] Furthermore, people were arrested in their homes, meeting- or workplaces, and on the street." "The individual concerned was obliged, by threats and force [...], to get into a specially-prepared means of transport, which could be a bus, a truck, or a police or army patrol vehicle; occasionally, refrigerated trucks belonging to State companies and, in some cases, to private companies, were used." Regarding conditions in the places of detention, "[g]enerally, the food was inadequate and the cover insufficient; the threats were constant, the beatings repeated, and the overcrowding prevented sleeping. The detainees were kept in 'solitary confinement' [...]."[43]

A.2) SITUATION OF LEOPOLDO GARCÍA LUCERO AND HIS FAMILY

A.2.1) <u>Regarding Mr. García Lucero and his family</u>

61. Leopoldo García Lucero was born in Chile on September 15, 1933,[44] and his wife, Elena Otilia García, was born on November 1, 1930.[45] Elena García had two daughters from a previous marriage, María Elena and Gloria, both with the surname Klug. Following her marriage to Mr. García Lucero there was a third daughter called Francisca Rocío García Illanes. Even though Mr. García Lucero is not María Elena and Gloria's biological father, they were raised by him and consider him their father.[46].

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[42] *Case of Almonacid Arellano et al. v. Chile, supra*, para. 82.6.

[43] Report of the National Commission on Political Imprisonment and Torture for the Clarification of the Truth about the Human Rights Violations in Chile ("Valech Commission"), 2004, Chapter IV (file of annexes to the Merits Report, tome I, annex 1, fs. 51 to 76).

[44] Identity card issued by the Chilean Civil Registry and Identification Service, and Leopoldo García Lucero's passport (file of annexes to the pleadings and motions brief, fs. 1553 and 1554).

[45] Elena García's passport (file of annexes to the pleadings and motions brief, tome I, f. 1551).

[46] Psychiatric reports on Leopoldo García Lucero and Elena García, prepared by Dr. Nuria Gené-Cos (*LMS, MRCPsych, Consultant Psychiatrist, Trauma Specialist & Section 12 Approved Doctor*), December 11, 2007 (file of annexes to the Merits Report, tome 1, annex 17, fs. 207 to 258).

62. At the time of his arrest (*infra,* para. 63), Leopoldo García Lucero worked at the Santiago de Chile racecourse. He had worked there for around nine years.[47]

A.2.2) Detention, torture and exile of Leopoldo García Lucero (from September 16, 1973, to June 12, 1975)

63. On September 16, 1973, Mr. García Lucero was arrested by *Carabineros* (military police) in Santiago de Chile, and taken to the building of the United Nations Conference on Trade and Development (UNCTAD).[48] He was then transferred to the *Carabineros* Post (Police Station No. 1).[49] There he was kept incommunicado and without being charged. He was later transferred to the National Stadium. While Mr. García Lucero was in the Police Station and in the National Stadium he was tortured in different ways.[50] In December 1973 he was transferred to the "Chacabuco" concentration camp, in Antofagasta, where he remained for 13 months.[51] Mr. García Lucero was then transferred to Ritoque, and from there to Tres Álamos, where he was kept for three months.[52]

64. Mr. García Lucero was expelled from Chile under powers granted by Decree Law No. 81 of 1973. He was escorted from the "*Tres Álamos*" Center to the airport on June 12,

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[47] Statement made by Leopoldo García Lucero on March 20, 2013, during the public hearing before the Court, and testimony provided by the petitioners at the public hearing before the Commission held during its 133rd session, on October 27, 2008 (file of annexes to the Merits Report, annex 4); audio available at http://www.oas.org/es/cidh/audiencias/advanced.aspx?long=es, and Complaint filed by José Antonio Ricardi Romero before the Santiago Court of Appeal on October 7, 2011 (file of annexes to the answering brief, annex 9, fs. 2760 to 2766).

[48] Note dated December 23, 1973 (*sic*), addressed by Mr. García Lucero to the Department of the Program to Recognize Person dismissed for political reasons of the Ministry of the Interior of the Republic of Chile (file before the Commission, tome I, fs. 739 and 740). The Commission indicated that Mr. García Lucero was arrested on September 16, 1973; it also indicated this in both the brief submitting the case and in Admissibility Report No. 58/05 and Merits Report No. 23/11. The representatives also indicated that Mr. García Lucero was arrested on that date in several briefs, including the initial petition lodged before the Commission on May 15, 2002 (file of annexes to the Merits Report, tome I, annex 3, fs. 91 to 120), and in the pleadings and motions brief. The State did not contest this assertion. Nevertheless, it should be noted that the State provided, as evidence, a communication which mentions that Mr. García Lucero was detained from September 1973 to June 1975; however, the note adds that, according to the files of the Documentation and Archives Foundation of the Solidarity Vicariate of the Archbishop of Santiago he was detained on October 7, 1973, in the UNCTAD building, and remained detained in the Chilean National Stadium and the Chacabuco detainee camp (*Cf.* Letter of November 28, 2011, from María Paz Vergara Low, Executive Secretary of the Documentation and Archives Foundation of the Solidarity Vicariate of the Archbishop of Santiago to the Special Examining Judge of the 34th Criminal Court of Santiago (file of annexes to the answering brief, annex 9, f. 2773).

[49] Initial petition before the Commission, *supra*, and Complaint filed by José Antonio Ricardi Romero, *supra*.

[50] While he was at the Police Station he was tortured in different ways (both physically and mentally): by tying up his hands and feet; blindfolding him, beating his head, and submerging him in water; all of this every two or three hours. He received a violent beating. He was beaten with the butt of a revolver or rifle by one of the *carabineros*, leaving a scar on his face, and almost blinding him in one eye. In addition, they constantly threatened to kill his daughter in his presence. He was constantly interrogated regarding the whereabouts of political leaders of the Popular Unity party. The torture increased at the National Stadium; they tied his hands to a wooden post and lifted him up with a crane; they applied electric shocks with a "cattle prod," then they submerged him in water. As a result of the beatings, he lost all his teeth and his left arm was broken. *Cf.* Initial petition of the petitioners before the Commission, *supra*, and Complaint filed by José Antonio Ricardi Romero, *supra.* In his own words, Mr. García Lucero stated: "they knocked out my teeth, [...] they paralyzed my arm, my spinal column; it was a total disaster." Statement of Leopoldo García Lucero before the Court, *supra*.

[51] According to the representatives, he had an emergency operation for a hernia in the groin, as a result of the torture suffered in the National Stadium, where he was only allowed to see his family twice (initial petition before the Commission, *supra*, and Complaint filed by José Antonio Ricardi Romero, *supra)*.

[52] *Cf.* Initial petition before the Commission, *supra,* and Complaint filed by José Antonio Ricardi Romero, *supra*).

1975.[53] Since then, he has been living in the United Kingdom. Subsequently, his wife Elena García, together with Gloria Klug and Francisca Rocío García Illanes arrived in the United Kingdom, and María Elena Klug came later.[54]

A.2.3) <u>Decree Law No. 2,191 or Amnesty Law</u>

65. On April 18, 1978, the "Government Junta" presided by General Augusto Pinochet Ugarte "decide[d] to enact" Decree Law No. 2,191, "grant[ing] amnesty" to all those who, "as perpetrators, accomplices or accessories after the fact had been involved in criminal acts [...] between September 11, 1973, and March 10, 1978, provided that [on April 18, 1978,] they were not being prosecuted or convicted."[55]

A.2.4) <u>National Truth and Reconciliation Commission (Rettig Commission)</u>

66. The State created the National Truth and Reconciliation Commission, also known as the "Rettig Commission," by Supreme Decree No. 355 of April 25, 1990. Its main purpose was to assist in the overall clarification of the truth about the most gross human rights violations committed between September 11, 1973, and March 11, 1990. It examined disappearances, executions, and torture resulting in death, "in which the State's moral responsibility was implicated owing to the acts of its agents or of individuals in its service, as well as kidnappings and attempts on people's life committed by private individuals for political reasons." Its mandate included:

> To establish the most complete picture possible of the heinous acts indicated above, their background and circumstances; to gather background information that allow the victims to be individualized and to establish their fate or whereabouts; to recommend the measures of reparation and rehabilitation that would ensure justice, and to recommend the legal and administrative measures that, in its opinion, should be adopted in order to prevent the perpetration of [such] acts.

Regarding the measures of reparation, the Commission Rettig concluded that these should be "effective" and "seek social integration" as well as "tend to create conditions for reconciliation." It recommended diverse measures, grouped in the following categories: "symbolic reparation and rehabilitation," and those "of a legal and administrative nature," including measures relating to "social welfare," "health," "education," and "housing." Some recommendations for measures of a "symbolic" or a "legal and administrative" nature, and for social welfare were classified as "more urgent."[56]

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[53] *Cf.* Initial petition before the Commission, *supra*. In their pleadings and motions brief, the representatives cited as a source the following document published by the Inter-American Commission "*Report on the Situation of Human Rights in Chile,* 1985, Chapter VI, para. 13," but did not present it as evidence. However, the document is available at: http://www.cidh.org/countryrep/Chile85sp/Indice.htm, and states that, "on November 6, 1973, Decree Law 81 was published in the Official Gazette. It made the right to live in Chile subject to the discretion of the administrative authority [...] empower[ing] the President to order the expulsion from, or abandonment of, the country, of individuals, whether aliens or nationals [...]." See also the letter dated November 28, 2011, from María Paz Vergara Low, *supra*, which states that "Decree No. 637 of May 12, 1975 [...] establishe[d] the "compulsory expulsion of some persons" including Mr. García Lucero (file of annexes to the answering brief, annex 9, f. 336).

[54] Letter from María Elena Klug dated January 8, 2011 (file of annexes to the pleadings and motions brief, tome II, annex VII, fs. 2283 to 2293). Elena García's daughters, María Elena Klug and Gloria Klug, were the children of a previous marriage, but have grown up with Mr. García Lucero (*supra* para. 61).

[55] Decree Law No. 2,191 of April 18, 1978, Article 1 (file of annexes to the pleadings and motions brief, tome I, annex IV, fs. 2247 and 2248).

[56] *Cf.* Report of the National Truth and Reconciliation Commission (Rettig Report), available on the website of the Human Rights Program of the Ministry of the Interior and Public Security of the Government of Chile: http://www.ddhh.gov.cl/ddhh_rettig.html (file of annexes to the Merits Report, tome I, annex 5, f. 122). See also "*Tabla leyes y medidas de reparación en Chile 1991–2011,*" published by the Human Rights Observatory of the Universidad Diego Portales (file of annexes to the answering brief, fs. 2744 to 2759), and "*Historia del Programa*"

B. Facts subsequent to the acceptance of jurisdiction

B.1. System of reparations adopted by the State

B.1.1) Law No. 19,123 - National Compensation and Reconciliation Board

67. By Law No. 19,123, published in the Official Gazette on February 8, 1992, the State created the National Compensation and Reconciliation Board, "in order to decide on cases that the [Rettig Commission] was unable to examine in depth, as well as any new cases that may arise and to provide social and legal assistance to the next of kin of victims."[57] In December 1996, the National Compensation and Reconciliation Board concluded its work and, subsequently, some of its functions were carried out by the so-called Program for the Continuation of Law 19,123.[58]

68. The benefits established by Law No. 19,123 included the Program of Reparation and Comprehensive Health Care (hereinafter "the PRAIS Program"), designed to provide "free and preferential treatment in all medical services in the area of mental and physical health, tests and specialized treatment, provided in all the country's health centers [to the] next of kin of detainees who disappeared [and] of those executed for political reasons, [and to] those who returned and [...] to those who were dismissed from their employment for political reasons (*exonerados politicos*) and their direct family groups." Subsequently, Law No. 19,980 of November 9, 2004, amended Law No. 19,123 to expand medical reparation benefits and to establish new ones. Furthermore, Law No. 19,992 promulgated on December 17, 2004, expanded care for those persons "whose names appear on the list of persons recognized as victims that forms part of the Report of the National Commission on Political Imprisonment and Torture"[59] (hereinafter also "Valech Commission") (*infra* para. 72).

B.1.2) Laws that regulate the pension and special bonus payment for those "dismissed for political reasons"

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available on the website of the Human Rights Program of the Ministry of the Interior and Public Security of the Government of Chile: http://www.ddhh.gov.cl/historia_programa.html (file of annexes to the Merits Report, tome I, annex 8, fs. 146 to 150).

[57] *Cf.* "*Historia del Programa,*" *supra*. See also Communication of the State received by the Commission on April 28, 2009 (file of annexes to the Merits Report, tome I, annex 6, fs. 124 to 140). With regard the information contained in this communication, in its Merits Report, the Commission, indicated: "[a]rgument of the State, not contested by the [then] petitioners; and no contrary conclusion arises from the file [before the Commission]." See also "*Tabla leyes and medidas de reparación en Chile 1991–2011*," *supra*.

[58] *Cf.* "*Historia del Programa,*" *supra*. This states that the Program Continuation Law 19,123 was established by Supreme Decree No. 1005 of April 25, 1997, and that, among other actions, "it was designed to assist in hundreds of trials underway in courts throughout the country, either directly, as complainant and/or intervener, or indirectly, by handing over the information requested by the judges." Since 2001, the Program Continuation Law 19,123 became the Human Rights Program of the Ministry of the Interior (*Cf.* Communication of the State received by the Commission on April 28, 2009, *supra*). The representatives indicated that Supreme Decree No. 1005 created the "Human Rights Office" and argued that "[e]ven though [the latter] has the legal faculty to conduct judicial proceedings, and has been essential in promoting the investigation of cases of disappearance and execution in Chile, its jurisdiction excludes cases of victims who are survivors of torture."

[59] Law No. 19,992, promulgated on December 17, 2004, and published on December 24 that year, articles 9 and 10. Article 9 cited refers to Law No. 19,980, establishing that a subparagraph (with the letter "d") be added to the "first paragraph of [its] seventh article [...]" (which relates to the "purpose" of the PRAIS Program), indicating (as beneficiaries of the "reparatory medical care" established) "those [persons] whose names appear on the List of Persons recognized as Victims, that forms part of the Report of the National Commission on Political Imprisonment and Torture, created by Supreme Decree No. 1,040, of 2003, of the Ministry of the Interior" (file of annexes to the Merits Report, tome I, annex 15, fs. 200 to 205, and file of annexes to the pleadings and motions brief, tome I, annex 3, fs. 2241 to 2246).

69. With regard to those whose employment situation was adversely affected for political reasons during the military dictatorship ("*exonerados políticos*"[60]), the State adopted several laws: Law No. 19,234 promulgated on August 5, and published on August 12, 1993, and the laws amending it: Law No. 19,582, and Law No. 19,881 promulgated on June 11, 2003, and published on June 27 that year, which was adopted in order to extend the time frame for registering "the politically exonerated."[61] These laws resulted in the creation of the Program to Recognize those who were Dismissed from their Employment for Political Reasons, under which these individuals were granted pensions and other benefits.[62] Law No. 20,134 promulgated on November 8, 2006, and published on November 22 that year, established a bonus payment of approximately US$3,009.90 (three thousand and nine United States dollars and ninety cents) or more[63] for those "dismissed for political reasons."[64]

B.1.3) <u>Laws relating to Chileans who were exiled</u>

70. After August 21, 1990, the State also adopted or kept in force a series of laws that benefited those who had been exiled during the military regime: (a) Law No. 18,994, creating the National Office for Returnees (ONR) – which concluded its functions in 1994 – in order to facilitate the return of those in exile by adopting different measures related to reintegration into the job market and the economy, health care, education, housing, legal assistance, as well as international cooperation with several countries to ensure the continuity of social security or to facilitate the transfer of funds; (b) Law No. 19,128 establishing certain duty-free and customs tariffs arrangements, and (c) Law No. 19,740, which also granted certain financial benefits to those in debt to the *Banco del Estado* who

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60 Regarding the concept of "*los exonerados politicos,*" the respective laws do not contain a specific or explicit definition of the term. However, their contents reveal that when they refer to "*los exonerados políticos*" they are referring to individuals who "were dismissed from their employment" for political reasons. Thus, article 1 of Law No. 20,134 that "[g]rants a special payment (*bono*) to those dismissed from their employment for the political reasons indicated," alludes to "employees from the private sector and from the State's autonomous enterprises, who were dismissed for political reasons between September 11, 1973, and September 29, 1975" (file of annexes to the Merits Report, tome I, annex 7, fs. 142 to 144). In addition, article 7 of Law No. 19,234, which "[e]stablishes free welfare benefits for those dismissed for political reasons," establishes that "[i]n order to prove the condition of person dismissed for political reasons, [...] the interested person must submit a request addressed to the President of the Republic, through the Ministry of the Interior, within one year of the date of publication of the law. In this request, they must indicated the circumstances of the dismissal, especially those relating to the political reasons, to be authenticated as indicated in the following articles; as well as the individual's social welfare situation at the time of the termination of their functions, all of this as indicated in the regulations that are issued by the President of the Republic, in exercise of his authority" (file of annexes to the Merits Report, tome I, annex 12, fs. 176 to 190).

61 *Cf.* "*Leyes que regulan la pensión and bono extraordinario como exonerado político*" [Laws regulating the pension and special bonus for those dismissed for political reasons] (file of annexes to the pleadings and motions brief, tome I, annex 2, fs. 2223 to 2240). Neither the parties nor the Commission provided evidence on the date of publication of Law No. 19,582.

62 Communication of the State received by the Commission on April 28, 2009, *supra.*

63 The sum of US$3,009.90 (three thousand and nine United States dollars and ninety cents) was mentioned by the Commission in the Merits Report. The representatives, for their part, stated in their pleadings and motions brief that the "original amount" of this payment was $1,900,000 (one million nine hundred thousand Chilean pesos), and indicated that this amount, less deductions, was received by Mr. García Lucero (*infra* para. 78 and footnote 79). Then, in their brief with final arguments, they indicated that this sum was equivalent to "US$4,025.40" (four thousand and twenty-five United States dollars and forty cents).

64 Law No. 20,134 which "[g]rants a special payment to those dismissed for the political reasons indicated," *supra*. Article 1 of this law establishes: "A special payment shall be granted, once, as indicated in article 3 of this law, to those [...] dismissed for political reasons [alluded to in footnote 60 *supra*], who were awarded a non-contributive pension pursuant to the provisions of the third subparagraph of article 12 of Law No. 19,234, and also to the beneficiaries of subsistence pensions derived from the said non-contributive pensions. All those indicated above must have received the said pension at February 28, 2005, and at the date of publication of this law."

obtained loans under the loan program to enable Chileans who returned to set up their own businesses.[65]

B.1.4) Human Rights program "No hay Mañana sin Ayer"

71. Regarding reparations for victims of human rights violations during the military regime, several laws were enacted under the human rights program entitled "*No hay Mañana sin Ayer*" of the Government of President Ricardo Lagos, which was announced on August 12, 2003:[66] (a) Law No. 19,980 (*supra* para. 68), and (b) Law No. 19,962, providing for the elimination of criminal records "relating to sentences imposed by military courts" for facts that occurred during the military dictatorship relating to crimes against "State security," "weapons control" and "terrorist conduct," which were punished by laws enacted at that time.[67]

B.1.5) National Commission on Political Imprisonment and Torture (Valech Commission)

72. The Valech Commission was created by Supreme Decree No. 1,040, published in the Official Gazette on November 11, 2003, in order to identify those who had suffered deprivation of liberty and torture for political reasons.[68] Its report was delivered to the President of the Republic on November 10, 2004, and was made public on November 28 that year.[69] An annex to the report entitled "List of political prisoners and persons tortured" contained the names of 27,153 people. "García Lucero, Leopoldo Guillermo," is among those named as victims of "political imprisonment" and torture.[70]

73. Law No. 19,992, promulgated on December 17, 2004, and published on December 24 that year,[71] established a reparation pension and granted other benefits in the area of education, health and housing. In particular, article 10 of this law, which refers back to its article 1, stipulates that the victims directly affected by human rights violations who were individualized in the annex "List of political prisoners and persons tortured," of the List of Persons recognized as Victims that forms part of the Valech Commission's report:

> Shall be entitled to receive from the State the technical support and physical rehabilitation measures required to overcome the physical injuries resulting from their political imprisonment or torture, when the said injuries are of a permanent nature and are an obstacle to the beneficiary's educational, employment or social integration capabilities.

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[65] *Cf.* Communication of the State received by the Commission on April 28, 2009, *supra*. See also "*Tabla leyes and medidas de reparación en Chile 1991–2011*," *supra*. Neither the parties nor the Commission provided information on the date of publication of Laws Nos. 18,994, 19,128 and 19,740.

[66] *Cf.* Communication of the State received by the Commission on April 28, 2009, *supra*.

[67] *Cf.* Communication of the State received by the Commission on April 28, 2009, *supra*.

[68] *Cf.* Communication of the State received by the Commission on April 28, 2009, *supra*.

[69] "*Tabla leyes and medidas de reparación en Chile 1991–2011*," *supra*. It should be noted that the State mentioned November 10 as the date on which the report was handed over. For its part, the Commission indicated that the report was made public on November 28.

[70] *Cf.* Report of the Valech Commission (file of annexes to the pleadings and motions brief, tome I, annex 1, fs. 1568 to 2222).

[71] *Cf.* Law No. 19,992, *supra*. See also the Regulations for the award and payment of pensions and extra payments established in Law No 19,992, published in the Official Gazette on March 14, 2005 (file of annexes to the Merits Report, tome I, annex 16. The Commission did not attach a copy of the document, but indicated a website where it could be found: http://www.archivochile.com/Poder_Dominante/pod_publi_parl/PDparlamento0012.pdf).

The persons recognized as victims by the Valech Commission who live outside Chile do not receive the health care benefits, which "may only be taken advantage of in the country."[72] In addition, Law No. 19,992 and its Regulations had already established that the pension was incompatible with those granted by Laws Nos. 19,234, No. 19,582 and No. 19,881, so that if someone was already receiving one of the latter pensions, he or she would have to choose between that one and the pension established by Law No. 19,992. Once "the interested person had chosen, he or she would have the right to a one-time bonus payment of $3,000,000.00" (three million Chilean pesos).

74. Article 15 of Law No. 19,992 contained a clause concerning the "confidential" nature of the "documents, testimony and background information provided by the victims before the [Valech] Commission"; it established that "no persons, group of persons, authority or judge shall have access to [them]" for "50 years," and also indicated that this was "without prejudice to the personal right of the owners of the documents, reports, statements and testimony included in them to publicize them or provide them to third parties of their own volition."[73].

B.2) Measures of reparation granted to Mr. García Lucero by the State

75. In order to be considered "a person dismissed for political reasons," Mr. García Lucero sent a letter dated December 23, 1993, from London, United Kingdom, to the Program for the Recognition of those Dismissed from their Employment for Political Reasons in Chile (*supra* para. 69). In a communication of December 1, 1994, the State acknowledged receipt of the "background information" concerning Mr. García Lucero's request in relation to Law No. 19,234. In his letter, among other matters, Mr. García Lucero referred to the torture he had endured "while he was detained" and to the "injuries caused by the torture received." He stated that:

> [His] upper teeth had been kicked out; [his] left arm had been broken by blows from the butt of a rifle, and a blow from a rifle butt to the forehead had disfigured [him] and [he] almost lost an eye. [He] had to have an emergency operation for a hernia (in the groin) in a tent in "Chacabuco" by a FACH doctor. The hernia appeared because [he] was hung from his wrists with a bag of wet cement tied to each of [his] ankles (this took places in the National Stadium). Also [he] was placed in a barrel of water which was connected to the electricity, and given electric shocks, etc. etc. The numerous blows to the head (throughout one whole night) with a rubber truncheon, caused serious health problems which meant that [he] could not work [...] in England, where he is registered as an invalid. Also, [in England, he] had to have surgery on a tendon in [his] right leg. This was also the result of having been hung up, while [he] was detained, as [he had] explained.[74]

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72 Testimonial statement of María Luisa Sepúlveda provided by affidavit on March 11, 2013 (merits file, tome II, fs. 576 to 625).

