

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF GUTIÉRREZ AND FAMILY v. ARGENTINA**  
**JUDGMENT OF NOVEMBER 25, 2013**  
*(Merits, reparations and costs)*

In the case of *Gutiérrez and family*,

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  
Eduardo Vío Grossi, 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 American Convention” or “the Convention”) and Articles 31, 32, 62 to 65 and 67 of the Rules of Procedure of the Court (hereinafter also “the Rules of Procedure”), delivers this Judgment, structured as follows:

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I

## INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On August 19, 2011, under the provisions of Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of *Jorge Omar Gutiérrez and family against the Argentine Republic* (hereinafter “the State” or “Argentina”). According to the Commission, the case concerns “the murder, on August 29, 1994, of Assistant Commissioner Gutiérrez who was investigating a case of corruption, subsequently known as [the] ‘case of the parallel customs house ...,’ in which important businessmen and high-ranking government officials were involved.” An investigation had been opened in the ordinary criminal jurisdiction into the events on which that case was based, in which presumably “there were fundamental irregularities.” However, “[e]ven though the investigation was fraught with irregularities and concealment measures, and despite the creation of a special committee by the Chamber of Deputies [of the National Congress], the State failed to adopt the necessary measures to clarify the facts and the corresponding responsibilities.” Thus, “17 years after the execution of Assistant Commissioner Jorge Omar Gutiérrez, there is still no certainty about the circumstances of his death, and no one has been sanctioned for the incident.” Lastly, the Commission affirmed that the human rights violations committed against Jorge Omar Gutiérrez and his family persisted as a result of the alleged absence of an effective investigation by the judicial authorities “into the participation of State agents in the murder of Mr. Gutiérrez.”

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

a. *Petition.* On May 12, 1999, the *Centro de Estudios Legales y Sociales (CELS)* lodged the initial petition, which was expanded by CELS, the Center for Justice and International Law (CEJIL), and Nilda del Valle Maldonado de Gutiérrez and Francisco Gutiérrez on October 6 that year.

b. *Admissibility Report.* On February 20, 2003, the Inter-American Commission approved Admissibility Report No. 1/03.<sup>1</sup>

c. *Merits Report.* On March 31, 2011, the Commission issued Merits Report No. 63/11, pursuant to Article 50 of the Convention (hereinafter “the Merits Report” or “Report No. 63/11”), in which it reached a series of conclusions and made several recommendations to the State:

c.1. *Conclusions.* The Commission concluded that the State was responsible for the violation of:

- The right to life recognized in Article 4 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Jorge Omar Gutiérrez, and
- The rights to personal integrity, judicial guarantees and judicial protection recognized in Articles 5, 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of his family members Nilda del Valle Maldonado (his widow), Jorge Gabriel Gutiérrez, David Gutiérrez and Marilín Verónica Gutiérrez (his three children), and Francisco Gutiérrez (his brother).

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<sup>1</sup> Admissibility Report No. 1/03 (file before the Commission, folios 1353 to 1380). In this report, the Commission concluded that it was competent to examine the claims submitted by the petitioners concerning the presumed violation of Articles 4, 5, 8 and 25 of the American Convention, in relation to Article 1(1) thereof.

c.2. *Recommendations.* Consequently, the Commission made the following recommendations to the State:

- Conduct a complete, impartial, effective and prompt investigation of the facts with the goal of establishing the identities of the perpetrators and the masterminds, as well as all individuals who participated in the facts related to the execution of Jorge Omar Gutiérrez, and punishing them.
- Conduct a full, impartial, effective and prompt investigation into the individuals belonging to different State bodies who have been involved in the investigations and proceedings carried out with regard to the facts of this case in order to determine responsibility (administrative, disciplinary, criminal, or of any other kind that may apply) for the deficiencies in the investigation, processing of the facts, and obstructions that have resulted in impunity.
- Provide adequate reparations to the next of kin of Jorge Omar Gutiérrez for the violations of their human rights.<sup>2</sup>

d. *Notification to the State.* The Merits Report was notified to the Argentine State by a communication of April 19, 2011, granting it two months to report on compliance with the Commission's recommendations. On June 17, 2011, the State requested an extension to present information on progress in the implementation of the recommendations, and it was granted one more month. The State presented the required information on August 1, 2011, when this period had already expired.

e. *Submission to the Court.* On August 19, 2011, considering "that, from the information provided, [it would appear that] the State has not adopted specific measures to comply with the recommendations made in the Merits Report," the Commission submitted all the facts and human rights violations described in the Merits Report, "owing to the need to obtain justice [...]." The Commission appointed Luz Patricia Mejía, then Commissioner, and Santiago A. Canton, then the Executive Secretary, as its delegates, and its Deputy Executive Secretary, Elizabeth Abi-Mershed, and Karla I. Quintana Osuna, Paulina Corominas and María Claudia Pulido, lawyers of the Executive Secretariat, as its legal advisers.

3. *Request of the Inter-American Commission.* Based on the above, the Commission asked the Court to declare the international responsibility of Argentina for the violation of the right to life, recognized in Article 4 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Jorge Omar Gutiérrez, and the rights to personal integrity, judicial guarantees and judicial protection recognized in Articles 5, 8 and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of the victim, specifically, his widow, Nilda del Valle Maldonado de Gutiérrez, his three children, Marilin Verónica, Jorge Gabriel and David, all with the surname Gutiérrez, and his brother, Francisco Gutiérrez. In addition, it asked the Court to order the State to provide certain measures of reparation, which will be described and examined in Chapter IX of this Judgment.

## II PROCEEDINGS BEFORE THE COURT

4. *Notification of the State and the representatives.* The State and the representatives of the presumed victims were notified of the submission of the case by the Inter-American Commission on January 26, 2012.

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<sup>2</sup> Cf. Merits Report No. 63/11 (merits file, folio 35).

5. *Brief with pleadings, motions and evidence.* On March 26, 2012, the *Centro de Estudios Legales y Sociales* (hereinafter “the representatives of the presumed victims,” “the representatives” or “CELS”) forwarded its brief with pleadings, motions and evidence (hereinafter “the pleadings and motions brief”). The representatives agreed, in general, with the violations alleged by the Inter-American Commission. However, they included Nilda Gutiérrez, sister of Jorge Omar Gutiérrez, who the Commission had not included as a presumed victim in its Merits Report, as a presumed victim of the violations of the rights contained in Articles 5, 8 and 25 of the Convention. Lastly, they asked the Court to order to State to provide diverse measures of reparation.

6. *Answering brief.* On July 27, 2012, the State presented its brief answering the submission of the case and with observations on the pleadings and motions brief (hereinafter “the answering brief”). In this brief, Argentina indicated “its willingness to accept the conclusions of the Merits Report adopted by the Inter-American Commission [...], as well as the resulting legal consequences.” Nevertheless, it indicated that it “reject[ed] those passages in the representatives’ brief that tr[ie]d to assimilate the facts of the case to situations of a systematic or general nature.” In addition, the State asked the Court to reject some of the evidence offered by the representatives and presented observations on the measures of reparation they had requested. The State appointed Alberto Javier Salgado as its Agent, and Julio Cesar Ayala and Andrea G. Gualde as Deputy Agents.

7. *Observations on the acknowledgement of responsibility.* On September 28, 2012, the Commission and the representatives, respectively, presented their observations on the acknowledgement of responsibility made by State (*supra* para. 6).

8. *Public hearing and evidence.* By an Order of December 20, 2012,<sup>3</sup> the President of the Court (hereinafter “the President”) ordered that the statements of five presumed victims and the opinions of eight expert witnesses proposed by the representatives be received by sworn statements before notary public (hereinafter “affidavit”). In addition, the President convened the Inter-American Commission, the representatives, and the State to a public hearing to be held on February 5 and 6, 2013, to receive the statement of one presumed victim, and one expert opinion offered by the representatives, as well as to hear the final oral arguments of the representatives and of the State, and the final oral observations of the Commission on the merits, and eventual reparations and costs.

9. *Postponement of the public hearing and presentation of an “Agreement on Reparations.”* On December 21 and 26, 2012, the State and the representatives, respectively, advised the Court that they had “initiated discussions with a view [...] to reaching agreement on an agenda of reparations” and, therefore, requested the postponement of the public hearing that had been convened, as well as the suspension of the time frames for the production and delivery of the evidence required in the President’s Order of December 20, 2012 (*supra* para. 8). Accordingly, on December 26, 2012, the parties and the Commission were advised that the President had decided to suspend the public hearing and the time frames established in the said Order of December 20, 2012. On March 12, 2013, the parties and the Commission were advised of the new time frames for the State to forward its questions to those testifying by affidavit, so that the representatives could forward the said statements, and so that the State could present its observations in this regard. On April 12, 2013, the parties and the Commission were informed that the President had decided to convene the parties to a public hearing on May 21 and 22, 2013.

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<sup>3</sup> Cf. *Case of Gutiérrez and family v. Argentina*. Convening of a public hearing. Order of the President of the Inter-American Court of Human Rights of December 20, 2012. This order is available at: <http://corteidh.or.cr/index.php/en/16-juris/193-convocatorias>.

That same day, some of the statements required by affidavit in the President's Order of December 20, 2012, were received. On May 17, 2013 Argentina forwarded the Court an "Agreement on Reparations" signed by the representatives of the victims and the State.

10. *Public hearing.* The public hearing was held at the seat of the Court on May 21 and 22, 2013, during the Court's ninety-ninth regular session.<sup>4</sup> During the hearing, the Court asked the parties and the Commission to provide certain clarifications, additional information, and helpful evidence when presenting their final written arguments and observations.

11. *Final written arguments and observations.* On June 24, 2013, the State and the representatives forwarded their respective final written arguments, and the Commission presented its final written observations. The State and the representatives provided the clarifications requested during the public hearing, and the representatives presented the helpful evidence that had been required (*supra* para. 10), as well as expense vouchers and other documentation. On July 9, 2013, the State was asked to present a "timetable" for the tasks mentioned in the "Agreement on Reparations" of May 17, 2013 (*supra* para. 9). On July 16, 2013, the State indicated that, "when the Court has handed down its judgment, all the parties concerned [...] will prepare a timetable with the approximate dates for completing each of the points" agreed on.

12. *Observations on the evidence forwarded with the final written arguments and the requested information.* On July 31, 2013, the representatives forwarded their observations on the clarifications, documentation, and helpful evidence requested during the public hearing, and the Commission asked for an extension until August 6, 2013, to present its observations, which was granted. The Commission forwarded its observations on August 7, 2013, after this additional period had expired.

13. *Helpful evidence.* On August 23, 2013, the Court required the State and the representatives to forward the Criminal Code and the Code of Criminal Procedure applicable in the investigations conducted into the facts of the case. On August 30, 2013, the representatives explained that the information required could be found on specific web pages of the State, and Argentina asked the Court for an extension in this regard. This extension expired on September 9, 2013; however, the State failed to forward the requested information. On October 16, 2013, the Court requested Argentine to provide information, by October 22, 2013, at the latest, on the actual status of case 5-10888-2, which, at December 30, 2009, had been before Court of Guarantees No. 5 of the La Plata Judicial Department. The State requested an extension in order to provide this information, and was granted a non-extendible period until October 30, 2013, for this purpose. On October 30, 2013, the State forwarded the requested information, and on November 7, 2013, the Commission and the representatives presented their respective observations.

### III COMPETENCE

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<sup>4</sup> At this public hearing, there appeared: for the Inter-American Commission, Silvia Serrano Guzmán, Adviser; for the representatives, Paula Litvachky, Gabriela Kletzel, Luis Valenga; for the Argentine Republic: Javier Salgado, Agent, Director of International Litigation on Human Rights Matters of the Ministry of Foreign Affairs and Worship, Gonzalo Bueno, Legal Adviser of the Department for International Litigation on Human Rights Matters of the Ministry of Foreign Affairs and Worship, Yanina Berra Rocca, official from the Legal Advisory Services Department of the Ministry of Foreign Affairs and Worship, and María Eugenia Carbone, Coordinator of International Legal Affairs of the National Human Rights Secretariat.

14. The Inter-American Court is competent to hear this case under Article 62(3) of the Convention, because Argentina has been a State Party to the American Convention since September 5, 1984, and accepted the contentious jurisdiction of the Court on the same date.

#### IV THE STATE'S ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY AND THE AGREEMENT ON REPARATIONS

##### ***A. Arguments of the parties and of the Commission***

15. In its answering brief, the State indicated "its willingness to accept the conclusions [and recommendations] contained in the Merits Report adopted by the Inter-American Commission [...], as well as the resulting legal consequences." To this end, it affirmed that "there [was] sufficient evidence to consider that the objective responsibility of the province of Buenos Aires had been constituted in the facts denounced and, consequently, that of the national State." Furthermore, the State took into account "the circumstance that there was a high degree of certainty about the possibility that agents of the Argentine Federal Police – in other words, Federal Government officials – were involved in the death of Mr. Gutiérrez." However, it "rejected those passages in the representatives' brief that tr[ie]d to assimilate the facts of the case to situations of a systematic or general nature," and asked the Court "to limit the subject matter for discussion to the specific circumstances that resulted in the death of [Mr.] Gutiérrez, and the intrigue surrounding the investigation into those responsible." In this brief, the State did not acknowledge Nilda Gutiérrez, sister of Jorge Omar Gutiérrez, as a victim in this case.

16. Regarding the pecuniary reparations requested by the representatives, Argentina asked the Court to establish them based on equity and taking into account "the efforts opportunely made" by the State, even though these "have not provided the comprehensive results that the case deserves." In addition, it contested some of the claims made by the representatives under the headings of "consequential damage," "damage to the family wealth" and "loss of earnings." Regarding the non-pecuniary measures requested by the representatives, Argentina argued that "even though measures are requested to improve institutional operations, their implementation w[ould] exceed the sphere and consequences of this case." Furthermore, according to the State, "the establishment of specific goals for public policies that, evidently, must be discussed and executed by the authorities elected under a democratic system [...]," would exceed the function of a judgment. It also indicated that "this is not the appropriate sphere for broaching" "the implementation of effective mechanisms for complying with decisions of international human rights bodies."

17. On May 17, 2013, Argentina presented an "Agreement on Reparations" (hereinafter "the Agreement") entered into with the representatives, which also contains an acknowledgement of international responsibility, as follows:

- 1) The State ratifies that, having examine Report No. 63/11 in light of the findings in the case, it assumes its international responsibility for the violation, in this case, of Articles 4, 5, 8 and 25 of the American Convention [...], in relation to the general obligation to respect and ensure the human rights established in Article 1(1) [thereof], to the detriment of Jorge Omar Gutiérrez and his family group named in the [pleadings, motions and evidence] brief.
- 2) In order to specify the scope of the State's assumption of international responsibility, it is placed on record that, as arises from Report No. 63/11 and from the victims' [pleadings, motions and evidence brief ...], the judicial investigation into the events that resulted in the murder of Jorge Omar Gutiérrez was not conducted in accordance with the required international standards.

- 3) In this regard, and based on the conclusions developed by the Inter-American Commission in this regard in its Report No. 63/11, and the victims in their [pleadings and motions brief], it can be inferred that the *res judicata* decision which led to the acquittal of one of those accused of the murder of Jorge Omar Gutiérrez should be classified as 'fraudulent'; the parties request the Court, in its judgment, to rule expressly on this point and on the legal consequences arising from it in relation to the international obligations assumed by the Argentine State under the American Convention [...]. Also, owing to the particularities of the case, the parties request the Court to rule on the inadmissibility of the provisions of the statute of limitations for the investigation and sanction of the other masterminds and perpetrators of the extrajudicial execution of Jorge Omar Gutiérrez.
- 4) With regard to the list of victims presented by the representatives in their [pleadings and motions brief], the State accepts that Nilda Gutiérrez, sister of Jorge Omar Gutiérrez, should be considered a victim.
- 5) Meanwhile, the parties undertake to follow up jointly on the commitments assumed in this document in relation to the following matters:
  - a) The National State undertakes to organize a public act of acknowledgement of responsibility for the violation of Articles 4, 5, 8 and 25 of the American Convention on Human Rights with regard to Jorge Omar Gutiérrez and his family.
  - b) In honor of the memory of Jorge Omar Gutiérrez, the National State and the province of Buenos Aires undertake to adopt measures to conserve and indicate the warehouse and the Police Precinct where the events occurred that gave rise to this case.
  - c) The National State and the province of Buenos Aires undertake to include the "Gutiérrez case" in the training curricula for the law enforcement personnel subject to their jurisdiction.
  - d) The National State undertakes to establish August 29 as the 'National Day to Combat Drug-Trafficking.'
  - e) The National State undertakes to implement, in conjunction with the authorities of the province of Buenos Aires, a strategy for participation in the judicial proceedings against [one presumed participant in the execution], as well as in the judicial investigations into those responsible for covering up the murder of Jorge Omar Gutiérrez.
  - f) The National State and the province of Buenos Aires undertake to implement fully [...] the provincial Judicial Police, including the constitution of the Monitoring Committee to ensure its effective execution in the Legislature of the province of Buenos Aires. In addition, they undertake to establish an effective protection system for victims and witnesses.
  - g) The National State, through the national Ministry of Security, undertakes to make progress in the implementation and regulation of external control mechanisms on the actions of the members of federal law enforcement personnel and to make progress in the pending administrative and summary actions against the members of the Argentine Federal Police it is responsible for who may have taken part in the crime, or been accessories to it, or obstructed the investigation. In this context, it is considered desirable that the [...] Court endorse this agenda agreed by the petitioners and the Argentine State and its respective timetable. This timetable was prepared and discussed during the meetings held following the issue of Report No. 63/11, in the context of the contacts established between the petitioners and all levels of Government involved in these proceedings (Government of the Nation and Government of the province of Buenos Aires).
- 6) Lastly, the parties request the Court [...] to rule – as established in Article 63 of the [American Convention] – on the scope of the reparations in favor of the victims, which should include guarantees of satisfaction, and measures of non-repetition, and compensation for pecuniary and non-pecuniary damage, based on the principle of equity, as well as the costs and expenses incurred in the domestic and the international jurisdiction.

18. Likewise, it should also be emphasized that, during the public hearing, the State reiterated the commitments made in the above-mentioned Agreement and acknowledged "the untiring efforts of the family of Jorge Omar Gutiérrez, [and] of his legal representatives [CELS], and of Luis Valenga, [in] seeking to obtain justice, [... and] the enormous patience, dignity and moral force that they have shown during the whole of this process." The State also indicated that it had "no doubt that the decision that this Court adopts will contribute decisively to the permanent removal of the mantle of impunity that covers this case, so that those responsible for the crime [perpetrated against] Jorge Omar Gutiérrez may be tried and duly punished, so that the victim's family, despite everything, may achieve what we all hope for this case: truth, justice, reparation, and [...] commemoration."

19. The Commission expressed its satisfaction for the State's acknowledgement of responsibility and for the willingness of the parties to enter into the Agreement. In this regard, it observed that "the dispute about the facts, the violations, the family members acknowledged to be victims, and the correlative existence of an obligation to make reparation to those family members, has ceased." Despite this, it considered that it was "necessary to deliver a detailed judgment, [...] to respond to the objectives of inter-American justice; specifically, the reparatory effects for the family of Jorge Omar Gutiérrez and the judicial clarification of the violations that occurred; but also because the parties and the Commission have agreed to request the Court to make a ruling that facilitates the effective implementation of the reparations." In this regard, it indicated that "[the] appropriate determination of the facts and their legal characterization was inextricably related to the implications of the obligation to investigate and punish those responsible, and to halt the impunity in the very particular procedural circumstances of the investigation at the domestic level." It also underscored that the Agreement "includes a general clause on the application of Article 63(1) of the American Convention," therefore, "it does not exclude other measures of non-repetition or of satisfaction that the Court may order in the exercise of its competence and in accordance with the inter-American standards in this regard."

20. The representatives appreciated the acknowledgement of responsibility made by the State. Nevertheless, they indicated that there were no arguments in their pleadings and motions brief that attempted to assimilate the facts of the case to situations of a systematic nature, but rather they had referred to "institutional structural deficiencies (in the provincial system of justice and in the functioning of the police forces involved) that facilitated the irregularities and intrigues that permitted, established and perpetuated up until today, the corporate concealment and impunity of the murder committed by State agents involved in a criminal network." On this point, they argued that "[w]hat the State is seeking to ignore is precisely this dimension of the case, directly related to the alleged violations and the measures of non-repetition requested." They also differed from the State's position in the sense that "measures aimed at reversing certain elements – even though the latter are the result of normative limitations or institutional practices that require wide-ranging measures – cannot be ordered in a [...] specific case being litigated." In addition, the representatives reiterated their pecuniary claims and stated that they were "convinced of the validity of [their] demands." Also, in their final written arguments, the representatives emphasized that the parties had signed the Agreement in the understanding that, thereby, they would contribute to the work of the Court by identifying measures "that should be adopted on the path towards integral reparation"; in other words, "the Agreement does not seek to be exhaustive as regards the reparations that have been determined in the case." Consequently, and with reference to Article 63 of the Convention, in the said Agreement the parties indicated "their intention that the Court establish, in addition to the measures already agreed on, [the] reparations that it considers pertinent."

## ***B. Considerations of the Court***

21. In accordance with Articles 62 to 64 of the Rules of Procedure<sup>5</sup> and in exercise of its powers concerning the international judicial protection of human rights, a matter that goes

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<sup>5</sup> Articles 62, 63 and 64 of the Rules of Procedure of the Court stipulate:

### Article 62. Acquiescence

If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects.

beyond the will of the parties,<sup>6</sup> it is incumbent on the Court to ensure that acts of acquiescence are acceptable for the objectives that the inter-American system for the protection of human rights seeks to achieve.<sup>7</sup> In this task, it does not merely verify, record, or take note of the acknowledgement made by the State, or verify the formal conditions of the said acts, but it must relate them to the nature and severity of the alleged violations, the requirements and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties,<sup>8</sup> so that it can clarify, insofar as possible and in the exercise of its competence, the truth of what happened.<sup>9</sup> Thus, the acknowledgement cannot result in a direct or indirect constraint to the exercise of the Court's competence to hear the case that has been submitted to it,<sup>10</sup> and to decide whether, in this regard, there has been a violation of a right or freedom protected by the Convention.<sup>11</sup>

22. Regarding the facts of the instant case, the Court notes that, when accepting the conclusions of the Merits Report, the State indicated that "there [was] sufficient evidence to consider that the objective responsibility of the province of Buenos Aires had been constituted" and, consequently, of the national State, and it took into account "the circumstance that there was a high degree of certainty about the possibility that agents of the Argentine Federal Police were involved in the death of [Mr.] Gutiérrez." In this regard, the Court considers that the acts committed by State agents that generated the international responsibility acknowledged by Argentina have not been determined clearly. Consequently, and particularly considering that the extensive and exact determination of the facts that occurred contributes to providing redress to the victims, to avoiding a repetition of similar events and, in sum, to meeting the objectives of the inter-American jurisdiction on human rights,<sup>12</sup> the Court finds it necessary to establish the facts that

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Article 63. Friendly settlement

When the Commission; the victims or alleged victims, or their representatives; the respondent State; or, if applicable, the petitioning State in a case before the Court inform it of the existence of a friendly settlement, compromise, or any other act appropriate for settling the dispute, the Court shall rule upon its admissibility and juridical effects at the appropriate procedural moment.

Article 64. Continuation of a case

Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles.

<sup>6</sup> Cf. *Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121, para. 42, and *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 20.

<sup>7</sup> Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of García and family members v. Guatemala. Merits, reparations and costs*. Judgment of November 29, 2012. Series C No. 258, para. 16.

<sup>8</sup> Cf. *Case of Kimel, supra*, para. 24, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2013. Series C No. 268, para. 19.

<sup>9</sup> Cf. *Case of Kimel, supra*, para. 24, and *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2013. Series C No. 266, para. 266.

<sup>10</sup> Article 62(3) of the Convention establishes: The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by to special agreement.

<sup>11</sup> Article 63(1) of the Convention establishes: If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

<sup>12</sup> Cf. *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 56, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, para. 28.

surrounded the violent death of Assistant Commissioner Gutiérrez and the investigation opened into this, in order to elucidate, insofar as possible, the truth of what happened, and to determine the State's responsibility derived from this, as well as measures to re-establish the enjoyment of the violated rights, and the corresponding reparations.

23. Furthermore, with regard to the legal arguments submitted by the parties, the Court notes that the State rejected the parts of the pleadings and motions brief that presumably assimilated the facts of this case to situations of a systematic or generalized nature. For their part, the representatives explained that their arguments referred to "institutional structural deficiencies" of the provincial system of justice and of the functioning of the police forces involved (*supra* para. 20). The Court considers that the dispute remains on this point, and it also observes that the arguments presented by the parties are closely connected to the delimitation of the factual framework of the case, which will be analyzed in the chapter on prior considerations.

24. Despite the foregoing, the Court notes that the State assumed its international responsibility for the violation of Article 4 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Jorge Omar Gutiérrez, as well as of Articles 5, 8 and 25 of the Convention, in relation to Article 1(1) of this treaty, to the detriment of his widow, Nilda del Valle Maldonado de Gutiérrez,<sup>13</sup> his three children, Marilyn Verónica, Jorge Gabriel and Omar David,<sup>14</sup> all with the surname Gutiérrez, and his siblings, Francisco Virgilio Gutiérrez and Nilda Elena Gutiérrez.<sup>15</sup> The Court decides to accept the acknowledgement made by the State with regard to these violations and will analyze their scope in the corresponding chapters.

25. In addition, in the Agreement, the State and the representatives asked the Court to rule expressly on the validity of the *res judicata* conferred on the acquittal of one of those accused of the murder of Jorge Omar Gutiérrez, which, in their opinion, "deserves to be classified as 'fraudulent,'" and on the legal consequences derived from it. Likewise, they asked the Court to refer to the inadmissibility of the provisions of the statute of limitations in relation to the investigation and punishment of the other masterminds and perpetrators of the extrajudicial execution of Jorge Omar Gutiérrez. In this regard, the Court will refer to the said requests in the corresponding chapter of this Judgment.