73 In relation article 15 of Law No.19,992, the State indicated that "this article merely gives the deponent the right to state the information that he possesses, granting the required legal safeguards to the members of the Commission [Valech. I]t was precisely this norm that made a major contribution to the success of the investigation conducted by the Valech Commission into the torture and political imprisonment that took place during the military regime, as well as the adoption of a plan of measures of reparation for the victims of these crimes and their families, including Leopoldo García."

74 *Cf.* Note dated December 23, 1973 (*sic*), addressed by Mr. García Lucero to the Department of the Program for the Recognition of those Dismissed from their Employment for Political Reasons of the Ministry of the Interior of the Republic of Chile, *supra*. Regarding the request submitted by Mr. García Lucero there is also a note of December 1, 1994, addressed to him by the National Coordinator of the Program for the Recognition of those Dismissed from their Employment for Political Reasons, Humberto Lagos Schuffeneger, who stated that the Program "[h]ad received the documentation in which he applied to be eligible for the welfare benefits established by Law No. 19,234 for those who are classified as persons dismissed for political reasons" (file before the Commission, tome I, f. 746).

76. Mr. García Lucero has received and continues to receive three types of monetary compensation under different laws.

B.2.1) Benefit as a Person Dismissed for Political Reasons under Law No. 19,234

77. Mr. García Lucero's request to be considered a "person dismissed for political reasons" (*supra* para. 75) was approved.[75] Consequently, he receives a monthly pension for life[76] and, according to the representatives, in January 2012, this represented $141,081.00 (one hundred and forty one thousand and eighty-one Chilean pesos), equivalent to US$288.48 (two hundred and eighty-eight United States dollars and forty-eight cents), of which he receives $136,167.00 (one hundred and thirty-six thousand one hundred and sixty-seven Chilean pesos), equivalent to US$278.43 (two hundred and seventy-eight United States dollars and forty-three cents), because 7% of the original sum is deducted for the National Health Fund (FONASA). Mr. García Lucero has been receiving this pension since 2000,[77] when he was accorded this benefit, retroactive to September 1, 1998.[78] Mr. García Lucero opted for the pension of a person dismissed for political reasons because article 15 of

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[75] *Cf.* "Evidence of recognition as a person dismissed for political reasons" (file of annexes to the pleadings and motions brief, tome II, annex 29, fs. 2685 to 2687), Decree No. 49 of February 6, 1996, and letter of February 13, 1996, addressed to Mr. García Lucero, signed by the National Coordinator of the Program for the Recognition of those Dismissed from their Employment for Political Reasons, Humberto Lagos Schuffeneger (file of annexes to the pleadings and motions brief, tome II, annex 29 fs. 2685 and 2686).

[76] "As of September 1, 1998," Mr. García Lucero's pension was $79,776.00 (seventy-nine thousand seven hundred and seventy-six Chilean pesos) (*Cf.* "Evidence of recognition as a person dismissed for political reasons" *supra*; Certification issued in January 2001 by the National Coordinator of the Program for the Recognition of those Dismissed from their Employment for Political Reasons, Humberto Lagos Schuffeneger). The State indicated that this monthly pension, for the amount indicated, was "granted to [Mr.] García Lucero" on "October 13, 2000," but that "he had received it since [...] September 1, 1998," and that the said amount is "approximately equivalent" to "US$140" (one hundred and forty United States dollars) "of that time" (communication of the State of October 1, 2009, received by the Commission on October 5 that year. File of annexes to the Merits Report, tome 1, annex 10, fs. 154 to 159), and at December 2008 it amounted to $133,059 (one hundred and thirty-three thousand and fifty-nine Chilean pesos) (*Cf.* Certification of the Pension Standardization Institute, Unit for Payment of Pensions to those Dismissed, document attached to a communication from the State received by the Commission on October 5, 2009. File of annexes to the Merits Report, tome 1, annex 9, f. 152). At February 2011, it amounted to $136,439.00 (one hundred and thirty-six thousand four hundred and thirty-nine Chilean pesos), of which he received $126,888.00 (one hundred and twenty-six thousand eight hundred and eighty-eight Chilean pesos), because $9,551.00 (nine thousand five hundred and fifty-one Chilean pesos) were deducted for the National Health Fund (FONASA) (*Cf.* Payment issued by the BBVA Bank, with "date of payment" February 17, 2011. File of annexes to the pleadings and motions brief, tome II, annex 26, f. 2642). Regarding the total amount received under\ this pension, according to the calculation made by the representatives, between 2000 and 2008, Mr. García Lucero had received the sum of US$14,880.00 (fourteen thousand eight hundred and eighty United States dollars) (*Cf.* Communication of the petitioners of December 19, 2008, received by the Commission on December 22 that year. File of annexes to the Merits Report, tome 1, annex 11, fs. 161 to 174). While, according to the calculation made by the State, at October 2009, he had received a total of US$25,500.00 (twenty-five thousand five hundred United States dollars) (*Cf.* Communication of the State of October 1, 2009, received by the Commission on October 5 that year, *supra*). The certification of the Pension Standardization Institute, Unit for Payment of Pensions to those Dismissed, *supra*, establishes that, between September 1998 and December 2008, Mr. García Lucero had been paid $14,188,016 (fourteen million one hundred and eighty-eight thousand and sixteen Chilean pesos) plus $234,626.00 (two hundred and thirty-four thousand six hundred and twenty-six Chilean pesos) as a "Christmas bonus" and $993,161.00 (nine hundred and ninety-three thousand one hundred and sixty-one Chilean pesos) had been deducted for the National Health Fund (FONASA).

[77] The Commission indicated that there was a discrepancy regarding the day and month of 2000 in which the pension was approved. The State indicated that this was as of October 13, 2000 (*Cf.* Communication of the State of October 1, 2009, received by the Commission on October 5 that year, *supra*), while the petitioners indicated to the Commission that it was as of May 22, 2000 (*Cf.* Communication of the petitioners of December 19, 2008, received by the Commission on December 22 that year, *supra*). However, both parties agree that Mr. García Lucero received the pension retroactively as of September 1, 1998.

[78] *Cf.* "Evidence of recognition as a person dismissed for political reasons": Certificate issued in January 2001, *supra*.

Law No. 19,234 allows him to transmit his pension to his heirs. Thus, he did not choose the pension established in Law No. 19,992, which does not allow this possibility.

B.2.2) Special compensatory bonus payment under Law No. 20,134

78. In addition, Mr. García Lucero received a special compensatory bonus payment under Law No. 20,134 (*supra* para. 69). This payment was deposited in his savings account in the *Banco del Estado* on January 29, 2008.[79]

B.3.3) One-time bonus payment under Law No. 19,992

79. On June 14, 2006, Mr. García Lucero received a one-time bonus payment of $3,000,000 (three million Chilean pesos)[80] pursuant to article 2 of Law No. 19,992 and articles 5 and 6 of its Regulation, because he had opted to receive the pension for a "person dismissed for political reasons" (*supra* paras. 73 and 77).

B.3 Current situation of Mr. García Lucero

80. According to his medical records, Mr. García Lucero has various physical and mental ailments,[81] and has been receiving treatment for several years.[82] In addition, he requires diverse medical and therapeutic treatments.[83] Mr. García Lucero suffers from a "mental and physical" disability. He has "a heart condition and mobility difficulties," "[d]isorders resulting from severe and complex post-traumatic stress" and "symptoms of depression" to a "severe degree."[84]

C. Facts relating to the investigation opened on October 7, 2011

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[79] *Cf.* Communication of the petitioners dated December 19, 2008, received by the Commission on December 22 that year, *supra*, and Communication of the petitioners dated December 10, 2009 (*sic*), received by the Commission on December 9 that year (file of annexes to the Merits Report, tome I, annex 13, fs. 192 to 194). The petitioners indicated that "the amount of the special bonus payment was [...] 1,900,000" (one million nine hundred thousand Chilean pesos), but "the real amount deposited" was $1,759,057.00 (one million seven hundred and fifty-nine thousand and fifty-seven Chilean pesos), because $140,943.00 (one hundred and forty thousand nine hundred and forty-three Chilean pesos) were deducted for tax. The parties disagree as to whether or not the amount deducted for tax was reinstated. The State and the petitioners affirmed contrary opinions before the Inter-American Commission (*Cf.* Communication of the State of October 1, 2009, received by the Commission on October 5 that year, *supra, and* Communication of the petitioners dated December 10, 2009 (*sic*), received by the Commission on December 9 that year, *supra*).

[80] In its answering brief, the State indicated that, "according to [...] information provided by the Social Welfare Institute, in June 2006 the sum of [$3,000,000.00] three million [Chilean] pesos was deposited in the saving account of [Mr. García Lucero] in the *Banco del Estado.* This was equivalent to approximately [...] US$5,535" (five thousand five hundred and thirty-five United States dollars) "at that time, corresponding to the payment established in Law No. 19,992." During the proceedings before the Commission, the representatives stated that the payment was equivalent to US$5,847.93 (five thousand eight hundred and forty-seven United States dollars and ninety-three cents) (*Cf.* Communication of the petitioners dated December 19, 2008, received by the Commission on December 22 that year, *supra*).

[81] *Cf.* Psychiatric reports on Leopoldo García Lucero and Elena García, prepared by Dr. Nuria Gené-Cos, Psychiatric Consultant, *supra.*

[82] *Cf.* Communication of Guy's and St. Thomas' NHS, NHS Foundation Trust of December 11, 2007, addressed to the representatives (file of annexes to the Merits Report, tome I, annex 19, fs. 263 and 264).

[83] *Cf.* Psychiatric reports on Leopoldo García Lucero and Elena García, prepared by Dr. Nuria Gené-Cos, Psychiatric Consultant, *supra;* statement of Leopoldo García Lucero, presented by the petitioners during the public hearing before the Commission, *supra*, and communication of Guy's and St. Thomas' NHS, *supra.*

[84] *Cf.* Psychiatric reports on Leopoldo García Lucero and Elena García, prepared by Dr. Nuria Gené-Cos, Psychiatric Consultant, *supra.*

81. After the case had been submitted to the Court on September 20, 2011, José Antonio Ricardi Romero, a lawyer with the office of the Public Legal Assistance Service [*Corporación de Asistencia Judicial],*[85] filed "a complaint" before the Santiago Court of Appeal on October 7 that year, in relation to "crimes [...] committed against [Mr.] García Lucero," requesting that it "order measures leading to the clarification of the facts, the identification of the perpetrator or perpetrators, the pecuniary responsibilities, and the punishment of the guilty parties" for the crimes of "illegal detention, torture or unlawful physical or mental coercion, injuries, threats and unnecessary violence contemplated in [articles] 150, 150A, 150B, 395 and the pertinent following articles, and article 296 of the Criminal Code and [in article] 330 of the Code of Military Justice." In this brief, he requested that the above-mentioned court proceed "pursuant to the said articles, article 19 of the Constitution," the "Inter-American Convention to Prevent and Punish Torture," and the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." He also asked that it "designate a special examining judge to hear and decide the matter."[86]

82. On October 11, 2011, the President of the Court of Appeal decided to forward "the case file to judge Mario Carroza Espinosa," for his "information and pertinent effects";[87] however, on October 13, 2011, the latter declared himself incompetent to hear this case pursuant to "decision No. 81-2010 of June 1, 2010."[88] Therefore, he forwarded the case file to the President of the Santiago Court of Appeal "so that a special examining judge could be appointed to examine the facts and then make a ruling."[89]

83. On October 26, 2011, the President of the Santiago Court of Appeal, by note No. 1407-2011, forwarded the case file to the Judge of the 34th Criminal Court of Santiago (hereinafter "the 34th Court"). That court admitted the complaint submitted as "case file No. 1261.2011" and decided to "open preliminary proceedings" on November 9, 2011. On that day it issued a court order to conduct the investigation to the Head of the Brigade for the Investigation of Crimes against Human Rights of the Civil Investigation Police of Chile (hereinafter "the Investigation Brigade").[90]

84. In note No. 2756 of November 23, 2011, the Investigation Brigade asked the Documentation and Archives Foundation of the Archbishop of Santiago, for "any information

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[85] According to article 2 of Law 17,995 the regional "Public Legal Assistance Service[s]" indicated in the law are State organs with "legal status" that have the mandate "to provide free legal and judicial assistance to individuals with limited resources. Also, to provide [...] those studying to be lawyers with the means to obtain the practical experience required to exercise the profession" (*Cf.* Law 17,996; file of annexes to the pleadings and motions brief, tome II, annex 11, fs. 2317 to 2319).

[86] Complaint filed by José Antonio Ricardi Romero, *supra*.

[87] Decision of October 11, 2011, of the President of the Santiago Court of Appeal, Juan Eduardo Fuentes Belmar (file of annexes to the answering brief, annex 9, f. 2767).

[88] According to Special Examining Judge Mario Carroza Espinosa, this decision appointed him "to examine 'proceedings on the violations of human rights that had taken place between September 11, 1973, and March 10, 1990, relating to the death and disappearance of persons'" and this "does not include crimes such as torture, injuries or threats" (Decision of October 13, 2011, of Special Examining Judge Mario Carroza Espinosa. File of annexes to the answering brief, annex 9, fs. 2768 to 2770).

[89] Decision of October 13, 2011 of Special Examining judge Mario Carroza Espinosa, *supra*.

[90] *Cf.* Decision of November 9, 2011, of the Alternate Judge of the 34th Court, Cheryl Fernández Albornoz, and communication of November 9, 2011, of the Alternate Judge of the 34th Court, Cheryl Fernández Albornoz, addressed to the Head of the Brigade for the Investigation of Crimes against Human Rights of the Civil Investigation Police of Chile (file of annexes to the answering brief, annex 9, fs. 2777 and 2776, respectively).

that might exist in its files" concerning Mr. García Lucero's detention.[91] The Foundation answered this request on November 28, 2011, but its reply was not sent to the 34th Court until December 13, 2011, after it had been sent elsewhere by error.[92] In note No. 234-2011, it advised:

> That, in the archives of the Committee on Cooperation for Peace in Chile (COPACHI) and, subsequently, of the Solidarity Vicariate, there is information that Leopoldo Guillermo García Lucero [...] was detained in the UNCTAD building on October 7, 1973, and remained detained in the National Stadium (Chile Stadium), and in the Chacabuco detention camp.

It also advised that Decree No. 637 of May 12, 1975, had ordered the "compulsory exile of the persons indicated, and the name of Leopoldo García Lucero was included on the list."[93]

85. On December 5, 2011, the Investigation Brigade reported on the measures taken, such as the request to the Archive Foundation of the Archbishop of Santiago (*supra* para. 84) and its own investigations that resulted in the identification of an individual who was presumably responsible, and who had been the commander of the Chacabuco concentration camp in 1973 and 1974.[94]

86. On January 23, 2012, the Alternate Judge, Cheryl Fernández Albornoz, issued a decision "asking [the Investigation Brigade] to provide information [...] on the court order to investigate" that she had issued on November 9, 2011 (*supra* para. 83).[95]

87. On February 9, 2012, Mr. Ricardi, the lawyer who had filed the complaint, asked the 34th Court to take the following measures: (1) summon a person possibly responsible to testify; (2) send an official note to the Documentation and Archives Foundation of the Archbishopric of Santiago asking it to send the 34th Court "the complete documentation relating to [Mr.] García Lucero, and (3) "send an official note to the General Secretariat of the Presidency of the Republic asking it to forward [...] to the [34th Court a]ll the information on [Mr.] García Lucero in the hands of the National Truth and Reconciliation Commission."[96] On February 15, 2012 the Judge carried out the first request; that is she summoned the person named as presumably responsible for the facts (*supra* para. 85) to testify on February 28, 2012, by mail and on pain of arrest. Regarding the other petitions, she decided that "they are not in order at this time."[97]

88. On March 13, 2012, Mr. Ricardi requested authorization to act as unofficial agent for Leopoldo García Lucero, because the latter "was temporarily unable to act in the

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[91] *Cf.* Note No. 2756 of November 23, 2011 addressed to the Documentation and Archives Foundation of the Archbishopric of Santiago, signed by the Head of the Brigade for the Investigation of Crimes against Human Rights, Sub-prefect Tomás Vivanco Fuentes (file of annexes to the answering brief, annex 9, f. 2774).

[92] *Cf.* Note No. 234-2011 of December 13, 2011, from Alejandro Madrid Croharé, Special Examining Judge to the 34th Court (file of annexes to the answering brief, annex 9, f. 2772).

[93] Letter of November 28, 2011, from María Paz Vergara Low, *supra*. See, as regards the date of Mr. García Lucero's arrest, *supra* footnote 48.

[94] *Cf.* Report of the Investigation Brigade of December 5, 2011, addressed to the 34th Court (file of annexes to the answering brief, annex 9, fs. 2780 to 2783).

[95] *Cf.* Order of January 23, 2012, of Cheryl Fernández Albornoz, Alternate Judge of the 34th Court (file of annexes to the answering brief, annex 9, f. 2784).

[96] *Cf.* Brief of February 9, 2012, of the lawyer José Antonio Ricardi Romero of the Public Legal Assistance Service to the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1164).

[97] *Cf.* Decision of February 15, 2012 of Cheryl Fernández Albornoz, Alternate Judge of the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1165).

proceedings, to appoint a lawyer and, ultimately, to exercise his rights, because currently he lives in England and it has not been possible to contact him." In addition, he asked, *inter alia*, that an official note be sent to the "Investigation Police" requiring them to determine the whereabouts of the individual who was presumably responsible for the facts, and that "letters rogatory be sent to the Inter-American Commission" asking it to provide information on Mr. García Lucero's address.[98] On March 20, 2012, the 34th Court authorized Mr. Ricardi to act as unofficial agent "for 90 days as of this date," and ordered that an official note be sent to the Police and that "letters rogatory be sent" to the Inter-American Commission.[99] In order to take this action, on the same date the 34th Court issued an official request to the Supreme Court.[100]

89. On March 23, 2012, by note No. 199-2012, Claudio Valdivia Rivas, Director General of the Public Legal Assistance Service of the Metropolitan Region, informed Andrés Vega Alvarado, Head of the Cabinet of the Ministry of Justice of the measures taken in the case of Leopoldo García Lucero and the procedural steps to be followed. In this document, he indicated that the 34th Court had asked the Public Legal Assistance Service to summon the official in charge of the "Chacabuco" center at the time of Mr. García Lucero's detention. This individual was summoned to appear on February 28, 2012; however, he did not come forward "because the summons did not reach him, as he had moved house." Mr. Valdivia Rivas also indicated that, on March 13, 2012, after a hearing with the Alternate Judge of the 34th Court, Mr. Ricardi made the above-mentioned requests (*supra* para. 88). In addition, he referred to "[t]he problems caused by [Mr.] García Lucero's lack of activity in the proceedings," because "since they did not have a mandate [from him] to represent him," they were "unable [...] to file a complaint and [...] to take a further series of procedural actions arising from this, [...] and this adversely affected the processing and the success of the action." He explained that, owing to the absence of this mandate and until the request to act as unofficial agents was admitted, it was possible that the case could be dismissed, and they would be unable to contest this. Lastly, he reiterated the need, "in the short term," to make "direct contact with [Mr. García Lucero] or, at least, to have fluid communication with [the representatives] in order to follow up on the complaint that had been filed."[101]

90. On March 30, 2012, the representatives, by e-mail, informed the State agents that:

> Leopoldo [García Lucero] and his family ha[d] informed [them] that they will not litigate the recent case opened in Chile, because they consider that the proceedings that are underway at this time are not appropriate and/or effective to clarify, within a reasonable time, his torture and detention; nor to determine, for example, the place where his savings are kept, etc.[102]

91. On June 6, 2012 the lawyer who had filed the complaint, Mr. Ricardi, as Mr. García Lucero's unofficial agent, filed a criminal complaint for the crimes "of torture, injuries and

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[98] *Cf.* Brief of March 13, 2012, of the lawyer, José Antonio Ricardi Romero, of the Public Legal Assistance Service to the 34th Criminal Court of Santiago (annexes to the final written arguments of the State, annex 3, fs. 1167 and 1168).

[99] *Cf.* Decision of March 20, 2012, of Ximena Sumonte Contreras, Alternate Judge of the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1174).

[100] *Cf.* Letters rogatory No. 2026 of March 20, 2012, signed by Ximena Sumonte Contreras, Alternate Judge and Christian Cid Díaz, Deputy Secretary, addressed to Rubén Ballesteros Carcamo, President of the Supreme Court (annexes to the State's final written arguments, annex 3, fs. 1175 to 1779).

[101] *Cf.* Note No. 199-2012 of March 23, 2012, to Andrés Vega Alvarado, Chief of Staff of the Ministry of Justice, Ministry of Justice, from Claudio Valdivia Rivas, Director General of the Public Legal Assistance Service, Metropolitan Region (file of annexes to the answering brief, annex 9, fs. 2787 to 2789).

[102] E-mail dated Mach 30, 2012, addressed by Clara Sandoval-Villalba, Alternate Judge, to Jorge Castro Pereira (file of annexes to the answering brief, annex 1, f. 2688).

threats committed against [Mr.] García Lucero [...] against all those who are found responsible for the facts during the investigation," based on the facts that are described in the brief, and which took place following Mr. García Lucero's arrest on September 16, 1973, and which, as indicated in this brief, constitute the

> Crimes of illegal detention, torture or unlawful physical or mental coercion, injuries, threats and unnecessary violence contemplated in articles 150, 150A, 150B, 395 and the pertinent following articles, and article 296 of the Criminal Code and in article 330 of the Code of Military Justice.

On this basis, he requested that,

> Pursuant to the said norms, Article 19 of the Constitution of the Republic, the "Inter-American Convention to Prevent and Punish Torture" and the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," measures be ordered leading to the clarification of the facts, the identification of the criminal or criminals, the pecuniary responsibility, and the punishment of the guilty parties.

As pertinent, the "First supplementary request" asked for the joinder of the complaint filed with "proceedings under case file No. 1261-2011" (*supra* para. 83), concerning the same facts, while the "Third supplementary request" asked for the "implementation of [other] measures" "in order to determine the facts as clearly as possible."[103]

92. On June 7, 2012, the complaint was admitted; an order was issued to joinder the proceedings, and an order was issued to the Investigation Brigade to implement the measures requested.[104] Regarding the latter, the case file contains the "order to investigate" issued by the 34th Court and addressed to the Investigation Brigade, which, in turn, issued a note on July 25, 2012, addressed to the Human Rights Program of the Ministry of the Interior, to the Comptrollership General of the Republic, and to the Hippodrome of Chile and, the following day, to the General Chief of Staff of the Chilean Army, the General Secretariat of the Chilean Navy, the General Chief of Staff of the Chilean Air Force, the General Sub-directorate of the Human Rights Department of the *Carabineros* of Chile, and the Head of the National Office of Crimes against Human Rights.[105]

93. On August 2, 2012, in compliance with the measures requested in the complaint, the 34th Court received a letter from the *Sociedad Hipódromo Chile S.A.*, providing information

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[103] *Cf.* Complaint filed on June 6, 2012, by the lawyer, José Antonio Ricardi Romero, of the Public Legal Assistance Service before the 34th Court (annexes to the final written arguments of the State, annex 3, fs. 1180 to 1185). The other measures requested in the complaint, according to the said document, are: "to order the [Investigation] Brigade to proceed to locate and summon" the person presumably responsible who has been identified; "to notify the Ministry of the Interior that it should forward a copy of the orders for the detention and expulsion from the country of [Mr.] García Lucero"; "to notify the General Directorate of *Carabineros* of Chile to advise the list of officials who were stationed at [an] [indicated] police station on September 16, 1973"; "to notify [different entities] that they should forward the political records [...] that exist in relation to [Mr.] García Lucero; to notify the [Investigation] Brigade that it should forward [...] its records on [the person presumably responsible who has been identified and] in order to locate and summon to testify in the proceedings [a doctor who has been identified]," and "to notify the Hippodrome of Chile [...] that it should advise the date of entry and last day of work that this entity records for [Mr.] García Lucero."

[104] *Cf.* Decision of June 7, 2012, of Cheryl Fernández Albornoz, Alternate Judge of the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1186).

[105] *Cf.* Investigation Order of June 7, 2012, issued by the 34th Court and addressed to the Investigation Brigade, and Notes of July 25 and 26 addressed by the Investigation Brigade to the Human Rights Program of the Ministry of the Interior, the General Comptrollership of the Republic, the Hippodrome of Chile, the General Chief of Staff of the Chilean Army, the General Secretariat of the Chilean Navy, the General Chief of Staff of the Chilean Air Force, the General Sub-directorate of the Human Rights Department of the *Carabineros* of Chile, and the Head of the National Office of Crimes against Human Rights (annexes to the final written arguments of the State, annex 3, f. 1199 to 1211).

on the date of entry and the last day of work of Mr. García Lucero, accompanied by the letter terminating his work contract dated November 7, 1973. According to the letter, "[Mr.] García [Lucero] began working [on] July 1, 1971, and his contract was terminated on November 7, 1973."[106]

94. On August 7, 2012, the 34th Court received a report from the Investigation Brigade, in which it described different measures implemented (*supra* paras. 92 and 93). In this report, in addition to the person presumably responsible identified previously (*supra* para. 85), a further two persons were "identified," without indicating the nature of their responsibility.[107]

95. On August 20, 2012, as a result of a decision of the 34th Court, one of the individuals identified in the report of the Investigation Brigade was summoned to testify, and it was decided to issue an arrest warrant against the person indicated as presumably responsible for the facts, since he had not come forward to testify, "despite being summoned by mail."[108] This warrant, "against whoever it may concern, for the offense of disobeying the orders of the [34th Court,]" was issued on the same date, and indicated "with a search of his home if necessary."[109]

96. On September 24, 2012 the 34th Court received Police Report No. 4248, in relation to the arrest warrant it had issued with instruction to ensure the appearance of the person required. This report states that the person presumably responsible for the facts "had not been arrested" and "requested that new arrest warrant be sent" with "the address registered by the wife [of the person presumably responsible], so as to be able to establish whether [he] lives at that address in order to notify him."[110] By a decision of the 34th Court of September 25, 2012, it was decided to issue a new arrest warrant against the person presumably responsible, at the residence of his wife.[111]

97. On October 2, 2012, the lawyer who had filed the complaint, Mr. Ricardi, asked the 34th Court to examine the measures take in the preliminary proceedings in order "to contribute to the success of the investigation and urge that it be completed promptly." In a decision of October 8, 2012, this request was admitted.[112]

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[106] *Cf.* Letter of July 31, 2012, from the *Sociedad Hipódromo Chile S.A.,* signed by Luis Ignacio Salas Maturana, Manager, received by the 34th Court on August 2, 2012, and Letter of dismissal of November 7, 1973, signed by Ricardo Echeverría Verdara, Head of the Personnel Department of the *Sociedad Hipódromo Chile S.A.*, addressed to Mr. García Lucero (annexes to the final written arguments of the State, annex 3, fs. 1197 and 1198).

[107] *Cf.* Police report No. 3498/00 dated August 6, 2012, issued by the Investigation Brigade, received by the 34th Court on August 7, 2012 (annexes to the final written arguments of the State, annex 3, fs. 1200 to 1203).

[108] *Cf.* Decision of August 20, 2012, of Cheryl Fernández Albornoz, Alternate Judge of the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1217).

[109] *Cf.* Arrest warrant dated August 20, 2012, issued by Cheryl Fernández Albornoz, Alternate Judge of the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1219).

[110] *Cf.* Police report No. 4248 of the Investigation Brigade concerning the arrest warrant issued by the 34th Court (annexes to the final written arguments of the State, annex 3, fs. 1223 to 1225).

[111] *Cf.* Decision of September 25, 2012, of Cheryl Fernández Albornoz, Alternate Judge of the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1226).

[112] *Cf.* Brief of the lawyer José Antonio Ricardi Romero of the Public Legal Assistance Service received on October 2, 2012, by the 34th Court, and decision of October 8, 2012, of Cheryl Fernández Albornoz, Alternate Judge of the 34th Court (annexes to the final written arguments of the State, annex 3, fs. 1236 and 1237, respectively).

98. On October 16, 2012, Police report No. 4580 was received by the 34th Court, with information on the arrest warrant issued on September 25 that year. It reported that the person required had not been found in the residence registered in the name of the wife of the person presumably responsible for the facts, and that the person who lives there indicated that she was his mother-in-law, and stated that "he has been living abroad for several years, and she was unaware of in which specific country."[113]

99. On October 30, 2012, the 34th Court, in Note No. 2896, ordered the "International Police" of the Investigation Police of Chile" to provide information "on the exits from and entrances into the country" of the person presumably responsible for the facts.[114] The same day, a witness, who is a doctor, provided testimony in which he stated that he had been "detained for political reasons in the National Stadium from September 13, 1973, until it was closed in November 1973." He indicated that he had known Mr. García Lucero, because, on their own initiative, the doctors who were detained "treated the injuries caused by torture." He testified that he had treated Mr. García Lucero "after the torture carried out in the dressing rooms," and that "subsequently, [...] the detainees were transferred from the National Stadium to the Chacabuco Nitrate Office, in the middle of the Atacama [desert]" where he again saw Mr. García Lucero. After that, the witness did not see Mr. García Lucero again until "he was sent into exile in England," and met Mr. García Lucero in London. He was asked whether he knows the person presumably responsible for the facts and he answered "'he is a bastard' [and that he] remember[d] when [he] arrived at Chacabuco, [that person] received the detainees and 'welcomed' [them] with insults and threats." He also stated that he had read the complaint (*supra* para. 91) and "what it states [...] is true."[115]

100. On January 9, 2013, the lawyer who filed the complaint, Mr. Ricardi, asked that "information be requested" in relation to the note sent to the International Police "owing to the time that has passed since it was requested."[116] Subsequently, Note No. 13069 dated December 3, 2012, of the Border Control Department of the National Headquarters of Aliens' Affairs and International Police, listing the migratory movements of the person supposedly responsible for the facts in the United States of America and Argentina, was added to the case file.[117] On April 1, 2013, the 34th Court ordered that a note be sent to the Supreme Court asking it to provide information "on the status of the international letters rogatory decreed in the proceedings."[118] On April 2, 2013, the 34th Court ordered that Interpol be notified that it should determine the place where the person required really was. In addition, it ordered that a note be sent to the Chilean *Gendarmería* [Prison Service] asking it to forward any records on the detention of Mr. García Lucero during the military regime.[119]

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[113] *Cf.* Police report No. 4580 of the Investigation Brigade of October 12, 2012, received on October 16, 2012, by the 34th Court (annexes to the final written arguments of the State, annex 3, fs. 1238 and 1239).

[114] *Cf.* Note No. 2896 of October 30, 2012, issued by the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1240).

[115] *Cf.* Testimonial statement of a doctor of August 30, 2012, before the 34th Court (annexes to the final written arguments of the State, annex 3, fs. 1241 and 1242).

[116] *Cf.* Brief of January 9, 2013, of the lawyer José Antonio Ricardi Romero of the Public Legal Assistance Service to the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1243).

[117] *Cf.* Note No. 13069 of December 3, 2012, of the Border Control Department, of the National Headquarters of Aliens' Affairs and International Police (annexes to the final written arguments of the State, annex 3, fs. 1248 and 1249).

[118] *Cf.* Decision of April 1, 2013, of Cheryl Fernández Albornoz, Alternate Judge of the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1249).

[119] *Cf.* Decision of April 2, 2013, of Cheryl Fernández Albornoz, Alternate Judge of the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1250).

101. On April 3, 2013, the 34th Court ordered that a note be sent to the Museum of Memory and Human Rights, requesting it to provide information "on all the political records, and records of detention, etc. of [Mr.] García Lucero" that it possesses.[120]

102. According to the information provided to the Court by the State on April 21, 2013, when it presented its final written arguments, "the domestic investigations" are being processed in the ordinary jurisdiction before the 34th Court, under case N-1.261.2011, and are "in the preliminary stages, awaiting pending measures."

VII
JUDICIAL GUARANTEES AND JUDICIAL PROTECTION IN RELATION TO THE GENERAL OBLIGATION TO ENSURE HUMAN RIGHTS AND THE OBLIGATION TO ADAPT DOMESTIC LEGISLATION AND THE OBLIGATIONS TO INVESTIGATE AND TO PUNISH ACTS OF TORTURE AND TO GUARANTEE THEIR INTEGRAL REPARATION

A. Introduction

103. In this case, the Commission and the representatives, based on partially different norms, argued that the State had violated its obligations in relation to the investigation of the acts suffered by Mr. García Lucero and the reparation of the harm they caused.

104. The Inter-American Commission maintained that, in this case, there had been a violation of the right to judicial guarantees and judicial protection and also to humane treatment, in relation to the obligation to investigate, "to the detriment of Mr. García Lucero and his family," based on the failure to comply with the obligation "to ensure" the "rights and freedoms recognized in [the Convention]," as well as "to adapt domestic law" in relation to the continued existence of Decree Law No. 2,191. Accordingly, it asked the Court to declare the violation of Articles 8(1),[121] 25(1),[122] 5(1),[123] 1(1)[124] and 2[125] of the American Convention and Article 8[126] of the Inter-American Convention against Torture.

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120 *Cf.* Decision of April 3, 2013, of Cheryl Fernández Albornoz, Alternate Judge of the 34th Court (annexes to the final written arguments of the State, annex 3, f. 1251).

121 Article 8(1) of the Convention establishes that: "[e]very 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."

122 Article 25(1) of the Convention states that: "[e]veryone 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."

123 Article 5(1) of the American Convention stipulates that: "[e]very person has the right to have his physical, mental, and moral integrity respected."

124 Article 1(1) of the Convention establishes that: "[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

125 Article 2 of the Convention stipulates: "[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

126 Article 8 of the Convention against Torture states that:

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case."

105. For their part, the representatives, in relation to both the investigation and the reparation, understood that Chile had violated, to the detriment of Mr. García Lucero and of his family members, the same rights indicated by the Commission, but "in relation to Article 1(1) of the Convention [...] and Articles 6,[127] 8 and 9[128] of the Inter-American Convention against Torture." They also argued that, because it had failed to adapt its domestic law as regards the Decree-Law indicated by the Commission, and also with regard to other laws and measures (*infra* paras. 143 and 144), Chile had violated Article 2 of the American Convention, and Articles 1[129] and 6 of the Inter-American Convention against Torture.[130] They indicated that the State was obliged to provide reparation based on Articles 1(1) and 25 of the Convention, and 9 of the Inter-American Convention against Torture. Then, in their final written arguments, they stated that "the right to reparation [...] arises" from the norms mentioned together with Article 8(1) of the Convention, and that "Chile [...] has the obligation to respect and guarantee [this ...] without discrimination, [...] and in keeping with the general guarantees established in [the said] Article 8." Among their arguments on the grounds for the right to reparation, they also mentioned that "the Convention even [...] includes Article 63(1) on reparations."[131]

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed *ex officio* and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal proceedings.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

[127] Article 6 of the Inter-American Convention against Torture stipulates that:

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

[128] Article 9 of the Inter-American Convention against Torture establishes that:

The States Parties undertake to incorporate into their national laws regulations guaranteeing suitable compensation for victims of torture.

None of the provisions of this article shall affect the right to receive compensation that the victim or other persons may have by virtue of existing national legislation.

[129] Article 1 of the Inter-American Convention against Torture establishes that: "[t]he States Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

[130] The representatives indicated that the State's delay in opening the investigation violated Articles 5(1) and 8(1) of the Convention, in relation to its Article 1(1) and Article 8 of the Inter-American Convention against Torture. In addition, in their opinion, the investigation underway violates Articles 8(1) [and] 25(1) in relation to [Article] 1(1) of the Convention and Articles 6 and 7 (*sic)* of the Inter-American Convention against Torture." As regards access to measures of reparation, they argued the violation of Articles 8 and 25 of the Convention, as well as of Article 9 of the Inter-American Convention against Torture. The Court observes that the representatives' allusion to Article 7 of the Inter-American Convention against Torture in their final written arguments was made in isolation and without submitting any reasoning as to why they considered that it was violated. Consequently, and since its presentation was time-barred, the Court will not rule on the supposed violation of Article 7.

[131] The representatives also stated that the obligation to provide redress "is intrinsically related to the obligation to investigate, to prosecute and to punish" and that, in the case of Mr. García Lucero, "the obligation to provide redress should have been met [... w]hen, in 1993 and 2004, [the State] received reasonable information providing grounds to believe that [he] had been tortured." Regarding the alleged obligation to investigate, the representatives' specific arguments in this regard are described below (*infra* paras. 110 to 117).

106. The State, based on arguments that are described below (*infra* paras. 118 to 120), denied its responsibility, indicating that:

> *Ex officio*, and using administrative channels, it has made a serious, responsible and specific effort to investigate the human rights violations that occurred during the military regime, achieving the clarification of the facts and making pecuniary and non-pecuniary reparation to the presumed victims, including Leopoldo García Lucero.

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107. In the following sections, the Court will evaluate the arguments presented in relation to the investigation of the facts and the possibility of Mr. García Lucero and his family members having access to remedies that would allow them to claim individualized measures of reparation.

B. Regarding the investigation of the facts

B.1) Arguments of the Commission and of the parties

108. The Commission referred to "the absence of an investigation *ex officio*" as an "essential component" of "the State's responsibility" in the case. It emphasized that it should be considered that the torture of Mr. García Lucero occurred "in the context of gross and massive human rights violations." Citing the Court's case law and decisions of the United Nations Committee against Torture (hereinafter "Committee against Torture"), and also of the European Court of Human Rights, it stated that the State has an obligation to open, *ex officio*, and immediately an "impartial, independent and thorough investigation, in order to identify and punish those responsible" when "it becomes aware of [torture]" or when they are "reasonable indications of [this]." It stressed that this obligation "cannot depend on a complaint being filed." In this regard, it argued that the State has been "aware of the allegations of failure to investigate in relation to the torture of Mr. García Lucero at least since November 2004." It was then that the petition in the case was forwarded to Chile and the report of the Valech Commission was published, which included the presumed victim on the list of victims of torture and "political imprisonment" and, despite this, the State did not open an investigation. Then, in its final written observations, the Commission indicated that even though "the State acknowledged that it had become aware of the torture" in 2004, "it did not take any measure to open an investigation *ex officio* until 2011. Furthermore, the documents in the file of the proceedings before the Commission, provided to the Court by the Commission, include a note presented to the State authorities by Mr. García Lucero in 1993 in which he described the ill-treatment he had suffered (*supra* para. 75).

109. The Commission stated also that, regarding the investigation opened in 2011, at April 21, 2013, "no decision had been issued in first instance, and [...] according to available information, it was on hold owing to an issue of competence."[132] It affirmed that "these proceedings have not let to any results; [...c]onsequently, [...] nine years after the publication of the Valech Commission's report, [...] the State has not made the slightest effort to open and expedite a diligent investigation *ex officio*."

110. The representatives indicated that it was only in 2011 that Chile opened an investigation *ex officio* into the torture of Mr. García Lucero. This meant that it had failed to comply with its international obligations since September 1988, when the Inter-American Convention against Torture entered into force for the State. In this regard, they provided

[132] The date indicated corresponds to the presentation of the Commission's final written observations in which it indicated that "to date" no decision had been taken in first instance in relation to the investigation of the facts.

different arguments, including that "Mr. García Lucero [was] one of the prisoners expelled from Chile during the dictatorship under a decree [...] adopted by the regime [that] contains [...] the names of those who were expelled." Subsequently, in their final written arguments, they indicated that the State should have "acted" when, "in 1993 and 2004, it had reasonable grounds to believe that Mr. García Lucero had been tortured." Thus, they argued that, "in December 1993, don Leopoldo sent an official letter to the Program for the Recognition of those Dismissed from their Employment for Political Reasons in Chile, and together with the required documentation, he attached a letter to the authorities describing in detail his torture and political imprisonment," and that, on November 23 and 28, 2004, respectively, the State was made aware of the petition lodged by Mr. García Lucero before the Inter-American Commission and the report of the Valech Commission was issued, which indicated that he had been a victim of torture and political imprisonment.

111. They added that "Chile is still not acting with due diligence in the investigation of cases of torture, and this has impaired access to justice in the case of Mr. García Lucero." Thus, they stated, with regard to the "Public Legal Assistance Service," that "it is not the appropriate entity" and that "the investigation has been opened by an entity that does not have the knowledge, the experience or the resources required to litigate Mr. García Lucero's case, which is extremely complex." Furthermore, they argued that, in Chile, there is no "entity with the capability to open and expedite the investigation of cases of survivors of torture during the dictatorship, as there is for cases of disappearance and extrajudicial execution." They indicated that they have noted:

> The following specific violations in the context of the criminal investigation [...]; (i) the investigating authority lacks the powers to obtain all the information needed for the investigation, particularly to obtain the information gathered by the Valech Commission; (ii) there has been an unjustified delay in the investigation owing to issues of competence; (iii) the investigation has not been conducted with due diligence because only one possible perpetrator of the torture has been identified; (iv) the [...] only possible perpetrator identified has not appeared before the courts because [the authorities] do not have [his] correct address; (v) neither the Public Legal Assistance Service nor the judge of the 34th Criminal Court of Santiago have the required experience to conduct these cases.

112. They added that:

> The absence of a system for conducting an 'effective investigation that permits those responsible to be identified, prosecuted and punished, when there is a complaint or a well-founded reason to believe that an act of torture has been committed' violates the Convention, [...] Articles 8(1), 25(1), in relation to Articles 1(1) and 2 thereof, and Articles 6 and 8 of the Inter-American Convention against Torture.

113. They considered that there should be:

> Other measures, which should be of a legal nature, to allow justice to function diligently; [... t]he entities of justice [...] should have specialized units for elucidating cases of torture [and] the victims should have access to legal representatives with knowledge of torture.

114. In addition, in relation to the "complaint filed," they stated that it:

> - [...] does not give an appropriate legal definition of the facts, by referring to them merely as torture, injuries and threats; also, it does not mention any responsible person, and does not relate the facts to any criminal proceedings underway in Chile for human rights violations in the same criminal context;
> - [...] cites [...] articles 150 A and B of the Criminal Code that were not applicable at the time of the facts, [and]
> - [...] uses provisions of military origin to define the illegal acts as constituting unnecessary violence by applying article 330 of the Code of Military Justice.

115. They stated that "[w]hen the examining judge [...] considered that he did not have competence to hear the case, lawyer Ricardi[, head lawyer of the Criminal Bureau of the Public Legal Assistance Service,] should have contested this decision and did not do so," and that "[i]t appeared that the investigation conducted by the Chilean Investigation Police delved no further than the public information that existed about the facts."

116. The representatives stated that, in the context of the ongoing investigation, "Mr. García Lucero did not file a complaint because he considered that [this] investigation [...] was neither effective nor appropriate to obtain justice." They indicated that, in view of the State's obligation to investigate *ex officio*, "it cannot be maintained that the complaint [...] is essential for the case to go forward." In addition, they said that "Mr. García Lucero has always been and [...] continues to be willing to cooperate with the investigation of his torture, provided that the State ensures the necessary measures to avoid any 're-traumatization.'" They indicated that "up until [April 21, 2013,] no one had contacted them to request that [Mr. García Lucero] give testimony or for any other reason related to the criminal proceedings."

117. Lastly, the representatives asserted that the investigation opened *ex officio* "in October 2011" to investigate the torture of Mr. García Lucero did not exempt the State of responsibility, [...] because Chile had not complied with the said obligation within a reasonable time."

118. The State asserted that:

> Since democracy was re-established in 1990, it had made a serious and responsible effort to investigate the human rights violations that took place during the military regime. [...] It is as a result of this effort [...] that, through the administrative channels, Leopoldo García [Lucero] has obtained clarification of the violations of his rights. [...] However, the State's efforts [...] have not ceased, which explains why [...] an investigation was opened in the criminal jurisdiction in order to prosecute and convict those who are found responsible. However, [...] all these actions have been conducted exclusively by the State.

119. The State indicated that, in October 2011, an investigation was opened *ex officio*, which is still at the "preliminary [stage], awaiting pending measures." It noted that neither Mr. García Lucero nor his family members, nor his representatives had filed "any complaint, or taken [any] judicial or extrajudicial steps in Chile," and that the "jurisdictional mechanism" was initiated "*ex officio*" by the Chilean authorities. Thus, the State indicated that, by resorting to the Inter-American Commission, "the subsidiary nature of the inter-American system" was disregarded.

120. In addition, the State provided details of the measures taken up until April 21, 2013.[133] It indicated that, after the investigation had been opened, the presumed victim did not collaborate with it and, to the contrary, despite contacts by the authorities, was reticent in contributing to the proceedings, expressly stating that it was not his intention to take part in the criminal proceedings. It also indicated that "the constant obstruction of direct access to the presumed victim by his representatives prevents the measures initiated from leading to results." Regarding the capacity of the respective entities to investigate cases of torture, it indicated that this case "was not the appropriate forum to make a general analysis of the technical and financial capability of the existing institutions to process cases of torture."

B.2) Considerations of the Court

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[133] The date corresponds to the presentation of the State's final written arguments.

121. Articles 8 and 25 of the Convention signify that victims of human rights violations must have effective judicial remedies that are conducted in accordance with due process of law (*infra* para. 182). In this regard, as pertinent to the facts at issue,[134] "the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next of kin to everything necessary being done to discover the truth of what happened and to punish those eventually found responsible."[135] Consequently, the State has an obligation to investigate the facts, which is an obligation of means and not of results; however, it must be assumed by the States as an inherent legal obligation and not as a mere formality preordained to be useful, or as an individual measure depending on the procedural initiative of the victims or their next of kin, or on the provision of probative elements by private individuals.[136] The said obligation, in relation to facts such as those that the State became aware of following the reception of the letter written by Mr. García Lucero on December 23, 1993 (*supra* para. 75, and *infra* para. 126), is stipulated in and complemented by the Inter-American Convention against Torture that, in its Articles 1, 6 and 8, imposes the obligations "to conduct an investigation" and "to punish" in relation to acts of torture.

122. In order to meet these obligations, once the State authorities are aware of the facts, they must "open, *ex officio* and without delay, a serious, impartial and effective investigation,"[137] by all available legal means, designed to determine the truth and to pursue, capture, prosecute and eventually punish all the masterminds and perpetrators of the facts, especially when State agents are or could be involved.[138] Also, as regards torture, Article 8 of the Inter-American Convention against Torture establishes that the "authorities shall proceed *ex officio* and immediately to conduct an investigation into the case," when "there is an accusation or well-grounded reason to believe that an act of torture has been committed within [the State's] jurisdiction."

123. In order to assess the State's conduct in relation to the obligation to investigate in this case, it should be noted that the failure to investigate the facts that constitute gross human rights violations that occurred in the context of systematic patterns is especially serious, because it may reveal non-compliance with the State's international obligations established by non-derogable norms.[139]

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[134] In view of the characteristics of this case and the fact that, according to the report of the Valech Commission, Mr. García Lucero was a victim of torture. In this regard, the Court has maintained that the State has the obligation to investigate and to ensure the "eradication" of "gross human rights violations" such as torture (*Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, paras. 134 to 136; *Case of Barrios Altos v. Peru. Merits.* Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of Suárez Peralta v. Ecuador*, *supra*). Also, it has referred to the obligation to investigate illegal detention linked to acts of torture (*Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, paras. 134, 136, 168, 169, 225 to 230 and 238, and *Case of Fleury et al. v. Haiti. Merits and reparations.* Judgment of November 23, 2011. Series C No. 236, paras. 105 to 114).

[135] *Cf. Case of Bulacio v. Argentina. Merits reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of the Santo Domingo Massacre v. Colombia, supra*, para. 155.

[136] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 177, and *Case of Mendoza et al. v. Argentina, supra*, para. 218.

[137] *Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits reparations and costs.* Judgment of September 15, 2005. Series C No. 134, paras. 219, 222 and 223, and *Case of Fleury et al. v. Haiti, supra,* para.107.

[138] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Mendoza et al. v. Argentina, supra*, para. 218.