26. Regarding the reparations requested, in the Agreement the parties considered it "desirable" that the Court endorse the "agenda agreed on" by them and "its respective timetable." However, when the Court requested that the said timetable be presented, the State advised that the parties had "made progress on the said Agreement during successive working meetings, without this including a detailed or precise timetable [...]," and that it had been considered "that when the Court delivers judgment, all the parties concerned [...] will work on the preparation of a timetable that includes approximate dates for each of the points" agreed on (*supra* paras. 11 and 17). In this regard, the Court notes that, despite the execution of the said Agreement, the dispute remains concerning some of the measures of reparation requested and their scope (*supra* paras. 16 and 17). Consequently, the Court will make the corresponding rulings in the respective chapter taking into account the Agreement reached.

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<sup>13</sup> Cf. Copy of Passport (merits file, folio 818).

<sup>14</sup> Cf. Birth certificates (file of annexes to the pleadings and motions brief, folios 2631 to 2633).

<sup>15</sup> Cf. Affidavits of April 9, 2013 (merits file, folios 697 and 715).

27. Based on the foregoing, the Court assesses positively the attitude of the State when indicating its acknowledgement of international responsibility, owing to its significance in the context of the inter-American system for the protection of human rights, and also that the parties have reached an agreement on reparations. The Court also stresses the acknowledgement made by Argentina during the public hearing of the efforts made by the family of Jorge Omar Gutiérrez. All these actions make a positive contribution to the evolution of these proceedings and to the prompt achievement of justice in this case, the validity of the principles that inspire the Convention<sup>16</sup> and, in part, to meeting the needs for redress of the victims of human rights violations.<sup>17</sup> Consequently, having examined this acknowledgement, and since the parties and the Commission agree on the importance that it rule in this regard, the Court finds it necessary to deliver a judgment in which it determines the facts and all the elements of the merits of the matter, as well as the corresponding consequences in relation to reparations.<sup>18</sup>

## V PRIOR CONSIDERATIONS

### A. *Determination of the factual framework*

28. The Court notes that, in their pleadings and motions brief, the representatives referred to facts that were not included in the Commission's Merits Report concerning the supposed limitations, based on the criminal law applicable to the case, to the participation of the next of kin of Mr. Gutiérrez in the investigations into his death.<sup>19</sup>

29. This Court has established that the factual framework of the proceedings is constituted by the facts contained in the Merits Report submitted to its consideration.<sup>20</sup> Consequently, it is not admissible for the parties to allege new facts that differ from those contained in this report,<sup>21</sup> although they may refer to facts that explain, clarify or reject the ones mentioned in the report and that have been submitted to the Court's consideration.<sup>22</sup>

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<sup>16</sup> Cf. *Case of El Caracazo v. Venezuela. Merits*. Judgment of November 11, 1999. Series C No. 58, para. 43, and *Case of García and family members, supra*, para. 22.

<sup>17</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 18, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245, para. 27.

<sup>18</sup> Cf. *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 69, and *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs*. Judgment of August 26, 2011. Series C No. 229, para. 37.

<sup>19</sup> The representatives stated that: "[t]he procedural law in force at that time (Provincial Law 3589), accorded limited possibilities for the next of kin of Mr. Gutiérrez to intervene in the proceeding [...]." According to the representatives, the "very limited" possibilities of the injured party are established specifically in article 87 of the Code of Criminal Procedure of the province of Buenos Aires. In addition, "according to article 89 [of this Code] the injured party is not a 'party' to the proceedings, placing him on a secondary level in relation to the prosecutor and the defense." Cf. Pleadings and motions brief (merits file, folio 125).

<sup>20</sup> Cf. *Case of the Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Vélez Restrepo and family members v. Colombia, Preliminary objection, merits, reparations and costs*. Judgment of September 3, 2012. Series C No. 248, para. 47.

<sup>21</sup> Cf. *Case of the Gómez Paquiyaury Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 178, 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. 133.

<sup>22</sup> Cf. *Case of the "Children's Rehabilitation Institute" v. Paraguay. Preliminary objections, merits, reparations and costs*. Judgment of September 2, 2004. Series C No. 112, para. 124, and *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 242, para. 17.

The exception to this principle are facts that are classified as supervening, provided that they are related to the facts of the proceedings.<sup>23</sup> The Court notes that the facts referred to by the representatives do not explain, clarify or reject those included in the Merits Report relating to the death of Assistant Commissioner Jorge Omar Gutiérrez and the acts and omissions by State agents in the investigations opened into this event. Consequently, the Court will not take them into account in its decision in this case.

### **B. Regarding the alleged structural deficiencies**

30. In its answering brief, the State “reject[ed] those passages of the representatives’ brief that allegedly attempted to assimilate the facts of the case to situations of a systematic or general nature.” Meanwhile, the representatives explained that their pleadings and motions brief did not include arguments that tried to assimilate the facts of the case to situations of a systematic nature; rather, they had indicated “institutional structural deficiencies (of the provincial system of justice and of the functioning of the police involved) that facilitated the irregularities and intrigues that permitted, established and perpetuated up until today, the corporate concealment and the impunity of the murder committed by State agents involved in a criminal network.” On this point, they argued that what “the State presumably sought to ignore was precisely this dimension of the case, directly related to the alleged violations and the measures of non-repetition requested.”

31. The Court notes that, in their pleadings and motions brief, the representatives included assertions relating to supposed structural deficiencies in the police and judicial systems responsible for investigating the death of Assistant Commissioner Gutiérrez. However, these assertions bear no relationship to the dispute before the Commission and do not refer to specific facts that explain, clarify or reject those contained in the Merits Report (*supra* para. 2). Therefore, the Court will not rule in this regard.

## **VI EVIDENCE**

32. Based on the provisions of Articles 46, 50, 57 and 58 of the Rules of Procedure, as well as on its case law concerning evidence and its assessment,<sup>24</sup> the Court will examine and assess the documentary probative elements forwarded by the parties on different procedural occasions, the testimony provided by affidavit and during the public hearing, and also the helpful evidence requested by the Court. To this end, it will abide by the principles of sound judicial discretion, within the corresponding normative framework.<sup>25</sup>

### **A. Documentary, testimonial and expert evidence**

33. The Court received various documents presented as evidence by the Commission and by the representatives attached to their principal briefs, as well as helpful evidence requested by the Court (*supra* paras. 11 and 13). In addition, it received the affidavits

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<sup>23</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 57, and *Case of the Kichwa indigenous People of Sarayaku, supra*, para. 27.

<sup>24</sup> Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69 al 76, and *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, para. 30.

<sup>25</sup> Cf. *Case of the “White Van” (Paniagua Morales et al.). Merits, supra*, para. 76, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 26, 2012. Series C No. 244, para. 13.

prepared by Francisco Virgilio Gutiérrez,<sup>26</sup> Nilda Elena Gutiérrez,<sup>27</sup> Jorge Gabriel Gutiérrez, Omar David Gutiérrez<sup>28</sup> and Marilin Verónica Gutiérrez.<sup>29</sup> It also received the opinions of expert witnesses Alejandro Rúa,<sup>30</sup> Gabriel Eduardo Pérez Barberá,<sup>31</sup> Luis María Chichizola<sup>32</sup> and Ricardo Favarotto.<sup>33</sup> In addition, during the public hearing, the Court received the testimony of Nilda del Valle Maldonado de Gutiérrez<sup>34</sup> and the opinion of expert witness Alberto Binder.<sup>35</sup>

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<sup>26</sup> The victim Francisco Virgilio Gutiérrez testified on “his supposed relationship with his brother at the time of his murder; the steps presumably taken in order to collaborate with justice in the clarification of the act, and his role as a national deputy or Mayor of Quilmes; about how he experienced the friendly settlement procedure, and the supposed reprisals and threats of which he and his family were victims owing to their commitment to obtain justice for the supposed murder of his brother.” *Cf. Case of Gutiérrez and family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012, operative paragraph 1.A.2.

<sup>27</sup> The victim Nilda Elena Gutiérrez testified on “her supposed relationship with her brother and the life of the Gutiérrez family before his presumed murder. She also testified[d] on the supposed consequences of this event and of the presumed impunity on the physical and mental health of her parents and the relationship with them; about the steps taken by herself and the family; the effect that the actions of the police, prosecution and judicial authorities supposedly had on her values and on those of her family, and also on the consequences that the alleged impunity of the facts had, and continue to have, on her life.” *Cf. Case of Gutiérrez and family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012, operative paragraph 1.A.1.

<sup>28</sup> The victims Jorge Gabriel and Omar David Gutiérrez testified on “their life at the time of the supposed murder of their father and the presumed repercussions on their personal and professional life projects; about the steps that they and their family members took to learn the truth of what happened, the supposed consequences of the alleged acts of concealment and obstruction by the police, prosecution and judicial authorities on their life, and on the presumed consequences that the alleged impunity of the facts had, and continue to have, on their life.” *Cf. Case of Gutiérrez and family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012, operative paragraph 1.A.3.

<sup>29</sup> The victim Marilin Verónica Gutiérrez testified on “her life at the time of the supposed murder of her father and the supposed consequences on the life of the family; the steps she took and what it supposedly involved to live, since adolescence, with the presumed impunity of the facts, and regarding the supposed obstacles faced by her and her family in the search for justice.” *Cf. Case of Gutiérrez and family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012, operative paragraph 1.A.4.

<sup>30</sup> Expert witness Alejandro Rúa provided an opinion on “the judicial and administrative actions in this case and whether or not they were adequate; about how the administrative actions of the Argentine Federal Police and of the Police of the province of Buenos Aires concerning the supposed murder of Jorge Omar Gutiérrez were conducted, and about the institutional measures that should be taken to rectify the supposed conditions that made these events possible; their presumed corporate concealment and the presumed administrative impunity.” *Cf. Case of Gutiérrez and family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012, operative paragraph 1.B.5.

<sup>31</sup> Expert witness Gabriel Eduardo Pérez Barberá provided an opinion on “the need for the criminal justice system to have criminal investigation units that are autonomous from the police, especially in those cases that involve law enforcement personnel.” *Cf. Case of Gutiérrez and family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012, operative paragraph 1.B.4.

<sup>32</sup> Expert witness Luis María Chichizola provided an opinion on “the structure and functioning of the Public Prosecution Service of the province of Buenos Aires; the supposed flaws in the judicial investigation, and how justice could be improved in this province for this type of case, particularly in relation to the Public Prosecution Service.” *Cf. Case of Gutiérrez and family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012, operative paragraph 1.B.6.

<sup>33</sup> Expert witness Ricardo Favorotto provided an opinion on “the supposed shortcomings in the judicial actions in this case; which of these problems supposedly constitute actual structural deficiencies, and about the institutional measures to overcome them.” *Cf. Case of Gutiérrez and family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012, operative paragraph 1.B.3. Also, on March 26, 2013, the representatives advised the Court of their decision to withdraw the presentation of the expert opinions of María Victoria Pita, Lila Caimari, Julián Axat and Ignacio Cano, opportunely offered and accepted to be provided by affidavit in the Order of the President of December 20, 2012, in this case (*supra* para. 8).

<sup>34</sup> Nilda del Valle Maldonado de Gutiérrez, wife of Jorge Omar Gutiérrez, testified on “her life at the time her husband was supposedly murdered; the steps that she and her family took to learn the truth of what happened; the actions of the police, prosecution and judicial authorities; the alleged obstacles faced by her family in their search for justice, and the supposed impact on her life and on that of her family of the death of her husband and

## **B. Admission of the evidence**

### *B.1. Admission of the documentary evidence*

34. In this case, as in others, the Court admits those documents provided by the parties at the appropriate procedural opportunity that were not contested or opposed, and the authenticity of which was not challenged, exclusively insofar as they are pertinent and useful for the determination of the facts and the eventual legal consequences.<sup>36</sup> In addition, the documents requested by the Court during the public hearing and subsequently, and that were opportunely provided by the parties,<sup>37</sup> are incorporated into the body of evidence in application of the provisions of Article 58 of the Rules of Procedure.

35. The representatives asked that “the State [...] be required to provide precise information on the evolution of the salary of an Assistant Commissioner [of the province of Buenos Aires ...] as of 1994 [...], with details of the corresponding salaries [...] up to the level of [...] Commissioner General.” For its part, the State argued that this request was inadmissible, because it was “a complete speculation.” The Commission did not refer to this point. The Court considers that it is not necessary to require Argentina to present the said documentation, because it is not essential, since, in the Agreement signed by the parties (*supra* para. 17.6) the Court is asked to establish “the compensation for pecuniary and non-pecuniary damage based on the principle of equity.”

36. Regarding newspaper articles,<sup>38</sup> 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.<sup>39</sup> The Court decides to admit those documents that are complete or that, at least, permit their source and date of publication to be noted, and will assess them taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.

37. With regard to several documents indicated by means of electronic links,<sup>40</sup> the Court has established that, if a party provides, at least, the direct electronic link to the document

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the supposed impunity of the acts.” *Cf. Case of Gutiérrez and family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012, operative paragraph 5.1.

<sup>35</sup> Expert witness Alberto Binder provided an opinion on “the functioning of the justice system and the Police of the province of Buenos Aires; in particular, the supposed deficiencies that led to the judicial and police reforms of 1997 and 1998, and on the purpose, content and main characteristics of this reform, and the degree of compliance with it in relation to its actual functioning.” *Cf. Case of Gutiérrez and family v. Argentina*. Order of the President of the Inter-American Court of Human Rights of December 20, 2012, operative paragraph 5.1.

<sup>36</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations*. Judgment of May 14, 2013. Series C No. 260, para. 53.

<sup>37</sup> The representatives forwarded the Final Report of the Special Investigative Commission of the Chamber of Deputies of the National Congress (merits file, folios 905 to 1096). Also, in a brief of August 30, 2013, they explained that the criminal and procedural codes applicable to the investigations conducted into the facts of the case may be found on specific web pages of the State (*supra* para. 13). The Court did not take into account the Commission’s brief of August 7, 2013, because it was time-barred (*supra* para. 12).

<sup>38</sup> *Cf. “Un Fallo Crítico con Severidad Caso de la Aduana Paralela”* [A judgment severely criticizes the case of the parallel customs house], *La Nación*, October 12, 2000, and “*El Ranking de los Hechos de Corrupción*” [The ranking of acts of corruption], *CNA Agencia de Noticias*, December 7, 2009 (file of annexes to the submission brief, folios 38 to 48).

<sup>39</sup> *Cf. Case of Velásquez Rodríguez. Merits, supra* para. 146, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 44.

<sup>40</sup> Among others, the representatives indicated the State’s web pages where the Criminal Code of the Argentine Nation currently in force can be found ([http://www.infojus.gov.ar/index.php?kk\\_seccion=codigos](http://www.infojus.gov.ar/index.php?kk_seccion=codigos),

it cites as evidence, and it is possible to access it, neither legal certainty nor procedural balance is affected, because it can be located immediately by the Court and the other parties.<sup>41</sup> In this case, neither the parties nor the Commission contested or submitted observations on the content and authenticity of such documents.

38. Regarding the book "*Maten a Gutiérrez, un crimen de la Aduana Paralela*" presented by the representatives, which refers to events relating to this case,<sup>42</sup> the Court considers that this is a written work that contains statements or assertions made by its author for public dissemination. Thus, the assessment of its contents is not subject to the formalities required of testimonial evidence. However, its probative value will depend on whether it corroborates or refers to aspects related to the specific case.<sup>43</sup> Consequently, and since the State has not contested the contents of this book, the Court decides to assess it, taking into account the whole body of evidence and applying the rules of sound judicial discretion.

39. The Court observes that, together with their final written arguments, the representatives forwarded vouchers for litigation expenses related to this case. In this regard, the Court will only admit those vouchers that refer to costs and expenses presumably incurred following the presentation of the pleadings and motions brief.

#### *B.2. Admission of the statements and the expert opinions*

40. The Court considers pertinent the statements and the expert opinions provided by affidavit and during the public hearing, only insofar as they are in keeping with the purpose that was defined by the President of the Court in the Order requiring them to be received (*supra* para. 8) and the purpose of this case. They will be assessed together with the other elements of the body of evidence. In addition, pursuant to the Court's case law, the statements made by the presumed victims cannot be assessed in isolation, but rather within the whole body of evidence in the proceedings, because they are useful to the extent that they can provide further information on the presumed violations and their consequences.<sup>44</sup>

## VII FACTS

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[http://www.infojus.gov.ar/index.php?kk\\_seccion=documento&registro=LEYNAC&docid=CPE%20C%20011179%201984%2012%2021](http://www.infojus.gov.ar/index.php?kk_seccion=documento&registro=LEYNAC&docid=CPE%20C%20011179%201984%2012%2021)) and the Code of Criminal Procedure of the province of Buenos Aires, text pursuant to Law 3589 ([http://www.gob.gba.gov.ar/dijl/DIJL\\_buscaid.php?var=1334](http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=1334), <http://www.gob.gba.gov.ar/legislacion/legislacion/l-3589.html>), which, according to the representatives, were applied in the investigation opened into the facts of this case. They also provided the link to Law 12,059 (<http://www.gob.gba.gov.ar/intranet/digesto/PDF/l12059.pdf>) and to Law 13,153 (<http://www.gob.gba.gov.ar/legislacion/legislacion/l-13153.html>).

<sup>41</sup> 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 Vélez Restrepo and family members, supra*, para. 63.

<sup>42</sup> Cf. Daniel Otero, "*Maten a Gutiérrez, un crimen de la aduana paralela*", Editorial Planeta, Buenos Aires, Argentina, 1998 (file of annexes to the pleadings and motions brief, folio 2348).

<sup>43</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 72, and *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. 55.

<sup>44</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 22, para. 43, and *Case of Mendoza et al., supra*, para. 54.

41. Jorge Omar Gutiérrez was born on November 5, 1952, in the Federal Capital, Buenos Aires, Argentina.<sup>45</sup> On June 28, 1974, he married Nilda del Valle Maldonado, with whom he had three children: Jorge Gabriel Gutiérrez, Omar David Gutiérrez and Marilyn Verónica Gutiérrez.<sup>46</sup> On March 1, 1970, he was a cadet at the Juan Vucetich Police Academy of the province of Buenos Aires and, in August 1994, he was the Assistant Commissioner of Police of Buenos Aires, in Avellaneda Police Precinct No. 2.<sup>47</sup>

42. On August 29, 1994, Assistant Commissioner Gutiérrez, then 41 years of age, was murdered by a shot in the back of the neck,<sup>48</sup> while travelling by train to Quilmes, where he lived with his wife and his three children. At the time of his death, Mr. Gutiérrez was investigating a “bonded warehouse [...] abutting the back of the [Avellaneda Second] Police Precinct.” Some time later, this investigation was included in a series of cases of corruption, smuggling, fraud, drug-trafficking, and unlawful association of public officials, *inter alia*, throughout the country, known as “the case of the parallel customs house.” This case concerned the existence of “several parallel customs houses of different sizes,” set up by “different organizations that carried out large-scale [illegal] operations, with the complicity of Administration officials and law enforcement personnel,”<sup>49</sup> and which was part of “a profound institutional crisis [...] from 1994 to 1996” that included “internal disputes between sectors [of] the Federal Police and the Police of the province of Buenos Aires.”<sup>50</sup>

43. The lifeless body of Assistant Commissioner Gutiérrez was found on August 29, 1994, by a train guard who was travelling as a passenger. The body of Mr. Gutiérrez was sitting in one of the carriages of the train and beside him was a case that was “open, and contained [...] some papers, an agenda, and two black pens.”<sup>51</sup> The guard on duty was advised of the find, and when the train reached the La Plata terminal, he advised the station master on duty, who then advised the police.<sup>52</sup>

#### **A. Preliminary investigation and oral proceeding stage (1994 to 1998)**

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<sup>45</sup> Cf. Extract from police dossier of Jorge Omar Gutiérrez (file of annexes to the pleadings and motions brief, folio 1998).

<sup>46</sup> Cf. Birth certificate of Jorge Gabriel Gutiérrez (file of annexes to the pleadings and motions brief, folio 2631); Birth certificate of Omar David Gutiérrez (file of annexes to the pleadings and motions brief, folio 2633), and Birth certificate of Marilyn Verónica Gutiérrez (file of annexes to the pleadings and motions brief, folio 2632).

<sup>47</sup> Cf. Extract from the Police dossier of Jorge Omar Gutiérrez (file of annexes to the pleadings and motions brief, folios 1995, 1998 and 2004).

<sup>48</sup> Cf. Death certificate of Jorge Omar Gutiérrez (file of annexes to the pleadings and motions brief, folio 2627)./

<sup>49</sup> Cf. Final report of the Special Investigative Commission on the Probable Commission of Illegal Acts Perpetrated or Produced in the National Customs Administration of November 1997 (merits file, folios 911, 912, 917, 964 and 1022).

<sup>50</sup> Cf. Expert opinion provided by Alberto Binder before the Inter-American Court during the public hearing held on May 21, 2013.

<sup>51</sup> Cf. Testimony of the train guard of August 30, 1994, before the Second Police Precinct of La Plata (file of annexes to the pleadings and motions brief, folios 1713 to 1715), and Record of site inspection of August 29, 1994, Second Police Precinct of La Plata (file of annexes to the pleadings and motions brief, folios 1705 to 1710).

<sup>52</sup> Cf. Testimony of the train guard of August 30, 1994, before the Second Police Precinct of La Plata (file of annexes to the pleadings and motions brief, folios 1713 to 1715); Testimony of the second train guard of September 29, 1994, before the Preventive Surveillance Division of the Railway Security Superintendence, Ministry of the Interior, Argentine Federal Police (file of annexes to the pleadings and motions brief, folios 2122 and 2123), and Testimony of the above-mentioned second train guard of January 20, 2003, before the Department Directorate of the Judicial Department of Investigations of San Isidro, Judiciary Investigations Police, Police of the province of Buenos Aires (file of annexes to the pleadings and motions brief, folios 1849 and 1850).

44. On August 29, 1994, Commissioner Jorge Luis Piazza and three agents of the Second Sectional Police Precinct of La Plata, province of Buenos Aires, visited the scene of the crime. During this procedure, the sitting judge of the La Plata Judicial Department was advised, and the presence of the Special Technical Investigations Service (SEIT) of the province of Buenos Aires was required. A short while later, members of this service arrived with experts in chemical appraisals, and in ballistics, mapping, photography and fingerprinting, and a forensic physician, together with the sitting judge of Criminal and Correctional Court No. 5 of La Plata, province of Buenos Aires, who ordered the experts to perform the corresponding procedures and, finally, the transfer of the remains for their subsequent forensic examination.<sup>53</sup> The autopsy was performed the same day by a SEIT forensic physician.<sup>54</sup>

#### *A.1. Preliminary investigation stage*

45. On August 29, 1994, the criminal case for the crime of murder was opened under file No. 10,888 before Criminal and Correctional Court No. 5,<sup>55</sup> under the national Criminal Code of Argentina (Law 11,179 T.O. 1984 updated) and the Code of Criminal Procedure of the province of Buenos Aires (Law 3,589).<sup>56</sup> Commissioner Jorge Luis Piazza of the Second Police Precinct of La Plata, province of Buenos Aires, was in charge of the investigation, with the collaboration of an operational group from the La Plata Departmental Investigations Directorate headed by an Inspector.<sup>57</sup> During the investigation, two eyewitnesses of the events were identified, a man and a woman, and the following procedures were carried out, *inter alia*: (a) from August 30 to September 23, 1994, the Commissioner in charge of the investigation and the investigating judge received different statements, including those of two adolescents who reported that, under threat from federal police agents, they had made testimonial statements in which they had falsely implicated two “boys” in the murder of Assistant Commissioner Gutiérrez;<sup>58</sup> (b) on September 22, 1994, a reconstruction of the crime was conducted before the investigating judge, with the collaboration of the male eyewitness and in the presence of Commissioner Piazza;<sup>59</sup> (c) on September 22, 1994, the testimony of the two eyewitnesses was received by the investigating judge;<sup>60</sup> (d) on

<sup>53</sup> Cf. Record of site inspection of August 29, 1994, Second Police Precinct of La Plata (file of annexes to the pleadings and motions brief, folios 1705 to 1710).

<sup>54</sup> Cf. Forensic examination of August 29, 1994 (file of annexes to the pleadings and motions brief, folios 1717 to 1720).

<sup>55</sup> Cf. Decision of December 28, 2006, of Transition Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folio 300); Decision of December 30, 2009, of Court of Guarantees No. 5 of the La Plata Judicial Department (file of annexes to the submission brief, folio 319), and Administrative Inquiry file 357-18-000001/94, Ministry of the Interior of the Argentine Federal Police (annexes to the pleadings and motions brief, folios 2212, 2217 and 2270).

<sup>56</sup> Article 3 of Law 12,059 of December 11, 1997, established that “[c]ases pending at March 1, 1998, shall continue to be processed pursuant to the provisions of Law 3,589 [...], until their conclusion. These cases must be concluded before January 1, 2000. After this date, they shall be processed in accordance with the new Code (Law 11,922).” Available at: <http://www.gob.gba.gov.ar/intranet/digesto/PDF/112059.pdf>. However, article 1 of Law 13,153 of December 18, 2003, later substituted article 3 of Law 12,059 establishing that “cases pending at March 1, 1998, shall continue to be processed until they have concluded, pursuant to the provisions of Law 3,589”. Available at: <http://www.gob.gba.gov.ar/legislacion/legislacion/I-13153.html>.

<sup>57</sup> Cf. Testimony of March 31, 2005, before judicial investigators (file of annexes to the pleadings and motions brief, folio 1966).