[139] *Cf., mutatis mutandi, Case of La Cantuta v. Peru. Merits reparations and costs.* Judgment of November 29, 2006. Series C No. 162, paras. 96, 157 and 160, and *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011 Series C No. 221, para. 183. In the first judgment cited, the Court indicated, in relation to facts that had been classified by State authorities, "and by the State's representative before the Court as crimes against humanity," and regarding which it had been established "that they were perpetrated in a context of

B.2.1) Regarding the immediate opening of an investigation ex officio

124. The Court notes that it is an obligation of the State not only to open an investigation *ex officio*, but also to do so, as expressly indicated by Article 8 of the Inter-American Convention against Torture, "immediately," as soon as there is "well-founded reason to believe that an act of torture has been committed." In this regard, the Court has stated that:

> Even when the acts of torture or cruel, inhuman or degrading treatment have not been denounced before the competent authorities by the victim himself, in any case in which there is evidence of their perpetration, the State must open, *ex officio* and immediately, an impartial, independent and thorough investigation that allows the nature and origin of the injuries indicated to be determined, those responsible to be identified, and their prosecution to be undertaken.[140]

125. Based on the above, the Court considers that the State's argument on the failure to denounce the facts and the circumstance that Mr. García Lucero and his family members had recourse to the Inter-American Commission (*supra* para. 119), does not preclude the State's obligation to investigate.[141]

126. The Court observes that the State became aware of the facts to be investigated on receiving Mr. García Lucero's letter of December 23, 1993, when he requested the pension as "a person dismissed for political reasons" (*supra* para. 75). This situation was reaffirmed by the inclusion of Mr. García Lucero's name on a list in the Valech Commission's report which also included the names of another 27,153 persons identified as victims (*supra* para. 72). Also, according to the characterization of events in the 2004 report of the Valech Commission (*supra* paras. 60 and 72), the acts suffered by Mr. García Lucero between September 16, 1973, and June 12, 1975, could be classified as gross human rights

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a generalized and systematic attack on sectors of the civilian population," that "the obligation to investigate and to punish becomes particularly important and powerful." The Court also indicated that "the prohibition of the forced disappearance of persons and the correlative obligation to investigate this and to punish those responsible has become *ius cogens*." The Court indicated that "the facts of the [...] case (relating to the practice of forced disappearance, which included in that case, as considered proved, cruel, inhuman and degrading treatment) "violate[d] non-derogable norms of international law (*ius cogens*)," and, in view of the "nature and severity of the facts," it considered that "access to justice constitutes a peremptory norm of international law." In its decision in the case of *Gelman v. Uruguay*, the Court underscored that "the State obligation to investigate and to punish the human rights violations and to prosecute and punish those responsible, as appropriate, acquired particular importance in view of the seriousness of the crimes committed and the nature of the rights harmed, especially because the prohibition of forced disappearance of persons and its correlative obligation to investigate this and to punish those responsible have, for a long time, been *jus cogens*." The express references of the rulings cited relate to acts of forced disappearance of persons. However, it is relevant to recall that the Court has stated that the "prohibition" of "torture and forced disappearance" is a "non-derogable norm of international law or *jus cogens*" (*Case of Goiburú et al. v. Paraguay. Merits reparations and costs.* Judgment of September 22, 2006. Series C No. 153, para. 93). Regarding the concept of *jus cogens,* the International Criminal Tribunal for the former Yugoslavia (ICTY) established that this refers to "a norm that enjoys a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by States through international treaties or local or special customs or even general customary rules not endowed with the same normative force." *Cf.* International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Furundzija*, Trial Chamber, Judgment of 10 December 1998, para. 153.

[140] *Cf. Case of Gutiérrez Soler v. Colombia.* Judgment of September 12, 2005. Series C No. 132, para. 54, and *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2010. Series C No. 218, para. 240. Similarly, *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits reparations and costs.* Judgment of November 26, 2010. Series C No. 220, para. 135.

[141] The assessment made is in relation to the substantive aspects of the alleged human rights violations. It is not an evaluation of the admissibility of the petition because, as already indicated, the State did not make this argument as a preliminary objection (*supra* paras. 43 and 44).

violations; in addition, the State has indicated that the acts committed against Mr. García Lucero could fall in the category of crimes against humanity which, as mentioned, the State "must investigate and punish."[142]

127. Taking into account all the above, the State's delay in opening an investigation was excessive, considering the moment when it became aware of the facts and the date on which it initiated investigative measures. In this regard, it is sufficient to note that, between the time at which the State became aware of the facts, before December 1, 1994 (*supra* para. 75) and the opening of the proceedings on October 7, 2011, at least 16 years, 10 months and 7 days elapsed. Consequently, the Court finds that the State failed to comply with its obligation to open an investigation immediately.

B.2.2) <u>Regarding humane treatment</u>

128. The Court notes that both the Commission and the representatives allege the violation of the right to humane treatment recognized in Article 5 of the Convention because of the suffering caused to Mr. García Lucero owing to the State's failure to conduct an investigation and the failure to ensure access to justice. In addition, they argued this violation in relation to access to measures of reparation.[143]

129. In the case *sub judice* it has been established that, once the State authorities became aware of the facts related to the "political imprisonment" and torture of Mr. García Lucero, they failed to open an investigation *ex officio* and immediately, and this was only initiated recently in 2011. This Court considers that the arguments of the representatives and the Commission are directly related to this omission by the State, which was examined in the preceding section in relation to judicial guarantees and judicial protection. Consequently, the Court finds that, in this case, it is not in order to rule on other arguments that refer to facts that have already been examined in relation to other treaty-based obligations.[144] Nevertheless, the Court will take note of the situation described when establishing the corresponding reparations for Mr. García Lucero. Furthermore, the Court does not find it pertinent to rule on the alleged violation of Article 5 in relation to access to measures of reparation, because of what it will decide with regard to the domestic proceedings to claim measures or reparation (*infra* para. 206).

B.2.3) <u>Regarding the measures taken in the investigation opened on October 7, 2011</u>

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[142] In its final written arguments, the State affirmed that, "owing to their severity and characteristics, the facts denounced by [Mr.] García Lucero should be categorized as crimes against humanity."

[143] The Commission argued the violation of humane treatment owing to "the continuous suffering that Mr. García Lucero and his wife endured due to the lack of adequate rehabilitation and treatment, as well as the harm caused by the absence of an investigation and of full reparation for the acts of torture." In this regard, the representatives also argued the said violation and asserted that Mr. García Lucero was "tortured and that, together with his family, lost everything. They indicated that "[i]n view of these facts, Chile failed to comply with its obligation to investigate, prosecute and punish, diligently and within a reasonable time, those responsible for the torture, detention and exile of Leopoldo [García] and its obligation to provide remedies so that [he] and his family could have access to the domestic civil and criminal courts." They added that, according to the medical report of Dr. Nuria Gené-Cos, the evaluation of Mr. García Lucero's mental health "indicates that his suffering will continue if, among other matters, justice is not obtained for the events he experienced." In conclusion, they indicated that, by permitting impunity in this case and by failing to comply with its obligation to ensure that justice functions properly, Chile has caused Mr. García Lucero and his family inhuman suffering.

[144] *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of June 27, 2012. Series C No. 245, para. 230.

130. As indicated, the State opened an investigation *ex officio* on October 7, 2011, after the case had been submitted to the Court (*supra* para. 81). In the context of this investigation, in addition to the actions relating to formalizing the initiation and processing, and determination of the competent authorities, the following actions aimed at investigating the facts were decided: the issue of notes to gather information from different entities; the reception of information provided by the Archbishopric of Santiago, the *Sociedad Hipódromo Chile S. A.*, and the Border Control Department of the National Headquarters of Aliens' Affairs and International Police; the summoning to testify of one person who was presumably responsible – identified during the investigation; the issue of arrest warrants for this person, owing to his failure to appear to testify; inquiries into the domicile of the said person presumably responsible, as well as into his exits from and entries into the country; and summoning of a witness to testify and subsequent reception of his testimony. Furthermore, the domestic case file contains decisions made in April 2013 for notes to be sent to Interpol and the Chilean *Gendarmería*; the former with regard to the whereabouts of the person presumably responsible who had been identified, and the latter regarding the "political background, and information on the detention, etc. with regard to [Mr.] García Lucero" (*supra* paras. 84, 87, 88, 92 to 95 and 98 to 101).

131. It is worth noting that, contrary to the mention of the Commission and the representatives in their observations and final written arguments, respectively, that the investigation was "on hold" or was "unduly delayed" owing to "problems of competence" (*supra* paras. 109 and 111), the latest actions that appear in the domestic case file, according to documents provided to the Court by the State with its final written arguments on April 21, 2013, are decisions issued on April 2 and 3, 2013, to take specific investigative measures (*supra* paras. 100 and 101). This reveals that, according to the evidence provided to the Court, the investigation is underway. The "problems of competence" have not prevented this or the implementation of the investigative measures described above.

132. The representatives also related the alleged lack of diligence to the use of certain legal principles (*supra* para. 114). This last aspect is related to aspects that will be analyzed below concerning the alleged legal obstacles to access to justice (*infra*, paras. 149 to 161). Other arguments relate to the alleged shortcomings of some of the domestic authorities as regards their powers, experience and capabilities (*supra* paras. 111 to 113). Regarding these last arguments, the Court does not find it in order to evaluate them because they are general and do not lead to the identification of specific aspects in which the supposed shortcomings had a negative effect on the investigation.[145]

133. However, in this case, the arguments of the parties and the Commission and the evidence that exists do not reveal that the omission of some measures that, in the representatives' opinion, would be advisable: certain police inquiries, the "association" of the investigation with certain criminal proceedings, and the questioning of a decision concerning competence (*supra* para. 115), constitute *per se* shortcomings to diligence. Thus, the Court finds that, in principle, it is for the domestic authorities to determine the appropriateness of specific or precise measures in the context of the investigation.

134. In addition, in the context of assessing the State's actions during the investigation of the illegal act, different aspects must be considered related to the participation of Mr. García Lucero in the proceedings. In this regard, the Court observes that, in his testimony by

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[145] The Court also notes that the witness José Antonio Ricardi Romero stated that "the Public Legal Assistance Service is an entity that is amply qualified to exercise [...] judicial representation," and that it is "the proper institution to assume the representation of persons who do not have the financial resources to pay for defense counsel or to defend themselves in cases such as that of [Mr.] García Lucero" (Testimonial statement of José Antonio Ricardi Romero provided by affidavit (merits file, tome II, fs. 820 to 825).

affidavit, Claudio Valdivia Rivas, Director General of the Public Legal Assistance Service of the Metropolitan Region, stated that "[the] court case [...] has faced problems owing to the absence of the direct collaboration and the legal mandate of [Mr.] García Lucero."[146] José Antonio Ricardi Romero, Head Lawyer of the Criminal Bureau of the Public Legal Assistance Service, made a similar observation in his testimony by affidavit indicating that "in any criminal investigation it is essential to have the collaboration of the party concerned, which has not occurred in this case," and that he had "filed a complaint based on the facts [...] as unofficial agent, in the expectation that [Mr.] García Lucero or his representatives would ratify the complaint; but this has not occurred." He added that "the [domestic] court [that is hearing the case] authorized [him] to act as unofficial agent on March 20, 2012, establishing a time frame of 90 days for the situation to be ratified by the party concerned." In this regard, the State, in its answering brief, noted that "under domestic law, the absence of a legal mandate or the collaboration of Leopoldo García Lucero [...] may lead to the dismissal of the case."

135. Furthermore, as documentary evidence, the State provided the Court with a series of e-mails, including one in which the authorities involved in the investigation sent the representatives "a copy of the case file of the proceedings resulting from the complaint filed by the Public Legal Assistance Service"[147] and others in which the authorities indicated the importance of having direct contact with Mr. García Lucero, and that he grant "a power of attorney that would allow them to act on his behalf [...] in order to file a complaint for the crimes committed, to request that certain measures be taken, and [...] to act as a party in the proceedings, taking the corresponding measures and filing the remedies that may be appropriate."[148] Also, on December 5, 2011, the Investigation Police indicated the pertinence of "entering into contact with [Mr. García Lucero] in order to obtain further details of the events that had occurred," and Claudio Valdivia Rivas indicated that, among the domestic actions taken, "are international letters rogatory to obtain the testimony of [Mr.] García Lucero." The body of evidence includes an official note addressed to the Supreme Court asking it to send letters rogatory to the Inter-American Commission requesting it to provide information on Mr. García Lucero's domicile (*supra* para. 88).

136. For their part, the representatives have indicated that the authorities have not communicated with them in order to obtain the testimony of Mr. García Lucero and that, despite his refusal to file a complaint, he is willing to collaborate with them (*supra* para. 116).[149]

137. Based on the above, the Court notes that the State has made the participation of Leopoldo García and his representatives possible, because it has given them access to the investigations and encouraged their intervention, as well as that of Mr. García Lucero directly. However, this does not justify that the failure of Mr. García Lucero to appear in the

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[146] Testimonial statement of Claudio Valdivia Rivas provided by affidavit (merits file, tome II, fs. 558 to 565).

[147] E-mail dated February 7, 2012, sent by Jorge Castro Pereira to "Sandoval Villalba, Clara-Lucia" (file of annexes to the answering brief, f. 2693).

[148] E-mail dated January 25, 2012, sent by "José Antonio Ricardi R." to "Sandoval Villalba, Clara-Lucia" (file of annexes to the answering brief, f. 2701).

[149] This also emerges from the documentary evidence presented by the State: in the e-mail of March 30, 2012, sent by "Sandoval-Villalba, Clara," representative of Mr. García Lucero, to a State official, she indicates, in addition to the refusal of "Leopoldo [García Lucero] and his family" "to litigate" in the proceedings (*supra* para. 90), that, nevertheless, Leopoldo [García Lucero] and his family are willing to collaborate with judicial authorities in Chile, providing information the latter do not have (for example, providing their testimony), provided that this requirement is necessary and avoids their re-victimization" (e-mail of March 30, 2012, sent by "Sandoval-Villalba, Clara" to Jorge Castro Pereira; file of annexes to the answering brief, f. 2688).

proceedings, by means of a complaint or any other action, would result in the closure of the proceedings, because this runs counter to the State's obligation to conduct the investigation *ex officio*. This does not preclude taking into account that, during an investigation into acts of torture, it is essential that the authorities are in communication with the victim. Thus, the Court recalls that, during the investigation of facts that include possible acts of torture, it is relevant that the authorities concerned obtain information from the victim's testimony and from the physical and psychological forensic examinations performed on him or her.[150] Notwithstanding the above-mentioned actions of the State, according to the evidence provided to the Court, there is no record that Mr. García Lucero's testimony has been obtained or that any forensic examinations have been performed. These actions are pending in the context of the ongoing investigation.

B.2.4) *Conclusion*

138. Consequently, owing to the State's excessive delay in opening an investigation following the date on which it became aware of the acts of torture, that is prior to December 1, 1994 (*supra* paras. 75, 126 and 127), this Court finds that the State is responsible for the violation of the rights to judicial guarantees and to judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument and to the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Leopoldo García Lucero.

139. Furthermore, without taking into account the measures pending implementation in the investigation that is underway, in the specific circumstances of this case, the Court does not find that the investigation opened on October 7, 2011, has been conducted in a way that gives rise to the State's international responsibility for infringing the rights to judicial guarantees and judicial protection based on the failure to observe standards of due diligence.

140. Given that the investigation of the facts is a State obligation that must be undertaken *ex officio* (*supra* para. 122) and that it relates to acts that have adversely affected Mr. García Lucero, and also that he continues to have the possibility of exercising his rights,[151] the Court does not find that find that the rights of Mr. García Lucero's family members have been violated.

141. Owing to the determinations made above, the Court finds it unnecessary to examine the arguments relating to the failure to implement domestic measures within a reasonable time.

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[150] The Court notes that "when investigating acts of torture, it is important that the competent authorities take into consideration the international standards for documenting and interpreting the elements of forensic evidence concerning the perpetration of acts of torture and, particularly, those defined in the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" [(United Nations, Office of the High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), New York and Geneva, 2001)]. *Case of Fleury et al. v. Haiti, supra*, para. 121. The actions established in the Protocol include "to obtain as much [...] information as possible through the testimony of the alleged victim," through the respective interview. Also, as the United Nations Committee against Torture has pointed out, "[t]he investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the Istanbul Protocol" (Committee against Torture. *General Comment No. 3 (2012). Implementation of article 14 by States parties*. Doc. CAT/C/GC/3. Distr. General 13 December 2012, para. 25).

[151] *Cf.* Similarly, *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits Reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 281.

C. Regarding the alleged legal obstacles to the investigation

C.1) Arguments of the Commission and of the parties

142. The Commission observed that an "essential component" of the State's responsibility is that Chile maintains in force the amnesty legislation (Decree–Law No. 2,191), which is incompatible with the American Convention and which "had a direct and necessary impact on the obstruction of Mr. García Lucero's right of access to justice."

143. The representatives stated that "structural factors," including several domestic laws, prevented an adequate investigation of acts of torture. Thus, they noted the following: (a) Chile "has not eliminated Decree [No. 2,191], or developed a judicial public policy [...] to prevent members of the justice system from continuing to apply it"; (b) article 15 of Law No. 19,992 establishes the confidentiality for 50 years of "documents, testimony and background information provided to the "Valech Commission" by victims,[152] which is an obstacle to the investigation; (c) articles 150 A and 150 B of the Criminal Code, which refer to the crime of "torment" (*torment*o), "are not applicable to the era of the facts; [the State is] committing a serious basic legal error because the law was not in force at the time," by initiating the investigation based on these articles, and (d) these articles and article 330 of the Code of Military Justice, which defines the crime of "unnecessary violence," are contrary to international law. In this regard, they indicated that the definition of the crime of "torment" is different from the definition of torture in the Inter-American Convention against Torture. Articles 150 A and B of the Chilean Criminal Code do not use the words "torture" or "cruel, inhuman or degrading treatment" to define the punishable conduct, and the problem "is not merely one of wording, because the definition is clearly too restricted in relation to the requirements of international law in this regard." Additionally, they set out the following arguments:

> Article 150 A applies only in relation to 'a person deprived of liberty' disregarding other potential victims[; n]either the Criminal Code nor the Code of Military Justice include attempt to commit torture[; t]he punishment applicable to the crime of torment and to that of unnecessary violence is not proportional to the severity of the crime committed and, also, article 97 of the Criminal Code establishes that, after 10 years, this punishable conduct is subject to a statute of limitations.

144. The representatives also indicated that article 103 of the Chilean Criminal Code includes the mechanism of "semi-prescription," and pointed out that this reduces the criminal punishment in certain circumstances. They considered that the said article "establishes a reduction of the sentence when certain requirements are met," which means that the applicable punishments are not proportionate to the crime.[153]

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[152] They clarified that the Inter-American Commission had not referred to this article, but that the representatives had presented this argument during the processing of the case before the Commission at the hearing on October 27, 2008, and before this when they requested a working meeting in 2007.

[153] In this regard, the representatives indicated that article 103 stipulates that "if the accused comes forward or is apprehended before the statute of limitations for the criminal action or the punishment comes into effect, but when half the time established for prescription in the respective case has elapsed, the court shall consider that the act has acquired two or more very special attenuating circumstances and no aggravating circumstance, and apply the rules of articles 65, 66, 67 and 68 either to impose the punishment, or to reduce the punishment that has been imposed." This rule "does not apply to the statute of limitations for of short-term special and minor offenses." They indicated that the Supreme Court of Justice of Chile had confirmed the application of this mechanism in a case relating to "torment." Furthermore, they illustrated their arguments with references to judgments of the Chilean Supreme Court of Justice that, they stated, resulted in the application of punishments that were disproportionate to the severity of the crimes committed, by applying the "semi-prescription" to the sentences of perpetrators of crimes against humanity.

145. The State contested the representatives' challenge *de jure* of Chilean law, considering, in relation to "article 15 of Law No. 19,992 [and] the semi-prescription" that "no mention is made of this in the chapter on 'Proven Facts' [of the Merits Report], and it is only in the chapter on the 'Position of the petitioners' that some of the arguments that the presumed victims made against domestic laws are set out." It added that the said pleadings "go beyond the factual framework established in the presentation of the case by the Commission ([Article] 40(a) of the Court's Rules of Procedure)" and it is not admissible to argue the violation of a right under the Convention on this basis." With regard to the confidentiality established by article 15 of Law No. 19,992, the State indicated that this was established by law and responded to a valid objective, which was the success of the investigation conducted by the National Commission on Political Imprisonment and Torture and that the restriction seeks to "protect the right to privacy of the persons who gave testimony, who are the sole owners of this information." It added that the said Commission was not a jurisdictional body.

146. Regarding the use of articles 150 A and 150 B of the Criminal Code in relation to their temporal validity, the State indicated that:

> The matter raised by the representatives [...] is not relevant for the processing of the domestic investigation proceedings, because the [domestic] court that is hearing the matter, when deciding that there has been criminal conduct and that certain persons have participated in this, proceeds to bring them to trial, indicating the crimes, the levels of participation, and the criminal norms that have been violated. The same procedure is followed when bringing charges in subsequent stages of the proceedings.

147. Regarding the crime of "torment," the State indicated that the Inter-American Commission had not considered the definition of the crime to be an obstacle or a mechanism for impunity and that "[i]n relation to the investigation and sentencing for crimes against humanity that occurred in [Chile], this definition has not represented a barrier to obtaining justice. [... T]he current definition of the crime of "torment" does not result in a situation of defenselessness for Mr. García Lucero or a violation of his rights. In addition, the State indicated that three bills have been submitted that seek to adapt the law as regards the crime of torture and that, on July 18, 2009, Law No. 20,357 was enacted criminalizing crimes against humanity and genocide, and war crimes, and it establishes punishments for acts of torture when committed in the context of such crimes.

148. With regard to "semi-prescription," the State indicated that this mechanism is "a general objective legal benefit that has nothing to do with the statute of limitations as a cause of the extinction of criminal responsibility," and that "it is never an impediment to a judicial investigation."

C.2) Considerations of the Court

149. The Court must analyze whether the investigation of the facts has been hindered as a result of shortcomings arising from domestic laws or measures of another nature. To this end, it should be noted that, as the Court has stated previously, the obligation to investigate "acquires special and determinant importance and force based on the seriousness of the violations committed."[154] Consequently, in this case, given that the facts that must be investigated were possibly inserted in a systematic practice occurring within a context of gross human rights violations, the obligation to investigate in the way indicated previously

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[154] *Cf. Case of Goiburú et al. v. Paraguay, supra,* paras. 84, 128 and 131, and *Case of García and family members v. Guatemala. Merits reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 131.

(*supra* para. 123) cannot be avoided or conditioned by domestic legal proceedings or provisions of any kind.[155] This relates to Article 2 of the Convention, according to which the States Parties must adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to the rights and freedoms protected in this instrument.[156]

C.2.1) Regarding Decree-Law No. 2,191 "granting amnesty"

150. In the judgment in the case of *Almonacid Arellano et al. v. Chile,* the Court declared that "[b]ecause it seeks to grant amnesty to those responsible for crimes against humanity, Decree Law No. 2,191 is incompatible with the American Convention and, therefore, lacks legal effects in light of this treaty."[157] It ordered the State "to ensure that Decree Law No. 2,191 does not continue representing an obstacle to the investigation, prosecution and punishment, as appropriate, of those responsible for other violations similar" to those of this case, which concerns an extrajudicial execution.[158] On that occasion, the Court "call[ed] attention to the fact that crimes against humanity, such as [...] torture, were not excluded from the amnesty provisions."[159] At the stage of monitoring compliance with that judgment, the Court has not yet declared that this order has been complied with.[160] The Court considers pertinent, in the context of this case, to repeat that, as determined in the case of *Almonacid Arellano et al. v. Chile*, Decree Law No. 2,191 cannot represent an obstacle for the investigation, prosecution and punishment of the respective crimes. In this regard, it recalls that the corresponding decisions taken in the above-mentioned judgment have general effects that go beyond that specific case.[161]

151. In the said judgment, the Court stated that:

> The obligation under international law to prosecute and, if they are declared guilty, punish the perpetrators of certain international crimes, which include crimes against humanity, derives from the obligation to ensure rights established in Article 1(1) of the American Convention. [...]
>
> Crimes against humanity result in the violation of a series of non-derogable rights recognized in the American Convention that cannot remain unpunished.[162]

152. On that occasion, the Court also recalled that it:

> Had already indicated in the case of *Barrios Altos [v. Peru]* that, 'amnesty provisions, the statute of limitations, and the establishment of mechanisms that exclude responsibility and that seek to prevent the investigation and punishment of those responsible for gross human rights violations, such as torture, summary, extralegal or arbitrary executions, and forced disappearances, all of

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[155] *Cf. Case of Contreras et al. v. El Salvador. Merits reparations and costs.* Judgment of August 31, 2011. Series C No. 232, para. 128, para. 127, and *Case of Gudiel Álvarez (Diario Militar) v. Guatemala, supra*, para. 230.

[156] *Cf. Case of Genie Lacayo v. Nicaragua, supra*, para. 51, and *Case of Mendoza et al. v. Argentina, supra,* para. 323.

[157] *Case of Almonacid Arellano et al. v. Chile, supra*, third operative paragraph.

[158] *Case of Almonacid Arellano et al. v. Chile, supra*, para. 145.

[159] *Case of Almonacid Arellano et al. v. Chile, supra*, para. 116.

[160] According to the respective Order issued in November 2010 (*Cf. Case of Almonacid Arellano et al. v. Chile. Monitoring compliance with judgment.* Order of the Court of November 18, 2010, second declarative paragraph).

[161] *Cf.* similarly, *Case of Barrios Altos v. Peru. Interpretation of the judgment on merits*. Judgment of September 3, 2001. Series C No. 83, para. 18, and *Case of Vélez Loor v. Panama, supra*, para. 244.

[162] *Case of Almonacid Arellano et al. v. Chile, supra*, paras. 110 and 111.

them prohibited because they violated non-derogable rights recognized by international human rights law, are inadmissible."[163]

153. However, regarding the State's international responsibility based on Decree Law No. 2,191, which was established in the decision in the case of *Almonacid Arellano et al. v. Chile*, it should be recalled that, in relation to the facts of that case, the Court noted that this norm had been applied in 1997 and 1998, preventing the continuation of criminal proceedings.[164] The Court also noted that, "[i]n recent years, [prior to September 2006,] the Chilean Judiciary had not applied Decree Law No. 2,191 in several cases."[165] This is consequent with the observation of the representatives in this case in their pleadings and motions brief, when they stated that, from 1998 to 2006, Decree Law No. 2,191 "began to be used less frequently."

154. After the State had become aware of the acts of torture committed against Mr. García Lucero, the continued existence of Decree Law No. 2,191 could constitute an obstacle to the opening of an investigation. However, the body of evidence does not reveal probative elements of acts that denote the specific application or proved impact of Decree Law No. 2,191 on the investigation of the facts of this case. Therefore, it has not been proved that the mere existence of Decree Law No. 2.191 was the cause of the failure to open an investigation into what happened in the case of Mr. García Lucero prior to October 7, 2011; nor has it been proved that, to date, it has affected the evolution of the investigation opened on that date. In any case, it should be stressed that, based on the findings made in the judgment in the case of *Almonacid Arellano et al.*, the Court established that "in view of its nature, Decree Law No. 2,191 lacks legal effects and cannot continue representing an obstacle to the investigation of the facts that constitute this case, or to the identification and punishment of those responsible, nor can it have the same or a similar impact on other cases of violations of rights recognized in the American Convention that occurred in Chile.[166] Despite recalling its findings in the said judgment, in the instant case, the Court does not find it appropriate to rule on the State's international responsibility as a result of the existence of Decree Law No. 2,191.

C.2.2) Regarding article 15 of Law No. 19,992

155. The representatives provided the text of article 15 of Law No. 19,992 and neither the State nor the Commission contested this.[167] The Court notes that the representatives affirmed that article 15 of Law No. 19,992 constitutes one of the "structural obstacles in Chile's legal system that prevents the successful completion of investigation, prosecution, punishment, and due reparation." The Court notes, on the one hand, that the Commission did not refer to this article in its Merits Report and, on the other hand, that the State contested the questioning of this article and considered that it was inadmissible to declare any violation based on the representatives' arguments.

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[163] *Case of Almonacid Arellano et al. v. Chile, supra*, para. 112. See also *Case of Barrios Altos v. Peru. Merits, supra*, para. 41.

[164] *Case of Almonacid Arellano et al. v. Chile, supra*, paras. 82.20 and 82.21.

[165] *Case of Almonacid Arellano et al. v. Chile, supra*, paras. 82.25.

[166] *Case of Almonacid Arellano et al. v. Chile, supra*, para. 119.

[167] The text states "the documents, testimony and background information provided to the National Commission on Political Imprisonment and Torture by the victims is confidential [...]. That confidentiality [...] shall be maintained for 50 years [...]. While the confidentiality established in this article is in force, no persons, groups of persons, authority or judge shall have access to the items indicated in the first paragraph of this article, without prejudice to the personal right of the owners of the documents, reports, statements and testimony included in them to publicize them or provide them to third parties of their own volition."

156. The Court underscores that, in their arguments, the representatives did not specifically indicated which information, or documents, testimony or background information protected by article 15 of Law 19,992 would be useful for advancing the investigation of this specific case. The Court observes that, under this law, Mr. García Lucero could have access to the documents, reports, statements and testimony relating to himself and even publicize them or provide them to third parties. Finally, the Court notes that the said provision was not applied in this case to refuse to provide information to any judicial authority and, to date, there is no evidence that in this or any other way it has represented an obstacle that has caused a specific prejudice to the investigations.

157. Based on the above and since the Court cannot analyze article 15 of Law No. 19,992 in the abstract because it was not applied and had no effects in this specific case, and the Court's contentious jurisdiction must be exercised to decide specific cases in which it is alleged that an act of the State, executed against specific individuals, is contrary to the Convention,[168] the Court does not find it in order to rule on article 15 of Law No. 19,992.

C.2.3) <u>Regarding articles 150 A and 150 B of the Criminal Code and 330 of the Code of Military Justice</u>

158. The representatives argued that articles "150 A and 150 B of the Criminal Code are not applicable to the time of the facts, [so that the State] was committing [...] a legal 'error' because the law was not in force at the time." In response, the State indicated that the representatives' argument "is not relevant for the processing of the domestic investigation proceedings." In addition, it mentioned the enactment of Law No. 20,357, which criminalizes torture in the context of crimes against humanity, genocide and war crimes; however, the facts do not reveal that this law is being applied in the investigation opened in this case. Furthermore, following the submission of the respective information requested by the Court, the State indicated that the wording of article 330 of the Code of Military Justice has not been amended since 1970. The State also contested the representatives' questioning of the said articles and considered that it was not in order to declare any violation on this basis.

159. In this regard, it should be noted that, in its Merits Report, the Commission alluded to the representatives' arguments that articles 150 A and 150 B of the Chilean Criminal Code and Article 330 of the Military Criminal Code present diverse problems and the fact that they had argued that "these provisions of Chile's domestic law violate Articles 2 and 8(1) of the American Convention." However, the Commission did not rule on this matter. Also, even though the representatives indicated, with regard articles 150 A and 150 B of the Criminal Code, the said "basic and serious legal error" mentioned in their brief with final written arguments, they merely stated this, without indicating the norms they understood to be applicable. In addition, they included arguments on precise aspects of these articles and with regard to article 330 of the Code of Military Justice that would make these provisions incompatible with the State's international commitments. Nevertheless, they did not indicate how, specifically in relation to the facts of this case, the said restriction of the crimes to acts committed against persons deprived of liberty or the failure to punish attempted torture would cause prejudice.

160. Furthermore, the proven facts do not reveal that the 10-year statute of limitations was applied, or prevented or limited in any way the evolution of the investigation of the pertinent facts in relation to this case. Indeed, it can be seen that it did not prevent the

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[168] *Cf. Case of Genie Lacayo vs. Nicaragua. Preliminary objections*, *supra*, para. 50, and *Case of Cabrera and Montiel v. Mexico*, *supra*, para. 207.

opening of the domestic investigation more than 36 years after Mr. García Lucero left Chile following his expulsion from the country. Regarding the arguments about the disproportionality of the applicable punishments, the body of evidence does not reveal that the article on the so-called "semi-prescription" has been applied in the investigation underway, and there is insufficient evidence to consider it proved that this had an evident effect on the imposition of disproportionate punishments.[169]

161. Based on the above, the Court does not find it appropriate to rule on the representatives' arguments concerning articles 150 A and 150 B of the Criminal Code, article 330 of the Code of Military Justice, the statute of limitations, and the so-called "semi-prescription." Despite this, it is pertinent note that diligence in the investigation of the facts always entails, *inter alia*, that the State apply norms that, as necessary, permit the proper investigation and the punishment, as appropriate, of those responsible.

D. Regarding the domestic proceedings to claim measures of reparation

D.1) Arguments of the Commission and of the parties

162. The Commission asserted that "every victim of human rights violations has the right to receive integral reparation from the responsible State." It acknowledged the reparations program implemented by the State, but indicated that this 'is not part of the purpose of this case, [because] it has not and cannot be applied to Mr. García Lucero," who "has not received any measure of reparation under this program." Nevertheless, it noted that Mr. García Lucero had received a "bonus payment" as compensation for the torture he suffered, but stated that this is "not integral reparation for the specific case," taking into account that he suffers from a permanent disability as a result [of this] torture. It affirmed that, in "the case of a [victim] with permanent physical and mental disability, [...] States must adopt compensation and rehabilitation measures."

163. In addition, the Commission indicated that Mr. García Lucero requires individual and family psychological therapy sessions, as well as physical therapy sessions, as measures of rehabilitation, and that even though the State has established a health-related reparations system known as "PRAIS," the presumed victim is unable to avail himself of it, because he does not live in the country. In this regard, it stated that the right of "all victims of human rights violations" "to receive integral reparation" remains "wherever [the victim] resides." It argued that, in this case, "it is not disputed" that "the framework of reparations in Chile excludes those who are in exile and who do not want or are unable to return to Chile." It added that the "Court's case law [...] has indicated that reparations must be provided even when the persons is in exile and does not live in the country."

[169] The Court observes that expert witness Cath Collins indicated that "[t]he reduction of punishments owing to the granting of gradual prescription is [...] one of the main explanations for the fact that only 30% of those convicted of human rights violations in Chile are ultimately imprisoned, because the initial sentences of most of the remaining 70% have been reduced in this way. It has been applied in all the [very few] final judgments for torture delivered to date." The expert witness also stated that "[t]here are indications that some of the State's lawyers and some judges of lower courts share [the] concerns [as regards imposing punishments proportionate to the severity of the crimes]. In August 2011, the San Miguel Court of Appeal ruled explicitly against the application of the gradual prescription of crimes against humanity. [...] However, in view of the non-binding nature of the precedent as a jurisprudential reference, the differences of opinion in this regard [...] give rise to a fairly inconsistent and unstable situation" (expert opinion of Cath Collins provided by affidavit, merits file, tome II, fs. 546 and 547). In this regard, this Court notes that the said consideration support the conclusion that it is uncertain what could happen as regards the imposing of punishments in relation to the ongoing investigation into the facts concerning Mr. García Lucero.

164. The representatives stated that, this "case does not [...] relate to torture, but rather [...] to access to justice and adequate reparation." They indicated that "the denial of justice" did not occur merely in relation to the investigation, but also because of the absence of reparation, which should redress the harm integrally. They stated that "Mr. García Lucero has not received integral reparation for his torture, unlawful detention and exile, because the reparations received are not sufficient, were not provided promptly, and have not been effective. [...] His wife and daughters have not been recognized as victims and have not received any type of reparation, among other reasons, because they live in exile." Even though Mr. García Lucero and his family "recognize the efforts made by the State [...] to make reparation to different victims of human rights violations during the military dictatorship, [...] they consider that the different public policies [...] have not provided adequate redress [...] for the harm caused."[170]

165. The representatives noted that, "[a]t first sight," the use of "reparations programs" seems to be "irreconcilable" with the "right of each individual to reparation for the harm suffered." However, they indicated that "they can be reconciled, [... t]o the extent that a program [...] includes different forms of reparation (and is not limited to just one such as compensation) [because] it gains in terms of complexity, but also in its possibility of recognizing and repairing the individual harm caused." They indicated that "any program of reparations should be established based on the principle of non-discrimination." They noted that "victims in the situation of Mr. García Lucero and [his wife...] do not have access to the PRAIS (health program) in the United Kingdom, while the surviving victims of torture who live in Chile, and their immediate families, do have access." They considered that "[t]his differential treatment is unjustified." In their brief with final arguments, they indicated that this "constitutes discriminatory treatment that violates Article 1(1) of the American Convention." They stated that "[t]he right to adequate reparation [...] cannot be conditioned [...] on the victims living in the territory of the State which must provide reparation."

166. They also indicated that "a fundamental element to link collective reparation and individual reparation" is that "the reparation of a collective nature or through reparation programs cannot take away from the victims their right to an effective and adequate remedy to argue that elements of the reparation program violate their right to integral reparation." They pointed out that Articles 8 and 25 of the Convention, as well as Article 9 of the Inter-American Convention to Prevent and Punish Torture, oblige the State to ensure that victims of torture may file "civil actions [...] to obtain integral reparation."

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[170] They noted that Mr. García Lucero had received a payment as a victim of torture under Law No. 19,992 and also, based on other norms, a pension as "a person dismissed for political reasons" and a special payment with regard to the latter. In this regard, they considered that "[t]he lack of due diligence by Chile in the case of victims survivors of torture who were political prisoners is evident. Thus, it was only in 2004, [...] 14 years after the return to democracy, [...] that Chile had an administrative remedy to obtain some form of reparation." They explained that, in addition to the bonus payment that Mr. García Lucero received, Law No. 19,992 established the possibility of the payment of a pension, but that, in order to receive it, Mr. García Lucero had to renounce other benefits provided by another law on "persons dismissed for political reasons," which he chose not to do. Thus, as in the case of Mr. García Lucero, "[i]f the person who opted, because he was considered to be ["]a person dismissed for political reasons ["] (to keep his monthly pension) [...] he would only have the right, as stipulated in article 2 of Law [No.] 19,992, to a single bonus payment of 3,000,000 Chilean pesos, equivalent to [...] US$5,847.93 at December 17, 2004." Regarding the pension as "a person dismissed for political reasons," they stated that "the value of this pension is not sufficient to redress the pecuniary damage caused to him by the loss of his employment." Moreover, the pension and the bonus payment received as "a person dismissed for political reasons" "are insufficient to redress the pecuniary damage resulting" from the denial of justice. In addition, if he collects these payments in Chile, Mr. García Lucero must pay the cost of the transaction and currency exchange, which would reduce the monthly amount of the pension to a risible sum. The representatives explained that Mr. García Lucero's wife and their three daughters have also been victims, "owing to the non-pecuniary and patrimonial damage caused them as a result of the torture of their [husband and] father, and the subsequent denial of justice"; therefore, they all have the right to integral reparation. However, they have not received any redress.

167. Regarding the above, in their pleadings and motions brief, the representatives argued that the continued existence of Decree Law No. 2,191 and article 15 of Law No. 19,992 also prevented the implementation of the investigation and the possibilities of claiming reparations.

168. They indicated that, in order to make this claim, an initial mechanism would be a "finance proceeding" (*finance proceeding*) against the State and, according to the representatives, this is an adequate, although ineffective, remedy to protect the "right to integral reparation." They added that, of "numerous actions" of this kind in relation to crimes during the dictatorship, "only one has been successful," and that "the reason usually mentioned by the Chilean courts to reject these actions is that they were time-barred under the statute of limitations, which is [four] years following the perpetration of the crime as established by article 2332 of the Civil Code."[171] Regarding their above-mentioned assertion that "the Chilean courts" reject certain actions, they subsequently explained in their final arguments brief that it is "the Constitutional Chamber of the Supreme Court that constantly [...] rejects [claims for compensation for harm resulting from a crime that are not heard by the criminal courts], on the [...] principle [...] that the civil action as a result of crimes against humanity is subject to the statute of limitations." They stated that, to the contrary, these claims "are generally admitted by the first instance courts or by the courts of appeal."

169. The representatives indicated that another possible mechanism is to try and obtain reparation under criminal proceedings, "once they conclude with a sentence against the perpetrator and against the Treasury." This mechanism is not effective either, owing "to the application of statutes of limitation and to the prescription of the civil action." They also stated that, after 2007, the Supreme Court declared 27 claims for compensation admissible related to "crimes perpetrated during the military dictatorship" filed in the context of criminal proceedings. They indicated that, in this case, it is not possible to use this mechanism owing to the absence of an effective and adequate investigation of Mr. García Lucero's torture and detention.

170. The representatives explained that they have been advising Mr. García Lucero since 1994, and that they have consulted "non-governmental organizations" that have "indicated that there was no possibility of making a criminal claim or filing a civil case," so that they have "focus[ed] on assisting Mr. García Lucero obtain a pension in Chile [owing to his status as] 'a person dismissed for political reasons.'"

171. The representatives explained that article 6 of Law No. 19,234, concerning "persons dismissed for political reasons" establishes that, if the "agreement" established in the law is reached, "the interested party [...] shall waive any legal action." Also, they indicated that Law No. 19,992, which established reparations for victims of "political imprisonment" and torture, "does not include similar norms," so that "victims may make use of remedies that exist under Chilean law" to contest the reparation amount allocated by the said law. However, they noted that "this is not possible, because no judge of the Republic would be legitimated by the Constitution to review the legality of an amount established by law." They stated that "[d]espite this, the possibility could be considered of using a constitutional remedy [...] to allege that the amount of the reparation is insufficient." In this regard, they

[171] In addition, the Court notes that, in their final written arguments, the representatives themselves referred to a judgment of the Supreme Court in which it indicated that the statute of limitations should be calculated as of the time that the illegal act had been proved. However, this is a recent judgment, of January 21, 2013, and the information provided by the representatives does not indicate the existence of another similar decision of the Supreme Court. The representatives related this decision to the "supposition" that, following the delivery of that judgment, "this line of jurisprudence would be maintained in the Treasury's upcoming defense arguments." In other words, they did not relate it to the alleged violations of rights prior to the delivery of the said judgment.

identified two remedies: "[n]on-applicability based on non-constitutionality established in article 93(6) of the Constitution" and "the action on unconstitutionality." Regarding the former, they considered that, "[i]n Chile it is unthinkable that a domestic court may agree to hear a claim against an element (in this case a reparation amount) previously established by the legislator. Indeed the faculties given to the Constitutional Court over the law are fairly limited." Regarding the latter, they stated that "neither would this be applicable because it depends on the existence of a prior declaration of the inapplicability of a legal principle [...] according to the above-mentioned article 93(6)." The representatives considered that "it should be concluded that there are no other judicial or administrative remedies to claim the pension or the "bonus payment," depending on the case, granted by Law 19,992."

172. In addition, with regard to the pension based on the status of "a person dismissed for political reasons," they maintained that it had been granted with an "unjustified delay," because Mr. García Lucero has been receiving it since 2000, "[seven] years after he had requested the protection of [his rights]. They also indicated that Mr. García Lucero "has received this pension retroactively since September 1998."

173. The State affirmed that:

> Nowadays it is evident and not even a subject for discussion that States are obliged to provide reparation to the victims of human rights violations. This obligation is a principle of public international law and a norm included in the system of universal and regional conventions.[172]

174. Regarding the reparations provided to Mr. García Lucero, the State indicated that, since the facts occurred during the military regime that governed the country from 1973 to 1990, certain particularities must be taken into account. Thus, the reparation criteria "have had to be redefined" in the "processes of the transition to democracy during which it has been necessary to deal with massive and systematic human rights violations." In order to "assume the burden of a process of transition to democracy," the implementation of a "program of reparations" by the State appeared to be an effective way of coordinating all the State's efforts." It indicated that "the programs comply with the requirement of comprehensiveness, because the measures established [...] include [...] material, moral and social aspects intrinsic to a process of reparation for human rights violations." It also asserted, reflecting the considerations of the United Nations Working Group on Enforced Disappearances, in a report on a visit to Chile in August 2012, that:

> In collective reparation programs, where it may not be possible to assess the damage suffered by each individual victim and where total reparation of the harm caused is also impossible, even the most generous program will be insufficient if what is expected is reparation of all the harm. Nevertheless, specific solutions may be provided to some of the problems arising from the harm suffered.

175. The State emphasized that, different actions were being taken in Chile that the Court had assessed positively in its judgment in the case of *Almonacid Arellano et al.*[173] It argued that "[t]he system of reparations implemented in Chile is adapted to the relevant international standards," and "covers various aspects, particularly: health, social welfare, education, housing, preservation of memory, truth and justice" and asserted that this system includes "two dimensions of reparations." The first "relates to a collective dimension under which, in addition to other benefits, reparations of a financial type have been

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[172] The State referred to "[t]he right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms," Final report of the Special Rapporteur, Mr. M. Cherif Bassiouni, submitted in accordance with resolution 1999/33 of the United Nations Commission on Human Rights of 18 January 2000 [E/CN.4/2000/62].

[173] *Case of Almonacid Arellano et al. v. Chile*, *supra*, para. 161.

established, the amount of which is the same for all the victims who have been found eligible by the committees entrusted with this task." The second, which relates to an individual perspective [...], considers individual elements," and relates to measures in "the sphere of health," linked to the PRAIS program, and also education and housing. Thus, "victims whose studies were interrupted owing to political imprisonment or torture have the right to the State guaranteeing the continuation [of those studies]." In addition, "measures have been established that seek to facilitate the acquisition of a home for those who do not own one, as well as improvements for owners of social housing." Regarding this case, the State asserted that Mr. García Lucero is one of the many people who have benefited from the different measures of reparation, so that his rights have not been violated."[174]

176. The State also argued that "[o]ver the period 1973–1990 [...] many Chileans lived in exile. [...] When they were able to return, it was the State that helped them in different ways." In this regard, it indicated various legislative measures under which it "created the National Office for Returnees; [...] awarded certain customs exemptions to those who returned, and [...] granted benefits to those indebted to the *Banco del Estado* who had obtained loans under the program to provide loans to Chileans who returned to set up their own businesses." It explained that the "general criteria [of the reparation system] are based on the victim's presence in the country," and that "the system is based on the victim having returned to the country or residing in the country, [...] because the concept is to try and reinstate these victims in the country, which they had been forced to leave." It also affirmed that "since Chile returned to democracy in 1990, there are no exiles." In this regard, it indicated that, in addition to the monetary reparations that Mr. García Lucero has received and continues to receive, there are others "in the form of special services in the areas of health, education or housing [that] are subject to the residence in Chile of [Mr. García Lucero] and/or his family." It indicated that:

> The ideal scenario would be that Mr. García Lucero return to Chile because, there, he and his whole family would be the beneficiaries of the whole system of reparation that exists in Chile and which, unfortunately, [...] it is impossible to extend to the exiles who still live abroad for practical reasons and also a matter of resources, because it would be necessary to take resources away from the programs that are provided in Santiago in order to deal with situations of Chileans who live abroad.

177. The State added that the reparations program implemented in Chile "could be compatible with the victims being able to have recourse to the national or international courts in order to submit their claims for reparation on an individual basis. In this regard, [...] the legitimacy of these individual mechanisms should be considered and the compatibilities established that allow access to the benefits of one or other procedure." It also considered that "the facts denounced by [Mr.] García Lucero [...] should be categorized as crimes against humanity, which, according to the international treaties in force, give rise to the State's responsibility with the resulting obligation to make reparation, which must be sought in the domestic courts. However, it also indicated that, insofar as "the pensions" that Mr. García Lucero receives "constitute civil compensation arising from the State's acknowledgement of responsibility for the massive and systematic human rights violations

[174] In this regard, it indicated that, "at [April 21, 2013, he] had received: [...] US$39,574.50 [...], equivalent to the payment from 1998 to [that] date of the pension as ["]a person dismissed for political reasons[";] US$5,059.90 [...] corresponding to the special payments established by Laws [...] 20,134 and 20,403[, and] US$6,315.70 [...] corresponding to the bonus payment established in Law [...] 19,992 as a victim of torture. This allows the State to affirm that, under the reparations pension, Mr. García Lucero has received [...] approximately [...] US$50,950.10. The annual amount of the pension he receives [...] is US$3,658.60, adjustable based on the consumer price index in Chile, and he will continue to receive it up until his death, when it will be transferred to his widow."

that occurred during the dictatorship, "it is not legally admissible to request further compensation for the same facts from the Treasury."