<sup>58</sup> According to the Court's case file at least nine statements were received (file of annexes to the pleadings and motions brief, folios 1713 to 1715, 1730 to 1732, 1722 to 1724, 1726 to 1728, 1740, 1749 to 1754, 2039, 2098 to 2100, and 2101 to 2102).

<sup>59</sup> Cf. Record of reconstruction of the crime of September 22, 1994, before Criminal and Correctional Court No. 5 (file of annexes to the pleadings and motions brief, folios 1737 and 1738).

<sup>60</sup> Cf. Testimony of two eyewitnesses (file of annexes to the submission brief, folios 107 and 108, and 111 to 113).

September 24, 1994, the said eyewitnesses took part in an identification parade in front of Commissioner Piazza,<sup>61</sup> and (e) on September 29, 1994, the male eyewitness ratified the contents of the record of the identification parade before the investigating judge.<sup>62</sup> Meanwhile, the female eyewitness stated that she was “terrified,” that she “fear[ed] for her life,” and that she “was unwilling to take [...] any action.”<sup>63</sup>

46. When these investigative procedures had been completed, the only individual indicted in the case was a Federal Police agent<sup>64</sup> belonging to the Preventive Surveillance Division of the Railway Security Superintendence,<sup>65</sup> who, as of September 23, 1994, was placed at the disposal of the investigating judge.<sup>66</sup> Finally, he was charged with the crime of murder aggravated by malice, with a request for life imprisonment with legal expenses and costs.<sup>67</sup>

### *A.2. Oral proceeding*

47. The only person indicted in this case for the crime of the murder of Assistant Commissioner Jorge Omar Gutiérrez was prosecuted in an oral proceeding before the First Court of the Criminal and Correctional Appeals Chamber of La Plata, province of Buenos Aires (hereinafter “the First Chamber of the Appeals Chamber”) under case file No. 85,714.<sup>68</sup> During this oral proceeding, on May 26, 1995, Nilda del Valle Maldonado de Gutiérrez was recognized as injured party,<sup>69</sup> on November 5, 1996, the reconstruction of the crime was conducted<sup>70</sup> and, on November 11 and 12, 1996, the public oral hearing was held.<sup>71</sup>

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<sup>61</sup> Cf. Record of identification parade of September 24, 1994 (file of annexes to the submission brief, folios 116 to 117, and 119 to 120).

<sup>62</sup> Cf. Record of hearings of September 29, 1994 (file of annexes to the pleadings and motions brief, folios 1759 and 1760).

<sup>63</sup> Cf. Record of hearings of September 29, 1994 (file of annexes to the pleadings and motions brief, folio 1747).

<sup>64</sup> Cf. Verdict of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the submission brief, folio 135), and Judgment of November 15, 1996, handed down by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folio 1784).

<sup>65</sup> Cf. Cover of the file of Administrative Inquiry No. 357-18-000001/94. Case: Prosecution of conduct. Administrative Investigations Department of the Argentine Federal Police (file of annexes to the pleadings and motions brief, folio 2113).

<sup>66</sup> Cf. Communication of September 26, 1994, Administrative Inquiry Proceeding No.1, file 357-18-000001/94 (file of annexes to the pleadings and motions brief, folio 2116), and Communication of September 24, 1994, Administrative Inquiry Proceeding No.1, file 357-18-000001/94 (file of annexes to the pleadings and motions brief, folio 2118).

<sup>67</sup> Cf. Record of the oral proceeding of November 11 and 12, 1996, First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folios 1778 to 1780).

<sup>68</sup> Cf. Verdict of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the submission brief, folio 123).

<sup>69</sup> Cf. Decision of May 26, 1995, First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folio 1762).

<sup>70</sup> Cf. Record of oral proceeding of November 11 and 12, 1996, First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folio 1773).

<sup>71</sup> According to the case file, during this hearing: (a) the only person indicted in the criminal proceedings gave a statement; (b) thirteen police witnesses, eight civilian witnesses, and eight expert witnesses were summoned to testify, and they ratified the signatures on their reports in the case file; (c) the two eyewitnesses appeared, and a confrontation was held between them; (d) the defense withdrew three testimonies, and (e) the prosecution and the defense presented their pleadings. Cf. Record of oral proceeding of November 11 and 12, 1996, First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folios 1765 and 1775).

48. On November 15, 1996 the First Chamber of the Appeals Chamber delivered its verdict<sup>72</sup> and judgment,<sup>73</sup> in which it “freely acquitted” the federal police agent indicted in the case for the crime of murder of which he had been accused, “because the charges had not been proved,” since there was “an insurmountable situation of doubt that must be decided in favor of the accused.” The following considerations, among others, were made in the acquittal verdict: (a) that it had not been proved that the accused had any reason to kill Assistant Commissioner Gutiérrez; (b) that the identification parades appeared to have “been tainted by pointers,” because the male and female eyewitnesses had indicated that they had “made identifications in the absence of the parade of individuals and before the legal procedure”; (c) the testimony of the male eyewitness was rejected because, among other matters, he had indicated that “he had not seen the perpetrator’s face”; (d) that the female eyewitness had allegedly “contradicted herself” and made assertions that “weaken[ed] her testimony,” and (e) the testimony of the then companion of the indicted federal police agent and her mother were taken into consideration. In addition, a judge who was a member of the Chamber, made a general reference to “the existence of investigative errors” in the case.<sup>74</sup> Thus, the First Chamber ordered the immediate release of the federal police agent indicted and returned the case file to the original court so that it could continue the investigation.<sup>75</sup> It also decided, among other matters, that the statements of some of the witnesses must be forwarded to the sitting Criminal and Correctional Court, “so that it [could] investigate the possible irregularities committed in the proceedings [...]”<sup>76</sup>

49. The evidence provided to this Court reveals that an investigation committee was created in the Directorate of Highly Complex Criminal Investigations of the Police of the province of Buenos Aires that investigated the death of Mr. Gutiérrez.<sup>77</sup>

### *A.3. Remedies filed after the oral proceeding*

50. The lawyer of the injured party, Nilda del Valle Maldonado, filed a special appeals on unconstitutionality based on nullity, and on the inapplicability of law or legal doctrine against the judgment of November 15, 1996 (*supra* para. 48).<sup>78</sup> On December 20, 1996, the First Chamber of the Appeals Chamber decided “[n]ot to admit the appeals,” because “the injured party was not entitled to file special appeals before the Supreme Court of Justice of the province.”<sup>79</sup> Consequently, the injured party’s lawyer filed a remedy of

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<sup>72</sup> Cf. Verdict of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the submission brief, folios 123 to 136).

<sup>73</sup> Cf. Judgment of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folios 1784 to 1788).

<sup>74</sup> Cf. Verdict of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the submission brief, folios 123 to 136).

<sup>75</sup> Cf. Judgment of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folios 1785 and 1788).

<sup>76</sup> Cf. Judgment of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folios 1784 to 1788).

<sup>77</sup> Cf. Statement of October 11, 2000, before the Second Transition Court of the La Plata Judicial Department (file of annexes to the submission brief, folio 225), and Statement of April 4, 2005, before judicial investigators of the Judicial Police Investigators Unit of the Office of the Prosecutor General of the Supreme Court of Justice of Buenos Aires (file of annexes to the pleadings and motions brief, folio 1961).

<sup>78</sup> Cf. Brief filing special appeals on unconstitutionality based on nullity, and on the inapplicability of law or legal doctrine (file of annexes to the pleadings and motions brief, folio 2042).

<sup>79</sup> Cf. Decision of December 20, 1996, issued by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folios 1790 and 1791).

complaint before the Supreme Court of Justice of the province of Buenos Aires.<sup>80</sup> On April 22, 1997, that court declared “that the special appeals filed had been rejected correctly.”<sup>81</sup> To counter this rejection, the injured party’s lawyer filed a special federal appeal in addition to the special appeals on unconstitutionality, and on the inapplicability of the law, which was granted by the First Chamber of the Appeals Chamber on April 28, 1998, forwarding the proceedings to the Supreme Court of Justice of the Nation.<sup>82</sup> On November 12, 1998, that court declared “the special appeal filed had been granted incorrectly,” because “it is not addressed against the judgment delivered by the superior court.”<sup>83</sup>

## ***B. Other investigations conducted between 1994 and 1998***

51. Based on the death of Assistant Commissioner Gutiérrez, in parallel to the preliminary investigation, the oral proceeding, delivery of judgment, and the appeals filed (*supra* paras. 44 to 50), three investigations were opened and processed: (i) Administrative Inquiry No. 808.998/94 Police of the province of Buenos Aires; (ii) Administrative Inquiry No. 357-18-000001/94 Federal Police, and (iii) the investigation of the Special Committee of the Chamber of Deputies of the National Congress. In addition, a criminal action was opened in relation to the denunciations of “unlawful coercion” made by two adolescents before Criminal and Correctional Court No. 5 (*supra* para. 45).

### *B.1. Administrative Inquiry No. 808.998/94 Police of the province of Buenos Aires*

52. On September 9, 1994, Administrative Inquiry No. 808.998/94 was opened in the Administrative Inquiry Directorate of the Police of the province of Buenos Aires. In this context, on September 13, 1994, the Directorate General of Judicial Affairs of the Police of the province of Buenos Aires declared that “the death of Assistant Commissioner Jorge Omar Gutiérrez could be attributed to ‘*in itinere*’ service.”<sup>84</sup> Nevertheless, owing to the judicial action filed (*supra* paras. 44 to 50), which revealed *prima facie* “that he was carrying out intelligence tasks,” the Police Inspector Supervisor of the province of Buenos Aires annulled this decision on March 23, 1998, and declared that “the death of Assistant Commissioner Jorge Omar Gutiérrez could be attributed to his functions.”<sup>85</sup>

### *B.2. Administrative Inquiry No. 357-18-000001/94 Federal Police*

53. On September 26, 1994, the Ministry of the Interior of the Argentine Federal Police opened Administrative Inquiry No. 357-18-000001/94, entitled “Prosecution of conduct” on disciplinary grounds, against the federal police agent indicted as the presumed perpetrator of the murder of Mr. Gutiérrez.<sup>86</sup> The Head of the Preventive Surveillance Division of the

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<sup>80</sup> Cf. Decision of April 28, 1998, issued by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folio 1800).

<sup>81</sup> Cf. Decision of April 22, 1997, issued by the Supreme Court of Justice of the province of Buenos Aires (file of annexes to the pleadings and motions brief, folios 1793 to 1797).

<sup>82</sup> Cf. Decision of April 28, 1998, issued by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folios 1800 to 1802).

<sup>83</sup> Cf. Decision of November 12, 1998, issued by the Supreme Court of Justice of the Nation (file of annexes to the pleadings and motions brief, folio 1805).

<sup>84</sup> Cf. Decision No. 81974 of September 13, 1994, of the Directorate General of Judicial Affairs (file of annexes to the submission brief, folios 103 and 104).

<sup>85</sup> Cf. Decision No. 104097 of March 23, 1998, Police Supervisor of the province of Buenos Aires (file of annexes to the submission brief, folios 2623 to 2625).

<sup>86</sup> Cf. Initial record of Administrative Inquiry Proceeding No. 1, file 357-18-000001/94 (file of annexes to the pleadings and motions brief, folio 2115).

Railway Security Superintendence was appointed to lead the investigation, because this was the Division where the said federal police agent worked<sup>87</sup> (*supra* para. 46). Subsequently, on October 6, 1994, the disciplinary case was referred to the Director General for Operations and Administration of the Railway Security Superintendence.<sup>88</sup> He, in turn, forwarded the preliminary investigation to the Head of the Administrative Investigations Department<sup>89</sup> who, on November 16, 1994, decided to continue the investigation in that department.<sup>90</sup>

54. The file reveals that, among others, the following investigative measures were taken: (a) between September 1994 and September 1995 various statements were received, including that of the male eyewitness;<sup>91</sup> (b) the female eyewitness was summoned, but did not come forward to testify;<sup>92</sup> (c) on September 28, 1994, the Personnel and Inquiry Superintendence was asked to provide the disciplinary file of the indicted federal police agent,<sup>93</sup> and this was forwarded on October 6, 1994;<sup>94</sup> (d) on October 3, 1994, the Welfare Division Superintendence was asked to provide the individual list of debts of the federal police agent who was being investigated, and this was received on October 11, 1994; (e) on December 14, 1994, the Head of the Preventive Surveillance Division of the Railway Security Superintendence was asked to provide a list of all the other personnel of the Operational Unit of which the federal police agent under investigation was a member, and the timetable of this Unit on August 28 and 29, 1994, and to provide a copy of the Unit's Logbook, which was sent on December 20, 1994<sup>95</sup> and (f) on June 29, 1995, the federal police agent investigated reserved the right to provide probative elements in his defense until the end of the public oral proceeding to which he would be subjected.<sup>96</sup>

55. On October 2, 1995, it was decided to conclude the preliminary investigation<sup>97</sup> and, the same day, the Head of the Administrative Investigations Department drew up the respective report. In this report, he considered that the disciplinary case should be provisionally dismissed, "since neither administrative nor disciplinary responsibility has been clearly proved." On February 29, 1996, the Administrative Inquiry held a hearing for the federal police agent investigated, and the period of regulatory hearings ended on March 15,

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<sup>87</sup> Cf. Note of September 26, 1994, Administrative Inquiry Proceeding No. 1, file 357-18-000001/94 (file of annexes to the pleadings and motions brief, folio 2116).

<sup>88</sup> Cf. Note of October 6, 1994, Administrative Inquiry Proceeding No. 1, file 357-18-000001/94 (file of annexes to the pleadings and motions brief, folio 2134).

<sup>89</sup> Cf. Note of October 11, 1994, Administrative Inquiry Proceeding No. 1, file 357-18-000001/94 (file of annexes to the pleadings and motions brief, folio 2135).

<sup>90</sup> Cf. Record of November 16, 1994, Administrative Inquiry Proceeding No. 1, file 357-18-000001/94 (file of annexes to the pleadings and motions brief, folio 2138).

<sup>91</sup> According to the case file, at least seven statements were received (file of annexes to the pleadings and motions brief, folios 2122, 2124, 2198 to 2209, 2125, 2127, 2183 to 2185, 2151 to 2154).

<sup>92</sup> Cf. Record of the preliminary investigation of January 23, 1995 (file of annexes to the pleadings and motions brief, folio 2188); Summons of January 24, 1994 (file of annexes to the pleadings and motions brief, folio 2192), and Final report of October 2, 1995 (file of annexes to the pleadings and motions brief, folio 2268).

<sup>93</sup> Cf. Request of September 28, 1994 (file of annexes to the pleadings and motions brief, folio 2129).

<sup>94</sup> Cf. Transmittal of disciplinary file of October 5, 1994 (file of annexes to the pleadings and motions brief, folios 2140 and 2141).

<sup>95</sup> Cf. Administrative Inquiry proceeding, file 357-18-000001/94 (file of annexes to the pleadings and motions brief, folios 2143 to 2146, 2174 and 2172).

<sup>96</sup> Cf. Rebuttal statement by the accused federal police agent of June 29, 1995 (file of annexes to the pleadings and motions brief, folios 2235 and 2236).

<sup>97</sup> Cf. Record of closure and analysis of measures taken of October 2, 1995 (file of annexes to the pleadings and motions brief, folio 2263).

1996, without the latter having submitted any arguments in his defense. Lastly, the Personnel Directorate decided to dismiss the administrative case.<sup>98</sup>

### *B.3. Investigation of the Special Investigative Commission of the National Congress*

56. The Special Investigative Commission of the Chamber of Deputies of the National Congress on the Probable Commission of Illegal Acts Perpetrated or Produced in the National Customs Administration (hereinafter “the Special Investigative Commission of the Chamber of Deputies of Congress” or “the Special Investigative Commission”) initiated its activities “in order to investigate the illegal acts, to determine responsibilities, and to propose legislative solutions.” The Committee met for the first time on November 5, 1996, and on December 26, 1996, it began to examine the murder of Assistant Commissioner Gutiérrez.<sup>99</sup> In January and February 1997, at least 20 persons testified before the Special Investigative Commission with regard to this case, some of whom reported that they had given false testimony in the criminal action opened for this murder because they had been threatened by federal police agents and by private individuals connected to the federal police agent who was being prosecuted.<sup>100</sup> On February 20 and 24, 1997, “having detected possible irregularities in relation to [the said] case No. 85,714,” the Special Investigative Commission referred to the consideration of the Supreme Court of Justice of the province of Buenos Aires, which was examining a remedy of complaint filed by the injured parties in relation to the above-mentioned acquittal (*supra* para. 50), the typed versions of the meetings that it had held, as evidence “to be considered in the judicial file,”<sup>101</sup> and for that court to “consider the possibility of re-opening the said case.”<sup>102</sup> The Special Investigative Commission issued its final report in November 1997. As indicated previously (*supra* para. 42), in its final report, the Special Investigative Commission “was able to verify that Assistant Commissioner Gutiérrez had been investigating an unlawful association that was presumably composed of law enforcement personnel, and that the customs warehouse [that he was investigating...] had apparently been operating for more than two years without its corresponding permit.”<sup>103</sup> In addition, it established the existence of “large-scale operations, all of which were aided and abetted by Administration officials and law enforcement personnel.”<sup>104</sup>

### *B.4. Proceeding No. 57,927, report of unlawful coercion*

57. The investigating judge of the proceeding held by Criminal and Correctional Court No. 5 in relation to the murder of Jorge Omar Gutiérrez (*supra* para. 45) forwarded the statements of two adolescents, presumably made under threat on premises of the Police of

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<sup>98</sup> Cf. Administrative file 357-18-000001/94 of the Ministry of the Interior of the Argentine Federal Police (file of annexes to the pleadings and motions brief, folios 2264 to 2283, 2316, 2318, 2324 to 2329).

<sup>99</sup> Cf. Final report of the Special Investigative Commission of November 1997 (merits file, folios 911, 915 and 963).

<sup>100</sup> Cf. Copy of the typed proceedings before the Special Investigative Commission (file of annexes to the submission brief, folios 148 to 173, and 175 to 199); Final report of the Special Investigative Commission of November 1997 (merits file, folio 963), and Briefs of February 20 and 24, 1997, forwarded to the President of the Supreme Court of Justice of the province of Buenos Aires by the President of the Special Investigative Commission (file of annexes to the submission brief, folios 143 to 145).

<sup>101</sup> Cf. Final report of the Special Investigative Commission of November 1997 (merits file, folio 964).

<sup>102</sup> Cf. Briefs of February 20 and 24, 1997, forwarded to the President of the Supreme Court of Justice of the province of Buenos Aires by the President of the Special Investigative Commission (file of annexes to the submission brief, folios 143 to 145).

<sup>103</sup> Cf. Final report of the Special Investigative Commission of November 1997 (merits file, folio 964).

<sup>104</sup> Cf. Final report of the Special Investigative Commission of November 1997 (merits file, folio 1022).

the province of Buenos Aires and of the Federal Police, to National Criminal Court of First Instance No. 32. In September 1994, proceeding No. 57,927 was opened before that court for unlawful coercion,<sup>105</sup> and it was archived by the judge in charge of the investigation on March 13, 1995, because the minors had “given an inadequate description [of the officials who had presumably obliged them to testify], which made it impossible for the court to try and identify them.”<sup>106</sup>

### **C. Investigations undertaken as of 1998**

58. As of 1998, a disciplinary investigation was opened into the actions of the investigating judge of proceeding No. 10,888 and the criminal investigation continued.

#### *C.1. Disciplinary investigation*

59. Based on the actions taken by the investigating judge during the hearing of proceeding No. 10,888 in Criminal and Correctional Court No. 5 of La Plata (*supra* paras. 45 and 46), a disciplinary investigation was initiated in the Judicial Control Secretariat of the Supreme Court of the province of Buenos Aires. On May 12, 2004, the Assistant Prosecutor General of the Supreme Court of Justice of the province of Buenos Aires issued his report in which he concluded, “based on the summary information available,” that “the irregularities he was able to verify were decisive for the failure of the investigation.”<sup>107</sup>

#### *C.2. Criminal investigation*

60. In view of the fact that, in the judgment of November 15, 1996, the First Chamber of the Appeals Chamber ordered the case file to be returned to the original court so that the investigation could continue, once the appeals filed after the oral proceeding had been processed (*supra* para. 50), on December 17, 1998, proceeding 5-10888-2 entered Transitional Court No. 2 of the La Plata Judicial Department, province of Buenos Aires, because former Criminal and Correctional Court No. 5, which was originally in charge of the criminal proceeding, had been incorporated into that court.<sup>108</sup> According to the case file, in August 2009, this court was established as Court of Guarantees No. 5 of the La Plata Judicial Department.<sup>109</sup> Nilda del Valle Maldonado and Francisco Gutiérrez participated as injured parties in these criminal proceeding.

61. On May 6, 1999, the Inspector who had collaborated in the investigation from the start (*supra* para. 45) provided the judge of the proceeding with a brief describing presumed obstructions to the said investigation and identifying one person as a participant

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<sup>105</sup> Cf. “Proceeding 57,927, National Criminal Court of First Instance No. 32” (file of annexes to the pleadings and motions brief, folio 2098).

<sup>106</sup> Cf. Decision of the investigating judge of March 13, 1995 (annexes to the pleadings and motions brief, folio 2105).

<sup>107</sup> Cf. Report of the Assistant Prosecutor General of the Supreme Court of Justice of Buenos Aires of May 12, 2004 (file of annexes to the submission brief, folio 287).

<sup>108</sup> Cf. Decision of December 28, 2006, of Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folios 300 and 301), and Decision of December 30, 2009, of Court of Guarantees No. 5 of the La Plata Judicial Department (file of annexes to the submission brief, folio 320).

<sup>109</sup> Cf. Decision of August 18, 2009, of Court of Guarantees No. 5 of La Plata (file of annexes to the pleadings and motions brief, folios 2075 to 2078); Decision of September 18, 2009, of Court of Guarantees No. 5 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folios 1976 to 1980), and Decision of December 30, 2009, of Court of Guarantees No. 5 of the La Plata Judicial Department (file of annexes to the submission brief, folios 322 and 323).

in the murder.<sup>110</sup> On April 17, 2000, the judge of the proceeding decided to archive the case file.<sup>111</sup> Then, on May 17 and 24, 2000, the injured party filed a brief before the judge of the proceeding in which they considered it necessary, among other matters, that “the investigation be reactivated, urgently, at least with regard to [the person identified as a participant in the facts by the Inspector],” and offered three testimonial statements.<sup>112</sup> In response, on September 5, 2000, the judge of the proceeding decided, among other matters, to annul the order to archive the case and established a hearing so that the witnesses offered could provide their testimony.<sup>113</sup>

62. Subsequently, the following measures were taken in the context of the criminal investigation: (a) the judge of the proceeding received various statements between September 21 and December 7, 2000, some of which referred to the participation in the murder of Mr. Gutiérrez of the federal police agent indicted, of the presumed participant identified, and of other police agents, as well as to presumed obstructions in the investigation of the incident;<sup>114</sup> (b) following an order of the judge of the proceeding,<sup>115</sup> the logbook of those on duty in the Avellaneda Second Police Precinct was seized and a handwriting appraisal was made of pertinent parts of this document. On October 23, 2000, the official calligraphic expert presented his report,<sup>116</sup> and (c) following an order of the judge of the proceeding,<sup>117</sup> on December 1, 2000, the designated Judicial Investigator and the Chief Clerk of the Court went to the Departmental Investigations Directorate of Lomas de Zamora and to the Second Police Precinct of Avellaneda to carry out the seizure and removal of different document, recording that the results of their search were unsuccessful.<sup>118</sup>

63. On July 12<sup>119</sup> and September 17, 2001,<sup>120</sup> the judge of the proceeding asked the Prosecutor General of the La Plata Judicial Department to appoint judicial investigators of

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<sup>110</sup> Cf. Brief of May 6, 1999, addressed to the judge of the proceeding (file of annexes to the pleadings and motions brief, folios 1826-9 to 1826-11 and 1826-20).

<sup>111</sup> Cf. Decision of April 17, 2000, of Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folio 1815).

<sup>112</sup> Cf. Brief presented on May 17 and 24, 2000, to Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folios 1817 to 1819).

<sup>113</sup> Cf. Decision of September 5, 2000, of Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folios 205 and 206).

<sup>114</sup> The case file before the Court contains 15 statements before Transitional Court No. 2 of the La Plata Judicial Department (file of attachments to the submission brief, folios 879, 883 to 887, 888 to 892 and 1016 to 1019; annexes to the pleadings and motions brief, folios 1855 to 1857, and file of annexes to the submission brief, folios 48 to 51, 53, 54, 56 to 99, 213 to 217, 219 to 222, 224 to 229, 231, 232, 235 to 244 and 246 to 253).

<sup>115</sup> Cf. Decision of September 28, 2000, of Transitional Court No. 2 of the La Plata Judicial Department (file of attachments to the submission brief, folio 856); Record of September 29, 2000, procedure carried out *ex officio* of seizure of logbook before the Judicial Department of La Plata (file of attachments to the submission brief, folio 874), and Communication of October 3, 2000, addressed to the Head of the Court Expert Appraisal Services by the Secretary of Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folio 211).

<sup>116</sup> Cf. Expert appraisal report of October 18, 2000, addressed to Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folios 208 to 210).

<sup>117</sup> Cf. Order of November 30, 2000, of Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folios 255 and 256).

<sup>118</sup> Cf. Note of December 1, 2000, of the Second Police Precinct of Avellaneda (file of annexes to the submission brief, folio 268), and Record of December 1, 2000, of the La Plata Judicial Department (file of annexes to the submission brief, folios 270 and 271).