178. Despite the above, it asserted that there is a possibility of filing a claim against the State, indicating that, in this regard "there is no single [legal] text that systematizes the responsibility of the State, but rather it is embodied in different norms of legal and constitutional rank (international human rights treaties)." Among these norms, it mentioned "articles 748 [to] 752 of the Code of Civil Procedure," which regulates the "finance proceeding," which is "a written proceeding processed under the rules of the ordinary major claims civil proceedings." According to the State, this procedure "has proved to be an effective way to obtain civil compensation."

179. In this regard, it clarified with regard to "the statute of limitations" that "this should not operate in relation to all actions designed to obtain compensation without considering or distinguishing the nature of the cause of the action." It indicated that, "in this regard," the facts in question were allegedly "crimes against humanity." It specified, in response to a request from the Court that it forward the norm that regulates the statute of limitations in civil actions, that:

> Regarding the legal provisions that regulate the statute of limitations in civil actions, it should be clarified that, in Chile, the source of civil responsibility are norms of international human rights law that are fully incorporated into domestic law, pursuant to the provisions of article 5 of the Constitution of the Republic[. ...] Thus, [...] the guiding principle regarding civil responsibility [...] is regulated in norms and principles of international human rights law.[175]

180. The State specified that:

> According to a report prepared by the Criminal Attorney's Office of the Santiago Prosecuting Attorney's Office, a final judgment has been delivered in 93 cases of on crimes of torture committed during the military government and, as appropriate, on the corresponding civil claims filed [...]; it is in the civil jurisdiction where most of the judgments in which the said action was admitted are to be found, in cases in which it was chosen to exercise the civil action together with the criminal action.

181. In the same report, the State also explained:

> That 202 civil court cases have been identified that are related to human rights violations which took place during the military government. Of these cases, 19 are related exclusively to the torture of civilians and the torture of officials. Some of the latter have concluded with final judgments in first instance, which haves not yet been executed, in which the Treasury has been sentenced to pay different types of compensation to the victims.

D.2) Considerations of the Court

182. To the extent that, when violated, treaty-based rights entail the State's obligation to make the reparation of the violations of those rights possible,[176] the existence of the legal

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[175] In this regard, it mentioned, "specifically," Article 63 of the Convention.

[176] Indeed, a principle of international law establishes that the State must make adequate reparation for the harm caused by the violation of its international obligations. Since it is a norm that is obligatory for the State, the principle indicated is applicable in relation to the binding international instruments for the protection of human rights that are part of the inter-American system. *Cf. Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 07, para. 25; *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 25, 2001. Series C No. 76 para. 78. This judgment cites "PCIJ, *Factory at Chorzow (Merits),* 1928, (Ser. A) No. 17, Judgement No. 13, 13 September 1928, para. 29." The said decision establishes that whenever a right established in any rule of international law is violated by act or omission, a new legal relationship automatically arises. This relationship is established between the subject to whom the act can be imputed, who must "respond" by means of adequate reparation, and the subject who has the right to claim the reparation owing to failure to comply with the obligation. In this regard, the Permanent Court of International

and institutional mechanisms that allow those affected to claim reparation must exist. This generally relates the obligation to make reparation to the existence of appropriate administrative or judicial mechanisms and, therefore, to the right of the victims to have access to justice,[177] which has its treaty-based foundation in the rights to judicial guarantees and judicial protection established in Articles 8 and 25 of the American Convention.[178] Based on these articles, "States are obliged to provide effective [...] judicial remedies to the victims of human rights violations that must be substantiated in accordance with the rules of due process of law."[179] "This effectiveness presumes that, in addition to the formal existence of the remedies, these lead to results or responses to the violations of rights, which means that the remedy must be appropriate to combat the violation, and that its implementation by the competent authority should be effective."[180] This should mean, according to the case, that the remedies are appropriate to achieve not only the ending of the violation or its threat, but also the reparation of the consequences of the violation, including, if possible, the restitution or re-establishment of the right. In this regard, the Court has indicated that "the effectiveness of the domestic remedies must be assessed comprehensively taking into account [...] whether, in the specific case, domestic mechanisms existed that ensured real access to justice to claim the reparation of the violation."[181]

Justice indicated in paragraph 73 of the said decision that "[i]t is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation. [...] Reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself." Furthermore, the State obligation to provide reparation for violations of the rights established in binding American international instruments is revealed in view of the principle of "complementarity" on which the protection system formalized within the framework of the Organization of American States is based. In this regard, the Court has stated that "State responsibility under the Convention can only be required at the international level when the State has had the opportunity to declare the violation and make reparation for the harm caused by its own means. This is based on the principle of complementarity (subsidiarity) that crosscuts the inter-American human rights system, which is, as the Preamble to the American Convention states, 'a convention reinforcing or complementing the protection provided by the domestic law of the American States.' Thus, the State 'is the main guarantor of the human rights of the people, so that, if an act is committed that violates these rights, it is the State itself that has the obligation to settle the matter at the domestic level and [...] to make reparation, before having to respond before international organs, such as the inter-America system, which derives from the subsidiary nature of the international proceedings in relation to the domestic systems of human rights guarantees'" (*Case of the Santo Domingo Massacre v. Colombia*, *supra*, para. 142. The text in inverted commas at the end of this paragraph corresponds to the decision of the Court in the *Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 157, para. 66.

[177] According to the International Commission of Jurists, "[a]ccess to justice requires the availability of effective remedies. All persons have a right to an effective remedy for any violation of their civil, cultural, economic, political, and social rights [...]." Declaration of the International Commission of Jurists on Access to Justice and Right to a Remedy in international human rights systems. Adopted in Geneva on 12 December 2012, article 5.

[178] The need for domestic remedies to be appropriate for the victims of human rights violations to claim reparation for the violations is inferred from the principle of complementarity under the inter-American system described above (*supra* footnote 175): if the appropriate "due process of law" did not exist, pursuant to Article 46(2)(a) of the Convention, the victims (or other persons or entities on their behalf) could, in the absence of reparation, resort to the inter-American system directly; in other words, without the need to exhaust domestic remedies. To the contrary, if the competent domestic organs, in application of the appropriate legal proceedings, declare and provide adequate reparation for the violation of a right, the intervention of the international organs established in the Convention would not be admissible (*Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 171).

[179] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, *supra,* para. 91, and *Case of the Santo Domingo Massacre v. Colombia*, *supra,* para. 155.

[180] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, *supra,* paras. 63, 64 and 66, and *Case of García and family members v. Guatemala*, *supra*, para. 142.

[181] *Case of Goiburú et al. v. Paraguay*, *supra*, para. 120. It should be explained that, in that specific case, which related to gross human rights violations, the Court determined that "the international responsibility of the State was aggravated"; indicated that the obligation to provide reparation "should not depend exclusively on the

183. When examining cases involving gross human rights violations,[182] the Court has indicated that "the obligation to make reparation is an inherent duty of the State, so that, even though the victims or their next of kin must have extensive opportunities to seek fair compensation, this duty cannot rest exclusively on their procedural initiative or on the contribution of probative elements by private individuals."[183] This must be understood bearing in mind that, in this type of case, the reparation owed involves the State's obligation to investigate *ex officio* the violations that have been committed[184] (*supra* para. 122). In accordance with the foregoing, in the respective cases, there is a relationship between the obligation to investigate, the possibility of access to adequate reparation, and the rights of

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procedural activity of the victims," and that "the State's responsibility for failing to redress the consequences of the violations in this case is not annulled or reduced by the fact that the victims' next of kin have not tried to use [certain] civil or administrative mechanisms" indicated by the State (*Cf. Case of Goiburú et al. v. Paraguay*, *supra*, paras. 94 and 122). Similarly, the Court had previously had the occasion to rule on the connection between the rights established in Articles 8 and 25 of the Convention and access to measures of reparation (*Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, *supra*, para. 227; *Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, para. 130; *Case of Las Palmeras v. Colombia. Merits.* Judgment of December 6, 2001. Series C No. 90, para. 59; *Case of the 19 Tradesmen v. Colombia. Merits reparations and costs*. Judgment of July 5, 2004. Series C No. 109, paras. 186 and 187; *Case of the Serrano Cruz Sisters v. El Salvador. Merits reparations and costs*, *supra*, paras. 63 and 64, and *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of June 15, 2005. Series C No. 124, para. 147).

[182] Among the acts that constitute "gross human rights violations, [the Court has referred to] torture, summary, extralegal or arbitrary execution, and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law" (*Cf. Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 171). It has expressed similar concepts in the following decisions: *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits reparations and costs.* Judgment of September 1, 2010. Series C No. 217, paras. 207 and 208; *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No. 221, para. 225; *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits reparations and costs.* Judgment of May 19, 2011. Series C No. 224, para. 117, and *Case of Bueno Alves v. Argentina. Monitoring compliance with judgment*. Order of the Inter-American Court of July 5, 2011, paras. 29 and 30).

[183] *Case of the Pueblo Bello Massacre v. Colombia. Merits reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 209; *Case of the Ituango Massacres v. Colombia.* Judgment of July 1, 2006. Series C No. 148, para. 340. Similarly: *Case of Goiburú et al. v. Paraguay. Merits reparations and costs.* Judgment of September 22, 2006. Series C No. 153, paras. 117 and 122, and *Case of the Miguel Castro Castro Prison v. Peru. Merits reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 400.

[184] In this regard, the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has "underscore[d] the important relationship between States parties' fulfillment of their obligations under articles 12 and 13 and their obligation under article 14. [...] Full redress cannot be obtained if the obligations under articles 12 and 13 are not guaranteed." Committee against Torture. *General Comment No. 3 (2012). Implementation of Article 14 by the States parties* Doc. CAT/C/GC/3. Distr. General 13 December 2012, para. 23. (The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment indicates as follows: "Article 12. Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. Article 13. Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given. Article 14. 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation. 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.") In addition, it is worth citing the consideration of the International Commission of Jurists, which stated that "[v]ictims of human rights violations have the right to know the truth about the circumstances in which the violations took place. As a component of the duty to provide reparation, States must hold criminally responsible perpetrators of gross violations, in particular of those constituting crimes under international law, and such accountability may not be abridged by immunities, amnesties or statutes of limitations." Declaration of the International Commission of Jurists on Access to Justice and Right to a Remedy in international human rights systems. Adopted in Geneva on 12 December 2012, Article 7.

the victims of violations to have access to justice. However, other kinds of administrative and judicial mechanisms, such as disciplinary, contentious-administrative or civil proceedings, may also be useful or effective to help establish the truth, and determine the scope and dimensions of State responsibility, and the reparation of the violations committed.[185] Thus, the possibility of obtaining measures of reparation should not be made dependent on the initiation, continuation or result of criminal proceedings, because this may restrict or excessively condition that possibility and, therefore, result in a deprivation of the right of the victims to have access to justice.[186]

184. Based on the above, it should be established that it is admissible for the Court to examine whether, independently of the investigation of the facts and the claims that could be made in this context, Mr. García Lucero, and his family members, had access to other mechanisms for making their claims.

185. However, in this case, the possibilities of making a claim have not been reduced to the possibility of individual actions, but rather the State established an administrative reparation program, and Mr. García Lucero has received benefits from it. The State argued that this circumstance makes other claims for reparation inadmissible (*supra* paras. 174 and 175), and the representatives expressed a different opinion, arguing the inexistence of effective remedies to claim integral reparation. Consequently, in light of the State obligation to make reparation for human rights violations, the Court must examine the relationship between the right of access to justice, based on the rights to judicial guarantees and protection, and the existence of administrative programs of reparation in order to determine whether, in this case, it was admissible for Mr. García Lucero and his family members to have access to remedies to claim, individually, measures of reparation and, if appropriate, assess whether they were provided by the State. Owing to the fact that the State, pursuant to legislation enacted after 1990, established benefits and a "right" related to measures of rehabilitation in favor of such individuals (*supra* para. 73), this Court will take into consideration that, in 2004, Chile recognized Mr. García Lucero as one of the people who had been a victim of torture and "political imprisonment" during the government of the military dictatorship.

D.2.1) <u>The administrative reparation programs and the rights to judicial guarantees and protection</u>

186. In the sphere of international law, documents have been published based on the rights of the individual as a victim of unlawful acts. In this regard, it is worth citing the

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185 Similarly, See *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 130, and *Case of the Santo Domingo Massacre v. Colombia*, *supra*, para. 154. See also *Case of La Cantuta v. Peru*, *supra*, para. 157, and *Case of Goiburú et al. v. Paraguay*, *supra,* para. 128. Added to the foregoing, it should be underscored that in the universal international sphere it has been stated that "[r]emedies for gross violations of international human rights law [...] include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered[, and] (c) Access to relevant information concerning violations and reparation mechanisms" (Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Norms and of Serious Violations of International Humanitarian Law. Resolution 60/147 adopted by the United Nations General Assembly on 16 December 2005, para. 11).

186 The Committee against Torture has indicated that "[n]otwithstanding the evident benefits to victims afforded by a criminal investigation, a civil proceeding and the victim's claim for reparation should not be dependent on the conclusion of a criminal proceeding. [... C]ompensation should not be unduly delayed until criminal liability has been established. Civil liability should be available independently of criminal proceedings and the necessary legislation and institutions for such purpose should be in place." Committee against Torture. *General Comment No. 3 (2012), supra*, para. 26.

"Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,"[187] the "Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,"[188] and the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law"[189] (hereinafter the "Basic Principles"). This illustrates a trend in the sphere of international law to recognize victims of unlawful acts as the holders of rights in this capacity, including with regard to measures of reparation and the right of access to justice in relation to those measures; even the International Court of Justice, which only has competence in litigations between States has ruled in this sense.[190] In this regard, the above-mentioned "Basic Principles" state that:

> A victim of a gross violation of international human rights law [...] shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws.

187. Regarding torture, under the inter-American system, the protection against such acts established in the American Convention, "as well as 'the international *corpus juris* concerning the protection of personal integrity," is reinforced by the Inter-American Convention against Torture.[191] Specifically with regard to reparation, Article 9 of this treaty indicates the "undertak[ing]" of the States Parties "to incorporate into their national laws regulations guaranteeing suitable compensation for victims of torture." This mandate complements the obligation to adopt the necessary provisions to make the pertinent treaty-based rights effective, established in Article 2 of the American Convention.

188. In order to determine the scope of the State's obligations with regard to the reparation of acts of torture, it is pertinent to take into account the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[192] to which Chile

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[187] Adopted by the United Nations General Assembly on November 29, 1985, by resolution 40/34. Principle 4 stipulates that: "[v]ictims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered."

[188] Adopted by the United Nations Commission on Human Rights on February 8, 2005. Principle 31 indicates: "Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator."

[189] Adopted by the United Nations General Assembly on December 16, 2005, by resolution 60/147. Principle 18 of this document stipulates the right of victims to "full and effective" reparation."

[190] In this regard, the judgment of the International Court of Justice of November 30, 2010, in the case of *Republic of Guinea v. Democratic Republic of the Congo* is illustrative, because, even though it concerns a dispute between States, it took into account harm to an individual, even in relation to reparations. In its ruling, the Court noted that the dispute between the States related to the violation of human rights owing to the harm suffered by a national of the Republic of Guinea: Mr. Diallo. Consequently, the reparations awarded by the Court responded to the request for compensation made by Guinea, and were based on the harm suffered by the said person (*Cf.* para. 161).

[191] *Cf. Case of the Miguel Castro Castro Prison v. Peru*, *supra*, paras. 276, 377, 378 and 379, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, *supra*, para. 233. Article 16 of the Inter-American Convention against Torture stipulates that it "shall not limit the provisions of[, *inter alia,*] the American Convention [... and] other conventions on the subject, [...] with respect to the crime of torture." This article establishes that the protection provided by the treaty is complementary or contributes to, but does not exclude or substitute, the provisions of the other norms it refers to.

[192] In this regard, the Court has indicated that "according to the systematic argument, norms must be interpreted as part of a whole, the significance and scope of which must be established based on the legal system to which they belong [(*Cf. Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits*

is a party.[193] Referring to its Article 14, which concerns the obligation to ensure measures of reparation,[194] the Committee against Torture has stated that "[t]he comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention."[195] The Committee also stated that:

> Reparation must be adequate, effective and comprehensive. States parties are reminded that in the determination of redress and reparative measures provided or awarded to a victim of torture or ill-treatment, the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed against them.[196]

189. In addition, the Court has indicated that "if domestic mechanisms exist to determine forms of reparation, these procedures and [their] results must be assessed" and that, to this end, it should be considered whether they "are objective, reasonable and effective."[197] In the case of Chile, the Court has noted the existence of difference measures[198] and, when

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reparations and costs. Judgment of November 16, 2009. Series C No. 205, para. 43)]. In this regard, the Court has considered that 'when interpreting a treaty, not only the formal agreements and instruments related to it are taken into account (second paragraph of Article 31 of the Vienna Convention), but also the system within which it is inserted (third paragraph of Article 31'; namely, international human rights law" (*Cf. The Right to Information on Consular Assistance within the Framework of the Guarantee of Due Process of Law.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 113, and *Case of Artavia Murillo et al. ("In Vitro fertilization") v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2012. Series C. No. 257, para. 191).

[193] The treaty was adopted and opened to signature, ratification and accession by the United Nations General Assembly in resolution 39/46, of December 10, 1984. It entered into force on June 26, 1987. The State of Chile ratified it on September 30, 1988.

[194] This article states that "[e]ach State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."

[195] Committee against Torture. *General Comment Nº 3 (2012)*, *supra*, para. 2. Expert witness Sveaass agreed with this assessment, and referred to this General Comment repeatedly in support of her expert opinion and in this indicated that "General Comment [No. 3 of the Committee against Torture] clarifies the standards and sets out the specific obligation and the ways in which reparation can be ensured. [... I]t represents the standard for evaluating compliance with [the obligation to provide reparation to victims of torture], and based on this, [her expert opinion] refer[red] to the text of the General Comment" (merits file, tome II, fs. 521 and 522). Similarly, expert witness Treue indicated that "[a] basic reference point for international standards regarding reparation, specifically for victims of torture and ill-treatment is General Comment No. 3 [...] of the Committee against Torture (Expert opinion provided by affidavit by Felícitas Treue (merits file, tome II, fs. 629 to 641). In this regard, the Court has considered that reparation is the generic term that cover the different ways in which a State can remedy the international responsibility it has incurred (such as, *restitutio in integrum*, compensation, satisfaction, and guarantees of non-repetition). *Cf. Case of Loayza Tamayo v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No 42 para. 85, and Case of *Suárez Peralta v. Ecuador*, *supra,* para. 164.

[196] Committee against Torture. *General Comment No. 3 (2012)*, *supra*, para. 6.

[197] *Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, *supra*, para. 303, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra*, para. 246.

[198] *Cf. Case of Almonacid Arellano et al. v. Chile*, *supra*, para. 82.29 to 82.33. The Court considered it proved in that case that "[o]n February 8, 1992, Law No. 19,123 creating the National Reparation and Reconciliation Corporation was published in the Official Gazette. Its purpose was 'to coordinate, implement and promote any actions necessary to comply with the recommendations contained in the Report of the National Truth and Reconciliation Commission.' To that effect, a monthly pension was granted to the next of kin of the victims of human rights violations or political violence; they were granted the right to receive certain free medical and educational benefits, and the children of victims were exempted from obligatory military service, if they requested this. [...] On November 11, 2003, Supreme Decree No. 1,040 was published in the Official Gazette creating the National Commission on Political Imprisonment and Torture, for the Clarification of the Truth with regard to individuals who were deprived of liberty and tortured for political reasons during the military dictatorship. Moreover, in its final report, the Commission proposed individual measures of reparation (established in Law No. 19,992) and also collective and symbolic measures. [...] On October 29, 2004, Law No. 19,980 was passed. This law amended Law No. 19,123 [...], by expanding the benefits and adding new ones for the next of kin of the victims, including, in

evaluating them, has stated that it "assesses positively the policy of reparation for human rights violations established by the State."[199] In the instant case, on June 14, 2006, in his capacity as a victim of torture and "political imprisonment," Mr. García Lucero received a one-time payment under Law No. 19,992 and its Regulations, after he had chosen to receive the pension as "a person dismissed for political reasons" (*supra* para. 79). In addition, in his capacity as "a person dismissed for political reasons," he received: (a) a monthly pension under Law No. 19,234 as of 2000 (*supra* para. 77), and (b) a special compensatory bonus payment under Law No. 20,134 (*supra* para. 78).[200]

190. The Court is unable to analyze whether these reparations are "sufficient, effective and complete," because an analysis of this kind should be based on the examination of the harm caused by the acts that began to be implemented at the time of Mr. García Lucero's detention on September 16, 1973, and, in any case, before March 11, 1990 (*supra* para. 36). Nevertheless, it should be noted that the existence of administrative programs of reparation must be compatible with the State's obligations under the American Convention and other international norms and, therefore, it cannot lead to a breach of the State's duty to ensure the "free and full exercise" of the rights to judicial guarantees and protection, in keeping with Articles 1(1), 25(1) and 8(1) of the Convention, respectively. In other words, the administrative reparation programs and other measures or actions of a legal or other nature that co-exist with such programs, cannot result in an obstruction of the possibility of the victims, pursuant to the rights to judicial guarantees and protection, filing actions to claim reparations. In view of this relationship between administrative reparation programs and the possibility of filing actions to claim reparations, it is pertinent for the Court to examine the representatives' arguments in this regard, and also those of the State.

191. The words of the Committee against Torture should be recalled in this regard when it indicated that: "[a] State's failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner may constitute a *de facto* denial of redress [...]," and that:

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particular, a 50 percent increase in the amount of the monthly reparation pension; the empowerment of the President of the Republic to grant a maximum of 200 non-contributory pensions and the expansion of health benefits. In addition to the foregoing, the State adopted the following reparation measures: (i) the Program to support Political Prisoners for individuals in custody at March 11, 1990; (ii) the Comprehensive Health Service and Reparation Program (PRAIS) for those affected by human rights violations; (iii) the Human Rights Program of the Ministry of the Interior); (iv) technological improvements to the Forensic Medicine Service; (v) National Returnees Office; (vi) the Program for those Politically Dismissed; (vii) the restitution of or compensation for property seized and acquired by the State; (viii) the establishment of the Human Rights Dialogue Committee, and Conversation Table), and ix) the presidential initiative "*No hay Mañana sin Ayer*" of President Ricardo Lagos. Lastly, the State has erected several monuments in homage to the victims of human rights violations."

[199] *Case of Almonacid Arellano et al. v. Chile*, *supra*, para. 161. Similarly, expert witness Cath Collins stated that "[t]he measures of reparation implemented in Chile as of 1990 are among the most complete aspects of its process of transitional justice." This expert witness also stated that "there has been a strong discrepancy between these public policies and the judicial practice in the case of civil complaints," an aspect that is analyzed below as it relates to this case (expert opinion provided by Cath Collins, *supra*).

[200] It should also be pointed out that, in its final written arguments, the State indicated that, under Law No. 20,403, in February 2010, a further bonus payment was awarded to Mr. García Lucero. Since neither he nor his representative collected the payment, it expired in September 2011, and was then was incorporated into his pension in March 2013. The payment voucher amounted to $490,000 pesos (US$1,031.50). In this regard, the representatives indicated that, at that date, Mr. García Lucero had not been notified of the payment and that "it has not been possible to verify it because the bank statements for April 2013 (which relate to banking movements in March) have not yet reached him in the United Kingdom, and Chile has not sent any proof of it [...]." It should be clarified that this payment was not provided as a form of reparation for the torture or for the violations alleged in this case. They indicated that the payment corresponds to the adjustment of payments made under Law No. 20,403 of 2009, which "adjusts the payments to public sector workers, grants the Christmas bonuses indicated, and the benefits mentioned."

> States parties shall enact legislation specifically providing a victim of torture and ill-treatment with an effective remedy and the right to obtain adequate and appropriate redress, including compensation and as full rehabilitation as possible. Such legislation must allow for individuals to exercise this right and ensure their access to a judicial remedy. While collective reparation and administrative reparation programmes may be acceptable as a form of redress, such programmes may not render ineffective the individual right to a remedy and to obtain redress.[201]

192. The Court notes the representatives' observations that, contrary to the regulations concerning the benefits for "those dismissed for political reasons," Law No. 19,992, which establishes reparations for victims of torture and "political imprisonment," does not contain provisions establishing that, when acceding to the respective reparations, the beneficiaries renounce the possibility of filing other actions. According to their arguments (*supra* para. 190), according to treaty-based rights, the establishment of domestic administrative or collective reparation programs does not prevent the victims from filing actions to claim measures of reparation. Consequently, the Court must analyze whether Mr. García Lucero or his family members were able to access appropriate remedies to file claims in relation to measures of reparation.

D.2.2) <u>Access to remedies to claim measures of reparation in this case</u>

193. The representatives, and also the Commission, have indicated that the compensation that the State awarded to Mr. García Lucero was insufficient to provide "integral reparation" in this case and, in this regard, they took into account that Mr. García Lucero was unable to access measures of rehabilitation (*supra* paras. 162, 164 and 165). As indicated, the Court will not analyze whether the benefits granted and established for Mr. García Lucero resulted in complete or integral reparation. However, it will assess whether there is any evidence to determine if he or his family members were deprived of their rights to judicial guarantees and protection.

194. Nevertheless, the Court does not find it pertinent to examine the arguments of the representatives concerning: (a) the alleged impossibility of contesting the amount of the reparations received by Mr. García Lucero by a remedy in the domestic jurisdiction,[202] because they did not explain their assertion that Chilean judges are not authorized to review an amount established by law (*supra* para. 171). Also, they did not explain whether their assertion reflected their legal opinion or an allegedly objective piece of information, or offer any evidence in this regard; (b) the "remedies of a constitutional nature," an argument that was only introduced in the final written arguments (*supra* para. 171), so that it is time-barred and the State did not have the opportunity to contest it; (c) the supposed "unjustified delay" in Mr. García Lucero obtaining the pension as "a person dismissed for political reasons," because they did not provide arguments, information of evidence that would allow the Court to evaluate how the respective procedure unfolded, and (d) that the

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[201] Committee against Torture. *General Comment No. 3 (2012), supra*, paras. 17 and 20, respectively.

[202] The State, for its part, only referred tangentially and imprecisely to the matter. It indicated that "the pensions" that Mr. García Lucero receives would preclude a claim for "further compensation from the Treasury for the same facts" and failed to explain which "pensions" it was referring to. According to information that the Court has received, based on the arguments of the Commission and the parties, Mr. García Lucero receives a single pension based on his status as "a person dismissed for political reasons." Owing to the word used, it cannot be understood whether the State's observation refers to all the reparations obtained by Mr. García Lucero. In addition, it is unclear whether it refers to the possibility of questioning the amount of "the pensions," or to an independent action for compensation, or to both matters. Consequently, the assertion is imprecise. Furthermore, the State bases its observation on the fact that "the principle of unjust enrichment [is] a general principle of law (and, as such, a source of international law)." Thus, what the State indicates must be understood as a vague statement of an isolated legal opinion, and placed in the context of all the arguments provided by Chile. In addition, these comments by the State appeared in a response provided in its final written arguments to questions posed by the Court during the public hearing. In other words, it is not a response to the arguments of the representatives.

alleged continued existence of Decree Law No. 2,191 and article 15 of Law No. 19,992 prevented, in addition to the development of the investigation, the possibilities of claiming reparations *(supra* para. 143). The Court has already ruled in relation to these norms and refers back to its decisions in this regard (*supra* paras. 154 and 157).

D.2.2.1) *Measures of compensation and rehabilitation as "rights" to be protected in this case*

195. Under Articles 25(1) and 8(1) of the Convention, the rights indicated exist in relation, *inter alia*, to "fundamental rights recognized [...] by law," and "rights [...] of a civil or [...] any other nature." According to some previous findings (*supra* paras. 124 to 127 and 138), since Chile recognized Mr. García Lucero's condition as a victim of "political imprisonment" and torture in 2004, the State has an obligation to enable him to be "guaranteed" "adequate compensation" under the corresponding norms (*supra* para. 182). In addition, domestic laws established rehabilitation measures for a group of individuals that includes Mr. García Lucero (*supra* para. 73). In this regard, in 2004, Law No. 19,992 established a "right" to "physical rehabilitation" for victims of "political imprisonment" and torture recognized as such by the Valech Commission, and also granted them educational benefits.[203]

196. In addition, with regard to the said measures, the Court observes that the "Basic Principles" (*supra* para. 186) indicate that "[i]n accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law [...] should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, [...] which include[s ...] forms [of ...] compensation [and] rehabilitation." The former "should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case," and the latter "should include medical and psychological care as well as legal and social services" (Principles 18, 20 and 21). The United Nations Human Rights Committee, referring to Article 7 of the International Covenant on Civil and Political Rights, has indicated that "States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible."[204] Indeed, reparation for human rights violations includes rehabilitation, which must include "medical and psychological treatments, as well as legal and social services."[205] In addition, as indicated (*supra* para. 188), the Committee

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[203] Article 10 of the law establishes that "[t]he persons indicated in articles 1 and 5 of the [...] law shall have the right to receive from the State the technical support and the physical rehabilitation required to overcome the physical injuries resulting from the political imprisonment or torture, when the said injuries are of a permanent nature and represent an impediment to the education, employment or social integration capabilities of the beneficiary. Its article 11 states "[t]he State will guarantee, free of charge, the continuation of studies, whether of a basic, medium or higher level, to those persons indicated in articles 1 and 5 of the [...] law, who owing to political imprisonment or torture were prevented from continuing their studies." Article 1 refers to "victims directly affected by human rights violations, individualized in the annex 'List of political prisoners and persons tortured' of the List of Persons Acknowledged as Victims, which forms part of the Report of the National Commission on Political Imprisonment and Torture, created by Supreme Decree No. 1,040 of 2003 of the Ministry of the Interior." Article 5 alludes to "[t]he persons individualized in the annex 'Minors born in prison or detained with their parents," on the List of Persons Acknowledged as Victims, which forms part of the Report of the National Commission on Political Imprisonment and Torture, created by Supreme Decree No. 1,040 of 2003 of the Ministry of the Interior."

[204] General Comment No. 20, Article 7 (Prohibition of torture and other cruel, inhuman or degrading treatment or punishment). General comments adopted by the Human Rights Committee, forty-fourth session, U.N. Doc. HRI/GEN/1/Rev.7, para. 15 (1992).

[205] Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Norms and of Serious Violations of International Humanitarian Law, resolution 60/147 adopted by the General Assembly on 16 December 2005, Principle 21. Similarly, in several cases the Court has considered it pertinent to order the award of measures of pecuniary compensation, together with treatment of the physical and psychological problems suffered, as measures of rehabilitation, to persons recognized as victims of

against Torture has indicated the right of victims of torture to obtain "compensation," as well as "the most complete rehabilitation possible" and, in this regard, a "legal remedy."

197. Now, in relation to the educational benefits and the "right" to "physical rehabilitation" established by Law No. 19,992, it is a fact that the respective services are available to people who are on Chilean territory,[206] and that, although Mr. García Lucero is entitled to this "right," he cannot enjoy it while he lives outside Chile. The said Law recognized as beneficiaries all the persons recognized as victims on the list that forms part of the Valech Commission's Report, and failed to make any distinction in this regard. The Court takes note of the dispute between the Commission and the parties on whether or not this circumstance gives rise to State responsibility, but will not rule in this regard, because under its temporal competence, it will not examine the original act that generated this, which is the torture, or its legal consequences or the harm caused and, consequently, it will not examine Mr. García Lucero's rehabilitation requirements either (*supra* para. 37)[207] and, therefore, it is unable to assess whether or not the State should take measures to this end. Nevertheless, even

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torture and cruel, inhuman and degrading treatment (*Cf. Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2004, Series C No. 114, paras. 244, 246 and 249; *Case of Bueno Alves v. Argentina*, *supra*, paras. 134 and 178; *Case of Bayarri v. Argentina. Preliminary objection, merits reparations and costs.* Judgment of October 30, 2008, Series C No. 187, paras. 170, 142 and 143; *Case of Fernández Ortega et al. v. Mexico, Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, paras. 251 and 289; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits reparations and costs.* Judgment of August 31, 2010. Series C No. 216, paras. 252, 253 and 278; *Case of Vélez Loor v. Panama, supra*, paras. 263 and 308, and *Case of Cabrera García and Montiel Flores v. Mexico, supra*, paras. 260, 220 and 221. Regarding the said decision in the case of *Bueno Alves v. Argentina*, it should be clarified that the representatives of the victim requested a compensatory amount for "medical and pharmaceutical expenses for treatment and rehabilitation," and that the Court considered the evidence for the expenses they had incurred to be insufficient and determined, based on the equity principle, that a sum of money be granted).

[206] In particular, it can be indicated, as regards "physical rehabilitation," that the law ordered, that the right established could be exercised or enjoyed by the incorporation of its holders as beneficiaries of the PRAIS Program. Article 9 of Law No. 19,992 stipulated: "The following letter (d) should be added to the first paragraph of article 7 of Law No. 19,980: '(d) Those who are individualized on the List of Persons Acknowledged as Victims that forms part of the Report of the National Commission on Political Imprisonment and Torture, created by Supreme Decree No. 1,040 of 2003 of the Ministry of the Interior'" (file of annexes to the Merits Report, annex 15, f. 202). According to information provided by the State in its answering brief, Law No. 19,980 "regulated, with legal rank, the PRAIS program aimed at granting medical benefits to the victims recognized by the Law on Reparation and Reconciliation." Witness Paula Godoy Echegoyen, "National Head of PRAIS," explained that "[t]he persons who have lived or live in exile are beneficiaries of the program together with their family group, and receive attention [...] when they return to the country on a permanent or temporal basis," and that there are no agreements with the United Kingdom or other countries to provide the attention outside the country (affidavit provided by Paula Godoy Echegoyen, merits file, tome II, fs. 566 to 574). María Luisa Sepúlveda, who was "Executive Vice-President" of the Valech Commission, indicated the same in her testimony: she stated when referring to "[t]he persons who live outside Chile," that "they can only enjoy the health benefits in the country" (testimonial statement made by María Luisa Sepúlveda, *supra*). In this regard, she stated that "none of the laws on reparations establish them as benefits to be received abroad." Similarly to all the above, Elena García testified that "[t]he PRAIS health system can only be used in Chile, and not in the United Kingdom" (testimony of Elena García, merits file, tome II, fs. 499 to 516).

[207] The Court takes noted that "[t]he Committee against Torture recommended to the State that it "take into consideration the obligation to ensure redress for all victims of torture and that it consider concluding cooperation agreements with countries where they reside so that they may have access to the kind of medical treatment required by victims of torture." In addition, the Committee urged the State "to take steps to ensure the necessary funding so that each team from PRAIS or another organization can give effective care to all those entitled to it. [...] The Committee recommend[ed] that the State [...] increase its efforts in regard to reparation, compensation and rehabilitation so as to ensure fair and appropriate reparation for all victims of torture" (Committee against Torture, forty-second session, Geneva, 27 April to 15 May 2009. Consideration of reports submitted by States Parties under Article 19 of the Convention. Concluding observations of the Committee against Torture. Chile. CAT/C/CHL/CO/5. 23 June 2009, para. 18). Similarly, expert witness Sveaass stated that "[t]he right to reparation can never depend on where the persons lives," and that "[i]n situations where people have been forcibly expelled or exiled by the authorities, the obligation to provide redress, which includes [...] rehabilitation is even more evident." She also indicated that "implementing a principle of integral reparation that includes those in exile, may encourage them to return to their country of origin" (expert opinion provided by Nora Sveaass by affidavit, merits file, tome II, fs. 524 and 525).

though the Court cannot assess the adequacy of the services provided by the "right" and the above-mentioned educational benefits, it notes that it is able to consider whether, in this regard, Mr. García Lucero had access to remedies that made it possible for him to file any claims he considered relevant. Thus, it is possible to evaluate, independently of the assessment of the above-mentioned fact that gave rise to the harm, whether, after August 21, 1990, the State incurred in acts or omissions that made it impossible to file appropriate and adequate actions to make the said claims. It is in this limited aspect that, in the instant case, the Court may consider whether the State's international responsibility has arisen in relation to the possibility of filing claims for measures of reparation, independently of the fact that generated the original harm.

198. Based on the above, the Court finds it admissible to examine whether the State, with regard to the possibilities of claims relating to measures of compensation and rehabilitation, observed the rights to judicial guarantees and protection.

D.2.2.2) *The possibilities of filing claims in relation to measures of reparation*

199. The proven facts do not show that, after August 21, 1993, Mr. García Lucero attempted, either himself or through his representatives, to file any action to obtain "integral reparation" or to claim the lack of access to measures of reparation established in Law No. 19,992 because he lives outside of Chile. Neither do they reveal that the fact that Mr. García Lucero resides in the United Kingdom means, in this case, that it was impossible to file legal actions in his country of origin.[208] The Court notes that Mr. García Lucero was in Chile in 1993 to take steps to obtain his pension as "a person dismissed for political reasons,"[209] which he obtained in 2000 and which he received retroactively to September 1998, so that, even though he lives in the United Kingdom, Mr. García Lucero was able to accede to administrative reparations. In addition, he has visited the country on other occasions,[210] he and his family members have been receiving legal advice since 1994 (*supra* para. 170) and, through his representatives, they have obtained legal counsel from different Chilean and international civil society organizations.[211]

200. The Court has determined, since its first decision, that a remedy is formally adequate when it is "suitable" within the "domestic legal system" "to protect the legal situation violated."[212] Regarding the reparation for victims of torture, the adequate remedies that the State must provide should make it possible to claim and have access to measures that include compensation and rehabilitation.[213]

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[208] Thus, Mr. García Lucero argued, during the public hearing, *supra,* that he "would have to be" in Chile in order to file a complaint and have the means to pay lawyers.

[209] Mr. García Lucero declared that he had received help from a senator to take the steps leading to obtaining his pension.

[210] *Cf.* Statement of Leopoldo García Lucero during the public hearing before the Court, *supra*.

[211] *Cf.* E-mail of Viviana Krsticevic addressed to Fiona McKay dated November 10, 1995, in which CEJIL stated "[...] we have reached the conclusion that no domestic remedy exists for this case [...]" (merits file, brief with final arguments of the representatives, annex I, fs. 1284), and Letter of José Zalaquett to William Dishington dated September 28, 1994, in which the former indicated that, "[i]n theory, the victims of torture have the possibility of requesting that the perpetrators be declared criminally responsible and that the perpetrators and the State be declared civilly responsible if the perpetrators were State agents [...]; in theory, the option to litigate is open; the possibilities of success are very remote" (merits file, brief with final arguments of the representatives, annex II, fs.1286 and 1287).

[212] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* paras. 64 and 66; and *Case of Castillo Petruzzi et al. Preliminary objections.* Judgment of September 4, 1998. Series C No. 41, para. 63.

[213] In this regard, it should be noted that the Court, in its case law, has always found it pertinent to establish measures of rehabilitation for surviving victims of torture. In some of these cases, it has considered it appropriate

201. The parties and the Commission have mentioned two remedies[214] for filing claims to obtain reparation: (a) the civil judicial complaint by means of the "finance proceeding,"[215] and (b) the claim for civil reparation within criminal proceedings.[216] However, they did not stipulate whether, by using these remedies, both measures of compensation and measures of rehabilitation can be claimed; or whether, if appropriate, the latter can be requested in the form of direct services or by claiming a sum of money equivalent to their costs. The representatives indicated that the "finance proceeding" is appropriate "to protect the right to integral reparation" (*supra* para. 168), and did not indicated that the claim in the criminal jurisdiction would not be appropriate for this purpose.

202. According to the representatives, despite the above, the domestic remedies are not apt to make the pertinent claims.[217] The Court underscores that the State did not agree that there were no appropriate remedies. It asserted that "the presumed victims have never requested or provided grounds for any judicial or extrajudicial measure in Chile designed to [...] require redress [...] for acts of torture [...], so that it is not possible to speak of the denial of justice," and argued that, consequently, "the subsidiary nature of the [inter-American system] was disregarded" (*supra* para. 119). Since it has been proved that the presumed victim and his next of kin have not filed claims in the domestic sphere, the Court must analyze whether or not the appropriate remedies to make the corresponding claims exist within that framework.

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that the measures of rehabilitation ordered be complied with by the delivery of a sum of money to this end. *Cf. Case of Barrios Altos v. Peru. Reparations and costs.* Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45; *Case of Cabrera García and Montiel Flores v. Mexico, supra*, paras. 220 and 221, and *Case of Vélez Loor v. Panama, supra*, paras. 263 and 264.

[214] Expert witness Cath Collins indicated, agreeing with what the parties had stated, that, in relation to the "civil complaints, [...t]here are two main types of complaint: either associated with a criminal complaint, or separately" (Expert opinion of Cath Collins, *supra*).

[215] The Court observes that "finance proceedings" are regulated in the Chilean Code of Civil Procedure. They are proceedings that, as indicated in article 748 of the said Code, follow the "procedures established for major claim proceedings in the ordinary jurisdiction, except for [certain] changes," and with their own particularities, established by the following articles, because they are "proceedings in which the Treasury [has] an interest." According to article 751 of the Civil Code, these particularities include the fact that whenever a final judgment is "unfavorable to the Treasury's interests" and is not appealed, "it will be submitted to the respective appeals court for consultation, after the parties have been notified" (merits file, brief with final arguments of the State, annex I, fs. 1125 and 1126).

[216] The civil action in the context of criminal proceedings is regulated in articles 59 to 69 of the Code of Criminal Procedure. Article 59 indicates:

> General principle. The civil action filed only in order to obtain the restitution of matters, shall be filed always during the respective criminal proceedings, as established in article 189.
>
> Furthermore, during the processing of the criminal proceedings, the victim may file against the accused all the other actions aimed at claiming the civil responsibilities derived from the punishable act pursuant to the provisions of this Code. The victim may also file these civil actions before the corresponding civil court. Nevertheless, once the civil action has been admitted in the criminal proceedings, it cannot be filed again before a civil court.
>
> With the single exception indicated in the first paragraph, the other actions designed to obtain reparation for the civil consequences of the punishable act that were filed by persons other than the victim, or are addressed against persons other than the accused, shall be filed before the civil court that has competence under the general rules.

[217] It should be clarified that the representatives have not claimed the absence of "adequate" remedies. In their arguments on the different remedies possible, they indicated their lack of effectiveness. Regarding the so-called "finance proceeding," they have said that "even though a way exists to obtain justice (an adequate remedy and procedure), this remedy and procedure cannot be effective to obtain the protection of the right to integral reparation."

203. The representatives have also indicated that the remedies referred to lack of "effectiveness," in view of the application of a statute of limitations to the filing of civil actions which, according to them, article 2332 of the Civil Code establishes at "four years following the occurrence of the offense." It should be emphasized that the Court asked the State to forward the norms that regulate the statute of limitations for civil actions and, in response, the State argued that, "regarding the legal provisions that regulate the statute of limitations in the case of civil actions, it should be indicated that, in Chile, the source of civil responsibility is provided by norms of international human right law." However, the Court takes note of the information presented by the representatives on article 2332 of the Civil Code, which was not contested.

204. According to the information provided by the representatives, this Court notes that even though article 2332 of the Civil Code established a statute of limitations of four years from the occurrence of the offense, the domestic courts have admitted complaints related to crimes concerning human rights violations committed during the military regime.[218] Thus, the representatives themselves indicated, in their pleadings and motions brief, that a civil action under the "finance proceeding" filed in relation to human rights violations committed during the military regime was successful before the Supreme Court. They also indicated on that occasion that, "within the Chilean system of justice, they were minority decisions" those that "establishe[d] that the objection of the statute of limitations for the civil action against the State is inadmissible." However, in their final written arguments, they indicated that "[c]laims for compensation [...] that are not heard in the criminal jurisdiction are generally admitted by the courts of first instance or by the courts of appeal." They also indicated that, after 2007, the Supreme Court declared admissible 27 claims for compensation related to "crimes perpetrated during the military dictatorship."

205. Furthermore, regarding the possibility of a civil action for reparation during criminal proceedings, the Court refers back to its considerations in relation to the State's lack of diligence to investigate the facts immediately, so that this non-compliance includes obstacles to the claim for measures of reparation in the criminal jurisdiction (*supra* para. 138). Even though, in general, the considerations included on the statute of limitations for civil actions in relation to possible claims for reparation filed in the criminal jurisdiction may be pertinent, it is not necessary analyze the matter in this case.

D.2.2.3) <u>Conclusion</u>

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[218] Regarding the relationship between claims for measures of reparation and prescription of civil actions relating to gross human rights violations, it should be taken into account that, in the ambit of the United Nations, The Set of Principles for the Protection and Promotion of Human Rights through action to combat impunity indicates: "Prescription – of prosecution or penalty – in criminal cases shall not run for such period as no effective remedy is available. Prescription shall not apply to crimes under international law that are by their nature imprescriptible. When it does apply, prescription shall not be effective against civil or administrative actions brought by victims seek reparation for their injuries" (United Nations. Economic and Social Council. Commission on Human Rights. Sixty-first session. Item 17 on the provisional agenda. Promotion and protection of human rights. Impunity. Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher. Addendum. Updated Set of principles for the protection and promotion of human rights through action to combat impunity. E/CN.4/2005/102/Add.1. 8 February 2005. Principle 23. (Citing the said document, expert witness Cath Collins stated that "in the case of crimes against humanity, the absence of prescription of criminal actions should be extended to civil actions" (Expert opinion of Cath Collins, *supra*). Specifically with regard to acts of torture, the United Nations Committee against Torture has stated that "[o]n account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. [...] States [...] shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress" (Committee against Torture. *General Comment No. 3 (2012), supra*, para. 40).

206. Based on the foregoing, the Court concludes that, in addition to the civil action in the context of criminal proceedings, Mr. García Lucero could have filed the "finance proceeding," a remedy that he did not attempt. In addition, there is no record that, despite being deprived of access to certain measures of reparation established in Law No. 19,992, because he lived in the United Kingdom, Mr. García Lucero tried to file any claim in either the judicial or the administrative jurisdiction to question his impossibility of enjoying those benefits. The representatives have indicated that, in general, the courts of first instance and the appeals courts admit claims for compensation (*supra* para. 204), without justifying why, in this case, no claim was made or why a claim would not be admissible. The Commission did not submit any arguments in this regard either. Consequently, and because there is no record that Mr. García Lucero or his family members have tried to file claims, the Court finds that, in this case, there is insufficient evidence to allow it to conclude with the required degree of certainty that the domestic regulations on the prescription of civil actions has impeded Mr. García Lucero and his family members from filing claims. Therefore, in relation to the possibilities of filing claims for measures of reparation in this case, the Court does not find it proved that the State is responsible for violating the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this treaty and the obligation contained in Article 9 of the Inter-American Convention against Torture.

VIII
FREEDOM OF MOVEMENT AND RESIDENCE

A. Arguments of the Commission and of the parties

207. At the public hearing, the representatives stated that "it could be argued that the situation of don Leopoldo and his family also constitutes a violation of Article 22 of the American Convention[219] owing to the exile that he has had to endure." In their final written arguments they indicated that the Court:

> Has jurisdiction to find [that the State is internationally responsible] for the exile because it constitutes a violation of Article 22, in particular paragraph 5. This is because Chile has known that [Mr. García Lucero] lives in exile, at least reasonably and specifically since 1993 when he applied for the benefits of the Law on Political Exiles and, despite this, Chile has continued denying him and his family the conditions required to be able to return.