<sup>119</sup> Cf. Order of July 12, 2001, of Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folio 1821).

the Prosecutor General's Office of the Supreme Court of Justice of Buenos Aires to continue the investigation. In response, on September 20, 2001,<sup>121</sup> the Prosecutor General advised that the Secretary of the Judicial Police of the Prosecutor's Office of the Supreme Court of Justice of Buenos Aires could not comply with this request because no investigators were available.

64. On September 16, 2002, the injured party asked the judge of the proceeding, *inter alia*, to appoint a police committee to conduct the investigation into the murder of Assistant Commissioner Gutiérrez.<sup>122</sup> On October 2, 2002, the judge of the proceeding asked the Minister of Security of the province of Buenos Aires to appoint a police committee to continue the investigation, among other matters.<sup>123</sup> In response, a Special Investigative Committee of the Ministry of Security of the province of Buenos Aires was created.<sup>124</sup>

65. The evidence submitted in this case reveals that, the following measures were taken before the Assistant Commissioners in charge of this Committee: (a) various statements were received between January 20, 2003, and March 25, 2004, one of which reported threats against a witness and another reported the participation of a Police Commissioner of the province of Buenos Aires as the one who "gave the order" to execute Assistant Commissioner Gutiérrez;<sup>125</sup> (b) on February 26, 2003, a newspaper article and an obituary notice were added to the criminal case file relating to the death, on February 24, 2003, of Commissioner Jorge Luis Piazza, whose testimony the injured party had requested the judge of the proceeding to receive<sup>126</sup> and whose death was investigated as murder;<sup>127</sup> (c) on April 4, 2003, a police procedure was carried out in the Quilmes Departmental Investigations Directorate concerning the person identified as a presumed participant in the murder of Mr. Gutiérrez,<sup>128</sup> and (d) on September 14, 2004, the male eyewitness and a street vendor took part in a photographic identity parade before the judge of the proceeding. During this procedure, they identified the presumed participant in the murder,<sup>129</sup> who, according to the case file, prior to the murder of Jorge Omar Gutiérrez, was a "police agent in the Avellaneda Fourth Police Precinct" and,

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<sup>120</sup> Cf. Note of September 17, 2001, addressed to the Prosecutor General by Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folio 276).

<sup>121</sup> Cf. Note of September 20, 2001, addressed by the Prosecutor General, Hector Vogliolo, to Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folio 1824). /

<sup>122</sup> Cf. Brief of September 16, 2002, addressed by Nilda del Valle Maldonado to Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folios 1829 to 1832).

<sup>123</sup> Cf. Record of October 2, 2002, of Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folio 1834).

<sup>124</sup> Record of December 28, 2006, of Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folio 301).

<sup>125</sup> The Court's file contains two statements made before the Departmental Investigations Directorate of San Isidro, four statements made before the Departmental Investigations Delegation of Quilmes, two before the Quilmes Special Investigative Commission, and one before Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folios 1848 to 1852, 1864 to 1868, 1871 to 1873, 1876 to 1878, 1881 to 1884, 1886 to 1889, 1902 to 1907, 1909 to 1913 and 1915 to 1918).

<sup>126</sup> Cf. Brief of May 2, 2001, addressed by the injured parties to the judge of the proceeding (file of annexes to the pleadings and motions brief, folios 1836 to 1837).

<sup>127</sup> Cf. Preparatory criminal investigation No. 167,253 into the murder of Commissioner Jorge Luis Piazza (file of annexes to the pleadings and motions brief, folios 2331 to 2344).

<sup>128</sup> Cf. Identification procedure of April 4, 2003, Special Investigative Commission, Ministry of Security of the province of Buenos Aires (file of annexes to the pleadings and motions brief, folios 1892 to 1893).

<sup>129</sup> Cf. Photographic identity parade procedure of September 14, 2004, by the male eyewitness before Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folios 1920 to 1925), and Photographic identity parade procedure of September 14, 2004, by a street vendor before Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folios 1931 to 1935).

subsequently, was appointed "trainee police agent" of the Police of the province of Buenos Aires, an appointment that was revoked on October 1, 1981<sup>130</sup>.

66. On September 30, 2004, the judge of the proceeding again asked for the appointment of judicial investigators from the Prosecutor General's Office of the Supreme Court of Justice of Buenos Aires to investigate the case,<sup>131</sup> and the Prosecutor General appointed two judicial investigators on October 22, 2004,<sup>132</sup> who delivered the results of their investigation procedures to the judge of the proceeding on September 13, 2006.<sup>133</sup>

67. On December 28, 2006, the said judge decided to dismiss the case provisionally. In her decision, she took into consideration that "many of the testimonial statements received by the court and in other investigating entities, associated the incident being investigated to the person who had been detained previously [...], against whom it is not possible to order any procedural action based on the 'non bis in idem' principle." She also took into account that, "despite the numerous meticulous measures taken by the judicial investigators, the judicial personnel and, lastly, by the investigators of the Judicial Police of the Prosecutor General's Office, it ha[d] not been possible to determine the participation of other perpetrators, accessories or accomplices."<sup>134</sup> This decision was appealed by the prosecutor and by the injured party. The appeal was decided on November 12, 2008,<sup>135</sup> by the Criminal Appeals and Guarantees Chamber of the La Plata Judicial Department (hereinafter "the Criminal Appeals and Guarantees Chamber"), which revoked the dismissal that had been ordered finding that the testimonial statements provided by the male eyewitness and by a street vendor witness, "contain[ed] indications that allow the intervention [of the person identified as a presumed participant in the murder of Mr. Gutiérrez] to be supposed. On March 31, 2009, the judge of the proceeding recused herself from continuing to intervene in the investigation procedure,<sup>136</sup> but this recusal was rejected on August 7, 2009, by the Criminal Appeals and Guarantees Chamber.<sup>137</sup>

68. On August 18, 2009, and based on the decision of the Criminal Appeals and Guarantees Chamber (*supra* para. 67), the judge of the proceeding decided to hold a hearing so that the person identified as presumed participant in the murder of Assistant Commissioner Gutiérrez and implicated in the investigation (*supra* para. 65) could appear

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<sup>130</sup> Cf. Record of identification of April 4, 2003, Special Investigating Committee, Ministry of Security of the province of Buenos Aires (file of annexes to the pleadings and motions brief, folios 1892 to 1893).

<sup>131</sup> Cf. Measure taken by Transitional Court No. 2 of the La Plata Judicial Department on September 30, 2004 (file of annexes to the pleadings and motions brief, folio 1938).

<sup>132</sup> Cf. Note of October 22, 2004, addressed by the Prosecutor General of the Supreme Court of Justice of the province of Buenos Aires to Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folio 1958).

<sup>133</sup> Cf. Note of September 13, 2006, sent by the judicial investigators of the Investigation Bureau of the Judicial Police of the Prosecutor General's Office of the Supreme Court of Justice of Buenos Aires to Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folios 1971 to 1974).

<sup>134</sup> Cf. Decision of December 28, 2006, of Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folios 300 to 303).

<sup>135</sup> Cf. Decision of November 12, 2008, of the First Court of the Criminal Appeals and Guarantees Chamber (file of annexes to the submission brief, folios 1577 to 1579).

<sup>136</sup> Cf. Record of March 31, 2009, of Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folios 312 to 314).

<sup>137</sup> Cf. Decision of August 7, 2009, of the First Court of the Criminal Appeals and Guarantees Chamber (file of annexes to the submission brief, folios 307 to 309).

and provide an unsworn statement “as a secondary participant.”<sup>138</sup> The injured parties filed an appeal against this decision, because, contrary to witness statements, the presentation of an unsworn statement had “no effect to interrupt or suspend [the statute of limitations]” and because, according to the injured parties, this decision ignored the decision of the higher court.<sup>139</sup> This appeal was granted on August 25, 2009, by the Criminal Appeals and Guarantees Chamber, which ordered that, before August 29, that year, the said individual should be summoned to provide a statement “as primary participant in the crime of homicide aggravated by malice of which Jorge Omar Gutiérrez was a victim.”<sup>140</sup>

69. In compliance with this decision, on August 26, 2009, the judge of the proceeding ordered the detention of the presumed participant and convened a preliminary hearing, “thus interrupting the time frame for the prescription of the case.”<sup>141</sup> For his part, the official defense counsel filed a recusal motion against the judge of the proceeding, which was admitted. Nevertheless, the Criminal Appeals and Guarantees Chamber declared the judge competent<sup>142</sup> and, on September 9, 2009, the judge extended the time frame for issuing an order of pre-trial detention. On September 18, 2009, the judge of the proceeding decided to “[o]rder [the detainee’s] release based on lack of merits,” instructing “that he be released immediately.”<sup>143</sup> This decision was appealed by the injured party who, on the denial of this appeal, also filed a remedy of complaint, which was denied on November 6, 2009.<sup>144</sup>

70. On December 30, 2009, the said judge decided to dismiss provisionally the presumed participant in the murder of Mr. Gutiérrez and ordered that “the whereabouts [of the two eyewitnesses of the incident] be ascertained” as a “measure contributing to the continuation of the investigation.” In this decision, she again considered that it was not possible to take any measure in relation to the federal police agent who had been indicted, based on the “*non bis in idem*” principle, and that, “despite the numerous and meticulous measures ordered in the proceeding, [...] with regard to the accused [...], insufficient evidence ha[d] been collected to accuse him of the act under investigation.”<sup>145</sup>

71. Despite the above, according to the case file, on August 26, 2011, Court of Guarantees No. 5 forwarded proceeding No. S-85,714<sup>146</sup> to the Criminal Appeals and Guarantees Chamber, and it was assigned to Chamber 1 of this entity on August 30,

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<sup>138</sup> Cf. Decision of August 18, 2009, of Court of Guarantees No. 5 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folios 2075 to 2078).

<sup>139</sup> Cf. Appeal filed by Nilda del Valle Maldonado and Francisco Gutiérrez before the First Criminal Chamber of Appeal and Guarantees (file of annexes to the pleadings and motions brief, folios 2079 to 2088).

<sup>140</sup> Cf. Decision of August 25, 2009, of the First Court of the Criminal Appeals and Guarantees Chamber (file of annexes to the pleadings and motions brief, folios 2089 to 2091).

<sup>141</sup> Cf. Communication of September 10, 2009, of the Criminal Transition Secretary, La Plata Judicial Department, addressed to the Secretariat of Institutional Affairs of the Supreme Court of Justice of the province of Buenos Aires (file of attachments to the submission brief, folios 1090 to 1091).

<sup>142</sup> Cf. Decision of December 30, 2009, of Court of Guarantees No. 5 of the La Plata Judicial Department (file of annexes to the submission brief, folios 322 and 323).

<sup>143</sup> Cf. Decision of September 18, 2009, of Court of Guarantees No. 5 of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folios 1976 to 1980).

<sup>144</sup> Cf. Decision of November 6, 2009, of the First Court of the Criminal Appeals and Guarantees Chamber (file of annexes to the pleadings and motions brief, folios 1982 to 1990).

<sup>145</sup> Cf. Decision of December 30, 2009, of Court of Guarantees No. 5 of the La Plata Judicial Department (file of annexes to the submission brief, folios 319 to 324).

<sup>146</sup> Cf. Communication of October 29, 2013, addressed by the President of the Criminal Appeals and Guarantees Chamber to the Deputy Secretary for the protection of human rights of the Human Rights Secretariat of the Ministry of Justice and Human Rights (merits file, folios 1449 and 1450).

2011.<sup>147</sup> Subsequently, after notice had been served to the parties, on September 26, 2011, the injured party filed a petition on the unconstitutionality of Law 13,153.<sup>148</sup> In addition, in the context of the said case, on September 29, 2011, two of the judges who were members of Chamber I decided, in a procedural decision, to recuse themselves from hearing the case. On November 8, 2011, the remaining judges of Chamber I decided to reject the recusal and, subsequently, the accused's defense counsel filed a remedy of cassation against this last decision. This remedy was granted on December 12, 2011, and, on June 7, 2012, Chamber III of the Criminal Cassation Court of the province of Buenos Aires admitted the recusal filed. Consequently, on August 6, 2012, Chamber I of the Criminal Appeals and Guarantees Chamber of the La Plata Judicial Department was reinstated with a new composition and, on August 13, 2012, the said chamber received the proceedings carried out up until that time.<sup>149</sup>

72. Regarding the petition filed by the injured party, in a decision of August 30, 2012, Chamber I of the Criminal Appeals and Guarantees Chamber decided that the declaration of the unconstitutionality of Law 13,153 was inadmissible and indicated its lack of competence to intervene in the substantiation of the oral proceeding; accordingly, the case was assigned to the "Criminal Appeals and Guarantees Chamber" for the random designation of a criminal court.<sup>150</sup> On October 3, 2012, the remedy of cassation filed by the injured party against the said decision was admitted, and the remedy was decided on May 7, 2013, by Chamber III of the Criminal Cassation Court of the province of Buenos Aires.<sup>151</sup> To counter this ruling the injured party filed appeals on unconstitutionality, nullity, and inapplicability of the law, which were forwarded to the Supreme Court of Justice of the province of Buenos Aires on May 30, 2013.<sup>152</sup> Subsequently, on June 18, 2013, the Supreme Court of Justice of the province of Buenos Aires issued a ruling in which it "partially admit[ted] the special appeal

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<sup>147</sup> Cf. Communication of October 29, 2013, addressed by the President of the Criminal Appeals and Guarantees Chamber to the Deputy Secretary for the protection of human rights of the Human Rights Secretariat of the Ministry of Justice and Human Rights (merits file, folios 1449, 1479 and 1480).

<sup>148</sup> The injured party presented, *inter alia*, the following "general and specific reasons": "[t]he former indicated that the proceeding under Law 3,589 openly violated the principles that underlie the adversarial procedure and, above all, those conceived based on the international treaties incorporated into [the] Constitution [...], therefore requesting that the proceeding [should be] held under Law 11,922 and before new jurisdictional organs installed following [...Law 12,060,] in this case and in keeping with the stage of the proceedings, a criminal court"; "[t]he latter refer[red] to the intervention and participation allowed to the injured party in the proceeding regulated by Law 11,922 and the law amending it (Law 13,943), which gives him a greater role and prioritizes him, contrary to the previous system which, in his opinion, subjects him to being a contingent party." Cf. Decision of August 30, 2012, of Chamber I of the Criminal Appeals and Guarantees Chamber (merits file, folios 1458 to 1480).

<sup>149</sup> Cf. Communication of October 29, 2013, addressed by the President of the Criminal Appeals and Guarantees Chamber to the Deputy Secretary for the protection of human rights of the Human Rights Secretariat of the Ministry of Justice and Human Rights (merits file, folios 1450 and 1451).

<sup>150</sup> Cf. Decision of August 30, 2012, of Chamber I of the Criminal Appeals and Guarantees Chamber (merits file, folios 1479 and 1480).

<sup>151</sup> On May 7, 2013 Chamber III of the Criminal Cassation Court of the province of Buenos Aires issued an "Agreement" in which: (i) it declared the nullity of the lack of competence decided by the Criminal Appeals and Guarantees Chamber; (ii) it rejected the appeal on the unconstitutionality of Law 13,153; (iii) it informed the Criminal Appeals and Guarantees Chamber that it should, urgently, summon the parties to a hearing so that they could define the evidence that should be collected in the necessary investigation and to determine the essential preliminary hearing, and (iv) it ordered the immediate intervention of the La Plata Prosecutor General in order to appoint the agents who should conduct a complete, impartial and effective investigation in order to determine the masterminds and perpetrators who intervened in the preparation and execution of the murder, as well as in the alteration or disappearance of evidence, and failures to carry out the corresponding investigations and to prepare the respective reports. Cf. Agreement of May 7, 2013, issued by Chamber III of the Criminal Cassation Court (merits file, folios 1484 to 1494).

<sup>152</sup> Cf. Communication of October 29, 2013, addressed by the President of the Criminal Appeals and Guarantees Chamber to the Deputy Secretary for the protection of human rights of the Human Rights Secretariat of the Ministry of Justice and Human Rights (merits file, folio 1452).

on non-applicability filed by the injured party and order[ed] Chamber I of the Criminal Appeals and Guarantees Chamber [of the Judicial Department] of La Plata, to conduct the public oral proceeding with the [presumed participant]" and rejected as inadmissible the special appeal on unconstitutionality and the special appeal of nullity.<sup>153</sup> The injured parties filed a special federal appeal against this decision. Lastly, on September 27, 2013, the Criminal Secretariat of the Supreme Court advised that the special federal appeal was being examined to decide on its admissibility.<sup>154</sup>

## **VIII MERITS**

73. In light of the considerations in Chapter IV on the acknowledgement of responsibility made by Argentina and the Agreement signed by the parties, in this chapter the Court will analyze, in particular with regard to the obligation to respect and ensure the right to life, first, the acts that constituted the State's failure to comply with its obligation to respect the right to life; second, those facts that resulted in Argentina's failure to comply with its obligation to investigate the murder of Jorge Omar Gutiérrez effectively in order to ensure his right to life, and the right to the judicial guarantees and judicial protection of his family members and, lastly, the violation of the right to personal integrity of the latter owing to the events that occurred.

### **VIII-1 RIGHT TO LIFE IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS**

#### ***A. Arguments of the parties and of the Commission***

74. The Commission considered, taking into account the body of evidence and the indications of the participation of State agents, as well as the absence of a diligent investigation by the State, that Argentina had failed to comply with its obligation to respect and protect the life of Jorge Omar Gutiérrez, in violation of Article 4(1) of the American Convention, in relation to Article 1(1) thereof. In this regard, it found that there was sufficient evidence, "in both the criminal proceedings, and in the special investigation carried out by the Special Investigative Commission of the Chamber of Deputies," to confirm the participation of agents of the State in the violation of the right to life, which gave rise to Argentina's responsibility for the violation of the obligation concerning respect. In addition, in the context of the obligation concerning guarantee, the Commission indicated that the death of Mr. Gutiérrez remains in impunity. It also emphasized that the final report of the Special Investigative Commission of the Chamber of Deputies referred to the relationship that existed between the execution of Jorge Omar Gutiérrez and the case of the "parallel customs house." For their part, the representatives agreed, in general, with the arguments presented by the Commission.

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<sup>153</sup> Cf. Decision of June 18, 2013, of the Supreme Court of Justice of the province of Buenos Aires (merits file, folios 1496 to 1502).

<sup>154</sup> Cf. Communication of October 29, 2013, addressed by the President of the Criminal Appeals and Guarantees Chamber to the Deputy Secretary for the protection of human rights of the Human Rights Secretariat of the Ministry of Justice and Human Rights (merits file, folio 1453). The representatives indicated in their brief with observations on the useful evidence forwarded by the State, that their "claim [against impunity] had not been recognized in a decision of the Supreme Court of Justice of the province of Buenos Aires of October 23, 2013, [which] rejected the special federal appeal filed by the petitioners, and which led them to file a remedy of complaint before the Supreme Court of Justice of the Nation." However, they did not submit evidence on this point.

75. The State acknowledged its responsibility for the violation of Article 4 of the Convention, in relation to Article 1(1) thereof, to the detriment of Jorge Omar Gutiérrez, “because it has not been possible to disprove the possibility that at least one State agent took part in [his] murder, [...] recognizing that there is a presumption of his effective participation [...] and considering the deficiencies in the identification, investigation and punishment of those responsible [...].” It also affirmed that “it was highly likely that agents of the Argentine Federal Police had been involved in the death of [Assistant Commissioner] Gutiérrez.”

### **B. Considerations of the Court**

76. The Court has established that, under Article 1(1) of the Convention, States are obliged to respect and ensure the human rights recognized therein.<sup>155</sup> In this regard, the Court has maintained that the first obligation assumed by the States Parties under the said article is “to respect the rights and freedoms” recognized in the Convention. Hence, the protection of human rights necessarily includes the notion of the restriction of the exercise of the power of the State.<sup>156</sup> It is a principle of international law that the State responds for the acts and omissions of any of its agents carried out in their official capacity – even if they are acting outside the limits of their competence,<sup>157</sup> and regardless of their rank – that violate the American Convention.<sup>158</sup> The Court has also indicated that part of the general obligation to ensure the rights recognized in the Convention is the specific duty to investigate cases in which violations of these rights are alleged; in other words, this duty arises from Article 1(1) of the Convention in relation to the right that must be protected, shielded or guaranteed.<sup>159</sup>

77. The Court has also established that the right to life plays a fundamental role in the American Convention, because it is the essential presumption for the exercise of the other rights.<sup>160</sup>

78. As mentioned previously (*supra* para. 22), when acknowledging its responsibility for the violation of Article 4 of the Convention, the State did not define clearly the acts perpetrated by State agents that resulted in this violation. Thus, taking into account the arguments presented by the Commission and the representatives (*supra* para. 74), in this chapter the Court will analyze the facts that resulted in the State’s non-compliance with the obligation to respect the right to life of Assistant Commissioner Jorge Omar Gutiérrez. In this regard, the Court recalls that, in order to establish that a violation of the rights embodied in the Convention has occurred, it is not necessary to determine, as under domestic criminal law, the guilt of the authors or their intentions, nor is it necessary to

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<sup>155</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 163, and *Case of the Massacres of El Mozote and nearby places*, *supra*, para. 142.

<sup>156</sup> Cf. *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 21, and *Case of the Massacre of Santo Domingo*, *supra*, para. 189.

<sup>157</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 173, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, para. 45.

<sup>158</sup> Cf. *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, para. 79, and *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 234.

<sup>159</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 162, and *Case of Palma Mendoza et al. v. Ecuador. Preliminary objection and merits*. Judgment of September 3, 2012. Series C No. 247, paras. 81 to 84.

<sup>160</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of Luna López v. Honduras. Merits, reparations and costs*. Judgment of October 10, 2013. Series C No. 269, para. 117.

identify, individually, the agents to which the violations are attributed.<sup>161</sup> It is sufficient that the State has an obligation that it has failed to comply with;<sup>162</sup> in other words, that this unlawful act is attributed to it.<sup>163</sup> Indeed, it is not incumbent on the Court to examine the hypotheses regarding authorship developed during the investigation of the facts of the instant case and, consequently, to determine individual responsibilities, the complete definition of which corresponds to the domestic criminal courts, but rather to evaluate the acts or omissions of State agents, based on the evidence submitted by the parties.<sup>164</sup>

79. The Court recalls that international courts have wide-ranging faculties to examine and assess evidence, based on sound judicial discretion, the rules of logic, and experience, and do not have to adopt a rigid determination of the *quantum* necessary to found a judgment.<sup>165</sup> Nevertheless, it is essential that the jurisdictional organ pays attention to the circumstances of the specific case and takes into account the limits imposed by respect for legal certainty and the procedural balance of the parties.<sup>166</sup> Furthermore, the Court has established that it is legitimate to use circumstantial evidence, indications and presumptions, provided that they lead to consistent conclusions on the facts.<sup>167</sup> Moreover, the Court cannot disregard the special significance of attributing to a State Party to the Convention the charge of having executed or tolerated on its territory violations such as those described in the instant case. Therefore, the Court must assess the evidence in a way that takes these elements into account and that, also, is able to create the conviction of the truth of the alleged facts.<sup>168</sup>

80. The Court observes that the evidence provided in this case reveals a series of indications regarding the participation of State agents in the murder of Mr. Gutiérrez, as well as in the obstruction of the investigation.

81. First, during the preliminary investigation stage of the criminal case (*supra* paras. 45 and 46), on September 14 and 22, 1994, the male and female eyewitnesses declared before the Commissioner in charge of the investigation and the investigating judge, that they were on board the train when the murder of Assistant Commissioner Gutiérrez took place, and that two individuals participated in it, regarding whom they provided the description. The male eyewitness affirmed that he knew both individuals and knew that they acted as police agents, and the female eyewitness stated that one of these individuals told her that they

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<sup>161</sup> Cf. *Case of the "Mapiripán Massacre"*, *supra*, para. 110, and *Case of Luna López*, *supra*, para. 119.

<sup>162</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 113, and *Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C No. 256, para. 112.

<sup>163</sup> Art. 2 of "Articles on Responsibility of States for internationally wrongful acts, prepared by the International Law Commission of the United Nations, annexed to resolution 56/83 adopted by the General Assembly [based on the report of the Sixth Committee (A/56/589 and Corr.1)]. Responsibility of States for internationally wrongful acts", 85th plenary meeting, 12 December 2001, Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrigendum (A/56/10 and Corr.1 and 2). 2 *Ibid.*, paras. 72 and 73, which covers international use in this matter.

<sup>164</sup> Cf. *Case of Cantoral Huamani and García Santa Cruz*, *supra*, para. 87, and *Case of Castillo González et al.*, *supra*, para. 113.

<sup>165</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 127, and *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 184.

<sup>166</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment November 25, 2000. Series C No. 70, para. 96, and *Case of Artavia Murillo et al. (In vitro fertilization)*, *supra*, para. 58.

<sup>167</sup> Cf. *Case of Godínez Cruz v. Honduras. Merits*. Judgment of January 20, 1989. Series C No. 5, paras. 136 and 137, and *Case of the Supreme Court of Justice (Quintana Coello et al.)*, *supra*, para. 173.

<sup>168</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 129, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 70.

were police agents and showed her “the badge.”<sup>169</sup> Also, in the identification parade on September 24, 1994, both witnesses identified a federal police agent<sup>170</sup> as one of the supposed authors of the murder of Assistant Commissioner Gutiérrez.<sup>171</sup>

82. More than four months later, during the disciplinary proceeding of the Administrative Inquiry by the Argentine Federal Police of the Ministry of the Interior (*supra* paras. 53 to 55), on February 1, 1995, the male eyewitness changed his testimony before the head of the investigation, indicating, among other matters, that, when the events occurred, “really [...he] was not paying attention to what was happening,” that he saw the author of the acts “always standing up and just his back,” and that he “only saw him for a second.” He also stated that, prior to the identification parade, he had been shown the indicted federal police agent.<sup>172</sup> This statement was ratified by the said witness during the public oral hearing of the oral proceeding against the said federal police agent before the First Court of the Appeals Chamber on November 11, 1996 (*supra* para. 47).

83. Approximately three months after the delivery of the verdict and judgment of November 15, 1996, and before the Special Investigative Commission of the Chamber of Deputies of the National Congress (*supra* para. 56), the male eyewitness stated that he had been obliged to change his testimony because “the Federal Police grabbed [him], detained [him] and took him to the Constitución [Police Precinct in] and began to beat [him], brain-washed [him and] put a gun to [his] head,” adding that he continued to receive threats.<sup>173</sup> Likewise, during the criminal proceedings, on March 25, 2004, he stated before the Assistant Commissioner in charge of the Special Investigative Committee of the Ministry of Security of the province of Buenos Aires (*supra* paras. 64 and 65): “what I testified in the beginning, in the La Plata Precinct, is [...] the truth; afterwards, the Federal Police grabbed me, they threatened me, they simulated that they would shoot me, they told me that they would kill me; consequently, during the trial I said what I said; the truth of everything I know is what I said in the Chamber of Deputies.” He explained that “during the oral proceeding he was obliged to give a different version to the truth, because he was threatened [by] different people who he knew to be federal police agents,” who “also told him what he had to testify.” Regarding the content of the statement he made in the Administrative Inquiry (*supra* para. 54), he stated “that this was made under threat of death.”<sup>174</sup>

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<sup>169</sup> Cf. Statement of the male eyewitness of September 14, 1994, before the Second Police Precinct of La Plata (file of annexes to the pleadings and motions brief, folios 1748 to 1754); Statement of the female eyewitness of September 22, 1994, before Criminal and Correctional Court No. 5 of La Plata (file of annexes to the submission brief, folios 111 to 113), and Statement of the male eyewitness of September 22, 1994, before Criminal and Correctional Court No. 5 of La Plata (file of annexes to the submission brief, folios 107 and 108).

<sup>170</sup> Cf. Verdict of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the submission brief, folio 135); Judgment of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folio 1784), and Administrative Inquiry File No. 357-18-000001/94. Case: Prosecution of conduct. Administrative Investigations Department of the Argentine Federal Police (file of annexes to the pleadings and motions brief, folio 2113).

<sup>171</sup> Cf. Record of the identification parade in the presence of the male eyewitness on September 24, 1994, before the Second Police Precinct of La Plata (file of annexes to the submission brief, folios 116 and 117), and Record of the identification parade in the presence of the female eyewitness on September 24, 1994, before the Second Police Precinct of La Plata (file of annexes to the submission brief, folios 119 and 120).

<sup>172</sup> Cf. Statement of the male eyewitness, Administrative Investigations Department, Ministry of the Interior of the Argentine Federal Police (file of annexes to the pleadings and motions brief, folios 2198 to 2209).

<sup>173</sup> Cf. Copy of the typewritten versions of the statements presented to the Special Investigative Commission of the Chamber of Deputies of the National Congress (file of annexes to the submission brief, folios 150 to 152, 166 and 168).

<sup>174</sup> Cf. Statement of March 25, 2004, Special Investigating Committee of Quilmes (file of annexes to the pleadings and motions brief, folio 1917).

84. Second, the evidence reveals that, during the hearing of the oral proceeding before the First Court of the Criminal and Correctional Appeals Chamber of La Plata (*supra* para. 47), on November 12, 1996, the then companion of the federal police agent who had been indicted in the proceedings was summoned to testify, together with her mother. Subsequently, before the Special Investigative Commission of the National Congress (*supra* para. 56), the then mother-in-law of the accused federal police agent “acknowledged that she had given false testimony in the criminal proceedings because she had been coerced by her former son-in-law.”<sup>175</sup> She also stated that, after the said federal police agent had been arrested, his father went “to look for all the weapons that he had at home. And he took away the weapons.”<sup>176</sup> The evidence shows that, on February 17, 1997, the witness reiterated this version before the Fifth Police Precinct of the Federal Police.<sup>177</sup>

85. Third, on November 17, 2000, the brother of the then companion of the accused federal police agent testified before the judge of the proceeding that, on the day of the death of Assistant Commissioner Gutiérrez, the police agent told him, on arriving back at the house, that “we had to do away with a rozzar.” He also indicated, “that, a few days later,” the father of the accused federal police agent, together with another two individuals, took from his home “a shoe box where [...] he kept weapons, revolvers and pistols, some of them unassembled,” and that, on that occasion, the father of the said federal police agent threatened him so that he would testify that the latter was at home on the day and at the time of the incident, which he refused to do.<sup>178</sup>

86. Fourth, there is evidence that, during the preliminary investigation stage of the criminal proceeding, two adolescents testified before the Commissioner in charge of the investigation on September 18, 1994 (*supra* para. 45), that they had given testimonial statements in other offices of the Police of the province of Buenos Aires and of the Federal Police, in which they had falsely implicated two “boys” in the murder of Assistant Commissioner Gutiérrez. In this regard, they rectified the said statements and stated that they were obliged to give them under “threat from personnel of the “Roca Division of the Argentine Federal Police,” providing the names they knew them by, and their description.<sup>179</sup> The two minors at the time of the events ratified these statements before the Special Investigative Commission of the National Congress (*supra* para. 56) and added that they had been “beaten” by personnel of the “Roca Division” and that, after revealing the truth of their false confessions, they continued to be threatened.<sup>180</sup>

87. Fifth, during the criminal proceedings, on May 6, 1999, the Inspector who had collaborated in the investigation into the violent death of Mr. Gutiérrez in 1994 presented a brief to the judge of the proceedings describing, *inter alia*, a “series of confrontations and

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<sup>175</sup> Cf. Final report of the Special Commission of the Chamber of Deputies of the National Congress of November 1997 (merits file, folio 946).

<sup>176</sup> Cf. Typewritten versions of the statements of the then mother-in-law of the accused federal police agent, and of Francisco Gutiérrez (file of annexes to the submission brief, folios 175 to 178 and 181).

<sup>177</sup> Cf. Statement of February 17, 1997, before the Fifth Police Precinct of the Argentine Federal Police (file of annexes to the submission brief, folios 202 and 203).

<sup>178</sup> Cf. Statement of November 17, 2000, before Transitional Court No. 2 of the La Plata Judicial Department (file of annexes to the submission brief, folios 247 to 248).

<sup>179</sup> Cf. “Case 57,927, ‘report of illegal coercion,’ National Criminal Court of First Instance No. 32” (file of annexes to the pleadings and motions brief, folios 2098 to 2100), and Statement before the Second Police Precinct of La Plata of September 18, 1994 (file of annexes to the pleadings and motions brief, folios 2101 and 2102).

<sup>180</sup> Cf. Copy of the typewritten versions of the statements presented to the Special Investigative Commission of the Chamber of Deputies of the National Congress (file of annexes to the submission brief, folios 161 to 164).

incidents between the victim [...] and the private guards of the large warehouse that abutted [the Avellaneda Second Police Precinct],” underscoring that these guards were agents and former agents of the Argentine Federal Police.<sup>181</sup> He also affirmed that: (i) on the night of the murder, the relief of Assistant Commissioner Gutiérrez had arrived hours later than normal, saying that he had been at a wedding that, “in fact, never existed”; (ii) the night of the murder, the driver of the police car that drove Mr. Gutiérrez decided to take him to the Avellaneda train station, even though he had asked to be taken to his home; (iii) several statements made by Federal Police officials and agents had prolonged the deliberate falsification of information on the functions usually performed by the accused federal police agent on board the trains, and (iv) he had found some falsifications of “times, which are significant,” in the logbook of the Avellaneda Second Police Precinct.<sup>182</sup>

88. Sixth, during the same criminal proceeding, on October 24, 2000, and on September 24, 2003, a witness who was detained testified that the order to murder Assistant Commissioner Gutiérrez had been given by “the person who, at that time, was the Police Commissioner and Inspector for the province of Buenos Aires, and the motive was because [...] he was being investigated [...] in relation to drugs and, at that time, he was one of leaders of the group that was trafficking” (*supra* paras. 62 and 65). In this regard, he explained that the said group was composed of several police agents of the province of Buenos Aires and of the Argentine Federal Police. In addition, he provided the name of a third person who he identified as a “participant in that job” He also affirmed that the federal police agent indicted in the criminal proceedings “was part of the group” and that he was “the perpetrator” of the act.<sup>183</sup>

89. Lastly, as already indicated, at the time of his death, Mr. Gutiérrez was investigating a bonded warehouse subsequently linked to a series of cases of corruption, smuggling, fraud, drug-trafficking, and unlawful association of public officials, *inter alia*, at the national level, known as the “case of the parallel customs house” (*supra* para. 42).

90. In view of the acknowledgement of responsibility made by Argentina, the Court considers it reasonable to grant probative value to the series of indications analyzed above; in particular to those derived from the State organs that were responsible for the investigation that have not been disproved. These/ indications allow the Court to conclude that State agents participated in the execution of Assistant Commissioner Jorge Omar Gutiérrez, as well as in the obstruction of the investigation. In this regard, the Court notes that the failure to comply with the obligation to respect human rights is particularly serious because it involved a direct violation of human rights by State agents.

91. It should be noted that, in this case, the analysis of the obligation to conduct an investigation with due diligence, with effective judicial oversight, and complying with a reasonable time is made in Chapter VIII-2 with regard to Articles 8 and 25 of the Convention, in relation to Article 1(1) of this instrument.

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<sup>181</sup> Cf. Brief of May 4, 1999, addressed to the judge of the proceedings (file of annexes to the pleadings and motions brief, folios 1826-9 to 1826-11).

<sup>182</sup> Cf. Brief of May 4, 1999, addressed to the judge of the proceeding (file of annexes to the pleadings and motions brief, folios 1826-13 to 1826-16, 1826-19 and 1826-20).

<sup>183</sup> Cf. Statement of the detained witness of October 24, 2000, before Transitional Court No. 2 of La Plata (file of annexes to the submission brief, folios 231 and 232), and Statement of the detained witness of September 24, 2003, before el Transitional Court No. 2 of La Plata (file of annexes to the pleadings and motions brief, folios 1902 to 1907).

92. Consequently, the Court finds it proved that the death of Jorge Omar Gutiérrez can be attributed to the State, so that the latter violated Article 4(1) of the American Convention, in relation to Article 1(1) thereof.

## **VIII-2 RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE THE RIGHTS**

### ***A. Arguments of the parties and of the Commission***

93. The Commission indicated that the judicial investigations in this case “showed indications of manipulation of [and negligence in] evidence gathering, obstruction of justice, and procedural delay, as well as a lack of due diligence in the investigation,”<sup>184</sup> so that the right of the next of kin of Jorge Omar Gutiérrez of “access to justice and to the truth” was violated. According to the Commission, Argentina “did not take prompt and effective measures to gather evidence that would have permitted the identification of those responsible, even though it had been provided with information by the victim’s next of kin and by eyewitnesses.” Based on the foregoing, it asserted that the State had violated Articles 8 and 25(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Jorge Omar Gutiérrez.

94. The representatives indicated that “the Argentine authorities responsible for ensuring an effective judicial response to the murder of Jorge Omar G[utiérrez]<sup>185</sup> failed to comply with their duty to conduct an investigation and an effective judicial proceeding that would lead to the prosecution and punishment of those responsible. This clearly violated the right of [the victim’s] next of kin to be heard within a reasonable time,<sup>186</sup> and for their claims to be processed before an independent and impartial court.” In this regard, they indicated that the next of kin of Mr. Gutiérrez “became the main promoters of the investigation,” which was characterized by a evident corporate concealment by the Argentine Federal Police with the support of the Police of the province of Buenos Aires, which included “serious threats, illegal detentions, and the torture of witnesses,” as well as the murder of the first judicial

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<sup>184</sup> The Commission stressed that: (a) “the police developed theories that had no logical relationship to the clear indications that the crime had a specific motive [...]”; (b) “[a]uthorities such as the Railway Security Superintendence of the Federal Police, adopted certain measures that made it difficult to individualize the police agent described by the two eyewitnesses”; (c) “[t]he Railway Security Superintendence of the Federal Police brought before the federal justice system two adolescents detained by the Federal Police, who incriminated themselves for the death of Mr. Gutiérrez. Subsequently, the adolescents indicated that they had been victims of torture in order to incriminate themselves”; (d) “[o]ne eyewitness receive threats and was harassed, which led her to withdraw her testimony against the said police agent [...],” and (e) “[t]he former companion and former mother-in-law of the [federal police agent indicted as the perpetrator of the act], who was subsequently acquitted, stated [...] that they had been coerced and threatened with having ‘their daughter and granddaughter,’ respectively, taken from them, if they did not support the alibi presented as a defense.”

<sup>185</sup> According to the representatives, in this case, “this obligation to provide judicial protection corresponds not only to the judges and members of the Public Prosecution Service, but also includes the actions of members of the federal police and the police of the province of Buenos Aires, who function as assistants to the justice system.”

<sup>186</sup> They emphasized that “no judicial ruling has been made that establishes who murdered Assistant Commissioner [...] Gutiérrez, who covered up this crime, and why.” And all this, even though, in this case, “there have been no elements that could involve significant legal complexity,” and that “the victim’s next of kin have promoted the progress of the proceeding and have even fought to ensure that it was not archived.” Regarding the conduct of the competent authorities, they indicated that “[t]he actions of the judges responsible for the preliminary investigation stage, their inability to uncover the vehement attempts of the police forces to obstruct the investigation, the lack of interest [...] in conducting a genuine and thorough investigation into the responsibility of the masterminds of the murder of [Assistant Commissioner] Gutiérrez, as well as into the other perpetrator of the murder [...], and the strong and sustained opposition of the judge to the petitions of the injured parties [...], are some of the reasons why [...] there is still impunity” in this case.

investigator of the proceeding initiated based on the execution of Mr. Gutiérrez “some days before he had to go and testify on [the latter’s] murder.” They also argued that the “judiciary consolidated the impunity” by “conducting an extremely deficient investigation, fraught with irregularities,” with “a deliberate lack of action.”<sup>187</sup> Based on all the above, the representatives argued that Argentina had violated Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Jorge Omar Gutiérrez and his family members.

95. The State “accepted the conclusions of the Commission’s Merits Report [...] with regard to the next of kin of [Assistant Commissioner] Gutiérrez [...] owing to the alleged violation of the rights [...] recognized in Articles [...] 8 and 25 [of the American Convention,] in relation to Article 1(1) of this international instrument” because the judicial investigation into the murder of Jorge Omar Gutiérrez “was not conducted in accordance with the required international standards.”

### **B. Considerations of the Court**

96. In light of Argentina’s acknowledgement of the violation of the rights to judicial guarantees and protection to the detriment of the next of kin of Assistant Commissioner Jorge Omar Gutiérrez, the Court will refer to lack of effectiveness of the investigations and proceedings conducted into the extrajudicial execution of the latter, taking into account the obligation of the State agents to act with due diligence and within a reasonable time, in accordance with Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of this instrument.

97. The Court has established that, under the American Convention, States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25),<sup>188</sup> remedies that must be substantiated in keeping with the rules of due process of law (Article 8(1)),<sup>189</sup> all within the general State obligation to ensure the free and full exercise of the right recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).<sup>190</sup> In addition, it has indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is done to discover the truth of what happened and to investigate, prosecute and punish, as appropriate, those found responsible.<sup>191</sup>

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<sup>187</sup> Among other matters, the representatives indicated that: (a) important leads that emerged at the start of the investigation were not followed up on; (b) witnesses were not sought diligently; (c) there was a failure to investigate the other individual presumably responsible for the death of Mr. Gutiérrez; (d) adequate measures were never taken to protect the witnesses who were threatened; (e) progress in the investigation was the result of the efforts of the next of kin of Mr. Gutiérrez; (f) “different officials of the Police of the province of Buenos Aires who tried to make progress in the investigation and began to discover irregularities were suddenly assigned to new tasks that prevented them from continuing”; (g) “both police forces circulated false versions about the causes of the death” of Mr. Gutiérrez, and (h) the judge of the proceeding ordered the closing of the investigation and decided to archive it only a few months after initiating it and without having taken a decision on measures taken by the injured parties.

<sup>188</sup> Cf. *Case of Fairén Garbí and Solís Corrales v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 2, para. 90, and *Case of the Massacres of Rio Negro v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C. No. 250, para. 191.

<sup>189</sup> Cf. *Case of Godínez Cruz v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 3, para. 92, and *Case of Mohamed v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 23, 2012. Series C No. 255, para. 82.

<sup>190</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of the Massacres of El Mozote and nearby places supra*, para. 242.

<sup>191</sup> 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 Massacres of El Mozote and nearby places, supra*, para. 242.

98. This Court has indicated in its consistent case law that the obligation to investigate is an obligation of means and not of results, which must be assumed by the State as an inherent legal obligation and not as a mere formality preordained to be illusory or as a mere effort on the part of private individuals.<sup>192</sup> The investigation must be serious, impartial and effective, and designed to determine the truth and to pursue, capture, prosecute and eventually punish the authors of the acts.<sup>193</sup> The said obligation remains “whosoever the agent who may eventually be attributed with the violation, even private individuals, because, if their acts are not investigated seriously, they would, to a certain extent, be aided by the public authorities, which would involve the international responsibility of the State.”<sup>194</sup> In addition, due diligence requires that the organ responsible for the investigation take all necessary measures and makes all necessary inquiries to obtain the results sought. Otherwise, the investigation is not effective in the terms of the Convention.<sup>195</sup>

99. The Court has also indicated that “the right to effective judicial protection requires judges to direct the proceedings in a way that avoids undue delays and hindrances leading to impunity, thus thwarting the due judicial protection of human rights,”<sup>196</sup> and that “judges, as conductors of the proceedings, are obliged to direct and guide the judicial proceeding so as not to sacrifice justice and due process of law to formalism and impunity”; to the contrary, “there is a violation of the State’s international obligation to prevent violations and to protect human rights and an impairment of the right of the victim and of his next of kin to know the truth of what happened, that those responsible are identified and punished, and to obtain the corresponding reparations.”<sup>197</sup>

100. The Court notes that, in the instant case, the criminal proceedings for the crime of murder were initiated before Criminal and Correctional Court No. 5 of La Plata, province of Buenos Aires, on August 29, 1994. When the investigations had been completed, only one person had been implicated, who was an agent of the Federal Police, and charges were brought against him for the crime of murder aggravated by malice (*supra* paras. 45 and 46). On November 11 and 12, 1996, the oral and public hearing was held before the First Court of the Criminal and Correctional Appeals Chamber of La Plata, province of Buenos Aires. On November 15, 1996, this Chamber delivered a verdict and judgment acquitting the accused, considering, *inter alia*, that the evidence provided by the prosecution had not overcome reasonable doubt as regards the authorship of the crime, and returning the case file to the original court. The case file was subsequently forwarded to Transitional Court No. 2 of the La Plata Judicial Department, province of Buenos Aires. On December 17, 1998, case 5-10888-2 was registered in this court, identifying the individual who presumably accompanied the indicted federal police agent in the extrajudicial execution, as a participant, among other persons possibly involved in the murder. On December 28, 2006,

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<sup>192</sup> Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 177, and *Case of Castillo González et al., supra*, para. 151.

<sup>193</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs. Judgment of June 7, 2003. Series C No. 99*, para. 127, and *Case of García Lucero et al. v. Chile. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2013. Series C No. 267*, para. 121.

<sup>194</sup> *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Luna López, supra*, para. 155.

<sup>195</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs. Judgment of March 1, 2005. Series C No. 120*, para. 83, and *Case of Albán Cornejo et al. v. Ecuador. Merits, reparations and costs. Judgment of November 22, 2007. Series C No. 171*, para. 62.

<sup>196</sup> *Case of Bulacio v. Argentina, supra*, para. 115, and *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of May 21, 2013. Series C No. 261*, para. 93.

<sup>197</sup> *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs. Judgment of November 25, 2003. Series C No. 101*, para. 211, and *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. 120 and 125.

the case was provisionally dismissed, a decision that was appealed and revoked and, on December 30, 2009, the judge of the proceeding provisionally dismissed the presumed participant for the second time. Nevertheless, according to the case file, on August 26, 2011, case No. S-85,714 was forwarded to the Criminal Appeals and Guarantees Chamber of the La Plata Judicial Department, to hold the oral public proceeding regarding the said presumed participant, pursuant to the decision of the Supreme Court of Justice of the province of Buenos Aires of June 18, 2013 (*supra* paras. 44 to 50 and 60 to 72).

*B.1. Omissions in following up on lines of investigation and in collecting evidence*

101. This Court has established that, in order to guarantee effectiveness, when investigating human rights violations, it is essential to avoid omissions in the collection of evidence and in following up on logical lines of investigation.<sup>198</sup>

102. As indicated *supra*, it is not incumbent on the Court to analyze the hypotheses on authorship developed during the investigation of the events and, consequently, to determine individual responsibilities, the definition of which corresponds to the domestic criminal courts.<sup>199</sup> Nevertheless, the Court has stipulated that when the “facts refer to the violent death of a person, the investigation opened must be conducted in such a way that it can ensure the appropriate analysis of the corresponding hypotheses of authorship, in particular those that infer the participation of State agents.”<sup>200</sup>

103. In this regard, first, the Court takes note that, following the acquittal of the federal police agent indicted in this case, the judge in charge of the criminal proceedings was subjected to an investigation by the Office of the Prosecutor General of the Supreme Court of Justice of Buenos Aires owing to his actions during the course of the investigation. Thus, the report that the Assistant Prosecutor General presented to the president of that court recorded that “the irregularities that [he found] were decisive for the failure of the investigation.” In this report, the Assistant Prosecutor General described the lines of investigation that should have been followed up on in order to determine the motive for the murder, among others, the “matter [...] of the] warehouse abutting the Police Precinct where [Mr. Gutiérrez] served. Regarding the determination of the motive and the possible relationship between the accused [...] and the victim, and also the individualization of the second participant in the murder, [...] he] criticized [...] the lack of investigative activity in this regard [...].”<sup>201</sup>

104. The Court has also taken note that, during the preliminary investigation stage, the following evidence, *inter alia*, was gathered concerning the motive for the extrajudicial execution of Assistant Commissioner Gutiérrez: (a) in a statement of September 7, 1994, before the Second Police Precinct of La Plata (*supra* para. 45), Nilda del Valle Maldonado, wife of Mr. Gutiérrez, indicated as a relevant fact, that he had visited the said bonded warehouse and that, on receiving his personal effects after his death, her attention was drawn to the fact that her husband’s strongbox was open, because he had always kept it

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<sup>198</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs.* Judgment of March 1, 2005. Series C No. 120, paras. 88 and 105, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232, para. 146.

<sup>199</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 37, and *Case of Manuel Cepeda Vargas, supra*, para. 41.

<sup>200</sup> *Case of Kawas Fernández v. Honduras. Merits, reparations and costs.* Judgment of April 3, 2009. Series C No. 196, para. 96.

<sup>201</sup> Cf. Report of the Assistant Prosecutor General of the Supreme Court of Justice of Buenos Aires of May 12, 2004 (file of annexes to the submission brief, folio 287).

locked;<sup>202</sup> (b) in testimony of September 18, 1994, before the Second Police Precinct of La Plata, an adolescent denounced that he had been falsely accused, together with another two adolescents, of the murder of Mr. Gutiérrez before the La Plata Investigations Unit of the Police of the province of Buenos Aires and the Roca Division of the Argentine Federal Police (*supra* para. 45), and been threatened with beatings and death by a federal police agent, and that he “was afraid that they would kill [him] because [he] denounced this”<sup>203</sup> and, on March 7, 1995, he denounced before another court that he and another adolescent had suffered “unlawful coercion and had been beaten “on the right leg and on the stomach” by the above-mentioned federal police agent and another police agent;<sup>204</sup> (c) in a statement of September 22, 1994, before Criminal and Correctional Court No. 5 of La Plata, the male eyewitness identified the perpetrator of the murder as an agent of the Argentine Federal Police (*supra* para. 45), and the female eyewitness indicated that one of the perpetrators of the murder identified himself as a police agent, showing her a credential and a “metal badge,”<sup>205</sup> and (d) in a statement of September 29, 1994, before the same court, the female eyewitness indicated that she was “terrified and feared for her life and for that of another witness who ha[d] testified in the proceeding” (*supra* para. 45).

105. Despite the foregoing, there is no evidence in the case file that any measures were taken to determine whether these indications could have been related to the motive for the execution of Mr. Gutiérrez, or to determine whether other State agents could have been involved in this incident. In fact, as indicated by the Inspector who collaborated in the investigation of the execution of Mr. Gutiérrez from the start, the “only motive that [...] was mentioned as reasonable at any time [...] was never examined thoroughly at either of the two stages of the criminal proceedings.”<sup>206</sup> Similarly, the other Inspector who took part in the investigation stated that “one of the significant versions that was discussed initially was that the murder of Assistant Commissioner Gutiérrez might be related to a bonded warehouse located behind the Avellaneda [Second] Precinct”; however, he did not know why “this lead was never followed up on.”<sup>207</sup> Thus, during this proceeding, it was not possible “to uncover the reason why [Assistant] Commissioner Gutiérrez was killed.”<sup>208</sup> Consequently, the Court finds that the investigation initiated into this act failed to follow up on logical lines of inquiry that had arisen during the investigation.

106. In addition, during the oral proceeding against the federal police agent indicted, conducted by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (*supra* para. 47), there were also certain omissions in the collection of evidence. In this regard, the Court notes that at least three witnesses did not appear to testify during the proceeding, even though they had been summoned, and that another “was not

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<sup>202</sup> Cf. Statement of Nilda del Valle Maldonado de Gutiérrez (file of annexes to the pleadings and motions brief, folios 1731 to 1732).

<sup>203</sup> Cf. Proceeding 57,927, “[...] Report of unlawful coercion,” National Criminal Court of First Instance No. 32 (file of annexes to the pleadings and motions brief, folios 2097 to 2100).

<sup>204</sup> Cf. Proceeding 57,927, “[...] Report of unlawful coercion,” National Criminal Court of First Instance No. 32 (file of annexes to the pleadings and motions brief, folio 2104). In addition, it is recorded in the decision of the First Instance Judge of March 13, 1995, that he had also denounced that the said police agents “obliged him to testify in the case” of Mr. Gutiérrez “by beating him.”

<sup>205</sup> Cf. Copy of the statement of the [female eyewitness] given before the judge presiding Criminal and Correctional Court No. 5 of La Plata (file of annexes to the submission brief, folios 112 and 113).

<sup>206</sup> Cf. Brief of May 4, 1999, addressed to Transitional Court No. 2 (file of annexes to the pleadings and motions brief, folio 1826-29).

<sup>207</sup> Cf. Statement before Transitional Court No. 2 of October 5, 2000 (file of annexes to the submission brief, folios 213 to 217).

<sup>208</sup> Cf. Verdict of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the submission brief, folio 133).

summoned.”<sup>209</sup> In addition, the prosecutor considered that the statements of two people were contradictory and requested a confrontation between them. In response the President of the Chamber stated “that since the previous witnesses ha[d] withdrawn, it was impossible to take this step.”<sup>210</sup>

107. Despite these omissions in the reception of statements from witnesses, there is no record in the case file that the First Chamber included any considerations concerning the failure to appear of the said persons. In this regard, it should be noted that article 151 of the Code of Criminal Procedure of the province of Buenos Aires applicable to this case established the measures to be taken if “the witness should fail to appear or should refuse to testify without any justification.”<sup>211</sup> In addition, despite the “investigative shortcomings in the proceedings” recorded by one of the judges of this Chamber,<sup>212</sup> on November 15, 1996, the Chamber proceeded to deliver its verdict without rectifying the said shortcomings. In this regard, the Court notes that, according to article 71.4.b of the said Code of Criminal Procedure, the judges had the obligation “[... t]o direct the proceeding and, within the limits imposed by the circumstances, should: [...i]ndicate, before processing any action, its defects or omissions, ordering that they be rectified within the time frame established, and should order, *ex officio*, any measure required to avoid nullities [...].” Thus, the Court finds that the First Chamber omitted to take the corresponding measures in order to rectify the flaws in the investigation at the preliminary investigation stage, and also failed to collect evidence in the oral proceeding, before delivering its verdict and judgment.

#### *B.2. Irregularities and obstructions within the investigations and the criminal proceedings*

108. The judicial file also reveals a series of irregularities and obstructions in the criminal proceedings that occurred during the oral proceeding against the federal police agent indicted and after his acquittal, as well as owing to the return of the proceedings to Criminal and Correctional Court No. 5 and its subsequent transfer to Transitional Court No. 2.

109. First, during the oral proceeding, a witness indicated that, on being arrested by the Police of the province of Buenos Aires, before being taken to the Police Precinct, he “was taken to a piece of waste ground where they questioned him.”<sup>213</sup>

110. Second, during the preliminary investigation stage of the criminal proceedings, the male eyewitness testified before the Commissioner in charge of the investigation and the judge of the case, that two individuals had taken part in the murder of Mr. Gutiérrez and

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<sup>209</sup> Cf. Record of the oral proceeding, fs.1253/1261, proceeding 10,888 (file of annexes to the pleadings and motions brief, folios 1767 and 1775).

<sup>210</sup> Cf. Record of the oral proceeding, fs.1253/1261, proceeding 10,888 (file of annexes to the pleadings and motions brief, folio 1772).

<sup>211</sup> Article 151 of the Code of Criminal Procedure of the province of Buenos Aires establishes: “If the witness should fail to appear on the day indicated or if he should refuse to testify without any justification, the following rules shall be observed: 1. If he should not respond to the first summons, he shall be made to appear at the following hearing by law enforcement agents. 2. If he should refuse to testify, he shall be arrested for forty-eight (48) hours, without prejudice to the responsibility incurred due to his disobedience.” Available at: [http://www.gob.gba.gov.ar/dijl/DIJL\\_buscaid.php?var=1334](http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=1334).

<sup>212</sup> Cf. Verdict of November 15, 1996, delivered by the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the submission brief, folio 134).

<sup>213</sup> Cf. Record of the oral proceeding, fs.1253/1261, proceeding 10,888 (file of annexes to the pleadings and motions brief, folio 1777); Judgment of the oral proceeding of November 15, 1996, of the First Court of the Criminal and Correctional Appeals Chamber of La Plata (file of annexes to the pleadings and motions brief, folio 1786), and Report of the Judicial Investigator of July 19, 1999 (file of annexes to the pleadings and motions brief, folio 1811).

provided their descriptions. In addition, he stated that he knew both individuals and knew that they acted as police agents; also, in the identification parade of September 24, 1994, he identified the federal police agent indicted. More than four months later, on February 1, 1995, the said witness came forward to testify in the administrative disciplinary procedure that was opened in parallel to the criminal proceedings in the Administrative Investigations Department of the Argentine Federal Police of the Ministry of the Interior. In this statement and before the head of the investigation, the witness changed his statement and indicated that, on being detained by the Police of the province of Buenos Aires, before being taken to the Police Precinct, he was also taken to a "piece of waste ground" where he was questioned, and that, prior to the identification parade, he was shown the federal police agent indicted.<sup>214</sup>

111. Subsequently, on November 11, 1996, during the oral public hearing of the oral proceeding before the First Court of the Appeals Chamber, this last statement was read and the witness ratified it "completely."<sup>215</sup> Approximately three months later, during the investigation of the Special Investigative Commission of the Chamber of Deputies of the National Congress, the said witness testified that he was obliged to change his statements owing to threats from Federal Police agents.<sup>216</sup> In particular, on March 25, 2004, during the criminal proceedings and before the Quilmes Special Investigative Commission, this witness stated that the testimony he had given in the administrative disciplinary proceeding in the Administrative Investigations Department of the Argentine Federal Police of the Ministry of the Interior "was given under threat of death" from Federal Police agents.<sup>217</sup>

112. Third, also in the context of the investigation of the Special Investigative Commission of the Chamber of Deputies of the National Congress (*supra* para. 56), in January and February 1997: (a) the mother-in-law at that time of the federal police agent indicted "acknowledged that she had falsified her testimony in the criminal proceedings because she had been coerced by her former son-in-law,"<sup>218</sup> and (b) two individuals who were minors at the time of the events stated that, owing to ill-treatment and threats by Federal Police agents, they were obliged to testify and to implicate two "boys" in the murder of Assistant Commissioner Gutiérrez.

113. Fourth, once the proceedings had been transferred to Transitional Court No. 2 of the La Plata Judicial Department, the following evidence, *inter alia*, was received by that court between September and November 2000 with regard to irregularities and obstructions in the investigations into the execution of Mr. Gutiérrez:

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<sup>214</sup> Cf. Administrative Inquiry File No. 357-18-000001/94. Case: Prosecution of conduct. Administrative Investigations Department of the Argentine Federal Police (file of annexes to the pleadings and motions brief, folio 2275).

<sup>215</sup> Cf. Record of the oral proceeding, fs.1253/1261, proceeding 10,888 (file of annexes to the pleadings and motions brief, folio 1773).

<sup>216</sup> Cf. Copy of the typewritten versions of the statements presented to the Special Investigative Commission of the Chamber of Deputies of the National Congress (file of annexes to the submission brief, folio 151).

<sup>217</sup> Cf. Statement of March 25, 2004 before the Special Investigative Commission of Quilmes (file of annexes to the pleadings and motions brief, folio 1917).

<sup>218</sup> In addition, the then mother-in-law of the federal police agent indicted made a statement on February 17, 1997, in the Fifth Precinct of the Argentine Federal Police, in which she clarified that she had "always been threatened by the parents [of the federal police agent indicted,] and not by him, because he was in the detention center." Statement of Claudia Acuña of February 17, 1997, before the Fifth Precinct of the Argentine Federal Police (file of annexes to the submission brief, folios 202 and 203).

- a) On October 23, 2000, information was provided that, the expert calligraphic appraisal performed on the pertinent parts (“times”) of the logbook of the Avellaneda Second Precinct, had concluded that these had been falsified;<sup>219</sup>
- b) The former Inspector who had taken part in the investigation since 1994 told the judge of the proceeding, *inter alia*, that, “on one occasion, [he had] interviewed [the two] train guards who found Gutiérrez dead, [who told him] that on several occasions before the oral proceeding, the federal police had tried to bribe them with money.”<sup>220</sup> He also stated that, on one occasion, the then provincial Minister of Security had told him that he knew that the police agent indicted was guilty, but that “his hands were tied.” In addition, the former Inspector indicated that he had evidence related to the presumed participant mentioned previously, but that this had been taken from “the UOM – Quilmes Sectional,” during a robbery that “had certain particularities, because nothing of value was stolen, but only information related to the investigation of the murder of [Mr.] Gutiérrez”;<sup>221</sup>
- c) One of the above-mentioned train guards stated that, two weeks after the murder, an individual in civilian clothing came to his home and said to him, “you were in the train, *pibe*, look here’s a lot of money, if you saw anything, forget it, because there’s lots of money”;<sup>222</sup>
- d) The brother of the then companion of the federal police agent indicted testified that the latter’s father had threatened him so that he would give false testimony in the criminal proceedings (*supra* para. 85);
- e) A former police agent of the province of Buenos Aires testified that, during the time he participated in the investigation, he noted “various irregularities as regards the investigative part, and could also note the irresponsibility and lack of interest of some public officials in discovering the truth.” He also stated that he “was unable to obtain the logistical support and personnel to conduct the investigation,” and that he had not received any collaboration in the investigation from the Commissioner Inspector who was his superior.<sup>223</sup> As already mentioned, this Commissioner Inspector was identified by a witness who was detained as the person who gave the order for the execution of Assistant Commissioner Gutiérrez (*supra* para. 88);
- f) Another Inspector stated that he had taken part in the investigation of the death of Assistant Commissioner Gutiérrez from the start; nevertheless, he was separated from the investigation, without being told the reasons for his transfer,<sup>224</sup> and

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<sup>219</sup> Cf. Expert appraisal of October 18, 2000, addressed to Transitional Court No. 2 of La Plata (file of annexes to the submission brief, folios 208 to 210).

<sup>220</sup> Cf. Statement of September 26, 2000, before Transitional Court No. 2 of La Plata (file of annexes to the pleadings and motions brief, folios 1826-47 to 1826-48 and 1826-59).

<sup>221</sup> Cf. Statement of September 21, 2000, before Transitional Court No. 2 of La Plata (file of annexes to the submission brief, folios 73, 74 and 242).

<sup>222</sup> Cf. Statement of October 17, 2000, before Transitional Court No. 2 of La Plata (file of annexes to the pleadings and motions brief, folio 1856).

<sup>223</sup> Cf. Statement of October 11, 2000, before Transitional Court No. 2 of La Plata (file of annexes to the submission brief, folio 227).

<sup>224</sup> Cf. Statement of October 5, 2000, before Transitional Court No. 2 of La Plata (file of annexes to the submission brief, folio 216).

g) An Assistant Commissioner of the Police of the province of Buenos Aires who had taken part in the investigation from the start, stated that, following the execution of Mr. Gutiérrez, the federal police agent indicted for his murder telephoned him to ask for information on the investigation, in order "to collaborate" with it.<sup>225</sup>

114. Subsequently, in July and September 2001, the judge of the proceeding asked the Prosecutor General to appoint "urgently" judicial investigators from the Office of the Prosecutor General of the Supreme Court of Buenos Aires, because, "from the testimony [... received,] it appeared that high-ranking members of the Federal Police and the Police of the province of Buenos Aires could be involved in the incident."<sup>226</sup> These requests were refused on September 20, 2001, owing to the lack of "availability" of judicial investigators.<sup>227</sup> In this regard, this Court observes that article 436 of the Code of Criminal Procedure of the province of Buenos Aires applicable to this case imposed on the judges and police officials the obligation "to investigate all actionable offenses that they become aware of in any way," and that the latter are the judge's "assistants."<sup>228</sup> In this regard, expert witness Gabriel Pérez Barberá advised the Court that:

If a wrongful act is committed by the member of an institution with a corporate culture and practices, it is highly probable that, if this same institution conducts the investigation to establish who was responsible for the wrongful act, this investigation will tend to conceal it [...].

115. In addition, the Court takes note that, on January 20, 2003, one of the guards of the train in which Mr. Gutiérrez died stated during the proceeding that, following the detention of the federal police agent indicted, he had been summoned by the Argentine Federal Police to come to "their precinct, in Plaza Constitución," where they asked him about the murder and "told him that he should give them a hand to help their colleague [...] who was in prison for murdering Assistant Commissioner Gutiérrez, and that they wanted to get him out of there."<sup>229</sup>

116. That same month Commissioner Jorge Luis Piazza,<sup>230</sup> who had been in charge of the investigation of the execution of Mr. Gutiérrez from the start and whose statement had been requested by the injured parties in May 2001, was murdered.<sup>231</sup> Criminal proceedings were opened with regard to the murder of Commissioner Piazza; however, on June 19, 2008, the

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<sup>225</sup> Cf. Statement of October 6, 2000 before Transitional Court No. 2 of La Plata (file of annexes to the submission brief, folios 220 to 221).

<sup>226</sup> Cf. Note of September 17, 2001, from the judge of the proceeding to the Prosecutor General of the La Plata Judicial Department (file of annexes to the submission brief, folio 276), and Note of July 12, 2001, from the judge of the proceeding to the Prosecutor General of the La Plata Judicial Department (file of annexes to the pleadings and motions brief, folio 1821).

<sup>227</sup> Cf. Note of September 20, 2001, from the Prosecutor General of the La Plata Judicial Department to Transitional Court No. 2 of La Plata (file of annexes to the pleadings and motions brief, folio 1824).

<sup>228</sup> Article 436 of the Code of Criminal Procedure of the province of Buenos Aires establishes: "The police officials and the judge shall proceed immediately to investigate all actionable offenses that they become aware of in any way. The former, within twenty-four (24) hours, shall inform the latter, as well as the prosecutor, and the official defender on duty, and shall continue the investigation until the judge arrives; they will then act as the latter's assistants. In addition, the investigator shall advise the judge that he has complied with the provisions of article 210 of this Code." Available at: [http://www.gob.gba.gov.ar/dijl/DIJL\\_buscaid.php?var=1334](http://www.gob.gba.gov.ar/dijl/DIJL_buscaid.php?var=1334).

<sup>229</sup> Cf. Testimony of January 20, 2003, Fs. 2092/2094, Proceeding 10,888 (file of annexes to the pleadings and motions brief, folios 1850 and 1851).

<sup>230</sup> Cf. Obituary notice of Jorge Luis Piazza, Fs. 2187, Proceeding 10,888, of February 26, 2003 (file of annexes to the pleadings and motions brief, folio 1859), and Decision of June 19, 2008, Case No. 19,325, of the Second Court of the Criminal Appeals and Guarantees Chamber of the province of Buenos Aires (file of annexes to the pleadings and motions brief, folios 2331 and 2344).

<sup>231</sup> Cf. Brief of May 2, 2001, addressed by the injured parties to the judge of the proceeding (file of annexes to the pleadings and motions brief, folio 1837).

Second Court of the Criminal Appeals and Guarantees Chamber of the province of Buenos Aires decreed “the total and final dismissal of the case against [three persons] in relation to the offense of unlawful deprivation of liberty followed by death.”<sup>232</sup>

117. In addition, in September 2004, statements were again received from the male eyewitness and the street vendor (*supra* para. 65), and they indicated that they had received pressure and threats from the police owing to their participation in the trial of the federal police agent indicted.<sup>233</sup>

118. Regarding the obstructions to the proceedings, this Court has ruled that, in order to ensure due process, States must take all necessary measures to protect agents of justice, investigators, witnesses, and family members of victims from harassment and threats aimed at hindering the proceedings, avoiding the elucidation of the facts, and concealing those responsible.<sup>234</sup> To the contrary, those who investigate and those who could be witnesses would feel intimidated and frightened and this would have a significant impact on the effectiveness of the investigation.<sup>235</sup>

119. Added to the above, the Court has considered that the threats and intimidation suffered by witnesses in the domestic proceedings cannot be examined in isolation, but should be analyzed in the context of obstructions to the investigation of the case. Consequently, such acts become another means of perpetuating impunity and preventing the truth of what happened from being known.<sup>236</sup> The Court has defined impunity as “the total absence of investigation, pursuit, capture, prosecution, and sentencing of those responsible for human rights violations.”<sup>237</sup>

120. Furthermore, the Court considers that, for an investigation to be effective, those responsible for it must be independent, from a hierarchical and institutional point of view and also in the practice, from the individuals implicated in the events investigated.<sup>238</sup>

121. In this regard, the Court notes that, in the instant case, at least five witnesses denounced that they had been threatened or pressured by federal police agents or by family

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<sup>232</sup> Cf. Decision of June 19, 2008, in Fs. 3448/3455, Preparatory criminal investigation No. 167,253 into the murder of Commissioner Piazza (file of annexes to the pleadings and motions brief, folios 2331 and 2344).

<sup>233</sup> The street vendor witness indicated that, in the Federal Police Unit in the Constitución Precinct, an official who used to accompany the police agent who was acquitted on the trains, asked him what he had testified in the oral proceeding and told him that he “should remember that [the police agent acquitted] was a good person and [...] had not killed the Assistant Commissioner.” He also indicated that, following this, he felt pressured by the police on the trains, and he “was harassed.” Cf. Testimony of March 18, 2004, before the Special Investigative Committee of the Ministry of Security of the province of Buenos Aires (file of annexes to the pleadings and motions brief, folio 1912). The eyewitness stated, *inter alia*, that he was obliged to change his statement with a gun to his head. Cf. Testimony Fs. 2907/2908, Proceeding 10,888, presented on March 25, 2004 (file of annexes to the pleadings and motions brief, folios 1915 to 1918).

<sup>234</sup> Cf. *Case of Myrna Mack Chang*, *supra*, para. 199, and *Case of the La Rochela Massacre v. Colombia*. *Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 171.

<sup>235</sup> Cf. *Case of Kawas Fernández*, *supra*, para. 106, and *Case of Luna López*, *supra*, para. 173.

<sup>236</sup> Cf. *Case of the Las Dos Erres Massacre* *supra*, para. 145.

<sup>237</sup> Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala*. *Merits*, *supra*, para. 173, and *Case of the Las Dos Erres Massacre*, *supra*, para. 234.

<sup>238</sup> Cf. *Case of Baldeón García v. Peru*. *Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 95. See also, ECHR, *Case of Giuliani and Gaggio v. Italy*, Judgment of 24 March 2011, para. 300: “For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, Güleç, cited above, §§ 81-82, and Oğur, cited above, §§ 91-92). This means not only a lack of hierarchical or institutional connection but also a practical independence.”

members of the federal police agent indicted, owing to their intervention in the investigations into the execution of Assistant Commissioner Gutiérrez (*supra* paras. 56, 57, 65 and 83 to 86), and this frightened them and made them anxious, without any evidence that the State adopted safety measures for them when it became aware of these incidents. Moreover, Commissioner Piazza, who was in charge of the investigation from the start and whose testimony had been requested by the injured party before Transitional Court No. 2, was murdered (*supra* paras. 65 and 116). Also, the Court notes that, in this case, attempts at bribery and the theft of evidence were reported without any evidence that these facts were investigated (*supra* paras. 104 and 113.b). All these facts have constituted obstructions to the proceedings, affecting the identification, prosecution, and punishment of those responsible for the execution of Assistant Commissioner Jorge Omar Gutiérrez. Thus, the Court notes that the exculpatory evidence provided by people who later disavowed this was taken into account in order to acquit the federal police agent indicted for this act, and the testimony of the male eyewitness was rejected owing to assertions he made under threat (*supra* para. 48).

122. In addition, the Court notes that the judge of the proceeding, in the decision of April 2000 to archive the case file, and in the decisions of December 2006 and December 2009 by which the proceedings and the presumed participant in the execution of Jorge Omar Gutiérrez, respectively, were dismissed provisionally, did not include any considerations regarding the relationship between this extrajudicial execution and the investigation of the Special Investigative Commission of the Chamber of Deputies of Congress into a series of cases of corruption, smuggling, fraud, drug-trafficking and unlawful association of public officials known as the “case of the parallel customs house,” or regarding the threats revealed throughout the proceedings, but rather treated the case of Mr. Gutiérrez as completely separate from those events, which did not help determine the truth or the corresponding responsibilities.

123. The Court also considers that, in this case, the denial of the requests of the judge of the proceeding for judicial investigators owing to their “unavailability” results in a failure of the judicial authorities of the province of Buenos Aires to comply with their duty to ensure that the investigations conducted by their assistants in the Police of the province of Buenos Aires would not be affected by possible obstructions by agents of this entity.

### *B.3. Reasonable time*

124. This Court has indicated that the right of access to justice is not complied with by the processing of domestic proceedings, but must also ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is done to discover the truth of what happened, and that those eventually found responsible are punished.<sup>239</sup>

125. As Argentina has acknowledged, even though more than 19 years have passed, the facts of the case have still not been clarified and the truth of what happened has not been determined, and this has affected the right of access to justice within a reasonable time of the next of kin of Mr. Gutiérrez. The Court does not find it necessary to include further considerations in this regard.

### *B.4. Consequences of the deficiencies in the investigation of the facts*

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<sup>239</sup> Cf. *Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 188 and *Case of García Lucero et al., supra*, para. 121.

126. The representatives,<sup>240</sup> the State, and the Commission<sup>241</sup> asked the Court to rule explicitly on the conclusions reached by the Commission and the representatives in the Merits Report and in the pleadings and motions brief. In their opinion, this “would allow it to be inferred that the status of *res judicata* conferred on the acquittal of one of those accused of the murder of Jorge Omar Gutiérrez would deserve to be characterized as ‘fraudulent.’” They also asked that the Court rule “on the legal consequences arising from this in relation to the international obligations assumed by the Argentine State under the American Convention.” Also, based on the particularities of this case, they asked the Court “to rule on the inadmissibility of the provisions of the statute of limitations in relation to the investigation and punishment of the other perpetrators and masterminds of the extrajudicial execution of Jorge Omar Gutiérrez” (*supra* para. 17).

127. In this regard, the Court finds it necessary to reiterate that, in cases such as this one, it must rule on the conformity of the State’s actions with the American Convention.<sup>242</sup>

128. Based on the foregoing, the Court considers that the provisions of Article 8(4) of the Convention, which state that “[a]n accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause,” forms part of the framework of the norms relating to a “fair trial” and to the guarantees of “due process,” established in the

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<sup>240</sup> The representatives argued that, owing to “the irregularities that surrounded the trial of one of the perpetrators of the death of Jorge Omar Gutiérrez [...] the concept of ‘fraudulent *res judicata*’ was applicable.” During the public hearing and in their final written arguments, the representatives explained that, in the instant case, “there was no ‘real intention to subject the person responsible to justice,’” because, according to them: “[t]he investigation was marked by a significant corporate cover-up by the Argentine Federal Police with the support of the Police of the province of Buenos Aires in order to ensure impunity”; the said “maneuvers involved serious threats, illegal detentions, and the torture of witnesses[; n]o investigation of these facts had any success,” and “[t]he courts that intervened conducted a very flawed investigation, fraught with irregularities, to discover the motive for the crime, and to identify all those involved.” In addition, they asked the Court to establish that this case relates to an “extrajudicial execution committed by police agents, with institutional support and concealment, against another police agent who was willing to investigate criminal networks entrenched in the State, which has been left unpunished for almost 19 years,” so that it constituted a “gross violation of human rights that made investigation and punishment essential,” and it should be understood that the provisions of the statute of limitations that might be applied were inadmissible. In addition, they argued that a “considered decision in this case requires weighing the very serious effects on this family for almost a decade, and the impact on Argentine society of a crime of this nature, which involved active and substantial institutional concealment by federal law enforcement personnel and the [police of the province of Buenos Aires], remaining unpunished.”

<sup>241</sup> During the public hearing and in its final written observations, the Commission asked the Court to establish the non-applicability of the statute of limitations in this case; on the one hand, because it relates to “a gross violation of human rights” and, on the other hand, because it is evident from “numerous acts and omissions that were deliberately aimed at obstructing the investigation and concealing responsibilities,” that the passage of time was determined by procedural acts and omissions designed, with evident bad faith or negligence, to promote or permit impunity. In addition, the Commission indicated that, in the context of this case, the court hearing the proceedings in which the federal police agent was acquitted, acted in order to remove the accused from criminal responsibility, and that there was no real intention to subject the person responsible to the action of justice. It also indicated that “the severity of the effects on the Gutiérrez family, owing to the impossibility of obtaining justice, in the face of an acquittal obtained in a way that was incompatible with the Convention, would not be justified by an absolute application of the guarantee of *ne bis in idem* in favor of [this] person, and any effects on the latter could be compensated by strict respect for due process of law and his right to a defend himself.”

<sup>242</sup> In other words, in accordance with international customary law, according to which “[t]he characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law,” it corresponds to the Court to determine the legitimacy of the State’s actions pursuant to the provisions of the Convention. *Cf.* Articles on Responsibility of States for internationally wrongful acts, prepared by the International Law Commission of the United Nations, annexed to resolution 56/83 adopted by the General Assembly [based on the report of the Sixth Committee (A/56/589 and Corr.1)]. Responsibility of States for internationally wrongful acts”, 85th plenary meeting, 12 December 2001, Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrigendum (A/56/10 and Corr.1 and 2). 2 *Ibid.*

same Article 8<sup>243</sup> of this treaty. Therefore, Article 8(4) of the Convention must be interpreted in harmony with these other norms and with the other provisions of the Convention.

129. Based on the above, as well as on the proven facts in this regard (*supra* paras. 96 to 125), and bearing in mind, also, that the parties agree that the judicial investigation of the events that resulted in the execution of Jorge Omar Gutiérrez was not conducted in accordance with the required international standards and that they should be investigated (*supra* para. 17.2), the Court concludes that, in the instant case, the judicial proceedings were not in keeping with the guarantees of “due process” established in the said Article 8 and, consequently, did not produce the “non-appealable judgment” mentioned in paragraph 4 of this article. Added to this, the Court considers that, in this case, the extrajudicial execution of Assistant Commissioner Jorge Omar Gutiérrez was particularly serious, owing to the circumstances in which it took place, namely: (a) that, at the time of his death, Assistant Commissioner Gutiérrez was investigating a bonded warehouse that was subsequently connected to the case of the “parallel customs house,” in which State agents were implicated; (b) that State agents were involved in the execution of Mr. Gutiérrez, and (c) that State agents obstructed the investigation opened into his death. Based on all the foregoing, the Court concludes that, in this specific case, the provisions of Article 8(4) of the Convention are not applicable.

130. Presuming that the provisions of Article 8(4) of the Convention would be applicable in any circumstances would imply that the decision of a domestic judge would have preeminence over a decision taken by this Court pursuant to the Convention. It would also mean, consequently, that the application, in any circumstance, of the said Article 8(4) of this treaty, could lead to impunity and to the non-applicability of the corresponding international norms, which would not accord with the object and purpose of the Convention.

131. It should be added that this would also happen, if the admissibility of the domestic statute of limitations was accepted at the international level in every case. However, in the cases in which it could be admissible, it must be in full conformity with the provisions of the Convention.

#### *B.5. Conclusions*

132. In this case, Argentina has accepted, and the Court has established, that the extrajudicial execution of Assistant Commissioner Gutiérrez can be attributed to the State and that, at the time of his execution, Mr. Gutiérrez was investigating the bonded warehouse beside the Avellaneda Second Police Precinct, which subsequently formed part of the so-called case of the “parallel customs house” (*supra* para. 42). In addition, Argentina accepted “the conclusions of the Commission’s Merits Report” that it was “responsible for not having conducted a serious, impartial and effective investigation into the victim’s execution, within a reasonable time and in keeping with the principles of due process of law.”<sup>244</sup> Thus, based on the contents of this chapter, the Court finds that the investigation and the criminal proceedings conducted owing to the extrajudicial execution of Jorge Omar Gutiérrez were fraught with irregularities and omissions by the State agents responsible for them as regards the collection of evidence, the following-up on logical lines of investigation,

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<sup>243</sup> Article 8(1) of the Convention stipulates: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

<sup>244</sup> Cf. Merits Report No. 63/11 (merits file, folio 35).

and the analysis of the facts of the case. Also, during the proceedings, serious obstructions occurred and threats against witnesses, in some cases perpetrated by federal police agents, as well as the death of a person whose testimony had been requested. In view of all this, 19 years later, the facts of the case have not been elucidated and remain in impunity.

133. Added to the above, the Court has considered that, in cases of violent death, such as this once, the implementation of a serious, impartial and effective investigation *ex officio*, is an essential element and a contributing factor to the protection of the right to life.<sup>245</sup> In this case, it is undeniable that, more than 19 years after the murder of Assistant Commissioner Jorge Omar Gutiérrez, the facts of the case remain to be clarified and the corresponding responsibilities have not been established, so that, as it has on other occasions,<sup>246</sup> the Court observes that reaching any other conclusions than the attribution of responsibility to the State for the extrajudicial execution of Mr. Gutiérrez, would signify allowing the State to shield itself behind the ineffectiveness of the criminal investigation in order to exempt itself from responsibility. But, the Court also finds that it is evident that the obstacles faced by the different judicial proceedings in this case cannot allow them to be characterized as an effective investigation, and this was acknowledged by the parties when they indicated in the Agreement on reparations that “the judicial investigation into the facts that resulted in the murder of Jorge Omar Gutiérrez was not conducted in accordance with the required international standards.”

134. As acknowledged by Argentina, the Court concludes that the investigation of the facts in this case did not comply with the criteria of due diligence, effective judicial protection, and reasonable time, in violation of the right of access to justice established in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Jorge Omar Gutiérrez.

### **VIII-3 RIGHT TO PERSONAL INTEGRITY OF THE VICTIM'S NEXT OF KIN**

#### ***A. Arguments of the parties and of the Commission***

135. The Commission indicated that the statements of the next of kin of Jorge Omar Gutiérrez “reveal the suffering and anguish caused” by the violations committed in this case, which generated “profound moral harm, the aftereffects of which persist [...] today.” It stressed that “the members of the immediate family of Jorge Omar Gutiérrez have experienced moral suffering, and feelings of insecurity, frustration and impotence as a result of his execution.” In addition, according to the Commission, it was the family members who “were the main drivers of the investigation,” and the lack of diligence in the investigation contributed to “prolonging their suffering.” Consequently, it concluded “that the rights protected by Article 5 of the American Convention were violated with regard to the family members of the victim, Jorge Omar Gutiérrez: his widow, Nilda del Valle Maldonado; his three children Jorge Gabriel Gutiérrez, [Omar] David Gutiérrez and Marilin Verónica Gutiérrez, and his brother Francisco Gutiérrez.”

136. The representatives indicated that the death of Jorge Omar Gutiérrez “had a significant impact on the functioning [of his family], who, from one day to the next, lost an important reference point.” They emphasized that his “father and mother and his brother

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<sup>245</sup> Cf. *Case of Kawas Fernández*, *supra*, para. 75.

<sup>246</sup> Cf. *Case of Kawas Fernández*, *supra*, para. 97, and *Case of the Massacres of El Mozote and nearby places*, *supra*, para. 164.

Fabián died without achieving their desire to obtain justice.” According to the representatives, Jorge Omar Gutiérrez had an excellent and very close relationship with his family, who “never remained passive” following his murder, because “Nilda del Valle Maldonado, Jorge Gabriel, David and Marilyn Gutiérrez, and also Francisco and Nilda Gutiérrez were involved in denouncing the crime, in the search for justice, and in keeping his memory fresh.” Consequently, the representatives affirmed that the death of Mr. Gutiérrez and the impunity of this act left his family “in a situation of permanent anguish and uncertainty that constituted the violation of their right to mental and moral integrity recognized in Article 5 of the [American Convention].”

137. The State “accepted the conclusions of the [Commission’s] Merits Report with regard to the next of kin [of Jorge Omar] Gutiérrez [...] regarding the alleged violation of [their] right to personal integrity [...] recognized in Article 5 [...].” It also acknowledged that “Nilda Gutiérrez, sister of Jorge Omar Gutiérrez,” was a victim of this violation.

### **B. Considerations of the Court**

138. The Court has indicated on other occasions that the next of kin of the victims of human rights violations may, in turn, be victims.<sup>247</sup> The Court has considered that the right to mental and moral integrity of some family members has been violated based on the suffering they have experienced owing to the acts or omissions of the State authorities,<sup>248</sup> taking into account, among other factors, the steps taken to obtain justice, and the existence of close family ties.<sup>249</sup> It has also declared the violation of this right owing to the suffering generated by the acts perpetrated against their loved ones.<sup>250</sup>

139. In addition, this Court has underscored that harm to the mental and moral integrity of the direct family members of victims of certain human rights violations can be presumed, as has occurred, for example, in the case of some massacres,<sup>251</sup> enforced disappearances of persons,<sup>252</sup> or extrajudicial executions.<sup>253</sup>

140. The Court appreciates the acknowledgement of responsibility made by the State with regard to the violation of the right to personal integrity of the next of kin of Jorge Omar Gutiérrez, namely: his wife Nilda del Valle Maldonado de Gutiérrez; his three children, Jorge Gabriel Gutiérrez, Omar David Gutiérrez, and Marilyn Verónica Gutiérrez, and his siblings Francisco Gutiérrez and Nilda Gutiérrez (*supra* para. 25). Nevertheless, the Court finds it pertinent to refer to the difficulties suffered by these persons, as the parties requested (*supra* paras. 135 and 136), in order to establish the scope of the harm caused.

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<sup>247</sup> Cf. *Case of the Serrano Cruz Sisters*, *supra*, paras. 113 and 114, and *Case of Luna López*, *supra*, para. 201.

<sup>248</sup> Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Luna López*, *supra*, para. 201.

<sup>249</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 163, and *Case of Gudiel Álvarez et al. (“Diario Militar”)*, *supra*, para. 290.

<sup>250</sup> Cf. *Case of the Serrano Cruz Sisters*, *supra*, para. 113 and 114, and *Case of Mendoza et al.*, *supra*, para. 273.

<sup>251</sup> Cf. *Case of the “Mapiripán Massacre”*, *supra*, para. 146 and *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 119.

<sup>252</sup> Cf. *Case of Blake*, *supra*, para. 114, and *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 119.

<sup>253</sup> Cf. *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 218 and *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 119.

141. In the instant case, the Court notes that the next of kin of Jorge Omar Gutiérrez sought justice for his death before State authorities on repeated occasions, without being able to access an effective remedy within a reasonable time (*supra* para. 125). In this regard, Nilda del Valle Maldonado, the victim's wife, indicated at the public hearing that:

"There was a before and after the death of Jorge, because for my children and I, and for the whole family, it was terrible [...]; it continues to be terrible even after almost 19 years. I think it had an impact that can never be repaired because we will never have Jorge with us again; the impact was tremendous, tremendous for all of us, for his children and for his siblings, his mother and his father [...]. Everything [...] the family did, I think it was commendable. It was the actions of all the family [...] the times we knocked on doors; and [...] there was no one in authority that we have not been to see [to find out] what happened to Jorge or what was being done in the court case [...]. The case would have been closed if it had not been for the family, for the fight we had to put up for everything."

142. Francisco Gutiérrez, Jorge Omar's brother, stated that, following his brother's murder, his life changed forever. He also indicated that:

"From that moment, I swore to find those who were responsible, the perpetrators, accomplices and accessories, bring them to justice [so that they ...] would be punished [...]. I never imagined the impunity that awaited us. [...] First my mother, Ruth, died in 1997, vanquished by the anguish of Jorge's death and the impunity that surrounded the trial for this crime; then my brother Fabián died in strange circumstances in 2007 and, finally, my father, Francisco, died the following year, in 2008, owing to his failing physical health and the mental anguish of having to leave this world with the crime against his son Jorge still unpunished."<sup>254</sup>

143. Meanwhile, Nilda Gutiérrez stated that she had an inconsolable reaction to the news of her brother's murder that "upset all [her] beliefs, including religious beliefs." She had the responsibility of telling her parents of Jorge Omar's violent death. In addition, as she lived very close to her mother's house she not only suffered because of the loss of her brother, but also because she saw directly her parents constant manifestations of pain and sadness, as well as the progressive deterioration of their health, up until their death.<sup>255</sup>

144. With regard to the children of Jorge Omar Gutiérrez, the Court underscores the profound sadness they felt following his execution. In this regard, Jorge Gabriel stated that "we lived with fear, with doubts [and] always with dread."<sup>256</sup> For his part, Omar David stated that it caused him a great deal of "anguish, anger, impotence, and a mixture of feelings that [...] they had killed [his father] in such a treacherous and cowardly way."<sup>257</sup> Lastly, Marilyn Verónica stated that she "always took part [in the investigation into her father's murder, and her] conversations were always and still are marked by these events, by the impunity, by apprehension, by anger, by impotence, and by pain."<sup>258</sup>

145. The Court notes that the extrajudicial execution of Jorge Omar Gutiérrez, attributable to the State, undoubtedly caused suffering, pain and anguish to his next of kin, particularly owing to the absence of a serious and effective investigation to identify, prosecute and punish, as appropriate, the perpetrators of his execution, despite their continuous efforts to discover the truth about what happened, and the actual impunity in this case (*supra* para. 133).

146. Based on the above, the Court concludes that the State violated the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of

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<sup>254</sup> Cf. Affidavit prepared by Francisco Gutiérrez (merits file, folios 697 to 689 and 706).

<sup>255</sup> Cf. Affidavit prepared by Nilda Gutiérrez (merits file, folios 719 and 720).

<sup>256</sup> Cf. Affidavit prepared by Jorge Gabriel Gutiérrez (merits file, folio 728).

<sup>257</sup> Cf. Affidavit prepared by Omar David Gutiérrez (merits file, folio 739).

<sup>258</sup> Cf. Affidavit prepared by Marilyn Verónica Gutiérrez (merits file, folio 752).

this instrument, to the detriment of Nilda del Valle Maldonado de Gutiérrez, Jorge Gabriel Gutiérrez, Omar David Gutiérrez, Marilin Verónica Gutiérrez, Francisco Gutiérrez and Nilda Gutiérrez.

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

147. Based on the provisions of Article 63(1) of the American Convention,<sup>259</sup> the Court has indicated that any violation of an international obligation that has caused harm entails the duty to repair it adequately,<sup>260</sup> and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>261</sup>

148. Based on the Agreement reached by the parties, which the Court has previously assessed pursuant to Articles 62 to 64 of the Rules of Procedure (*supra* para. 21), the Court will analyze the measures agreed on in order to determine their scope and methods of implementation. Also, based on its considerations on the merits and the violations of the American Convention declared in the preceding chapters, the Court will proceed to examine the claims presented by the Commission and the representatives regarding which a dispute subsists (*supra* para. 25). All this in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation, in order to establish the measures designed to make integral reparation for the harm caused to the victims<sup>262</sup>.

149. The Court has established that reparations must have a causal nexus to the facts of the case, the violations that have been declared, and the harm proved, as well as the measures requested to redress the respective harm. Hence, the Court must observe this concurrence in order to rule appropriately and in accordance with the law.<sup>263</sup> The Court will determine measures to guarantee the violated rights, to repair the consequences produced by the violations, and to establish compensation for the harm caused.

### **A. Injured party**

150. The Court reiterates that, under Article 63(1) of the Convention, anyone who has been declared a victim of the violation of any right recognized in the Convention is considered an injured party.<sup>264</sup> Therefore, the Court considers Jorge Omar Gutiérrez, and also Nilda del Valle Maldonado de Gutiérrez (wife of Jorge Omar Gutiérrez), Jorge Gabriel Gutiérrez, Omar David Gutiérrez and Marilin Verónica Gutiérrez (children of Jorge Omar

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<sup>259</sup> Article 63(1) of the Convention establishes that: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

<sup>260</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2013. Series C No. 268, para. 243.

<sup>261</sup> Cf. *Case of Velásquez Rodríguez. Reparations and costs, supra*, para. 25, and *Case of Luna López, supra*, para. 213.

<sup>262</sup> Cf. *Case of Velásquez Rodríguez. Reparations and costs, supra*, paras. 25 to 27, and *Case of Luna López, supra*, para. 214.

<sup>263</sup> Cf. *Case of Ticona Estrada et al., supra*, para. 110, and *Case of Luna López, supra*, para. 215.

<sup>264</sup> Cf. *Case of the La Rochela Massacre, supra*, para. 233, and *Case of Luna López, supra*, para. 216.

Gutiérrez) and Francisco Gutiérrez and Nilda Gutiérrez (siblings of Jorge Omar Gutiérrez) to be the “injured party.”

***B. Obligation to investigate, and identify, prosecute and punish, as appropriate, the perpetrators and masterminds of the facts related to the execution of Jorge Omar Gutiérrez***

151. The Commission asked the Court to order the State to conduct a complete, impartial, effective and prompt investigation in order to determine and punish all the masterminds and perpetrators who participated in the events related to the execution of Jorge Omar Gutiérrez. Also, in its final observations, it requested the removal of any factual or legal obstacle to the progress of the judicial investigations and that the victims be guaranteed full participation in all the investigations.

152. The representatives requested in their pleadings and motions brief that the Court order the State “to re-open the [investigation] against [the federal police agent indicted]” as presumed perpetrator of the extrajudicial execution of Mr. Gutiérrez and that it make “progress in the investigation and the effective prosecution [of the presumed participant who accompanied the said federal police agent], as well as [in] the complete investigation, prosecution and punishment of the masterminds of the murder, and all those who were involved in the cover-up.” In addition, in their final arguments, they asked for the removal of any factual or legal obstacle to the progress of the judicial investigations and that the victims be guaranteed full participation in all the investigations.

153. The State accepted the Commission’s recommendation concerning its obligation to investigate (*supra* para. 151) and, in the Agreement, it “undert[ook] to implement, together with the authorities of the province of Buenos [Aires], a strategy for participation in the judicial proceedings against [the federal police agent indicted], as well as in the judicial investigations into those responsible for covering up the murder of Jorge Omar [Gutiérrez].”

154. Taking into account: (a) the agreements reached regarding reparations in the Agreement (*supra* para. 17); (b) that the right of access to justice was violated in the domestic investigations and criminal proceedings (*supra* para. 125); (c) that the extrajudicial execution of Assistant Commissioner Jorge Omar Gutiérrez perpetrated by State agents is a particularly serious violation owing to the circumstances that surrounded it (*supra* para. 129); (d) that the next of kin of Mr. Gutiérrez suffered a violation of their rights of access to justice, to the truth, and to reparation, owing to the actions of the State (*supra* para. 134), and (e) the obstacles faced by the investigation and the criminal proceedings (*supra* para. 121), this Court establishes that the State must, in order to comply with the undertaking made in good faith, implement with due diligence and within a reasonable time, the corresponding investigations and criminal proceedings, in order to individualize, identify, prosecute and punish, as appropriate, the perpetrators and masterminds of the acts related to the execution of Jorge Omar Gutiérrez, as well as to establish the truth about them, taking into account the criteria indicated with regard to investigations in this type of case (*supra* paras. 96 to 99, 101, 102, 118 to 120, 124, 128 to 131, and 133). To this end, the State must:

- a) Remove all the *de facto* and *de jure* obstacles that prevent the effective investigation of the facts in the respective proceedings, in order to avoid the repetition of what happened in circumstances such as those of the instant case;<sup>265</sup>

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<sup>265</sup> Cf. *Case of Valle Jaramillo et al.*, *supra*, para. 232, and *Case of Kawas Fernández*, *supra*, para. 192.

- b) Ensure that the different organs of the system of justice involved in the case have the necessary human and material resources to perform their tasks in a satisfactory, independent and impartial manner, and that the persons who take part in the investigation, including victims, witnesses, and agents of justice, have adequate guarantees of security;<sup>266</sup>
- c) Ensure that due diligence in the investigation means that all the State authorities are obliged to collaborate in the collection of evidence, and must therefore provide the judge, prosecutor or other judicial authority with all the information required and abstain from acts that entail the obstruction of the progress of the investigative process;
- d) Ensure the next of kin of Assistant Commissioner Jorge Omar Gutiérrez full access and capacity to act at all stages of this investigation, pursuant to domestic law and the norms of the American Convention,<sup>267</sup> and
- e) Publicize the results of the proceedings so that society may know the facts that are the purpose of this case, as well as those responsible.<sup>268</sup>

### **C. Measures of satisfaction and guarantees of non-repetition**

155. International case law and, in particular that of the Court, has established repeatedly that the Judgment may constitute *per se* a form of reparation.<sup>269</sup> However, considering the circumstances of the case and the adverse effects on the victims arising from the violations of the American Convention declared to their detriment, as well as the Agreement reached by the parties, the Court finds it pertinent to determine the following measures of reparation.

#### **C.1. Satisfaction**

##### *C.1.1. Public act to acknowledge international responsibility and public apology*

156. The representatives asked the Court to order the State “to acknowledge publicly its international responsibility for the events to the detriment of Jorge Omar Gutiérrez and his next of kin, and to offer a public apology for the human rights violations in which it has incurred,” as well as for the “lack of an effective investigation into what happened.” In this regard, they asked that an act of acknowledgement of responsibility be organized, with the participation of national and provincial authorities, in which the victim’s memory is commemorated. The Commission did not refer specifically to this point.

157. In the Agreement (*supra* para. 17), Argentina undertook to organize a public act to acknowledge responsibility for the violation of Articles 4, 5, 8 and 25 of the American Convention on Human Rights to the detriment of Jorge Omar Gutiérrez and his next of kin.

158. The Court appreciates greatly the State’s willingness to organize a public act to acknowledge its international responsibility for the facts of the instant case, and therefore

<sup>266</sup> Cf. *Case of Kawas Fernández*, *supra*, para. 195.

<sup>267</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, para.149, and *Case of Kawas Fernández*, *supra*, para. 194.

<sup>268</sup> Cf. *Case of Valle Jaramillo et al.*, *supra*, para. 233, and *Case of Kawas Fernández*, *supra*, para. 194.

<sup>269</sup> 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 the Constitutional Tribunal (Camba Campos et al.)*, *supra*, para. 250.

endorses this measure in the terms agreed between the parties. The Court also finds, as it has in other cases,<sup>270</sup> that, in this act reference must be made to the human rights violations declared in this Judgment and an apology offered for the events of this case. To this end, Argentina must reach agreement with the victims or their representatives on the organization of this public act of acknowledgement and its characteristics, and also provide the victims, among other elements, with the necessary facilities of transport and logistics in this regard. The State has one year from notification of this Judgment to hold this act.

*C.1.2. Publication and dissemination of the Judgment*

159. The representatives asked the Court to order the State to disseminate the Judgment in this case widely. They also asked that the acknowledgement of responsibility be published in two of the country's most important newspapers and on the web page of the *Centro de Información Judicial* (CIJ, [www.cij.gov.ar](http://www.cij.gov.ar)) [the news agency of the Judiciary]. They indicated that this acknowledgement should be accompanied by an account of the series of irregularities and obstructions of justice that resulted in impunity in this case. Neither the Commission nor the State referred to this point specifically.

160. The Court establishes, as it has in other cases,<sup>271</sup> that the State must publish, within six months of notification of this Judgment, the official summary of the Judgment prepared by the Court, once, in the Official Gazette, and in a national newspaper with widespread circulation. Argentina must also publish the Judgment in its entirety for at least 12 consecutive months on the website of the *Centro de Información Judicial* (CIJ, [www.cij.gov.ar](http://www.cij.gov.ar)), as well as on the official websites of the Argentine Federal Police and of the Police of the province of Buenos Aires.

*C.1.3. Measures to conserve and indicate the warehouse and the police precinct where the events occurred*

161. In the Agreement reached with the representatives, the State undertook "to adopt measures to conserve and indicate the warehouse and the police precinct where the events occurred that gave rise to this case." The Commission did not refer to this point.

162. The Court assesses positively the undertaking made by the State, aimed at recovering the memory of Jorge Omar Gutiérrez. Consequently, the Court endorses this measure agreed between the parties and orders the State to implement it within one year of notification of the Judgment.

*C.1.4. Establishment of the "National Day to Combat Drug-trafficking"*

163. In the Agreement reached with the representatives, the State undertook "to establish August 29 as the 'National Day to Combat Drug-trafficking.'" The Commission did not refer to this point.

164. The Court appreciates the State's willingness to establish August 29 as the "National Day to Combat Drug-trafficking" as a measure of satisfaction, and takes note of this commitment. The Court will not monitor implementation of this measure during the procedure of monitoring compliance with the Judgment.

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<sup>270</sup> Cf. *inter alia*, *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 81, and *Case of Nadege Dorzema et al.*, *supra*, para. 265.

<sup>271</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Luna López*, *supra*, para. 224.

## **C.2. Guarantees of non-repetition**

165. The Court recalls that the State must prevent the recurrence of human rights violations such as those described in this case and, to this end, adopt all the necessary legal, administrative and any other measures to make the exercise of these rights effective,<sup>272</sup> in accordance with the obligations to avoid similar acts occurring in the future, in compliance with the obligations to prevent violations, and guarantee the human rights recognized by the American Convention.<sup>273</sup>

### *C.2.1. Training for police agents*

166. The representatives asked the Court to order the State to guarantee that the career of Jorge Omar Gutiérrez and the reasons for his death are part of the compulsory curriculum of the training program of the Federal Police, and the Police of the province of Buenos Aires, as well as of the Judicial Police of the province of Buenos Aires. In the Agreement signed by the representatives and Argentina, the “National State and the province of Buenos Aires undert[ook] to include the ‘Gutiérrez case’ in the training curricula of the law enforcement personnel subject to its jurisdiction.” The Commission did not refer to this point.

167. Taking into account the particularities of this case, the Court considers it important to strengthen the institutional capacities at the level of the province of Buenos Aires and at the federal level in Argentina by training its law enforcement personnel in order to avoid the repetition of events such as those analyzed in the instant case. Regarding the training on the protection of human rights, in its case law, the Court has considered that this is a way of providing public officials with new expertise, developing their capacities, allowing them to specialize in certain innovative areas, preparing them to occupy different posts, and adapting their capacities to improve their performance of the tasks they are assigned.<sup>274</sup>

168. The Court assesses positively the State’s willingness to include the “Gutiérrez case” in the training curricula of law enforcement personnel subject to the jurisdiction of the National State and the province of Buenos Aires. Thus, taking into account the human rights violations committed by State agents, as well as the impunity of the case, the Court orders that, without prejudice to the training programs on human rights for public officials that already exist in Argentina, the State incorporate into the training courses or curricula of the Argentine Federal Police and of the Police of the province of Buenos Aires, as well as of the Judicial Police of that province, within a reasonable time and with the respective budgetary envelope, training courses on the obligations of respect for and guarantee of human rights, particularly the right to life, on the obligation to investigate with due diligence, and on effective judicial protection, as well as on control of conformity with the Convention, referring to this case and to this Judgment.

### *C.2.2. Regulation and implementation of external control mechanisms for the federal police forces, improvements in the investigative capacity of the system of justice, establishment of the Judicial Police of the province of Buenos Aires, and of effective protection systems for victims and witnesses*

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<sup>272</sup> Cf. *Case of Velásquez Rodríguez, Reparations and costs, supra*, para. 166, and *Case of Luna López, supra*, para. 234.

<sup>273</sup> Cf. *Case of Velásquez Rodríguez, Reparations and costs, supra*, para. 166, and *Case of Suárez Peralta, supra*, para. 195.

<sup>274</sup> Cf. *Case of Claude Reyes et al. v. Chile. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 24, 2008, nineteenth considering paragraph, and Case of Radilla Pacheco, supra*, para. 346.

169. Among their different requests, the representatives presented four groups of measures of non-repetition, which they described in detail, and which are: (i) regulation and implementation of external control measures for the federal police forces, including the “implementation of civilian and independent mechanisms that ensure the effective control of the legality of the performance of the police agents and of internal administrative actions”; (ii) improvements in the investigative capacity of the system of justice of the province of Buenos Aires in complex cases involving State officials; (iii) establishment of the Judicial Police of the province of Buenos Aires, including the obligation to adopt “legal and material measures that permit the creation of a criminal investigation unit that complies functions other than those performed by the preventive police forces, and that is able to assist the public prosecution service in these investigations,” and (iv) “legal and material measures to develop and implement effective protection systems for witnesses and victims.” The Commission did not refer to these issues.

170. In the Agreement, the State undertook the following: “to further the regulation and implementation of external control mechanisms on the actions of the members of federal law enforcement agencies”; “full [...] operation of the provincial Judicial Police, including the creation of the Monitoring Committee to ensure its effective execution in the legislature of the province of Buenos Aires,” and “the establishment of an effective system of protection for victims and witnesses.” In addition, the State indicated “that these measures have already been initiated within the provincial and national Executive, respectively,” and that “the required commitment in this area is to strengthen and develop what already exists.”

171. The Court takes note of the undertakings made by the State, which are aimed at ensuring that the obstructions to the investigation and criminal proceedings, as well as the threats to witnesses that have been verified in this case, do not happen again. The Court will not monitor the implementation of these measures under the proceeding of monitoring compliance with the Judgment.

#### ***D. Compensation***

172. First, the Court notes that, in the Agreement, the representatives and the State asked the Court to rule “on the scope of the reparations in favor of the victims, which should include [...] compensation for pecuniary and non-pecuniary damage, based on the equity principle.” The Court will take this request into account to rule on the arguments of the parties in this regard.

##### ***D.1. Pecuniary damage***

173. In its case law, the Court has developed the concept of pecuniary damage and has established that this supposes “the loss of, or detriment to, the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus to the facts of the case.”<sup>275</sup>

##### ***D.1.1. Consequential damage***

174. The representatives argued that the State should reimburse the expenses incurred by the Gutiérrez family as a result of the human rights violations committed to the detriment of Jorge Omar Gutiérrez. In this regard, they asked the Court to order the State

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<sup>275</sup> *Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Luna López, supra*, para. 246.

to reimburse "the expenses incurred by the family to give the victim a decent burial," as well as "the expenses entailed by keeping the proceedings and the demand for justice open," which involved holding public meetings, producing posters and leaflets, and weekly trips from Quilmes to La Plata from September 1994 to March 1998. However, they indicated that, owing to the complexity of quantifying the total for these expenses, and the impossibility of presenting vouchers for them, they asked the Court to consider allocating a symbolic amount that reflected these expenses. The Commission did not refer to this point.

175. The State considered "objectionable that, under the heading of consequential damage, the petitioner has included trial expenses and costs," because, in its opinion, some of the representatives' items were repeated "in the special section on costs and expenses."

176. The Court has verified that the representatives of the victims presented three vouchers covering funeral expenses incurred by Nilda del Valle Maldonado between 1994 and 2004.<sup>276</sup> However, the Court presumes that, as of the execution of Jorge Omar Gutiérrez, his next of kin incurred diverse expenses owing to this act. Consequently, the Court establishes, in equity, compensation of US\$1,000.00 (one thousand United States dollars) for consequential damage. This amount must be delivered to Nilda del Valle Maldonado. In the section on costs and expenses, the Court will assess those disbursements related to the expenditure involved in keeping the proceedings and the demand for justice open (*infra* para. 194).

#### *D.1.2. Loss of earnings*

177. The representatives indicated that Jorge Omar Gutiérrez was 41 years of age when he was murdered and that, according to statistical data for 1999 of the National Census and Statistics Institute (INDEC), average life expectancy in Argentina for men was 68.53 years; they therefore calculated that Jorge Omar Gutiérrez would have lived a further 27.53 years, and received 330.36 more salaries. However, the representatives indicated that the calculation should take into account not only the 931.00 Argentine pesos a month that he received in 1994, but this amount should be updated, taking into account his commitment and the quality of his work, so that it could be expected that, during his career, he would be promoted to at least the rank of Commissioner General, with a current monthly salary of 23,923.59 Argentine pesos. According to the representatives, 25% should be deducted from the estimated amount of the income as the sum that the victim would have used for his persons expenses. Finally, the representatives asked the Court to establish, in equity, the rate that should be used to calculate interest, which should include interest calculated from the date of the incident until the date the payment is made. The Commission did not refer to this matter.

178. The State considered "unfounded the said expectation to assimilate the career in the police force of [Jorge Omar] Gutiérrez to a purported 'successful career' culminating in the achievement of one of the highest ranks and, consequently, the highest income on the current pay scale." In addition, it asked that the "the items that the Court will consider be defined using strict criteria of equity," taking into account that both the widow and the children of Jorge Omar Gutiérrez "have received and continue to receive the corresponding pension from the social security institute, which has been taking the place of the income with which [Mr.] Gutiérrez covered the his family's living costs and, therefore, an essential part of what is sought to be understood by loss of earnings."

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<sup>276</sup> The vouchers represent the sum of 495.50 Argentine pesos. *Cf.* Vouchers for funeral expenses (file of annexes to the pleadings and motions brief, folios 2634 to 2637).

179. The Court notes that the representatives forwarded a voucher for the salary of Jorge Omar Gutiérrez as Assistant Commissioner,<sup>277</sup> as well as tables of the National Census and Statistics Institute on life expectancy at birth by sex and by jurisdiction in Argentina for the years 1990/1992 and 2000/2001.<sup>278</sup> For its part, the State indicated that both the widow and the children of Jorge Omar Gutiérrez have received and continue to receive the pension that corresponded to him from the social security institute, without providing any evidence in this regard. The representatives did not disprove this allegation by the State; however, this Court has verified that the Directorate General of Judicial Affairs of the Police of the province of Buenos Aires decided to declare “the death of Assistant Commissioner Jorge Omar Gutiérrez attributable to service [and] to notify the heirs [...] of the compensation provided,”<sup>279</sup> and to provide certified copies to the “Retirement and Pension Fund,” for the pertinent effects. Therefore, the Court will not order a compensatory amount for the next of kin of Jorge Omar Gutiérrez for the said loss of earnings as of his execution.

#### *D.1.3. Damage to the family wealth*

180. The representatives affirmed that the family of Jorge Omar Gutiérrez were unable to carry out their daily activities owing to the change in their personal circumstances as a result of his execution. In this regard, they indicated that, as of the death of her husband, Nilda del Valle Maldonado was obliged to begin to work, and could not devote herself solely to running her home and taking care of her children. They argued that Jorge Gabriel, the elder son of Jorge Omar Gutiérrez, who was 18 years of age at the time of his father's death, had to start working to ensure the subsistence and protection of the whole family. In addition, Omar David, 16 years old at the time of the incident, had to work and study at the same time. Meanwhile, Marilin, who was aged 13 at the time of the events, also suffered the consequences in her daily life. Furthermore, all of them, and also Nilda and Francisco Gutiérrez, sister and brother of Jorge Omar Gutiérrez, dedicated much of their time to promoting the investigation and seeking to obtain justice for the execution, to the detriment of other activities that they could have carried out, and also “together, covered the expenses related to the search for justice and the maintenance of [his] memory.” Consequently, the representatives asked the Court to establish a compensatory amount in accordance with criteria of equity. The Commission did not make any observations in this regard.

181. For its part, the State indicated that, when asserting that “it was the siblings Jorge Omar [Gutiérrez] who, jointly, covered the expenses related to this search for justice,” it was sought to include items that corresponded to “costs and expenses” under this heading.

182. This Court has granted compensation for the concept of damage to the family wealth in cases in which, even when there is no appropriate mechanism that shows the exact amount or value of the harm caused, damage to the family wealth can be inferred from the facts revealed by factors such as: a substantial change in the conditions and quality of life that are a direct consequence of the acts that can be attributed to the State; expenditure incurred in relation to exile or moving house; social reincorporation expenses; expenses incurred to obtain employment that was lost as a result of the violations committed by the

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<sup>277</sup> The voucher is for a net sum of 931.76 Argentine pesos and for a paid sum of 899.46 Argentine pesos. *Cf.* Voucher for the salary of Jorge Omar Gutiérrez (file of annexes to the pleadings and motions brief, folio 2030).

<sup>278</sup> *Cf.* INDEC tables on life expectancy at birth, by sex and by jurisdiction, in Argentina, 1990/92 and 2000/2001 (file of annexes to the pleadings and motions brief, folio 2032).

<sup>279</sup> *Cf.* Decision No. 104097 (file of annexes before the Commission, folio 101).

State; expenses related to the inability to study; loss of possessions, and also harm to the physical, mental and emotional health of the family concerned.<sup>280</sup>

183. The Court takes note that, in this case, the next of kin of Jorge Omar Gutiérrez were declared victims of the violation of the rights to judicial guarantees and protection, as well as to personal integrity owing to his death and the impunity in which the case remains. Thus, it considers that what the representatives indicate as “damage to the family wealth” is not a direct consequence of these violations, and that, in this case, it is subsumed within the amounts for pecuniary and non-pecuniary damage. Therefore, the Court will not order an additional amount for this concept. In the section on costs and expenses, the Court will assess those financial disbursements related to the expenses entailed by keeping open the proceedings and the demand for justice (*supra* para. 176 and *infra* para. 193).

#### **D.2. Non-pecuniary damage**

184. In its case law, the Court has developed the concept of non-pecuniary damage and has established that this “may include both the suffering and afflictions caused by the violation, and also the impairment of values of great significance for the individual, as well as any change, of a non-pecuniary nature, in the living conditions of the victims.”<sup>281</sup>

185. The representatives stated that “the non-pecuniary damage suffered by the next of kin of Jorge Omar Gutiérrez, resulted from: (a) the violent death of a loved one at the hands of State agents; (b) the ineffectiveness of the system of justice to investigate the facts; (c) the distortion and concealment of the facts by public officials, some of them colleagues of the victim; (d) the versions aimed at harming the reputation of Jorge Omar Gutiérrez and creating impunity; (e) the failure of the criminal actions filed [...] (despite persistent requests and direct investigations by the family members); (f) the intimidation, threats, attacks, and other acts of violence suffered by key witnesses in the judicial proceedings; (g) the accusations against them because they organized activities to avoid collective oblivion in relation to the crime; (h) the State’s lack of protection in the face of possible attacks by the perpetrators and masterminds interested in ensuring impunity, despite the fears expressed by the family[, and] (i) the State’s absence of political will and the disregard of the demands for justice by public officials and a deliberate lack of respect during the friendly settlement procedure.” In addition, the representatives argued as part of the non-pecuniary damage “the change in the living conditions of each member of the family.” Consequently, the representatives asked the Court to establish, in equity, a compensatory amount for the wife of Jorge Omar Gutiérrez, his three children, his sister Nilda Gutiérrez, and his brother Francisco Gutiérrez. Meanwhile, in the Agreement, the parties asked the Court to rule on the scope of the reparations for the victims, which should include compensation for non-pecuniary damage, based on the principle of equity (*supra* para. 17). The Commission did not refer to this point.

186. As the Court has indicated on other occasions,<sup>282</sup> in cases such as this one, the non-pecuniary damage inflicted on the victim is evident. In this regard, the Court decides to order the State to pay compensation of US\$75,000.00 (seventy-five thousand United States dollars) for the non-pecuniary damage suffered by Jorge Omar Gutiérrez. This sum must be delivered integrally and in equal parts to the victim’s wife and children, respectively, Nilda del Valle Maldonado de Gutiérrez, Jorge Gabriel, Omar David and Marilin Verónica Gutiérrez.

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<sup>280</sup> Cf. *Case of Gutiérrez Soler*, *supra*, para. 78, and *Case of Baldeón García*, *supra*, para. 186.

<sup>281</sup> *Case of the “Street Children” (Villagrán Morales et al.)*, *supra*, para. 84, and *Case of Luna López*, *supra*, para. 251.

<sup>282</sup> Cf. *Case of Zambrano Vélez et al.*, *supra*, para. 142, and *Case of Kawas Fernández*, *supra*, para. 194.

In addition, the Court has taken note of the anguish and suffering experienced by the next of kin of Jorge Omar Gutiérrez as a result of the facts of the case and of the impunity in which his death remains (*supra* paras. 141 to 146). In the specific case of Nilda del Valle Maldonado and Francisco Gutiérrez, the Court has noted the additional effects derived from their participation as injured parties in the criminal proceedings (*supra* paras. 141 and 142). Consequently, and in light of the Agreement reached by the parties, the Court finds that, in equity, the State must provide the victims with the following amounts, in United States dollars:

<b>Name</b>	<b>Relationship</b>	<b>Amount</b>
<b>Nilda del Valle Maldonado de Gutiérrez</b>	<b>Wife</b>	<b>US\$ 20,000.00</b>
<b>Jorge Gabriel Gutiérrez</b>	<b>Son</b>	<b>US\$ 10,000.00</b>
<b>Omar David Gutiérrez</b>	<b>Son</b>	<b>US\$ 10,000.00</b>
<b>Marilin Verónica Gutiérrez</b>	<b>Daughter</b>	<b>US\$ 10,000.00</b>
<b>Francisco Gutiérrez</b>	<b>Brother</b>	<b>US\$ 10,000.00</b>
<b>Nilda Gutiérrez</b>	<b>Sister</b>	<b>US\$ 5,000.00</b>

## **E. Costs and expenses**

### *E.1. Arguments of the parties*

187. The representatives stated that the victims were assisted by two private lawyers up until the beginning of 1998, when another person began to represent them. In addition, they had to finance the domestic proceedings. Hence, they asked the Court to order compensation that included, in equity, a symbolic amount for the expenses incurred in the domestic jurisdiction during the 19 years that the case has been processed.

188. Regarding the costs incurred for the proceedings before the inter-American system, the next of kin of Jorge Omar Gutiérrez were represented by the *Centro de Estudios Legales y Sociales* (CELS). According to the representatives, they had to pay the ordinary expenses of processing the case (expenditure for telephone calls, fax, mail and supplies) amounting to US\$2,500.00 (two thousand five hundred United States dollars), plus the expense of three trips to Washington D.C., with the respective expenses when they were summoned to hearings and/or working meetings, attended by two people each time. According to the representatives, the Gutiérrez family covered their own expenses to be present on these occasions before the Commission, attended by two people on the first occasion, and three people on the other two. In this regard, the representatives indicated that they do not have vouchers for the amounts paid out; they therefore asked the Court to order, in equity, the sum of US\$1,500.00 (one thousand five hundred United States dollars) per person, for each of these trips, for a total of US\$9,000.00 (nine thousand United States dollars) for CELS and US\$12,000.00 (twelve thousand United States dollars) for the family.

189. Lastly, the representatives alleged that the following disbursements were made for travel and accommodation in order to attend the public hearing at the seat of the Inter-American Court in San José, Costa Rica: Nilda del Valle Maldonado disbursed US\$1,978.63 (one thousand nine hundred and seventy-eight United States dollars and sixty-three cents); the attendance of Luis Valenga, which was paid by the Gutiérrez family, cost US\$2,127.21 (two thousand one hundred and twenty-seven United States dollars and twenty-one cents), and the attendance of Paula Litvachky and Gabriela Kletzel, which was covered by CELS represented a cost of US\$5,035.79 (five thousand and thirty-five United States dollars and seventy-nine cents). Consequently, they asked the Court to order the State to reimburse

these expenses. Regarding the honorarium of CELS for its work on the international case, they asked the Court to establish this based on the equity principle. The Commission did not refer to this point.

190. The State indicated that it would “await the [ruling] made in this regard,” pursuant to criteria of reasonableness that should predominate when requesting and establishing the amounts corresponding to the reimbursement of the expenses required in order to access the internal and the international proceedings, and because the representatives had asked that these be established based on equity. Meanwhile, in the Agreement, the parties asked the Court to rule on the scope of the reparations for the victims, which should include the costs and expenses incurred in the domestic and the international jurisdiction.

### *E.2. Considerations of the Court*

191. The Court reiterates that, according to its case law,<sup>283</sup> costs and expenses are included in the concept of reparation, because the activities deployed by the victims in order to obtain justice, at both the internal and the international level, entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment.

192. Regarding the reimbursement of expenses, the Court must make a prudent assessment of their scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those arising during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.<sup>284</sup>

193. First, although the representatives did not submit evidence of the expenses incurred as a result of the demand for justice of the Gutiérrez family before the Argentine authorities, the Court has verified the constant activity of Nilda del Valle Maldonado and Francisco Gutiérrez in the criminal proceedings initiated owing to the facts of the case (*supra* paras. 47, 60, 141 and 142). Consequently, the Court orders, in equity, that the State pay each of them the sum of US\$6,000.00 (six thousand United States dollars) for the costs incurred in the domestic litigation.

194. Furthermore, regarding the inter-American litigation, the Court notes that the representatives forwarded various vouchers for air travel to the seat of the Inter-American Commission in Washington, D.C., amounting to US\$4,213.10 (four thousand two hundred and thirteen United States dollars and ten cents). The State did not make any observations in this regard. Consequently, the Court orders the State to reimburse this sum to the representatives of the victims. In addition, the Court notes that the representatives did not provide evidence or indicate which family members of Mr. Gutiérrez had travelled to the seat of the Inter-American Commission in Washington, D.C., because of the case, so that it will not order an amount for this concept. Also, the Court will not take into account the vouchers forwarded by the representatives related to a trip to New York, United States of America, because they did not indicate how this is related to the case.

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<sup>283</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 39, and *Case of Luna López*, *supra*, para. 258.

<sup>284</sup> Cf. *Case of Garrido and Baigorria. Reparations and costs*, *supra*, para. 82, and *Case of the Constitutional Tribunal (Camba Campos et al.)*, *supra*, para. 316.

195. Lastly, the Court notes that the representatives forwarded vouchers related to the expenses paid to attend the public hearing held before this Court. Consequently, the Court orders the State to reimburse the victims' representatives the sum of US\$4,407.65 (four thousand four hundred and seven United States dollars and sixty-five cents), and to reimburse Nilda del Valle Maldonado the sum of US\$5,262.56 (five thousand two hundred and sixty-two United States dollars and fifty-six cents). In addition, the Court orders, in equity, that the State reimburse the representatives the sum of US\$25,000.00 (twenty-five thousand United States dollars) for their honorarium. The amounts established for the victims' representatives must be delivered directly to the *Centro de Estudios Legales and Sociales* (CELS). At the stage of monitoring compliance with this Judgment, the Court may establish that the State reimburse the victims or their representatives any subsequent reasonable and duly authenticated expenses.<sup>285</sup>

#### **F. Other measures requested**

196. The Commission asked the Court to order the State to determine the administrative, disciplinary, criminal or any other applicable type of responsibility for the flaws in the investigation and processing of the facts, and the obstructions that have led to impunity. In the Agreement signed with the representatives, the State undertook "to further the pending administrative and summary actions concerning the personnel of the Argentine Federal Police subject to its jurisdiction who may have taken part in the crime, concealed it, or obstructed the investigation."

197. In addition, the representatives asked the Court to order the State: to legislate and regulate the full participation of victims and civil society organizations in administrative proceedings, and to implement an external control mechanism for the administrative proceedings; to incorporate into the "norms that govern the activities of the country's law enforcement personnel a clause that establishes the possibility of filing and investigating, or reviewing, the disciplinary proceedings in relation to facts that have resulted in a recommendation, decision or conviction by an international monitoring and control organ in proceedings for human rights violations, in relation to the State"; to implement effective mechanisms for full compliance with the decisions of international organs concerning human rights; to amend the actual regulation of the institutional and corporate defense systems of law enforcement agencies; to create and implement mechanisms to protect officials willing to investigate; to create "a grant with the name of Jorge Omar Gutiérrez for police cadets to take courses on human rights"; to recall "the memory of Jorge Omar Gutiérrez during the ceremony of November 2 in which, each year, police agents who have died in the line of duty are commemorated"; to implement "the necessary measures to ensure that the place where the warehouse operated that adjoined the Avellaneda Second Police Precinct can be designated for a purpose that benefits the public," and to support "the dissemination of the documentary that is being made on the facts of this case, as well as the re-edition of the book '*Maten a Gutiérrez*' by Daniel Otero".

198. In this regard, the Court finds that the measures of reparation ordered in this Judgment are sufficient based on the facts and human rights violations established.

#### **G. Method of complying with the payments ordered**

199. The State must make the payments of compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this Judgment

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<sup>285</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña*, *supra*, para. 291, and *Case of Luna López*, *supra*, para. 260.

directly to the persons indicated herein, within one year of notification of the Judgment, in accordance with the following paragraphs.

200. If the beneficiaries should die before they receive the respective compensation, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

201. The State must comply with its obligations by payment in United States dollars or Argentine currency, using the exchange rate between the two currencies in force on the stock market of New York, United States of America, the day before the payment.

202. If, for reasons that can be attributed to the beneficiaries of the compensation, it is not possible for them to receive it within the indicated time frame, the State shall deposit these amounts in their favor in an account or certificate of deposit in an Argentine financial institution, in United States dollars and in the most favorable financial conditions permitted by Argentine banking law and practice. If, after 10 years, the compensation has not been claimed, the amounts shall be returned to the State with the interest accrued.

203. The amounts allocated in this Judgment as compensation shall be delivered to the persons indicated integrally, as established in this Judgment, without deductions arising from possible taxes or charges.

204. If the State should incur arrears, it shall pay interest on the amount owed corresponding to bank interest on arrears in the Argentine Republic.

## **X OPERATIVE PARAGRAPHS**

Therefore,

### **THE COURT**

#### **DECIDE,**

unanimously that:

1. It accepts the Agreement on Reparations in the terms of paragraphs 15 to 27 of this Judgment.

#### **DECLARES,**

unanimously that:

2. The State is responsible for the violation of the right to life recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Jorge Omar Gutiérrez, in accordance with paragraphs 74 to 92 of this Judgment.

3. The State is responsible for the violation of the right to judicial guarantees and to judicial protection recognized in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Nilda del Valle Maldonado de Gutiérrez, Jorge Gabriel Gutiérrez, Omar David Gutiérrez, Marilyn Verónica

Gutiérrez, Francisco Gutiérrez and Nilda Gutiérrez, all of them family members of Jorge Omar Gutiérrez, in accordance with paragraphs 93 to 134 of this Judgment.

4. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Nilda del Valle Maldonado de Gutiérrez, Jorge Gabriel Gutiérrez, Omar David Gutiérrez, Marilin Verónica Gutiérrez, Francisco Gutiérrez and Nilda Gutiérrez, all of them family members of Jorge Omar Gutiérrez, in accordance with paragraphs 135 to 146 of this Judgment.

**AND ESTABLISHES,**

unanimously that:

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

6. The State must conduct the corresponding investigations and criminal proceedings, with due diligence and within a reasonable time, in order to individualize, identify, prosecute and punish, as appropriate, the perpetrators and masterminds of the facts related to the execution of Jorge Omar Gutiérrez, and also to establish the truth about them, taking into consideration the criteria indicated for investigations in this type of case, as established in paragraphs 151 to 154 of this Judgment.

7. The State must organize, within one year of notification of this Judgment and as established herein, a public act in which it acknowledges its international responsibility and offers an apology for the facts of this case, as established in paragraphs 156 to 158 of this Judgment.

8. The State must publish, within six months of notification of this Judgment, the official summary of the Judgment prepared by the Inter-American Court of Human Rights, once in the Official Gazette, and in a national newspaper with widespread circulation. In addition, the Argentine Republic must publish the Judgment in its entirety for at least 12 consecutive months on the website of the *Centro de Información Judicial* (CIJ, [www.cij.gov.ar](http://www.cij.gov.ar)), as well as on the official websites of the Argentine Federal Police and of the Police of the province of Buenos Aires, as established in paragraphs 159 and 160 of this Judgment.

9. The State must adopt measures to conserve and indicate the warehouse and the police precinct where the events occurred that gave rise to this case within one year of notification of this Judgment, as established in paragraphs 161 and 162 hereof.

10. The State must incorporate into the training curricula of the Argentine Federal Police and of the Police of the province of Buenos Aires, as well as of the Judicial Police of that province, within a reasonable time and with the respective budgetary envelope, training courses on the obligations of respect for and guarantee of human rights, particularly the right to life, and with regard to the obligation to investigate with due diligence and for effective judicial protection, as well as control of conformity with the Convention, referring to this case and to this Judgment, as established in its paragraphs 166 to 168.

11. The State must pay the amounts established in paragraphs 176, 186 and 193 to 195 of this Judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, in accordance with the provisions of the said paragraphs and of paragraphs 172 to 204 of this Judgment.

12. The State must provide the Inter-American Court of Human Rights with a report on the measures adopted to comply with this Judgment within one year of its notification.

13. The Court will monitor full compliance with this Judgment, in exercise of its attributes and in fulfilment of its obligations under the American Convention on Human Rights, and will close this case when the State has complied fully with all its provisions.

Done, at San José Costa Rica, on November 25, 2013, in the Spanish and English languages, the Spanish version being authentic.

Diego García-Sayán  
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

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