208. They added that "his return must be made in conditions of legal, physical and material safety, including access to land and to means of subsistence. [...] Chile, with the absolute absence of reparation policies for exiles, has not complied with these standards.

B. Considerations of the Court

209. The Court notes that the Commission did not consider the violation of the right to movement and residence in its brief submitting the case to the Court, or in its Merits Report. However, the presumed victims or their representatives may cite rights other than those included by the Commission based on the facts presented by the latter.[220] The

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[219] The relevant part of Article 22 of the Convention establishes that:

> "5. No one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it."
>
> [...]

[220] *Cf. Case of the "Five Pensioners" v. Peru. Merits reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Suárez Peralta v. Ecuador*, *supra*, para. 19.

representatives did not allege this violation in their pleadings and motions brief, but rather they alleged it during the public hearing and in their final written arguments.

210. Since the representatives' presentation of the specific arguments on Article 22 of the American Convention was time-barred, the Court finds that it is not required to make a ruling on the State's alleged international responsibility based on the presumed violation of this article.

IX
REPARATIONS
(Application of Article 63(1) of the American Convention)

211. Based on the provisions of Article 63(1) of the American Convention, the Court has stated that any violation of an international obligation that has caused harm entails the duty to repair it satisfactorily and that this provisions reflects a norm of customary law that constitutes one of the fundamental principles of contemporary law on State responsibility (*supra* footnote 176).[221] In this case, the Court finds it necessary to award different measures of reparation in order to guarantee the right that has been violation and redress the harm integrally.

212. It should be noted that this Court has established that reparations should have a causal nexus to the facts of the case, the violations that have been declared, the damage proved and the measures requested to redress the respective harm. Therefore, the Court must observe the co-existence of these factors in order to rule properly and pursuant to the law.[222]

213. The Court appreciates the effort made by Chile to implement a program of reparations (*supra* para. 189). Furthermore, the Court has noted that Mr. García Lucero has received certain measures of reparation under this system (*supra* para. 189). These measures were granted as a form of reparation, considering that Mr. García Lucero was "a person dismissed for political reasons," and because the State recognized, in the report of the Valech Commission, the torture he suffered from 1973 to 1975. These facts were considered as "background information" in this Judgment and the Court did not examine them, because they fell outside its temporal competence. Thus, the violations declared in this Judgment have a factual basis in events that occurred after this Court's contentious jurisdiction had been accepted in relation to access to justice (*supra* para. 138). Consequently, the Court will not take into account the sums of money that Mr. García Lucero has received to date, or that have been established in his favor, in order to determine the reparations that correspond to the violations of rights established in this Judgment.

214. Based on the preceding considerations on the merits, and the violations of the American Convention declared in Chapter VII, the Court will proceed to analyze the claims submitted by the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in its case law concerning the nature and scope of

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[221] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, para. 25, and *Case of Suárez Peralta v. Ecuador, supra*, para. 161.

[222] *Cf. Case of Ticona Estrada et al. v. Bolivia, supra*, para. 110, and *Case of Suárez Peralta v. Ecuador, supra*, para. 163.

the obligation to make reparation, in order to establish measures designed to redress the harm caused to the victim.[223]

A. Injured party

215. The Court reiterates that, in the terms of Article 63(1) of the Convention, it considers that the injured party is the person who has been declared a victim of the violation of any of the rights recognized therein. Therefore, this Court considers Leopoldo Guillermo García Lucero to be the "injured party" and, as the victim of the violations declared in Chapter VII, he will be considered the beneficiary of the reparations ordered by the Court.

B. Obligation to investigate the facts and to identify and, as appropriate, punish those responsible

B.1) Arguments of the Commission and of the parties

216. The Commission asked the Court to order Chile to proceed "immediately to investigate the facts, impartially, effectively and within a reasonable time [...], with the objective of clarifying them completely, identifying those responsible, and punishing them accordingly." The Commission specified that the Court should order Chile "to adopt the necessary measures to void the effects of Decree Law No. 2191 permanently.

217. The representatives asked that "Chile should be ordered explicitly to investigate diligently, to prosecute and to punish the perpetrators of the torture, arbitrary detention and expulsion of Mr. García Lucero." The representatives also asked that the Court:

> Clearly stipulate the State's obligation to investigate, prosecute and punish in the ordinary (not the military) jurisdiction the perpetrators of these crimes; to impose punishments that are proportional to the severity of the crimes committed, and not to use statutes of limitation or any other hidden means of providing impunity.

218. In conclusion, the representatives asked that Mr. García Lucero and his family should be kept informed about the progress of the proceedings.

219. The State indicated that if the Court declared its international responsibility for the violation of one or more rights of the Convention, when deciding on the appropriate measures of reparation, it take into consideration, among other factors, "the causal nexus between the facts that are the subject of the litigation, the violations that have been alleged, and the harm on which the measures of reparation requested are based." It added that, in the specific case of Mr. García Lucero, Chile "had complied with its obligation to investigate, and continues to do so insofar as possible," and that he had been provided with measures of reparation.

B.2) Considerations of the Court

220. The Court has established in this Judgment that the State violated Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument and the obligations established in Articles 1, 6 and 8 of the Inter-American Convention against Torture, because the State's delay in opening an investigation into the facts that occurred to Mr. García Lucero between September 16, 1973, and June 12, 1975, which the State was aware of following its reception of the communication of December 23, 1993, was excessive

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[223] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of Suárez Peralta v. Ecuador, supra*, para. 162.

(*supra* para. 75). As a result of the foregoing, this Court establishes that the State must continue and conclude, within a reasonable time, the investigation of the said facts in the ordinary jurisdiction, based on the domestic norms that will allow those responsible to be identified, prosecuted and punished, as appropriate, taking into account that the said facts took place in the context of a systematic pattern of human right violations.

221. Also, owing to the special characteristics of the case, it is relevant that the criminal investigation receive the testimony of the victim and perform a forensic physical and psychological examination (*supra* para. 137). In addition, the investigation must be conducted in accordance with the corresponding international norms, in particular the American Convention and the Inter-American Convention against Torture, to both of which Chile is a State Party.

222. In addition, in keeping with the considerations on the possibility of filing a civil action within the framework of the investigation of the facts and the respective criminal proceedings (*supra* para. 205), if this occurs, the State must enable Mr. García Lucero to file claims for measures of reparation established in the applicable domestic laws.

223. Furthermore, in the context of this case, Decree Law No. 2,191 cannot represent an obstacle to the implementation of actions aimed at the investigation, prosecution and punishment, as appropriate, of those responsible. In this regard, it should be recalled that, in the instant case, the State must proceed as indicated in the case of *Almonacid Arellano et al. v. Chile* (*supra* para. 154).

C. Measures of satisfaction and rehabilitation

224. International case law and, in particular, that of the Court, has established repeatedly that the judgment constitutes *per se* a form of reparation.[224] Nevertheless, considering the circumstances of the case and the effects on the victim arising from the violations of the American Convention declared against him, the Court finds it pertinent to decide the following measures of reparation.

C.1) Measure of satisfaction: publication and dissemination of the Judgment

C.1.1) *Arguments of the Commission and of the parties*

225. The representatives asked the Court to order the President of Chile, Sebastián Piñera, "to address a private letter to Mr. García Lucero apologizing to him, to his wife Elena [García], and to the other members of his direct family, in the name of the State, owing to the severity of the human rights violations, and the suffering caused as a result of the State's action or inaction for almost four decades." The Commission, without prejudice to requesting that "Mr. García [Lucero] and his family receive integral and adequate reparation for the human rights violations," did not refer specifically to this measure. For its part, the State contested this measure.

C.1.2) *Considerations of the Court*

[224] *Cf. Case of Neira Alegría et al. v. Peru. Reparations and costs.* Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Suárez Peralta v. Ecuador*, *supra*, para. 177.

226. The Court finds it pertinent to establish, as in has in other cases,[225] that the State should publish, within six months of notification of this Judgment: (a) the official summary of this Judgment prepared by the Court, once in the Official Gazette, and (b) the entire Judgment, available for one year on an official website that is accessible from abroad.

C.2) Rehabilitation

C.2.1) Arguments of the Commission and of the parties

227. The Commission asked the Court to order the State to "[f]ully and adequately compensate Leopoldo García Lucero and his next of kin [...], in a manner that takes into account his specific condition, as he is in exile and permanently disabled." It asked that the Court ensure that "Leopoldo García Lucero and his next of kin have access to the medical and psychiatric/psychological treatment needed to assist in their physical and mental recovery at a specialized facility of his choosing, or the means to secure this recovery."

228. The representatives asked that Mr. García Lucero and his wife be provided with "the purchase of health insurance that covers pre-existing [conditions] [...] and that is recognized in the United Kingdom." They also stipulated that "if there is no insurance that covers pre-existing conditions, the [...] Court should order the State of Chile to pay the costs of those treatments that are not covered by health insurance." The representatives asserted that this was the most viable way of providing Mr. García Lucero with a measure of rehabilitation owing to the failure to redress the acts of torture in a way that was prompt, effective and of good quality, bearing in mind his vulnerable situation. In conclusion, the representatives also asked that the State grant a housing allowance as a measure of rehabilitation.

229. Regarding the measures of rehabilitation, the State contested the request for medical treatment submitted by the Commission and by the representatives. It indicated that the representatives had based their request, "mainly, on the effects of the acts of torture, rather than on the presumed failure of the State to comply with the obligation to investigate and to provide reparation to the victims." In addition, as already indicated (*supra* para. 73), it argued that it would be impossible to implement the PRAIS Program outside Chile.

C.2.2) Considerations of the Court

230. The Court notes that the representatives and the Commission, in their requests for measures to provide medical and psychological treatment for the victim, argue harm that could be related to facts that fall outside the temporal competence of the Court and, therefore, regarding which the Court has not ruled.

231. Despite this, the Court notes that Mr. García Lucero is in a particularly vulnerable situation.[226] In this regard, the Court observes that it has been proved that Mr. García Lucero is 79 years old and suffers from a permanent disability. Also, it has not been contested that Mr. García Lucero was a victim of torture and "political imprisonment," as recognized by the Valech Commission, with both physical and psychological repercussions.

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[225] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Suárez Peralta v. Ecuador, supra*, para. 189.

[226] Regarding the characterization of Mr. García Lucero as a vulnerable person, it should be indicated that Articles 17 and 18 of the Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," indicate the pertinence of the "protection" of the "elderly" and the "handicapped." Also, on December 16, 1991, the General Assembly of the United Nations adopted the "United Nations Principles for Older Persons" (Resolution 46/91).

Indeed, the Court takes note that, in 2004, the State acknowledged that Mr. García Lucero was a victim of torture and has indicated that it is not the State's intention to "avoid its obligation to repair the harm caused to don Leopoldo's physical and mental health." In addition, the State has implemented public reparation policies for victims of torture and "political imprisonment" that include measures of rehabilitation. However, Mr. García Lucero resides in the United Kingdom and, consequently, currently has no access to these programs.

232. Nevertheless, the Court appreciates that the State has provided Mr. García Lucero with '*Multistim Sensor*' "medical equipment" to treat his condition.

233. Based on the preceding considerations and the particularities of this case, the Court assesses positively the State's initiative to take measures to improve Mr. García Lucero's well-being and urges the State to provide a discretionary sum of money in pounds sterling that is reasonably adequate to cover the costs of his medical and psychological treatments in his current place of residence in the United Kingdom.

D. Guarantees of non-repetition requested by the Commission and the representatives

D.1) Arguments of the Commission and of the parties

234. The Commission asked the Court to order Chile to "adopt the measures needed to permanently void the effects of Decree Law No. 2191 [...] so that it does not pose an obstacle to the investigation, prosecution and punishment of other similar violations that occurred in Chile, and the rights of the victims to truth, justice and reparations."

235. The representatives requested, as measures of non-repetition related to the right to reparation and the right of access to justice, that: (a) "article 15 of Law No. 19,992 of 2004 regarding the 50-year confidentiality of the information gathered by the Valech Commission be declared unconstitutional"; (b) the Court rule on the non-applicability of 'semi-prescription' or gradual prescription, or other penal benefits such as good conduct, in cases of crimes against humanity; (c) the Court rule on "the international obligation of States with regard to the proportionality of the punishment in relation to the violation committed and, by referring to the said benefits under Chilean penal law, this would provide an opportunity to establish guidelines in this regard"; (d) "a simple and effective remedy be incorporated into the [Chilean] legal system that allows victims of torture or other cruel, inhuman or degrading treatment to claim and accede to effective and adequate reparation"; (e) "the legal obstacles that prevent filing a civil action to claim damages be removed"; (f) "the content of the statute of limitations for the civil action [be amended] when applied to crimes against humanity such as torture," and (g) "a unit be created that is specialized in the investigation of cases of torture and illegal detention that took place during the dictatorship."

236. The State contested the measures requested and, regarding Decree Law No. 2,191, indicated that "it has no practical application in Chile, because the country's courts of justice have all stated that [...] it is not applicable to crimes and offenses that violate human rights." Chile also advised the Court that the State "has examined different ways of ensuring that this law formally ceases to have legal effects in [its] legal system."

D.2) Considerations of the Court

237. The Court does not find it necessary to rule on the measures of reparation requested in relation to the arguments described above, and refers back to its decision in this Judgment in this regard.

E. Compensation

E.1) Pecuniary and non-pecuniary damage

E.1.1) Arguments of the Commission and of the parties

238. The Commission did not refer specifically to pecuniary measures of reparation, but asked that Mr. García Lucero and his family receive integral and appropriate reparation.

239. The representatives alleged that the pension and the special payment that Mr. García Lucero has received as "a person dismissed for political reasons" are not sufficient to repair the pecuniary damage caused to him as a result of "the loss of the pension to which he would have had access, if he had not been detained, tortured and expelled from his country." Therefore, the representatives asked the Court to adjust the pension that Mr. García Lucero receives. They noted that this measure could be considered reparation for the harm caused by the loss of the employment that Mr. García Lucero had in Chile.

240. In addition, the representatives advised the Court that Mr. García Lucero does not know what happened to the savings he had in a Chilean bank account. The representatives asked the Court to order the State "to determine the fate of these savings and return them to Mr. García Lucero with the bank interest accrued during all the years in which he did not have access to his savings," and that the total be changed into pounds sterling without any cost.

241. The representatives also asserted that "the suffering caused to both Mr. García Lucero and his wife Elena as a result of the denial of justice and the absence of adequate reparation should also be a source of reparation owing to the harm caused." In this regard, the representatives asked the Court to order Chile to pay GBP 30,000.00 (thirty thousand pounds sterling) as compensation for "non-pecuniary damage" caused to Mr. García Lucero. The representatives explained that this compensation was appropriate, because "it should be noted that don Leopoldo should receive redress because he lost, as a direct result of Chile's actions, the opportunities that he would otherwise have had to lead a decent life." They added that the State should provide Mrs. García Lucero with a compensatory payment of GBP 20,000.00 (twenty thousand pounds sterling) for the non-pecuniary damage suffered owing to her husband's expulsion from Chile, as well as "having had to dedicate her life, full-time, [...] to care for him [...] and having had to be far from her family in Chile, without being able to return to her country of birth and without having the financial resources to visit her country following the fall of the dictatorship, or to attend her mother's funeral."

242. The State contested the representatives' request that measures of reparation be ordered in relation to the payment of compensation for non-pecuniary damage, which, it argued, are based on facts other than the obligations to investigate and to provide reparation for the torture as of the time this could be required of the State, such as the suffering resulting from acts of torture and their effects, and from Mr. García Lucero's exile.

E.1.2) Considerations of the Court

243. The Court has established that pecuniary damage supposes "loss or detriment to the income of the victims, the expenses incurred based on the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case."[227] Furthermore, in its case law, it has developed the concept of non-pecuniary damage and has established that this "may include both the suffering and difficulties caused to the direct victim and his next of kin, the impairment of values that are very significant to the individual, as well as the changes of a non-pecuniary nature, in the living conditions of the victims and their family."[228]

244. The Court considers that the pecuniary damage alleged by the representatives is related to facts regarding which the Court has not ruled, because they fall outside its temporal competence (*supra* paras. 36 and 37). Moreover, it has not been proved that the victim's patrimony has been affected owing to the facts that gave rise to the State's international responsibility for the human rights violations declared in this Judgment. Therefore, the Court finds it inappropriate to establish measures of compensation for pecuniary damage.

245. In addition, the representatives have argued various types of non-pecuniary damage. The Court observes that these are based on the alleged impact of the "denial of justice" and "adequate reparation" on the "moral" harm to Mr. García Lucero related to his permanence outside Chile. In these terms, it is difficult to delimit clearly the non-pecuniary damage caused by the acts that occurred outside the Court's temporal competence from those that have happened within its competence regarding which violations of Convention-base rights have been declared.

246. Nevertheless, the Court has indicated diverse infringements of human rights in relation to the violation of judicial guarantees and judicial protection to the detriment of Mr. García Lucero. It has been proved that the State incurred in an excessive delay before opening the investigation more than 16 years after being informed of the facts. This, according to the particularities of this case and the existing evidence, has acquired its own characteristics and consequences. In this regard, Mr. García Lucero has been waiting for 40 years to obtain justice. In addition, he is an elderly person, being 79 years of age, and suffers from a permanent disability. In this context, it should be recalled that the Court has had the occasion to consider the special importance of the promptness of judicial proceedings in relation to persons in a vulnerable situation, such as a person with a disability, given the specific impact that a delay may have for such individuals. In this regard, the Court has taken into consideration the case law of the European Court of Human Rights, which considered that the advanced age of individuals involved in judicial proceedings required the authorities to exercise special diligence in deciding the respective proceeding.[229] In addition, the Court underscores the fact that Mr. García Lucero lives outside Chile and that he is therefore prevented from having access to measures of reparation accessible in Chile, which could alleviate the adverse effects that may have

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[227] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs. Judgment of February 22, 2002.* Series C No. 91, para. 43, and *Case of Suárez Peralta v. Ecuador, supra*, para. 212.

[228] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits and reparations.* Judgment of May 21, 2013. Series C No. 261, para. 212.

[229] *Cf. Case of Furlan and family members v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, paras. 195 and 196. This cites "E.C.H.R., *Case of Jablonská v. Poland,* (No.60225/00), Judgment of 9 March 2004. Final, 9 June 2004, para. 43; *Case of Codarcea v. Romania*, (No. 31675/04), Judgment of 2 June 2009. Final, 2 September 2009, para. 89. Also, *Case of Styranowski v. Poland*, (No. 28616/95), Judgment of 30 October 1998, para. 57, and *Case of Krzak v. Poland*, (No. 51515/99), Judgment of 6 April 2004. Final, 7 July 2004, para. 42."

resulted from the human rights violations declared in this Judgment. In this regard, even though the Court did not rule on the alleged violation of the right to humane treatment for the reasons described in this Judgment (*supra* para. 129), it found it pertinent to take into consideration Mr. García Lucero's "situation," when noting the impact of the delay in judicial proceedings in relation to the possible effects on persons in the situation of Mr. García Lucero. Consequently, the Court finds it pertinent to establish, in equity, the sum of GBP 20,000.00 (twenty thousand pounds sterling) in favor of Leopoldo García Lucero as compensation for the non-pecuniary damage caused.

F. Costs and expenses

247. As the Court has indicated on previous occasions, costs and expenses are included within the concept of reparation established in Article 63(1) of the American Convention.[230] The Court observes, however, that the representatives have "waive[d] their right to claim legal costs for the litigation of this case." Therefore, the Court considers that the costs and expenses of the litigation are not in dispute and it is not necessary to rule on this point.

G. Method of complying with the payments ordered

248. The State must make the payment of the compensation for non-pecuniary damage established in this Judgment to Leopoldo García Lucero, within one year of notification of this Judgment, in accordance with the following paragraphs. If the victim should die before the payment of the respective sum, this shall be delivered to his heirs, in keeping with the applicable domestic law.

249. The State must comply with the pecuniary obligations by payment in pounds sterling.

250. If, for reasons that can be attributed to the beneficiary of the compensation or his heirs, it is not possible to pay the amount decided within the time frame indicated, the State shall deposit the said amount in his favor in an account or a certificate of deposit in a Chilean financial institution, in pounds sterling in the most favorable financial conditions that are allowed by banking practice and law. If, after 10 years, the amount allocated has not been claimed, the amount shall be return to the State with the interest accrued.

251. The amount allocated in this Judgment, as compensation for non-pecuniary damage, must be delivered to Leopoldo García Lucero integrally, as established in this Judgment, and may not be affected or conditioned by current or future taxes, or by deductions for financial or bank charges.

252. If the State should fall in arrears, it must pay interest on the amount owed corresponding to bank interest on arrears in Chile.

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253. In accordance with its constant practice, the Court reserves the authority inherent in its attributes and also derived from Article 65 of the American Convention, to monitor full compliance with this Judgment. The case will be concluded when the State has complied entirely with its provisions.

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[230] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Suárez Peralta v. Ecuador, supra*, para. 217.

254. Within one year, of notification of this Judgment, the State must provide the Court with a report on the measures adopted to comply with it.

X
OPERATIVE PARAGRAPHS

255. Therefore,

THE COURT

DECIDES,

unanimously,

1. To reject partially the preliminary objection filed by the State concerning the lack of temporal and material competence of the Court, in accordance with paragraphs 24 to 42 of this Judgment.

DECLARES,

unanimously, that:

2. The State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof and to the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Leopoldo García Lucero, for the excessive delay in opening an investigation, in accordance with paragraphs 121 to 127 and 138 of this Judgment.

3. The State is not responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof and Article 9 of the Inter-American Convention to Prevent and Punish Torture, in relation to the possibilities of claiming measures of reparation, in accordance with paragraphs 194 and 199 to 206 of this Judgment.

4. It is not appropriate to issue a ruling on the alleged international responsibility of the State based on the presumed failure to comply with the obligation to adopt provisions of domestic law established in Article 2 of the American Convention on Human Rights, in the terms of paragraphs 150 to 161 of this Judgment. However, the Court reaffirms its decision in the judgment in the case of *Almonacid Arellano et al.*, in which it established that "given its nature, Decree Law No. 2,191 lacks legal effects and cannot continue representing an obstacle to the investigation of the facts that constitute this case, or to the identification and punishment of those responsible; nor can it have the same or a similar impact on other cases of violations of rights recognized in the American Convention that occurred in Chile."

5. It is not appropriate to issue a ruling on the alleged international responsibility of the Stated based on the presumed violation of the right to humane treatment, and of movement and residence recognized in Articles 5(1) and 22 of the American Convention on Human Rights, in accordance with paragraphs 129, 209 and 210 of this Judgment.

AND DECIDES

unanimously, that:

6. This Judgment constitutes *per se* a form of reparation.

7. The State must continue and conclude, within a reasonable time, the investigation into the facts that occurred to Mr. García Lucero between September 16, 1973, and June 12, 1975, as of the time it became aware of those facts, without Decree Law No. 2,191 constituting an obstacle for the implementation of the investigation, as indicated in paragraphs 220 to 223 of this Judgment.

8. The State must make the publications indicated in paragraph 226 of this Judgment, within six months of its notification.

9. The State must pay, within one year of notification of this Judgment, the amount established for the non-pecuniary damage caused to Leopoldo García Lucero, as indicated in paragraphs 243 to 246 of this Judgment.

10. It is not in order to require payment of the costs and expenses of the litigation, in accordance with paragraph 247 of this Judgment.

11. The State must, within one year, of notification of this Judgment, provide the Court with a report on the measure taken to comply with it.

The Court will supervise full compliance with this Judgment, in exercise of its authority and in compliance with its obligations under the American Convention on Human Rights, and will consider this case closed when the State has complied with all its provisions.

Done, at San José, Costa Rica, on August 28, 2013, in the Spanish and the English languages, the Spanish text being authentic

Diego García-Sayán
President

Manuel E. Ventura Robles | Alberto Pérez Pérez

Roberto F. Caldas | Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary