

Inter-American Court of Human Rights

Case of Vargas-Areco v. Paraguay

Judgment of September 26, 2006 (Merits, Reparations and Costs)

In the case of *Vargas-Areco*,

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

Sergio García-Ramírez, President;
Alirio Abreu-Burelli, Vice-President;
Antônio A. Cançado Trindade, Judge;
Cecilia Medina-Quiroga, Judge;
Manuel E. Ventura-Robles, Judge; and
Diego García-Sayán, Judge.

also present,

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

delivers the following judgment pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 53(2), 55, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure").

I

INTRODUCTION TO THE CASE

1. On March 27, 2005, pursuant to the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the State of Paraguay (hereinafter "the State" or "Paraguay") originating in petition No. 12.300, received at the Secretariat of the Commission on July 28, 1999. On April 22, 2005, the Commission filed "an amended application" (*infra* para. 15).

2. The Commission alleged that the minor Gerardo Vargas-Areco was recruited into military service in the Paraguayan Armed Forces on January 26, 1989, at the age of 15. On December 30, 1989, the minor Vargas-Areco was allegedly arrested as punishment for failing to voluntarily and timely return to the military post after a

* The Judge Oliver Jackman did not participate in the deliberation and signing of this Judgment. Due to reasons of *force majeure*, he was not able to participate in the LXXII Ordinary Period of Sessions of this Court.

leave of absence to spend Christmas with his family. Vargas-Areco appeared at the infirmary of the military unit where he was treated for a nasal bleeding. After leaving the infirmary, the minor Vargas-Areco allegedly ran to flee from the military post and evade the punishment imposed upon him. The child was shot to death from behind by a non-commissioned officer (NCO) who saw him run away. The dead body of the child was found the following day 100 meters away from the infirmary of the military post.

3. Therefore, the Commission requested the Court to declare that the State violated the rights protected in Articles 8 (Right to Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, to the detriment of the relatives of the minor Gerardo Vargas-Areco, namely: Pedro Vargas, his father; De Belén Areco, his mother; and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of them members of the Vargas-Areco family and siblings of Gerardo Vargas-Areco. The Commission alleged that the State violated the aforementioned Articles since "it failed to effectively and timely investigate, prosecute and punish the perpetrators of the violations committed against their relative" and "no appropriate reparation was provided to the relatives of the child."

4. Likewise, the Commission requested the Inter-American Court to order the State, pursuant to Article 63(1) of the Convention, to adopt the specific reparation measures detailed in the application. Lastly, the Commission requested the Court to order the State to pay costs and expenses arising from proceedings in the instant case before domestic courts and before the Inter-American System for Human Rights Protection.

II COMPETENCE

5. The Court has jurisdiction to hear the instant case pursuant to Articles 62 and 63(1) of the American Convention, given that Paraguay is a State Party to the Convention since August 24, 1989, and has accepted the contentious jurisdiction of the Court on March 26, 1993 (*infra* paras. 40 to 63).

III PROCEEDING BEFORE THE COMMISSION

6. On July 28, 1999, the Inter-American Commission received a petition filed by the parents of the minor Gerardo Vargas-Areco, the Center for Justice and International Law (hereinafter "*CEJIL*"), and *Servicio de Paz y Justicia de Paraguay* (Paraguayan Peace and Justice Service) (hereinafter "*SERPAJ PY*", and collectively "the representatives" or "the representatives of the victims"), against the State for the events allegedly occurred on December 30, 1989.

7. On October 17, 2000, the State requested the Commission to make its best efforts to help the parties reach a friendly settlement. The request was communicated to the representatives, who accepted the proposal. On May 13, 2003, the petitioners sent a communication stating their intention to abandon the friendly settlement proceeding on the grounds that the State had failed to honor the undertakings made during said proceeding.

8. On October 19, 2004, the Commission approved Report on Admissibility and Merits No. 76/04. As regards to the merits of the case, the Commission found that the State violated the rights set forth in Article 7 (Right to Personal Liberty), 5 (Right to Personal Integrity), 4 (Right to Life) and 19 (Rights of the Child) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, to the detriment of the minor Vargas-Areco, and Articles 8 (Right to Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, to the detriment of the child's relatives. Likewise, the Commission made some recommendations to the State.

9. On December 27, 2004, the Commission notified the Report on the Merits to the State and granted a term of two months to inform the Commission of the measures adopted in compliance with the recommendations made therein.

10. On February 24, 2005, the State indicated "its undertaking to publicly acknowledge its liability for the events specified in the [...] Report on the Merits" of the Commission through a ceremony "presided over by the Minister of Foreign Affairs and the Minister of National Defense." Moreover, the State undertook "to further on the proceedings initiated before regular criminal courts until final judgment is rendered" and "to allow a term of 1 (one) year to provide fair reparation, given that administrative formalities must be complied with to include in 2006 National Expense Budget the compensation to be paid to the victim's judicially recognized heirs." The State also indicated that it was able to pay a maximum amount of US\$ 20,000 (twenty thousand United States dollars) as compensation for the events discussed in the instant case. As regards to costs and expenses, the State "considered reasonable offering to pay the amount of [US]\$ 5,000 (five thousand [United States] dollars)." Moreover, the State delivered a copy of Decree No. 4399 of December 29, 2004, "[w]hereby conscript Gerardo Vargas-Areco was promoted to the rank of First Deputy Sergeant after his death."

11. On March 21, 2005, the petitioners requested that the case be submitted to the Court.

12. On March 26, 2005, the Inter-American Commission, in view of the State's failure to comply with the recommendations contained in the Report approved pursuant to Article 50 of the American Convention, and in accordance with the provisions of Article 51(1) of the Convention and Article 44 of the Rules of Procedure, decided to submit the instant case to the Court.

IV PROCEEDING BEFORE THE COURT

13. On March 27, 2005, the Commission filed with the Court an application against the State (*supra* para. 1 and 12), together with documentary evidence, and offered to submit witness testimonies as further evidence. The Commission appointed José Zalaquett and Santiago A. Canton as delegates, and Ariel Dulitzky, Víctor Madrigal-Borloz, Ignacio Álvarez and Manuela Cuvi-Rodríguez as legal counsel.

14. Through that application, the Commission requested the Court to declare that the State violated the rights set forth in Article 7 (Right to Personal Liberty), 5 (Right to Personal Integrity), 4 (Right to Life) and 19 (Rights of the Child) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, to

the detriment of the minor Vargas-Areco, and Articles 8 (Right to Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, to the detriment of the child's relatives. Furthermore, the Commission requested that the Court order the State to adopt certain reparation measures as set forth in the application.

15. On April 22, 2005, the Commission delivered an "amended application", whereby it requested the Court to declare that the State violated the rights protected under Articles 8 (Right to Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, to the detriment of the relatives of the minor Gerardo Vargas-Areco. Moreover, it added that the "violations in relation to which the Commission was requesting judgment by the Court occurred after March 26, 1993, when Paraguay accepted the contentious jurisdiction of the Court." Likewise, the Commission requested certain reparations.

16. On June 10, 2005, the Commission "indicate[d] that the claims regarding questions of law contained in the application [...] filed with the [...] Court on March 27, 2005, [...] included [arguments regarding alleged] human rights violations occurred before March 26, 1993, when the distinguished State of Paraguay accepted the contentious jurisdiction of the Court." Consequently, the Inter-American Commission stated that "its claim was no longer aimed at having the [...] Court declare that the State of Paraguay was liable for violating [...] the rights embodied in Articles 7 (Right to Personal Liberty), 5 (Right to Personal Integrity), 4 (Right to Life) and 19 (Rights of the Child) of the American Convention." Lastly, the Commission also indicated that, in order to "facilitate proceedings in the instant case, the Commission filed with the Court [an 'amended application' on April 22, 2005], which contained the aforementioned limitations."

17. On July 4, 2005, the Secretariat of the Court (hereinafter "the Secretariat"), after a preliminary examination of the application by the President of the Court (hereinafter "the President"), served said application and its appendixes upon the representatives and the State. The State was also notified of the term to file an answer to the application and to appoint its agents for the instant case, and of its right to appoint an *ad hoc* Judge.

18. On July 22, 2005, the State appointed Federico Antúnez-Barrios as agent in the instant case.

19. On August 29, 2005, the representatives filed a brief of requests, arguments and evidence (hereinafter "brief of requests and arguments"), and attached documentary evidence and offered testimonies of witnesses and expert witnesses as evidence. In said brief, the representatives alleged that the State violated the rights set forth in Articles 8 (Right to Fair Trial), 25 (Right to Judicial Protection), 19 (Rights of the Child) and 5 (Right to Personal Integrity) of the Convention, and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter the "Convention against Torture"), all of them in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of the minor Vargas-Areco and his relatives. Lastly, the representatives requested that the Court order the State to adopt various pecuniary and non-pecuniary reparation measures and to pay the costs and expenses incurred upon proceedings before the Inter-American System for Human Rights Protection in the instant case.

20. On October 28, 2005, the State filed its answer to the application and requested that the "State's unconditional acquiescence in the application filed by the Commission be deemed duly submitted" (*infra* para. 44). To that effect, pursuant to the instructions of the President, the State was required to clarify, no later than November 15, 2005, and subject to no term extension, whether its acknowledgment of international liability covered the claims set forth by the representatives in the brief of requests and arguments, which were not brought by the Commission in its application.

21. On November 15, 2005, the State submitted the clarification requested by the President (*supra* para. 20) and indicated that, "[t]he State of Paraguay undertakes to comply with the decisions of the [...] Court as regards to the claims of the representatives of the victims, to their fullest extent."

22. On November 23 and 24, 2005, the Commission and the representatives, respectively, filed their comments to the answer to the application and the brief of clarifications requested by the President regarding the scope of the State's acknowledgment of liability. Both the Commission and the representatives indicated in their respective briefs that the State's acknowledgment did not cover the claims brought by the representatives in addition to the claims contained in the application filed by the Commission, in relation to the alleged violation of Articles 19 (Rights of the Child) and 5 (Right to Personal Integrity) of said treaty in relation to Articles 6 and 8 of the Convention against Torture.

23. On December 27, 2005, the State appointed Raúl Martínez-Villalba as Deputy Agent.

24. On February 9, 2006, the parties were notified of the Order issued by the Court on February 7, 2006, whereby it decided to invite the parties to a public hearing to be held in the city of Brasilia, Brazil, on March 30, 2006, to receive the testimonies of Mrs. De Belén Areco and expert witness Mr. Carlos Portillo, both proposed by the representatives, and the oral arguments on the merits and potential reparations and costs in the instant case. Furthermore, in said Order the President requested the ten witnesses and three expert witnesses proposed by the representatives to render their testimony through affidavits. Moreover, in this Order the Court requested the State to submit evidence to facilitate the adjudication of the case and informed the parties that they should submit their final written arguments on the merits and potential reparations and costs no later than May 15, 2006.

25. On February 24, 2006, the representatives submitted the affidavits of the expert witnesses Luis Fondebrider and Julio Alberto Ravioli. The affidavit of Mr. Pedro Vargas was submitted on February 27, 2006.

26. On March 6, 2006, the representatives submitted the affidavits on the testimony rendered by María Magdalena, Patricio, Doralicia, Sebastián, Jorge Ramón and Daniel, all of them members of the Vargas-Areco, and the testimony of expert witness Mr. Juan Carlos Yuste-Alonso.

27. On March 13, 2006, the State submitted evidence to facilitate the adjudication of the case as requested by the Court (*supra* para. 24).

28. On March 23, 2006, the Commission informed that it would make no comment on the affidavits and expert witness' testimony submitted by the representatives.

29. On March 27, 2006, the representatives informed that Mrs. De Belén Areco would not be able to travel to Brazil to render testimony at the public hearing due to health reasons.

30. On March 30, 2006, the Court held a public hearing to receive testimonies and expert witness' reports as proposed by the representatives (*supra* para. 24), and heard the arguments on the merits and possible reparations and costs of the Commission, the representatives and the State. There appeared before the Court: a) for the Inter-American Commission: Florentin Meléndez and Santiago Cantón, as delegates; and Mr. Víctor Madrigal and Mrs. Manuela Cuvi, as legal counsel; b) for the representatives: Mrs. Viviana Krsticevic, Liliana Tojo and Julieta Di Corleto, attorneys-at-law for *CEJIL*, and Mr. Orlando Castillo, attorney-at-law for *SERPAJ PY*; and c) for the State: Ambassador Mario Sandoval and Counselor Francisco Barreiro, as advisors, and Federico Antúnez-Barrios, as agent. Furthermore, Sebastián Vargas-Areco¹ appeared in the capacity as witness for the representatives in *lieu* of Mrs. De Belén Areco (*supra* para. 29) and expert witness Carlos Portillo, also proposed by the representatives. At said public hearing, the State restated its acquiescence in the application filed by the Commission and added that "in view of the special circumstances of the instant case[,] the additional claims filed by the Commission will not be challenged."

31. During the meeting prior to the public hearing, the representatives submitted the affidavit with the testimony rendered by Mrs. De Belén Areco-Vargas.

32. On May 19, 2006, after a new term was granted, the State and the representatives, respectively, filed their final written arguments; so did the Commission on May 22, 2006.

33. On June 22, 2006, the State informed that on June 21, 2006, "the State of Paraguay made a Public Acknowledgment of International Liability at the headquarters of the National Chancery," for the purposes of the instant case. On July 25, 2006, the State submitted additional information regarding said public acknowledgment.

V

PRELIMINARY CONSIDERATIONS

34. Now, the Court will proceed to determine: (a) the legal consequences of the "amended application" filed by the Commission, and (b) the scope of the acknowledgment of international liability made by the State.

¹ Given the fact that Mrs. De Belén Areco was unable to travel to render testimony at the public hearing, the representatives proposed Mr. Sebastián Vargas-Areco, son of Mrs. De Belén Areco and brother of the alleged victim, as witness. During the meeting prior to the public hearing, held on March 29, 2006, the State and the Commission agreed on the substitution of said witness

a) Legal consequences of the "amended application" filed by the Commission

35. In the instant case, the Commission filed with the Court an "amended application" three weeks after filing the original application pursuant to Article 51(1) of the Convention and Article 44 of the Rules of Procedure of the Commission, before notice thereof was served by the Court upon the parties. The "amended application" restricted the original claims submitted by the Commission. The Court notified both applications to the State and the representatives, who were given the opportunity to file their comments thereon (*supra* paras. 17, 19 and 20).

36. On October 28, 2005, the State requested that "the State's unconditional acquiescence in the [amended] application filed by the Commission" on April 22, 2005, be deemed duly submitted. The State made no challenge in that brief to the "amended application" filed by the Commission; instead it acquiesced in the claims brought by the Commission through said application (*supra* para. 20).

37. As in other opportunities, the Court considers that its rulings should cater for a fair balance between the protection of human rights -ultimate goal of the system- and legal certainty and procedural equality as a means to guarantee the stability and reliability of the international protection system allowing to reach said goal.

38. In the instant case, the Commission filed an "amended application" before notice of the original application was served in order to limit the scope of the application to alleged violations occurred after March 26, 1993, when the State accepted the contentious jurisdiction of the Court. The filing of the "amended application" did not impair the right of defense of the State nor did it preclude the exercise of any other right set forth in the Convention.²

39. Based on the foregoing and considering that the State acquiesced in the application filed by the Commission on April 22, 2005, the Court will not further on the analysis thereof and finds that said application reflects the claims of the Commission for the purposes of the instant case.

b) Scope of the State's acknowledgment of international liability

40. As indicated above (*supra* paras. 20 and 36), the State requested the Court to accept its acknowledgment of international liability for the purposes of the instant case. The Court will analyze the scope of said acknowledgment.

41. Article 53(2) of the Rules of Procedure provides as follows:

[i]f the respondent informs the Court of its acquiescence to the claims of the party that has brought the case as well as the to claims of the representatives of the alleged victims, their next of kin or representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

² Cf. *Case of Cayara*. Preliminary Objections. Judgment of February 3, 1993. Series C No. 14, para. 59.

42. The Inter-American Court, exercising its contentious jurisdiction, applies and interprets the American Convention, and when a case is submitted to its jurisdiction, the Court has the power and authority to determine the international responsibility of a State Party to the Convention for any violations to the provisions of the same,³ provided said State has accepted the contentious jurisdiction of the Court.

43. The Court, exercising its powers of international judicial protection of human rights, may determine whether an acknowledgment of international responsibility made by a State provides sufficient ground, under the terms of the American Convention, to proceed with the consideration of the merits of the case and the determination of possible reparations. To that effect, the Court must analyze the particular circumstances of each case.⁴

44. The State filed its answer to the application and requested that the "State's unconditional acquiescence in the [amended] application filed by the Commission be deemed duly submitted" (*supra* para. 20). Later, the State filed a clarification on the scope of its acknowledgment of liability regarding the claims brought by the representatives in the brief of requests and arguments, which had not been raised by the Commission in the application. The State indicated that, "[t]he State of Paraguay undertakes to comply with the decisions of the [...] Court as regards to the claims of the representatives of the victims, to their fullest extent" (*supra* para. 21).

45. The Commission and the representatives filed their comments on the scope of the State's acknowledgment of liability (*supra* para. 22). Both the Commission and the representatives indicated in their respective briefs that the State's acknowledgment did not cover the claims brought by the representatives, which differ from the claims raised in the application filed by the Commission, in relation to the alleged violation of Articles 19 (Rights of the Child) and 5(1) (Right to Personal Integrity) of said treaty in relation to Article 1(1) of said treaty and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

46. At the public hearing held on March 30, 2006 (*supra* para. 30), the State restated its acquiescence in the application filed by the Commission and also asked for "forgiveness" to the Vargas-Areco family in their mother tongue (Guarani). The State requested Sebastián Vargas-Areco, the only member of the Vargas-Areco family present at the public hearing, "to communicate to his mother the request for forgiveness made by the State, which not only understands the situation and asks for forgiveness but also undertakes to accept any reparations deemed necessary."⁵ Furthermore, at the public hearing, the State indicated that "the filing of a simple and straightforward acknowledgment of liability had deleted any controversy as to the merits of the case, particularly regarding the events." Moreover, the State mentioned that "the alleged violations of the rights set forth in Articles 19 and 5(1) of the American Convention[, and Articles] 6 and 8 [of the Inter-American

³ Cf. *Case of Ximenes-Lopes*. Judgment of July 4, 2006. Series C No. 149, para. 61; *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 57; and *Case of Baldeón-García*, Judgment of April 6, 2006. Series C No. 147, para. 37.

⁴ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 39; *Case of Ximenes-Lopes*, *supra* note 3, para. 62; and *Case of the Ituango Massacres*, *supra* note 3, para. 58.

⁵ Transcription of the public hearing held on the Case of Vargas-Areco on March 30, 2006, in the City of Brasília, Brazil.

Convention to Prevent and Punish Torture claimed by the representatives,] took place before March 26, 1993; therefore, the jurisdiction of the Court to decide on said matters is limited." Notwithstanding the foregoing, the State added that, in "view of the special circumstances of the instant case[,] and in order to fully vindicate the memory of the victim and his relatives, to whom the State expresses its respect and consideration, the State [...] will not challenge the additional claims brought by the Commission."

47. At that hearing, both the Commission and the representatives found that the acknowledgment of liability made by the State and the request for forgiveness communicated to the relatives of Gerardo Vargas-Areco through Sebastián Vargas-Areco constituted a positive behavior on the part of the State. The Commission found that the acknowledgment of the State "involves acquiescence in the events and acceptance of the legal consequences specified in the application." Furthermore, the representatives "thanked deeply the behavior of the State of Paraguay as regards to its acknowledgment of liability."

48. At the public hearing, the representatives alleged that the State was liable for violation of the right to life and personal liberty "given that no investigation was carried out on the forced recruitment and no prevention measures were adopted." Furthermore, in their final arguments, the representatives added that the State was also liable for failure to comply with the "obligation to investigate and punish the violations of the rights set forth in Articles 1(1), 4, 7 and 5(1) [of the Convention], in relation to Articles 6 and 8" of the Convention against Torture. Similarly, in that brief the representatives claimed that the State was liable for violation of the "right to special protection measures for the child [set forth in Article 19 of the Convention], in relation to Articles 1(1), 2 and 7" thereof. The representatives stated that "given the fact that the Inter-American Court lacks jurisdiction to decide on events occurred before March 26, 1993, the alleged violations of rights refer exclusively to the performance of domestic proceedings, the denial of justice and its consequences, to protect children and to safeguard the relatives of Gerardo Vargas-Areco."

49. In its final arguments (*supra* para. 32), the State restated the arguments expressed at the public hearing, in the sense that it "will not challenge the additional claims brought by the Commission."

50. In its final arguments (*supra* para. 32), the Commission stated that the State had acknowledged the claims brought by the Commission regarding Articles 8 and 25 of the Convention, in relation to Article 1(1) of said treaty as well as the additional claims brought by the representatives regarding Articles 19 and 5(1) of said treaty, in relation to Articles 1(1) thereof and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, "after March 26, 1993, given the limitations applicable to the *ratione temporis* jurisdiction of the Court."

51. Moreover, in their final arguments the representatives stated (*supra* para. 32) that "the State acquiesced in the application in full" and, therefore, "the facts, questions of law and reparations sought by the representatives and the [...] Inter-American Commission have not been contested."

i) Acknowledgment by the State as to the facts

52. The Court finds that the controversy as to the facts alleged in the application, which are deemed proven as set forth in paragraph 71 of this Judgment, has ceased.

53. It should be noted that the events occurred before the date when the State recognized the jurisdiction of the Court will only be taken into account as regards to the obligations undertaken by the State, which continued in force after March 26, 1993. The Court finds that the approval of the State does not reflect an aim to extend the jurisdiction of the Court to be subject to proceedings for acts resulting in human rights violations occurred before the date when the State recognized the jurisdiction of the Court.

ii) Acknowledgment by the State as to the claims

54. The State notified the Court of its acquiescence in the violations of the rights set forth in Articles 8 and 25 of the Convention, in relation to Article 1(1) of said treaty, and Article 5(1) thereof, in relation to Articles 1(1) of said treaty and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. Furthermore, the State acknowledged having failed to comply with its obligation to investigate and punish the violation of the rights set forth in Articles 4, 5(1) and 7 of the Convention, in relation to Article 1(1) of said treaty, and the violation of the right to special protection measures for children, set forth in Article 19 of said instrument, in relation to Articles 1(1), 2 and 7 thereof.

55. Pursuant to Article 53(2) of the Rules of Procedure, the Court is entitled to determine the applicability of said acknowledgment. Moreover, the Court is empowered to establish the scope of its own jurisdiction.⁶

56. The Court restates that the acquiescence made by the State covers only the alleged violations occurred after the jurisdiction of the Court was recognized.

57. Therefore, the Court finds that the acknowledgment of international liability made by the State for violation of the rights set forth in Articles 8 and 25 of the Convention, in relation to Article 1(1) of said treaty, and Article 5(1) thereof, in relation to Article 1(1) of said treaty and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture is valid. The foregoing considerations apply to the events occurred after March 26, 1993, when the State recognized the jurisdiction of the Court, to the detriment of the relatives of the minor Gerardo Vargas-Areco, as specified in paragraph 83 of this Judgment.

58. Moreover, the Court finds that the acknowledgment of international liability made by the State for non-fulfillment of the obligation to investigate and punish the violation of the rights set forth in Articles 4 and 5(1) of the Convention, in relation to Article 1(1) of said treaty is valid. The foregoing considerations apply to the events occurred after March 26, 1993, to the detriment of the relatives of the minor Gerardo Vargas-Areco.

⁶ Cf. *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 78; *Case of Caesar*. Judgment of March 11, 2005. Series C No. 123, para. 8; *Case of the Serrano-Cruz Sisters*. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 63.

59. However, pursuant to Article 53(2) of the Rules of Procedure, the Court rejects the acknowledgment of the alleged violation of the right to special protection measures for children set forth in Article 19 of the Convention, in relation to Articles 1(1), 2 and 7 of said treaty, to the detriment of the children of Paraguay or of the minor Vargas-Areco.

60. The alleged violation was claimed by the representatives based on the lack of legal rules, after 1993, to guarantee enforcement of the prohibition against the recruitment of children under the age of 15 into the armed forces, and the exceptional nature of the recruitment of children aged 15 to 18. To that respect, the representatives stated that their claim was not aimed at having the Court impose liability upon the State for the recruitment of Vargas-Areco, but for a systematic practice of child recruitment and for the legal rules in force whose mere existence, after 1993, would infringe *per se* Articles 2, 7 and 19 of the Convention, since they allow for Paraguayan children to enlist and remain in the armed forces.

61. The Court considers that no ruling must be entered in the instant case as regards to violations of the Convention to the detriment of any Paraguayan child recruited after 1993, within the scope of an alleged pattern of child recruitment by the armed forces or under legal rules allowing said recruitment. The alleged victims are not parties to this controversy. However, notwithstanding the limitations of the Court to declare the occurrence of a violation resulting from the recruitment of the minor Vargas-Areco into the armed forces (*supra* paras. 5 and 53), and considering the acknowledgment of liability made by the State, and its recent efforts to adapt its domestic legislation to satisfy international law requirements regarding child recruitment into the armed forces, the Court will proceed to include in the appropriate chapter of this Judgment (*infra* paras. 111 to 134) some general considerations regarding child enlisting in the armed forces. Said considerations will be based on the duty of the Court to protect human rights and the obligation of States to guarantee the rights of children at all instances.

62. Besides the aforementioned circumstance of a ruling on alleged violations suffered by individuals who are not parties to the dispute brought before the Court, the alleged violation of the rights set forth in Article 19 of the Convention, to the detriment of the minor Vargas-Areco, cannot be analyzed without reviewing other events occurred before the jurisdiction of the Court was recognized in the instant case. The minor Vargas-Areco died on December 31, 1989, more than three years before the date when jurisdiction was recognized. Similarly, the State ratified the Convention on August 24, 1989, while the child was recruited on January 26, 1989. Therefore, given that the acknowledgment made by the State only covers those violations occurred after March 26, 1993, the Court lacks jurisdiction to prosecute the State for the recruitment and continuance of Vargas-Areco in the armed forces as from 1989, and for his death in the same year.

63. Pursuant to the precedents of the Court, in the case of continuous or permanent violations beginning before approval of the jurisdiction of the Court and continuing thereafter, the Court has jurisdiction to examine any acts and omissions occurred after recognition of jurisdiction, and their pertaining effects.⁷ The alleged

⁷ Cf. *Case of the Girls Yean and Bosico*. *supra* note 6, para. 106; *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 39; *Case of the Serrano-Cruz Sisters*. Preliminary Objections, *supra* note 6, para. 67.

failure to adopt measures to protect the minor Vargas-Areco, pursuant to the provisions of Article 19 of the Convention, cannot be considered a continuous or permanent violation, whose perpetration extended until March 26, 1993, when the State recognized the jurisdiction of the Court. The alleged violation of the rights set forth in Article 19 of the Convention was perfected upon the death of the minor Vargas-Areco. Based on the foregoing, the Court finds that no events occurred subsequent to the date of recognition of jurisdiction that the Court may consider to justify a violation of the rights set forth in Article 19 of the Convention, in relation to Articles 1(1), 2 and 7 of said treaty, to the detriment of the minor Vargas-Areco.

iii) Acknowledgement as to the claims for reparations

64. The Court considers that the acknowledgment by the State of the events and claims in the instant case purports certain legal consequences regarding reparations. To that respect, the Court resorts to a statement repeatedly upheld in its precedents in the sense that when an illegal act attributable to a State is committed, international liability is immediately imposed upon the State for violation of the international provision involved, and therefore the State has the duty to repair and make the consequences of said violation cease.⁸ The Court will rule on reparations in chapter ten of this Judgment.

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* *

65. The acknowledgment of liability made by the State purports acquiescence in the events and claims, representing a very important step in the development of proceedings and a step towards the enforcement of the principles consecrated in the American Convention.⁹ In the instant case, the Court takes into account particularly the manner in which the State expressed its acknowledgment at the public hearing; i.e. through a request for forgiveness addressed to the family of Gerardo Vargas-Areco (*supra* para. 46).

66. However, taking into account the responsibility the Court has as international human right protection body and in view of its precedents, the Court considers that rendering judgment determining the truth of the facts acknowledged by the State and their consequences would amount to a form of reparation for the relatives of Gerardo Vargas-Areco, who were in turn victims of certain violations, and would contribute to prevent similar events from happening again.¹⁰

67. Based on the foregoing, the Court finds that the Judgment should include the testimonies of witnesses and expert witnesses (*infra* para. 69).

⁸ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 116; *Case of Ximenes-Lopes*, *supra* note 3, para. 208; and *Case of the Ituango Massacres*, *supra* note 3, para. 346.

⁹ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 57; and *Case of the Ituango Massacres*, *supra* note 3, para. 79; and *Case of Baldeón-García*, *supra* note 3, para. 55.

¹⁰ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 58; and *Case of the Ituango Massacres*, *supra* note 3, para. 80; and *Case of Baldeón-García*, *supra* note 3, para. 56.

68. Furthermore, the Court admitted the acknowledgment of violation of the rights set forth in Articles 8 and 25 of the Convention, in relation to Article 1(1) of said treaty, and Article 5(1) thereof, in relation to Article 1(1) of that instrument, and the non-fulfillment of the duty to investigate and punish violation of the rights set forth in Articles 4 and 5(1) of the Convention, in relation to Article 1(1) of said treaty and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all in relation to events subsequent to March 26, 1993; however, the Court finds some clarifications should be made regarding certain matters related to the obligations established in those Articles (*infra* paras. 72 to 110), as well as reparations, costs and expenses (*infra* paras. 135 to 175).

VI EVIDENCE

69. There is no controversy as to the facts of the instant case and the corresponding claims and evidence submitted by the plaintiffs; however, the Court finds that this Judgment should include the following statements, based on the considerations of *supra* paragraph 66.

A) *Statements made at the public hearing before the Inter-American Court*

WITNESS TESTIMONY

1) **Sebastián Vargas-Areco, brother of Gerardo Vargas-Areco**

Sebastián was nine years old when his brother died. On December 1989, three days after Gerardo was taken back to the military unit after spending some time with his family, his relatives received a call and were told Gerardo was dead.

After receiving the coffin, military officers gave instructions to bury the mortal remains of the minor. Before burying Gerardo, his family asked Dr. Ribamar Cruz e Silva, a military physician, to open the coffin and examine the body. The physician took pictures and inspected the mortal remains.

Gerardo's mother fainted when she heard her son was dead. She is still suffering the physical consequences of the events; thus, she is significantly impaired to travel. The relationship between Gerardo and his mother was crucial to both of them. The entire family was deeply affected by the suffering endured by Gerardo's mother and by learning that Gerardo had died and had possibly suffered mistreatment. The parents of Gerardo have sought justice and an explanation of the reasons for the alleged mistreatment inflicted on the child.

EXPERT REPORT

2) **Carlos Portillo, psychiatrist, Director of the Support Program for "Victims of Human Right Violations" of ATYHA (Center of Human Rights Alternatives)**

The family was seriously affected by the death of Gerardo and the information received from the physician regarding the presence of signs of torture and suffering before the death. The relatives reflect their sorrow individually and collectively

through physical and emotional aftereffects that prevent them from continuing their ordinary lifestyle. The entire family endured pain, weeping, anguish, helplessness feelings and suffering for having been unable to avoid the alleged torture suffered by Gerardo and for their doubts and uncertainty as to what really happened.

Gerardo's mother, Mrs. De Belén Areco, is the member of the family who suffered the greatest psychological disorder. She spends most of the time in seclusion and self-isolation, expressing sadness and having difficulties to sleep; she cries frequently and easily, and has hopelessness feelings. Moreover, she suffered from heart disorders.

The family's suffering deepened due to the lack of an appropriate response by the State. The family believes that the 1-year imprisonment imposed upon corporal 2nd class López-Insfrán was "a sham" and that said punishment does not effectively satisfy their need for truth and justice. They believe that domestic proceedings will be futile.

B) Statements rendered before a notary public

WITNESS TESTIMONY

1) Relatives of Gerardo Vargas-Areco¹¹

The family of Gerardo Vargas-Areco is composed of his siblings Juan, María Elisa, Patricio, Doralicia, Mario, María Magdalena, Daniel, Sebastián and Jorge Ramón Vargas-Areco, his father Pedro Vargas and his mother De Belén Areco.

Before joining the armed forces of Paraguay, Gerardo lived with his parents. He was an affectionate, educated and easygoing child. His parents and siblings felt proud when Gerardo voluntarily decided to enlist in military service. The family believed that voluntary enlisting was the best choice to avoid the risk of having Gerardo recruited in the street, as it was a common practice in Paraguay with many other 15-year old children. However, Gerardo's mother regretted seeing her child leave home at such a young age. Gerardo planned to return home after military service to care for and support his parents.

After being recruited, Gerardo visited his family twice. His second visit was during a 5-day leave granted to spend Christmas with his family. His mother was ill at that time so Gerardo notified the military unit that he should stay at home to care for his mother and he was given permission to stay with his family until December 26, 1989. Non-commissioned officer Ramón Espinola arrived on that date to pick him up and they left for Villarrica at 8.45 that night.

On December 31, 1989, Gerardo's father received a phone call from the police headquarters and was informed that his son had been shot to death. The family reached the airport, where they received the mortal remains in a sealed coffin. The military officers who delivered the body gave them instructions not to open the coffin and to bury Gerardo that same day. The family took the coffin home.

¹¹ Given the fact that the testimonies of the parents and siblings of the minor Vargas-Areco refer to the same matter, the Court will summarize their joint discussion.

Mr. Vargas, Gerardo's father, asked local authorities for help to open the coffin, which was welded. After opening the coffin, they noticed that one of Gerardo's eyes was "completely out of its socket" and one arm showed signs of burns. The family endured great suffering after opening the coffin.

Gerardo's father traveled to Brazil on January 1, 1990, to bring Dr. Ribamar Cruz e Silva to perform an autopsy on Gerardo's body. Dr. Cruz e Silva told the family that the cause of death was a bullet and that the body was bruised, one forearm looked burnt, the head had "scratches and broken bones", one side of the head was "bruised", "all his teeth had been removed" and "he had a bruise on the back of his neck"; i.e., Gerardo had been tortured and had died as a result of a "shot in the chest."

On January 3, 1990, a captain from the armed forces appeared at Gerardo's family home and explained that Gerardo had been taken to the infirmary the night of his death to be treated for nasal bleeding. After that, when leaving the infirmary, Gerardo got a thorn in his feet and ran away, crossing down the wire fence of the military post. Noticing that Gerardo would not stop, corporal 2nd class López-Insfrán "let out a rifle shot."

The family wished to know the truth about the events; therefore, they filed a complaint. Gerardo's parents were never asked to render testimony before judicial authorities. The family considers that judicial proceedings in Paraguay were considerably delayed.

Mr. Pedro Vargas, Gerardo's father, mourned the death of his son as if "he had been ripped off his right hand." "The suffering deep in his heart is [for him] a punishment that will never cease. He hopes he will meet his son again when he dies, as said in the Bible, but [his] pain will never end", because he will not be able to look into his son's eyes ever again.

Gerardo's mother was deeply affected by her son's death. She reached the street shrieking of pain and crying after receiving the news of Gerardo's death and fainted after opening the coffin. Gerardo was the entire world to her and she knows that nothing will bring him back. Mrs. Areco feels Gerardo "was a soldier and did not deserve the treatment he received from the State." Gerardo's death triggered Mrs. Areco's illness and problems to sleep. She wants to know what really happened, "what was his mistake, [...] if [Gerardo] displayed lack of respect or disobedience [towards military officers]."

María Magdalena Vargas-Areco, Gerardo's youngest sister, was 13 years old when he died. She sustained great suffering when the coffin was opened and she saw her brother's face was "a mess." She misses her brother a lot and she feels Gerardo was a "part" of her.

Patricio Vargas-Areco was Gerardo's older brother; he was 26 years old when Gerardo died. He feels empty and grieves over no longer having Gerardo in their lives. He was shocked after seeing his brother's dead body in the coffin. He wants the State to give him an explanation of what happened to his brother.

Doralicia Vargas-Areco, Gerardo's older sister, was 17 years old when he died. She still thinks a lot of her brother and keeps all his photographs to be able to picture

him. She suffered deeply due to the death of his brother and misses him badly. It hurts her deeply to see her parents suffering and, especially, her mother who is ill.

Sebastián Vargas-Areco, Gerardo's brother, is still in grave pain for the death of his brother, who was very affectionate towards all of them.

Jorge Ramón Vargas-Areco, Gerardo's youngest brother, was 8 years old at the time of Gerardo's death. Jorge Ramón has no vivid memory of his brother's death but he is deeply hurt and sad, especially due to the suffering endured by his mother. He begged to find the truth about what really happened to Gerardo.

Daniel Vargas-Areco was Gerardo's younger brother; he was 10 years old when Gerardo died. Gerardo's death caused him, as well as the rest of the family, extreme sorrow and anguish.

The parents of the minor Vargas-Areco wish that the street where they live be named Gerardo Vargas-Areco and that a memorial be built in his honor.

EXPERT REPORTS

2) Luis Bernardo Fondebrider, anthropologist of the Argentine Team of Forensic Anthropology

The investigation into the death of the minor Vargas-Areco failed to comply with most standard procedures regarding the crime scene.

An autopsy of the body could help answer some questions about the alleged torture of Gerardo Vargas-Areco; however, given that many years have elapsed, the decomposition of the body may hide or wipe out some marks. After such a long time, a new analysis would only reveal bone fractures.

Moreover, though an analysis of the photographs of the dead body may reveal some injuries, its effectiveness would be limited as it depends on the quality of the images, thus hindering a reliable diagnosis.

3) Julio Alberto Ravioli, physician

The investigation of the death of the minor Vargas-Areco did not include an autopsy, though it is a mandatory procedure in cases of violent deaths. The examination performed by Dr. José de Ribamar-Cruz was not a medico-legal autopsy, but merely an external examination of the body. The surveys performed "were totally insufficient to investigate the violent death" of Gerardo Vargas-Areco.

After so many years of the events, the natural body decomposition process would hinder the assessment, with a considerable degree of certainty, of the presence of signs of violence. The "only possibility to reveal other types of injury would consist in verifying the presence of bone fractures upon body exhumation."

The analysis of the photographs taken from the dead body of the minor Vargas-Areco reveals a facial injury and shows that the description of the remaining injuries -including the left eyeball out of its socket- matches the transformation suffered by the body as a result of the decomposition process. Furthermore, the examination showed that the decomposition level in the skull and neck areas does not result from

chromatic changes of the body but rather indicates that these areas were traumatized before the death. The examination of the photographs does not allow to verify or dismiss possible acts of torture, or to establish the distance or direction of the mortal shot.

4) **Juan Carlos Yuste-Alonso, sociologist**

One-year military service at the Paraguayan Armed Forces is mandatory for all male citizens aged 18 to 50. Compulsory military service is set forth in Article 129 of the Constitution and Law No. 569/75. The minimum age for enlisting in active service is 18 years old, though Section 5 of Law No. 569/75 provides for the recruitment of people under the age of 18 subject to approval by their parents and authorization of a Juvenile Court. However, in practice, authorities do not fulfill this legal requirement when making effective said recruitment.

The recruitment of children into the armed forces is a deep-rooted tradition in Paraguay. The celebration of Children's Day in Paraguay on August 16 includes the exaltation of the figure of "soldier children [...] who are sacrificed to their Flag." The recruitment of children from the early age of 12 is a systematic and historical practice, despite express legal prohibitions and the two orders issued by the Commander in Chief of the Armed Forces in 1995, which prohibit recruitment of children under the age of 18. The recruitment of children aged 14 is considered by many as a "growth rite" widely accepted by the community and the family.

In the 80's and 90's, forced recruitment was carried out by recruitment military officers in public places, especially at on-road buses, football fields, nightclubs and rural areas. Most recruited children were born to poor families and Guarani is their only language. These military operations were carried out door-to-door in rural areas, where military officers exerted pressure and instilled terror as a method to invite parents to surrender their children to comply with compulsory military service. Most of the parents who accept and sign the authorization for recruitment of their children are illiterate.

Moreover, it should be mentioned that punishment and acts of violence against soldier children are widely accepted and justified in the military environment. Out of 110 cases of dead conscripts registered since 1989, only one case had the perpetrator punished.

VII PROVEN FACTS

70. The Court will consider the facts related to the alleged illegal recruitment of the minor Vargas-Areco, his death while in active military service, the proceedings before the military court to establish liability for his death and the status of ordinary judicial proceedings as of March 26, 1993. Said facts have imposed obligations upon the State, which remain valid as of that date.

71. Pursuant to the acknowledgment of liability made by the State (*supra* paras. 20, 21, 30, 33 and 40 to 64) and pursuant to the body of evidence in the instant case, the Court finds the following facts to be proven.

A. *Recruitment and death of the minor Gerardo Vargas-Areco*

71(1) Gerardo Vargas-Areco, born in the city of Bella Vista Norte, department of Concepción, Paraguay, on November 6, 1973, was the son of Pedro Vargas and De Belén Areco. His siblings are Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of them members of the Vargas-Areco family.

71(2) On January 26, 1989, when Gerardo was 15 years old, he was recruited into military service in the Paraguayan Armed Forces. During the first months in service, he was stationed in Air Force Regiment "Silvio Pettrossi" of Campo Grande, Luque, and in November 1989, he was transferred to "Urunday" Joint Task Force, II Infantry Division of Villarrica, Guairá.

71(3) Around November 10, 1989, while in military service at Villarrica military post, the minor Vargas-Areco was granted a leave of absence to visit his family. After said leave, he decided not to return to the military post and a non-commissioned officer appeared at his home and took him back to the post, where he was punished for failing to return to service after his leave.

71(4) On December 1989, the minor Vargas-Areco was granted a five-day leave to visit his family. At the end of said leave, the minor decided again not to return to the military post; therefore, also in this opportunity a non-commissioned officer appeared at his home and took him back to the military base in Villarrica.

71(5) On December 30, 1989, while Vargas-Areco was under arrest as a punishment for failing to return voluntarily and timely to the Villarrica post, he suffered a nasal bleeding. Around 9:00 p.m. that day, a military officer ordered a non-commissioned officer to transfer the minor Vargas-Areco to the infirmary of the military post, where the bleeding was controlled.

71(6) On the way to the infirmary, the minor Vargas-Areco ran away, allegedly to flee from the post and the punishment imposed upon him. The minor was shot to death from behind by the escorting non-commissioned officer who saw him escape.

71(7) The dead body of the minor Vargas-Areco was found at 6:00 a.m. on December 31, 1989, almost 100 meters away from the infirmary of the military post. The removal of the dead body was carried out by a forensic physician, Dr. David Obregón, who stated that the cause of death was "acute bleeding due to a gunshot wound" and specified that the bullet reached the body on the back through the chest. The description was as follows:

Acute bleeding resulting from large-bore gunshot wound on right hemi thorax with entry orifice on dorsal area and exit orifice on front area of the thorax. The entry orifice had no scar tattoo. The examination of the rest of the body, from top to finish, did not reveal any other injury.

71(8) On December 31, 1989, the dead body of the minor Gerardo Vargas-Areco was taken in an Air Force plane to its hometown, Bella Vista, and delivered to his mother by a non-commissioned officer of the Paraguayan Army under express orders not to open the sealed coffin.

71(9) At the request of the relatives, the Justice of Peace of Bella Vista authorized to perform a medical examination on the corpse, which was carried out on January 1,

1990, by Dr. José de Ribamar-Cruz e Silva. The examination indicated that the cause of death was a "gunshot wound" and also showed the presence of other injuries, which were described as follows:

bruise wounds in the right olecranium area, affecting the arm and forearm, loss of epidermis in some areas, suspicious second-degree burns caused by boiling liquid. The left eyeball was practically out of its socket. Subcutaneous emphysema affecting the left parietal bone and ear level, with bruise wounds on the epidermis, loss of skin in some areas, darkened skin allegedly as a result of burns with flaming fuel, similar wounds on the sides of the neck and left shoulder, and on part of the torso and back, in the infraspinal area.

71(10) On January 2, 1990, the parents of Gerardo Vargas-Areco filed a criminal complaint before the Justice of Peace of the region for the death of their son.

B) Proceedings before the military courts

71(11) On December 31, 1989, the Commander of the Second Infantry Division, Brigadier General Mario Rodolfo Escobar-Anzoategui, ordered the commencement of military investigation proceedings regarding the events that led to the death of the minor Gerardo Vargas-Areco. On January 10, 1990, the military investigation was closed and the case was set for full trial. On February 1, 1990, the Military Prosecutor brought criminal charges against a non-commissioned officer of the Army, corporal 2nd class Aníbal López-Insfrán, for the crime of "homicide committed in the performance of duties."

71(12) On February 23, 1990, the Military First Instance Court, Second Division, rendered judgment and found corporal 2nd class López-Insfrán not guilty on the grounds that the homicide of Gerardo Vargas-Areco was committed "in the course of duty"; a mitigating circumstance pursuant to the provisions of Section 260 of the Military Criminal Code of Paraguay.¹² The Prosecutor's Office filed a motion for appeal against the judgment and, on March 28, 1990, the Supreme Military Court of Justice sentenced corporal 2nd class López-Insfrán to one-year military imprisonment for the crime of "homicide committed in the performance of duties."

C. Proceedings before the ordinary courts

71(13) On December 31, 1989, the corresponding Division of the Criminal Court of Villarrica ordered the removal of the corpse of the minor Vargas-Areco. On January 5, 1990, the First Instance Court on Juvenile Criminal and Correctional Matters, First Division, of Villarrica Judicial District, ordered the commencement of investigation proceedings on the death of the minor Vargas-Areco. The parents of the child appeared as complainants and submitted as evidence photographs of the corpse of the minor Vargas-Areco and the medical examination performed by forensic physician Dr. José de Ribamar-Cruz e Silva.

71(14) On September 10, 1990, the Supreme Court of Justice of Paraguay ruled on a conflict of jurisdiction involving the military courts and the ordinary courts regarding the investigation of the death of the minor Vargas-Areco. The Military

¹² Section 260 of the Military Criminal Code of Paraguay sets forth that "No crime is committed when the death or injuries are ordered by the law or a legitimate authority, or resulting from defense needs or in the course of duty."

Criminal Code sets forth that any military officer found guilty of a common crime must be submitted to the jurisdiction of the ordinary criminal courts, and that when a crime punishable under both Codes is committed, the jurisdiction of the ordinary courts will prevail; therefore, the Supreme Court found that the First Instance Court on Juvenile Criminal and Correctional Matters, First Division, of Villarrica Judicial District, had jurisdiction over proceedings against corporal 2nd class López-Insfrán regarding the violent death of the minor Vargas-Areco.

71(15) Proceedings before ordinary courts were delayed due to formal requirements. From 1991 to 1997, investigations on the instant case were paralyzed.

71(16) Indeed, various members of the Armed Forces were asked to render testimony before ordinary courts, firstly on February 19, 1990. The Armed Forces answered said request and alleged that the case was under investigation before the military jurisdiction. After the Supreme Court of Justice found that the ordinary courts had jurisdiction to hear the case, the military officers failed to appear to render testimony. The appropriate witnesses rendered testimony after September 18, 2000; i.e. more than ten years after the first call for evidence.

71(17) On April 10, 2001, the Criminal Assessment and Judgment Court of Villarrica Judicial District declared the investigation closed regarding the accused corporal 2nd class López-Insfrán and set the case for full trial. In view of the additional evidence proposed, an order was entered on November 27, 2001, to extend the scope of the investigation regarding Captain Eduardo Riveros, to be joined as defendant. Later, testimony was also received from a retired general and two active officers of the Paraguayan Army, and further evidence was submitted, including re-evaluations of the medical report.

71(18) On May 31, 2002, due to the accusations of torture filed by the complainants and the inconsistencies between the report of the physician who removed the corpse on December 31, 1989, and the report of Dr. José de Ribamar Cruz e Silva of January 1, 1990, the Court ordered that a third examination be performed. On May 6, 2002, physician Mario J. Vásquez-Estigarríbia established that, pursuant to the photographs of the corpse of Gerardo Vargas-Areco, the cause of death was an "wound on the back of the left hemothorax [...] related to an entry orifice caused by a gunshot [...] between the 6th and 7th interspinal right sub scapular space." Moreover, it was established that "the alleged burns [...] correspond to putrid ichorous emphysema of the corpse (once the putrefaction process begins, subcutaneous fluid gas blisters appear) that looks like a burn after popping upon contact."

71(19) On September 22, 2003, October 3, 2003, and October 26, 2003, physicians Octaviano Aquiles Franco-Saggia, Fausto Ricardo Paredes-Pavón and Elida Salinas-Ramírez, respectively, issued expert reports on the photographs of the corpse of Gerardo Vargas-Areco. The experts found that the injuries detected were consistent with the natural putrefaction process of a dead body.

71(20) On June 14, 2004, upon request by the State's attorney, the Court ordered that further expert opinions be requested on the photographs of the corpse of the minor Vargas-Areco. On July 5, 2004, physician José G. Bellassai-Zayas issued a report, whereby he stated that "given that the autopsy performed on the body is not available, it is difficult to establish the cause of death with certainty," and added

that “the [...] wounds detected in the body result from a putrefaction process and cannot be associated with torture injuries or hitting.”

71(21) On October 13, 2003, almost thirteen years after commencement of investigation proceedings before the ordinary courts, the Court ordered the closing of the evidence submission stage regarding the accused Aníbal López-Insfrán. On August 6, 2004, ten months after that, the Court ordered the closing of the evidence submission stage regarding the other accused, Eduardo Riveros-Gavilán.

71(22) On March 2, 2005, judgment of conviction was entered against corporal 2nd class López-Insfrán, ordering one-year imprisonment for the “wrongful homicide” of Gerardo Vargas-Areco. The sentence was deemed fully purged as Mr. López-Insfrán had already been sentenced to one-year imprisonment in the military jurisdiction (*supra* para. 71(12)), which was served at Peña Hermosa prison. Furthermore, Eduardo Riveros-Gavilán was found not guilty since the judgment declared Aníbal López-Insfrán as sole perpetrator of the death of Gerardo Vargas-Areco.

D. Recruitment of children into the Paraguayan Armed Forces

71(23) Law No. 569/75 of December 24, 1975, provides for compulsory military service in Paraguay and was in force when the minor Vargas-Areco was recruited. Said law sets forth that compulsory military service must be fulfilled by males aged 18 to 19.¹³

71(24) Furthermore, section 56 of said law sets forth that “[a]ny authority recruiting minors under the age of 18 [...] shall be dismissed or disqualified from holding public offices for a period of five years, unless otherwise established herein and notwithstanding criminal liability arising thereunder.”¹⁴

71(25) Section 36 of Law No. 569/75 establishes a special regime regarding Military Instruction Centers for Reserve Student Training (*CIMEFOR*). Said law offers students who have successfully completed their fourth high school year to attend military service for five-week periods during school break.¹⁵ Until March 2000, admission to *CIMEFOR* required an authorization from the Counsel for Incompetent Persons and, after April that year, from First Instance Juvenile Courts.¹⁶

71(26) On September 27, 2002, Paraguay ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed

¹³ Law No. 569/75 of December 24, 1975, “Compulsory Military Service”, sections 3(a) and 15.

¹⁴ Law No. 569/75, *supra* note 13, section 56.

¹⁵ Law No. 569/75, *supra* note 13, section 36.

¹⁶ Said jurisdiction is established in Resolution No. 167 of April 13, 2000, issued by the Supreme Court of Justice. Section 1 of said resolution establishes the jurisdiction of First Instance Juvenile Courts to authorize minors to leave the country or to be admitted to *CIMEFOR*. To the date when the minor Vargas-Areco was recruited, jurisdiction for admission to *CIMEFOR* was regulated under Resolution No. 7 of October 18, 1983, whose subparagraph (i) established the jurisdiction of the Counsel for Incompetent Persons to authorize minors to travel abroad or to be admitted to *CIMEFOR*.

conflict,¹⁷ and established that the minimum age for recruitment into Paraguayan military service was 16 years old. On March 14, 2006, the President of Paraguay signed a statement to substitute the one deposited with the ratification instrument, whereby it was established that voluntary or compulsory military service in Paraguay would not apply to minors under the age of 18.

71(27) The State acknowledged the occurrence of mistreatment, forced recruitment and death involving children in active military service.¹⁸ In most cases, these violations resulted from excesses committed by officers in command upon imposing physical and psychological punishment on conscripts, and over demanding physical exercises and accidents associated with the characteristics of compulsory military service. In many cases, these circumstances have irreversible physical and psychological consequences.

E. Damage caused to the relatives of Gerardo Vargas-Areco, costs and expenses

71(28) The death of the minor Vargas-Areco and the impossibility to find the truth about the facts surrounding his alleged torture and death caused his parents and siblings significant pain, sadness and anguish. The health of Mrs. De Belén Areco, Gerardo Vargas-Areco's mother, deteriorated considerably as a result of his death.

71(29) *CEJIL* and *SERPAJ PY* have incurred expenses arising from proceedings in the instant case before the Inter-American System for Human Rights Protection, upon representing the relatives of Gerardo Vargas-Areco.¹⁹

VIII

VIOLATION OF ARTICLES 4, 5(1), 8(1) AND 25 OF THE AMERICAN CONVENTION (RIGHT TO LIFE, PERSONAL INTEGRITY, FAIR TRIAL AND JUDICIAL PROTECTION) IN RELATION TO ARTICLE 1(1) OF SAID TREATY AND ARTICLES 6 AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE

Considerations of the Court regarding the duty to investigate the death and alleged torture of the minor Vargas-Areco, and the violation of the right to personal integrity of the child's relatives.

72. As set forth in the chapter on Preliminary Considerations, the Court lacks jurisdiction to decide on any event occurred before March 26, 1993, when the State recognized the jurisdiction of the Court (*supra* para. 53).

¹⁷ UN, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, A/RES/54/263, of May 25, 2000, available at <http://www.ohchr.org/english/law/crc-conflict.htm>.

¹⁸ UN, Committee on the Rights of the Child, survey of the reports submitted by States pursuant to Article 44 of the Convention on the Rights of the Child. Paraguay Report. CRC/C/65/Add.12, of March 15, 2001.

¹⁹ *Cf.* Vouchers of costs and expenses incurred by *CEJIL* and *SERPAJ PY* (record of appendixes to the brief of requests and arguments, folios 3049 to 3290).

73. Since its very first judgments, the Court has ruled on the close connection between the general duty to safeguard the right to fair trial embodied in Article 1(1) of the Convention and the specific rights protected under said instrument.²⁰ The duty to safeguard the right to fair trial imposes certain obligations upon the State, which are aimed at guaranteeing that any person under the jurisdiction of the State may freely and fully exercise the rights embodied in the Convention.²¹ Given its close connection to other specific rights, the duty to safeguard the right to fair trial may be fulfilled in different manners; therefore, whether the State has said duty to safeguard the right to fair trial will depend on the specific right at stake and the circumstances of the case.

74. The duty to investigate human rights violations falls under the positive measures that States should adopt to guarantee the rights embodied in the Convention.²² From the very beginning, the Court has ruled that in order to fulfill the aforementioned duty, States must not only prevent but also “investigate and punish any violation of the rights embodied in the Convention, and also foster restoration, if possible, of the affected right and, as applicable, redress the damage resulting from said human rights violation.”²³

75. As regards to the duty to guarantee the right set forth in Article 4 of the Convention, the Court has indicated that said right:

not only presupposes that no person may be arbitrarily deprived of his life (negative duty) but also requires, pursuant to the obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction. The State's positive duty to protect the right to life does not involve legislators only but the entire government structure and those in charge of security, namely the State's police or armed forces.²⁴

76. Furthermore, the Court found that:

in cases of extra-judicial executions, it is essential that States conduct an effective investigation into a deprivation of life case and punish the perpetrators, especially when state officials are involved; otherwise they would be creating, in a climate of impunity, the conditions that will allow these events to continue, which is contrary to the duty to respect and guarantee the right to life.²⁵

²⁰ Cf. *Case of Velásquez-Rodríguez*. Judgment of June 29, 1988. Series C No. 4, para. *Case of Godínez-Cruz*. Judgment of January 20, 1989. Series C No. 5, para. 171; and *Case of Neira Alegría et al.* Judgment of January 19, 1995. Series C No. 20, para. 85.

²¹ *Case of the Ituango Massacres*, *supra* note 3, para. 297; *Case of Baldeón-García*, *supra* note 3, para. 81; and *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, para. 142.

²² Cf. *Case of Ximenes-Lopes*, *supra* note 3, para. 177.

²³ *Case of Velázquez-Rodríguez*, *supra* note 20, para. 166.

²⁴ *Case of the Ituango Massacres*, *supra* note 3, para. 130 and 131. Cf. also *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 65 and 66; and *Case of Baldeón-García*, *supra* note 3, para. 84; *Case of the Sawhoyamaya Indigenous Community*, Judgment of March 29, 2006. Series C No. 146, para. 152.

²⁵ *Case of Baldeón-García*, *supra* note 3, para. 91. Cf. also *Case of the “Mapiripán Massacre”*. Judgment of September 15, 2005. Series C No. 134, para. 137 and 232-233.

77. In this sense, the Court has also stated that in cases involving extra-judicial executions, the authorities of a State must initiate a rigorous, impartial and effective investigation *ex officio* and as soon as is practicable after they take knowledge of the facts.²⁶ Said obligation must be fulfilled in a particular manner when the extra-judicial execution involves a child, given its inherent vulnerability, especially if the minor is under the custody or protection of the State.²⁷

78. Similarly, as regards to the obligation to guarantee the right set forth in Article 5(1) of the Convention, the Court has indicated that said obligation comprises the State's duty to investigate possible acts of torture or other cruel, inhuman or degrading treatment.²⁸

79. In that sense, the Court has previously pointed out that:

The Court understands that, based on the general obligation to guarantee every person subject to its jurisdiction the human rights set forth in Article 1(1) of the Convention, together with the right to personal integrity set forth in Article 5 (Right to Personal Integrity) of the treaty, the State has the obligation to immediately initiate *ex officio* an effective investigation to identify, prosecute and punish perpetrators when a complaint has been filed or when there are sufficient reasons to believe that an act of torture has been committed.²⁹

80. The investigation to be carried out by the State into acts that allegedly violate Article 5(1) of the Convention is also expressly regulated in Articles 1, 6 and 8 of the Inter-American Convention against Torture, which bind State Parties to take all steps that may be effective to prevent and punish any acts of torture within the scope of their jurisdiction, and to guarantee an impartial examination of all torture cases.³⁰ Paraguay ratified the Convention against Torture on February 12, 1990, and deposited the ratification instrument on March 9, 1990.

81. Ultimately, the duty to investigate is a compulsory obligation of the State embodied in international law, which cannot be mitigated by any domestic legislation

²⁶ Cf. *Case of Ximenes-Lopes*, *supra* note 3, para. 148; and *Case of the Ituango Massacres*, *supra* note 3, para. 296; *Case of the Pueblo Bello Massacre*, *supra* note 21, para. 143; and *Case of the "Mapiripán Massacre"*, *supra* note 25, paras. 219 and 223. In the same regard, cf. *Eur.C.H.R., Nachova and others v. Bulgaria* [GC], No. 43577/98 and 43579/98 Judgment of 6 July, 2005, para. 111.

²⁷ Cf. *Case of Ximenes-Lopes*, *supra* note 3, para. 103; *Case of Baldeón-García*, *supra* note 3, para. 120; *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/99 of August 28, 2002. Series A No. 17, para. 93. In the same regard, cf. *Matter of Urso Branco Prison*, Provisional Measures. Resolution of July 7, 2004, Considering Clause six; and *Case of the Gómez-Paquiyaui Brothers*. Provisional Measures. Resolution of May 7, 2004, Considering clause thirteen.

²⁸ Cf. *Case of Ximenes-Lopes*, *supra* note 3, para. 147; and *Case of Moiwana Community*, *supra* note 7, para. 92.

²⁹ Cf. *Case of Baldeón-García*, *supra* note 3, para. 156; *Case of Gutiérrez-Soler*. Judgment of September 12, 2005. Series C No. 132, para. 54; *Case of Tibi*. Judgment of September 07, 2004. Series C No. 114, para. 159. Cf. also, *Case of Ximenes-Lopes*, *supra* note 3, para. 148. In the same regard, *Eur.C.H.R., Assenov and others v. Bulgaria*, no. 90/1997/874/1086, Judgment of 28 October 1998, par. 102; and *Eur.C.H.R., İlhan v. Turkey* [GC], no. 22277/93, Judgment of 27 June 2000, paras. 89-93.

³⁰ Cf. *Case of Baldeón-García*, *supra* note 3, para. 157; *Case of Gutiérrez-Soler*, *supra* note 29, para. 54; and *Case of Tibi*, *supra* note 29, para. 159.

or act whatsoever.³¹ As previously pointed out by the Court, in cases of brazen violations of fundamental rights, the imperious need to avoid repetition can only be satisfied by fighting impunity³² and by respecting the right of the victims and society as a whole to know the truth about the events.³³ Therefore, the obligation to investigate constitutes a means to guarantee said rights and non-compliance therewith imposes international liability upon the State.

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82. In view of the State's acknowledgment (*supra* para. 20 to 22), the Court will examine in this section the non-fulfillment of the obligation to investigate the alleged violation of the rights set forth in Articles 4 and 5(1) of the Convention, in relation to Article 1(1) of said treaty, and Articles 6 and 8 of the Convention against Torture, to the detriment of the relatives of the minor Vargas-Areco, and the violation of their right to personal integrity, regarding the events occurred after March 26, 1993.

83. The Court restates that the relatives of the victims of certain human rights violations may, in turn, be victims of other violations.³⁴ Considering the acknowledgment made by the State and its own judicial precedents,³⁵ the Court finds that the victims in the instant case are the relatives of the minor Gerardo Vargas-Areco, namely: Pedro Vargas and De Belén Areco, parents of the minor Vargas-Areco; Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of them members of the Vargas-Areco family, siblings of Gerardo.

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84. In the instant case, the Court finds that the events occurred before March 26, 1993, imposed upon the State the obligation to investigate the alleged violation of the rights to life and personal integrity, in relation to which the Court cannot pass judgment. Nevertheless, it should be mentioned that said obligation had not been fulfilled to the date the jurisdiction of the Court was recognized.

85. To that respect, note that the State ratified the American Convention on August 24, 1989; i.e. several months before the death of the minor Vargas-Areco and while he was in active military service. Therefore, after that date, the State had

³¹ Cf. *Case of the Ituango Massacres*, *supra* note 3, para. 402; *Case of Baldeón-García*, *supra* note 3, para. 201; and *Case of Blanco-Romero et al.* Judgment of November 28, 2005. Series C No. 138, para. 98.

³² Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 137; and *Case of the Ituango Massacres*, *supra* note 3, para. 299; and *Case of Baldeón-García*, *supra* note 3, para. 195.

³³ Cf. *Case of the Ituango Massacres*, *supra* note 3, para. 289; *Case of Baldeón-García*, *supra* note 3, para. 166; and *Case of the Pueblo Bello Massacre*, *supra* note 21, para. 171.

³⁴ Cf. *Case of Ximenes-Lopes*, *supra* note 3, para. 156; *Case of Baldeón-García*, *supra* note 3, para. 128; and *Case of López-Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 119.

³⁵ Cf. *Case of the Ituango Massacres*, *supra* note 3, para. 264; *Case of the Pueblo Bello Massacre*, *supra* note 21, para. 235; and *Case of the "Mapiripán Massacre"*, *supra* note 25, para. 257.

the duty to fulfill all the obligations arising out of the Convention, even if the Court has no jurisdiction to rule on the alleged violations of said instrument.³⁶ Mention should be made that the purpose and goal of the Convention is to protect human beings; therefore, it requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*).³⁷

86. Similarly, the Court has previously analyzed the obligations set forth in Articles 6 and 8 of the Convention against Torture in relation to the events occurred prior to the time the treaty became effective for the State, and has ruled that "the obligations undertaken under said treaty must be fulfilled by the State"³⁸ once the aforementioned Convention against Torture becomes effective. Based on the foregoing, the Court finds that the State has the duty to investigate and punish the alleged torture of Gerardo Vargas-Areco in the domestic jurisdiction, pursuant to Articles 6 and 8 of the Convention against Torture. Said obligation is binding since March 9, 1990, notwithstanding any source of obligations other than the aforementioned Convention against Torture. Since March 26, 1993, the Court has jurisdiction to rule on the non-fulfillment of the obligation set forth in the Convention against Torture.

87. In the instant case, the Court finds that the extra-judicial execution of Gerardo Vargas-Areco and his alleged torture were not effectively and fully investigated. For instance, the authorities who carried out the investigation after 1993, should have analyzed the inconsistencies between the reports of the military physician who participated at the initial stage and of Dr. Ribamar Da Silva, and should have ordered that an autopsy be performed by a third expert, carefully taking into account its results. Instead, said authorities only asked different physicians to analyze photographs of the mortal remains of Gerardo Vargas-Areco in order to establish "if the wounds present in the body can be associated with acts of torture [...]." To that effect, on May 6, 2002; September 22, 2003; October 3, 2003; October 26, 2003; and July 5, 2004, the physicians Mario J. Vázquez-Estigarribia, Octaviano Aquiles Franco-Saggia, Fausto Ricardo Paredes-Pavón, Elida Salinas-Ramírez and José G. Bellassai-Zayas, respectively, issued expert reports regarding the photographs of the dead body of Gerardo Vargas-Areco (*supra* para. 71(18) to 71(20)).

88. As indicated in the expert witness report of Dr. Ravioli, the certificate of removal of the body and the medical reports drafted during criminal investigations do not satisfy the formalities of an autopsy, which constitutes the adequate technical means to establish the cause of death (*supra* para. 69.B.3).

89. In its expert witness report, Dr. Ravioli indicated that, "the examination of the photographs enclosed allows us to confirm or reject the presence of acts of torture," and added that the "surveys performed were fully insufficient to investigate a violent death. [Furthermore, the] surveys performed do not provide relevant information to

³⁶ Cf. *Case of Moiwana Community*, *supra* note 7, para. 43.

³⁷ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 64; and *Case of the Ituango Massacres*, *supra* note 3, para. 129; and *Case of Baldeón-García*, *supra* note 3, para. 83. In the same regard, cf. *Eur.C.H.R., McCann and Others v. the United Kingdom*, Judgment of September 27, 1995, Series A No. 324, paras. 146-147.

³⁸ Cf. *Case of Baldeón-García*, *supra* note 3, para. 158; *Case of Gutiérrez-Soler*, *supra* note 29, para. 54; and *Case of Tibi*, *supra* note 29, para. 159.

clarify the circumstances surrounding the death or to progress on the investigation to effectively establish the commission of acts of torture.” Dr. Ravioli concluded that the truth about the actual events could have only been found “through exhumation and performance of an autopsy on the body,” but said procedures were not carried out (*supra* para. 69.B.3).

90. Based on the foregoing, the Court considers that the State had the obligation to exhume and perform an autopsy on the body of the minor Vargas-Areco to establish, with the maximum degree of certainty, if he was subject to acts of torture. The obligation of the State became effective at the time the State learnt of the alleged acts of torture. As regards to the jurisdiction of the Court, the State failed to comply with the duty to exhume and perform said autopsy after March 26, 1993. Pursuant to the expert opinions of physicians Fondebrider and Ravioli (*supra* para. 69.B.2 and 69.B.3), even considering the natural decomposition process undergone by the body, the State could have performed certain surveys after that date to establish if the body of the minor Vargas-Areco had bone fractures that could be associated with acts of torture.

91. Mention must be made of the fact that the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (hereinafter “the Istanbul Protocol”) sets forth that state authorities conducting an investigation should at least, *inter alia*: a) identify the victim; b) collect and preserve evidence related to the death in order to assist with any investigation; c) identify possible witnesses and obtain testimonies in relation to the death under investigation; d) determine the cause, manner, place and time of death, as well as any pattern or practice which may have brought about such death, and e) distinguish between natural death, accidental death, suicide and homicide. Moreover, the Court points out that: a) a thorough investigation of the crime scene should be conducted, and b) rigorous autopsies and analyses of human remains should be performed by competent professionals, using the best procedures available.³⁹

92. For the purposes of this case, it is particularly useful to bear in mind that Article 12 of the “Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions” sets forth that:

The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. [...] If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

93. Moreover, said procedures should take into consideration the international rules for documenting and interpreting forensic evidence elements regarding the commission of acts of torture and, particularly, those defined in the Istanbul Protocol.⁴⁰

³⁹ Cf. *Case of Ximenes-Lopes*, *supra* note 3, para. 179; and *Case of the Ituango Massacres*, *supra* note 3, para. 298; *Case of Baldeón-García*, *supra* note 3, para. 96; and UN, Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Doc E/ST/CSDHA/12 (1991).

⁴⁰ Cf. U.N.O., United Nations High Commissioner for Human Rights, Geneva, 2001, available at: www.ohchr.org/english/about/publications/docs/8rev1.pdf.

94. Based on the foregoing, the Court considers that the investigation of the extra-legal execution of Gerardo Vargas-Areco, and his alleged torture, was not carried out in a manner that guarantees the rights set forth in Articles 4 and 5(1) of the Convention, in relation to Articles 1(1) of said treaty, and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the relatives of the minor Vargas-Areco.

95. Moreover, the relatives of the minor Vargas-Areco were victims of violation of the right to personal integrity as a result of their own suffering. The facts of the case reveal, as acknowledged by the State, that the relatives of Gerardo Vargas-Areco suffered large psychological impact and endured a great deal of pain and anguish as a direct consequence of the death of the minor Vargas-Areco and the State's failure to effectively investigate said death and the acts of torture possibly inflicted upon him (*supra* para. 71(28)).

96. In other cases, the Court considered that the right to psychological and moral integrity of the relatives of the victims had been violated due to the additional pain endured as a result of the specific circumstances surrounding the violations committed against their beloved ones and from subsequent acts or omissions by government authorities regarding to the incidents at issue here.⁴¹ In the instant case, the relatives of Gerardo Vargas-Areco have long lived, and still today, feeling uncertainty, frustration, anguish and powerlessness due to the lack of an adequate investigation into the acts committed against the minor (*supra* para. 71(28)). Said circumstances have caused a major alteration in the lifestyle of the victims and their social and family relations, seriously impairing the lifestyle of the family as a group and of each member individually. The assessment made by the relatives regarding the facts of the instant case has already been described (*supra* para. 69.A.1 and 69.B.1).

97. The Court considers that the non-fulfillment of the duty to investigate and punish said death and the alleged acts of torture affected, after March 26, 1993, the personal integrity of the relatives of the minor Vargas-Areco as mentioned in this Judgment.⁴² Said circumstances constitute a violation to the right to personal integrity enshrined in Article 5(1) of the American Convention, in relation to Article 1(1) of said treaty.

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Considerations of the Court in relation to Articles 8(1) and 25 of the Convention

98. The purpose of this section is to establish if judicial investigation proceedings in the instant case were carried out in accordance with Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of said treaty.

99. Article 8(1) of the American Convention prescribes that:

⁴¹ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 104; *Case of Ximenes-Lopes*, *supra* note 3, para. 156; and *Case of Baldeón-García*, *supra* note 3, para. 128.

⁴² Cf. *Case of Moiwana Community*, *supra* note 7, para. 92 and 93.

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

100. Article 25 of the Convention sets forth that:

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

2. The State Parties undertake:

- a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b) to develop the possibilities of judicial remedy; and
- c) to ensure that the competent authorities shall enforce such remedies when granted.

101. The Court has repeatedly stated that the right to fair trial should guarantee, within reasonable time, the right of the alleged victims or their relatives to have adopted all measures necessary to know the truth about the facts and to punish those responsible.⁴³

102. As regards to the principle of reasonable time set forth in Article 8(1) of the Convention, the Court finds that three elements should be taken into account to establish the fairness of the time incurred in judicial proceedings: a) the complexity of the matter, b) the procedural activities carried out by the interested party, and c) the conduct of judicial authorities.⁴⁴

103. In view of the foregoing criteria, the Court considers that in the instant case it was easy to determine the identity of the only alleged victim of the violation of the right to life and integrity, as well as the identity of the alleged perpetrators. Similarly, the circumstances presumably surrounding the facts; i.e. the events occurred at a military post, they were immediately known by the State, the dead body of the alleged victim was found 100 meters away from an infirmary within said post, and the fact that the State had free access to the crime scene, eliminate a large degree of complexity in the instant case. Moreover, the delay in criminal proceedings did not result from the conduct of the relatives of Gerardo Vargas-Areco, but from the inactivity of judicial authorities. In this regard, mention should be made of the fact that the obligation to investigate acts such as those committed in the instant case should be fulfilled *ex officio* by the State (*supra* para. 77 to 79).

⁴³ Cf. *Case of the Ituango Massacres*, *supra* note 3, para. 289; *Case of Baldeón-García*, *supra* note 3, para. 166; and *Case of the Pueblo Bello Massacre*, *supra* note 21, para. 171.

⁴⁴ Cf. *Case of Ximenes-Lopes*, *supra* note 3, para. 196; and *Case of the Ituango Massacres*, *supra* note 3, para. 289; and *Case of Baldeón-García*, *supra* note 3, para. 151.

104. Proceedings for the death of Gerardo Vargas-Areco before the ordinary courts had been fully paralyzed as of March 26, 1993, when the State recognized the contentious jurisdiction of the Court and no further proceedings were carried out until 1997.

105. After that date, some crucial procedures were delayed, such as the statement of the accused which was received in February 1999, and the re-enactment of the facts made in 2000. The testimonies of various military officers which had been requested in 1990 were received after September 18, 2000; i.e. almost 11 years after the events and more than 7 years after the jurisdiction of the Court was accepted. On October 13, 2003, almost 13 years after commencement of investigation proceedings before the ordinary courts and more than 10 years after recognition of the jurisdiction of the Court, the evidence submission stage was closed in relation to corporal 2nd class Aníbal López-Insfrán. Lastly, on March 2, 2005, 15 years after the events and 12 years after recognition of the jurisdiction of the Court, judgment of conviction was rendered in the proceedings before the ordinary courts for the crime of “wrongful homicide” (*supra* para. 71(22)).

106. As indicated above (*supra* para. 76), in the case of an extra-legal execution, the State shall effectively investigate the deprivation of the right to life and shall punish those responsible for the acts, particularly when state agents are involved. Otherwise, the prevailing impunity would foster repetition of events of similar nature.⁴⁵ These circumstances compromise the international liability of the State.⁴⁶

107. Furthermore, in the instant case, the ordinary courts sentenced corporal 2nd class López-Insfrán to one-year imprisonment for the crime of “wrongful homicide” committed against Gerardo Vargas-Areco; a punishment consistent with the provisions of domestic legislation regarding said crime. Mr. López-Insfrán was sentenced for “wrongful homicide,” a crime set forth in Section 107 of the Criminal Code of Paraguay. Said section provides that any person whose “negligent act causes the death of another shall be punished with imprisonment for up to five years or fine.” In the judgment of conviction of March 2, 2005, the judge considered that Mr. López-Insfrán acted in accordance with the military procedure established to prevent an arrested person from escaping, i.e.: ordering a person to stop three times, then shooting into the air and, lastly, shooting into the legs of the fugitive to hurt him and prevent him from escaping. According to the Judge of the case, Mr. López-Insfrán had no intention to kill Gerardo Vargas-Areco; however, due to the darkness of the place where the events occurred and the lack of care of the corporal 2nd class, the shooting contemplated in the military rules of procedure caused the death of the minor Vargas-Areco. Therefore, the act constituted wrongful homicide and not willful murder.

108. The Inter-American Court cannot, and does not intend to, stand in for national authorities upon establishing the penalties applicable to the crimes contemplated in domestic law, or defining the procedures applicable to certain situations within the military context. Notwithstanding the foregoing, the Court is

⁴⁵ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 137; and *Case of the Ituango Massacres*, *supra* note 3, para. 299; and *Case of Baldeón-García*, *supra* note 3, para. 195.

⁴⁶ Cf. *Case of Baldeón-García*, *supra* note 3, para. 91; *Case of the Pueblo Bello Massacre*, *supra* note 21, para. 145; and *Case of the “Mapiripán Massacre”*, *supra* note 25, paras. 137 and 232.

concerned about the lack of proportionality detected: a) between the method used in view of a conscript's attempt to escape from the armed forces and the lack of discipline displayed by said conscript; and b) between the response of the State to the illegal conduct of the officer and the legally protected interest allegedly affected – a child's right to life.

109. In view of these criteria, the Court considers that, in the instant case, the State failed to fulfill its obligation to carry out a complete and effective investigation of the alleged torture and extra-legal execution of the minor Gerardo Vargas-Areco, within reasonable time.

110. Based on the foregoing, the Court finds that the domestic proceedings initiated in the instant case do not constitute an effective remedy to truly guarantee the right to fair trial of the relatives of Gerardo Vargas-Areco, within a reasonable term, including finding the truth about the events, the investigation and punishment of those responsible and the reparation of the consequences of the alleged torture and deprivation of the right to life of Gerardo Vargas-Areco. Said circumstances impose liability upon the State for violation of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of said treaty, to the detriment of the relatives of the minor Vargas-Areco.

IX RECRUITMENT OF CHILDREN INTO THE ARMED FORCES

111. As previously stated in the section entitled "Preliminary Considerations", the Court will provide some general considerations regarding the recruitment of children into the armed forces (*supra* para. 61).

112. International law sets forth special rules to protect the physical and psychological integrity of children while involved in military activities, whether in times of peace or during armed conflict.

113. As to international humanitarian law, the Additional Protocols to the Geneva Conventions of August 12, 1949, on the protection of victims of international (Protocol I) or domestic (Protocol II) armed conflict establish the need to provide special protection for children. Protocol I establishes that "the Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavor to give priority to those who are oldest."⁴⁷ As regards to fundamental rights, Article 4 of Protocol II sets forth that "[c]hildren shall be provided with the care and aid they require, and in particular [...] children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities."⁴⁸

⁴⁷ Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the protection of victims of international armed conflicts (Protocol I), Article 77(2).

⁴⁸ Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the protection of victims of non-international armed conflicts (Protocol II), Article 4(c).

114. Furthermore, international humanitarian law calls for the adoption of restrictions regarding the recruitment of children into the armed forces. In that respect, Article 38, paragraph 3, of the United Nations Convention on the Rights of the Child sets forth that “States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.”⁴⁹

115. The International Red Cross and the United Nations Commission on Human Rights have made recommendations to eradicate the recruitment of people under the age of 18 into the armed forces.⁵⁰

116. On May 25, 2000, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was approved.⁵¹ Said Protocol was ratified by Paraguay on September 27, 2002, through Law No. 1897 of May 22, 2002.

117. Article 2 of said Protocol prohibits the compulsory recruitment of minors under the age of 18 into the armed forces.⁵² In exceptional cases of recruitment of minors between 15 and 18 years of age, Article 3 of the Protocol sets forth:

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.
3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:
 - a. Such recruitment is genuinely voluntary;
 - b. Such recruitment is carried out with the informed consent of the person’s parents or legal guardians;
 - c. Such persons are fully informed of the duties involved in such military service;

⁴⁹ Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of November 20, 1989. The Convention on the Rights of the Child was ratified by Paraguay in 1990, through Law No. 57/90.

⁵⁰ In September 1999, the 27th International Conference of the Red Cross and Red Crescent established the need to exclude minors under the age of 18 from armed hostilities. The UN Commission on Human Rights, through Resolution 1999/80 on the rights of the child, established “[t]he urgent need to raise the current minimum age limit set by article 38 of the Convention on the Rights of the Child on the recruitment and participation of any person in armed conflicts.”

⁵¹ UN, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, *supra* note 17.

⁵² UN, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, *supra* note 17.

- d. Such persons provide reliable proof of age prior to acceptance into national military service.

118. The State ratified said Protocol on September 27, 2002. Upon said ratification, as established in Article 3(2) of said treaty, the State deposited an instrument whereby it established that the minimum age for recruitment into the Paraguayan military service was 16. Nevertheless, on March 14, 2006, the President of the Republic signed a declaration that would replace the one deposited with the ratification instrument, whereby it was established that voluntary or compulsory military service in Paraguay would not apply to minors under the age of 18.

119. In 1999, the Inter-American Commission issued a general recommendation for eradicating the recruitment of children and their participation in armed conflict.⁵³ In said general recommendation, the Commission set forth that “[a]lthough laws in most member countries [of the Organization of American States] establish a minimum age of 18 for conscription; practices violating the human rights of children persist. The Commission finds such practices comparable to slavery and forced servitude.”⁵⁴

120. Pursuant to these considerations, Article 3 of Convention No. 182 of the International Labor Organization concerning the prohibition and immediate action for the elimination of the worst forms of child labor, sets forth that forced or compulsory recruitment of children for use in armed conflict will be considered a form of slavery or practice similar to slavery, which must be eradicated.⁵⁵

121. Similarly, the Rome Statute of the International Court of Justice prohibits recruiting minors under the age of 15 into the armed forces and their active involvement in hostilities.⁵⁶

122. The foregoing considerations reflect a trend in international law to avoid the incorporation of minors under the age of 18 into the armed forces and to guarantee, in all circumstances, that minors under the age of 18 do not participate directly in hostilities.

123. Despite this international trend, the domestic legislation of Paraguay prohibits recruiting minors under the age of 18 into the armed forces.

124. Law No. 569/75 of December 24, 1975, which provides for compulsory military service in Paraguay, in force at the time the minor Vargas-Areco was recruited, sets forth that compulsory military service must be fulfilled by males aged 18 to 19.⁵⁷

⁵³ ICHR, Annual Report of the Inter-American Commission on Human Rights 1999, Chapter 6, *Recommendation for eradicating the recruitment of children and their participation in armed conflicts*, OEA/Ser.L/V/II.106Doc. 3, of April 13, 2000, page 1619.

⁵⁴ ICHR, Recommendation for eradicating the recruitment of children and their participation in armed conflicts, *supra* note 53, page 1620.

⁵⁵ WTO, Convention on the prohibition and immediate action for the elimination of the worst forms of child labor, approved on June 17, 1999, ratified by Paraguay on March 7, 2001, Article 3(a).

⁵⁶ Rome Statute of the International Court of Justice, approved on July 17, 1998, in force since July 1, 2002, Articles 8(2)(b)(xxvi) and 8(2)(e)(vii).

⁵⁷ Law No. 569/75, *supra* note 13, section 3(a) and 15.

125. Furthermore, section 56 of said law sets forth that “[a]ny authority recruiting minors under the age of 18, [...] unless otherwise established herein and notwithstanding the criminal liability thereunder, shall be dismissed or disqualified for holding public offices for a period of five years.”⁵⁸

126. According to the expert witness Juan Carlos Yuste-Alonso (*supra* para. 69.B.4), in practice, Paraguayan authorities do not comply with the limitations imposed by domestic legislation for recruiting minors under the age of 18.

127. Moreover, Section 36 of Law No. 569/75 established a special regime regarding Military Instruction Centers for Reserve Student Training (*CIMEFOR*), which offers students who have successfully completed their 4th year at high school the possibility to attend military service for five-week periods during school holidays.⁵⁹ Until March 2000, admission to *CIMEFOR* required an authorization from the Counsel for Incompetent Persons and, after April that year, also from First Instance Juvenile Courts (*supra* para. 71(25)).

128. In the Third Report on the Situation of Human Rights in Paraguay, published in 2001, the Inter-American Commission found that “[e]ven though the law provides that in exceptional circumstances the age for military service can be brought forward, for justified causes and with parents’ consent, this exception is not unusual, becoming practically a rule.”⁶⁰ Furthermore, the Commission noted that “in many cases recruitment following intimidation of the parents whose sons have a “good physique” for military service.”⁶¹

129. Notwithstanding the foregoing international law provisions, in many cases children are subject to forced recruitment through coercion on the children themselves or their relatives. It has been stated that in some cases the age records of enlisted children have been forged.⁶² After recruitment, children usually receive identical treatment to adults, thus leading to dramatic physical and psychological consequences.⁶³

130. The State acknowledged the occurrence of mistreatment, forced recruitment and death involving children in active military service (*supra* para. 71(27)). In most cases, these violations resulted from excesses committed by officers in command

⁵⁸ Law No. 569/75, *supra* note 13, section 56.

⁵⁹ Law No. 569/75, *supra* note 13, Section 36.

⁶⁰ ICHR, Third Report on the Situation of Human Rights in Paraguay, OEA/Ser./L/VII.110 Doc. 52, March 9, 2001, Chapter VII, para. 37.

⁶¹ ICHR, Third Report on the Situation of Human Rights in Paraguay, *supra* note 60, para. 38.

⁶² *Cf. The Impact of Armed Conflicts on Children*, Report produced by the expert Graca Machel for the United Nations, submitted in August 1996, pursuant to Resolution No. 48/157 of December 20, 1993, adopted by the General Assembly of the UNO, para. 36; available at <http://www.unhcr.ch/Huridocda/Huridocda.nsf/TestFrame/bdf752e7cd66ca7f80256706003ef3e5?Opendocument>.

⁶³ *Cf. The Impact of Armed Conflict on Children*, *supra* note 62, para. 44.

upon imposing punishment on conscripts, and accidents associated with the characteristics of compulsory military service.

131. Moreover, conscripts in the Paraguayan Armed Forces have been subject to physical and psychological punishment, and over demanding physical exercises which, in many instances, led to adverse physical and psychological consequences. These techniques are used to inspire respect for the orders of officers in command and to punish acts of disobedience and inappropriate fulfillment of said orders.⁶⁴

132. In that respect, the expert witness Juan Carlos Yuste-Alonso stated that punishment and acts of violence against soldier children are widely accepted and justified in the Paraguayan military environment (*supra* para. 69.B0.4). Furthermore, since 1989, out of 110 registered cases of dead conscripts, only in one case the perpetrator was punished (*supra* para. 69.B0.4).

133. On June 18, 1997, the UN Committee on the Rights of the Child made its concluding observations on the situation of children in Paraguay and pointed out that, despite the legal restrictions imposed upon the recruitment of minors under the age of 18, "it is concerned that in practice this policy is not always enforced and that there are still under-age juveniles coerced or pressured into military service." Therefore, the Committee on the Rights of the Child encouraged the State party to enforce rigorously legislation in force.⁶⁵ The international body addressed the subject again in 2001, and recommended that Paraguay "put an end to the practice of recruiting children into the Paraguayan Armed Forces and national police."⁶⁶

134. In that respect, the Court considers that the recent statement made by the President of Paraguay on March 14, 2006, regarding the Optional Protocol to the Convention on the Rights of the Child in relation to the involvement of children in armed conflict, which sets forth that minors under the age of 18 cannot be recruited into military service, constitutes a positive step to prevent events such as those occurred in the instant case from happening again.

X REPARATIONS APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION

OBLIGATION TO MAKE REPARATIONS

Arguments of the Commission

135. The Commission stated that:

⁶⁴ Amnesty International, Paraguay, Military Service: Recruitment of Children, Routine Ill-treatment and Unexplained Deaths, April 5, 2001, AI INDEX: AMR 45/002/2001.

⁶⁵ UN, Concluding Observations of the Committee on the Rights of the Child: Paraguay, June 18, 1997, CRC/C/15/Add.75, para. 17 and 36.

⁶⁶ UN, Concluding Observations of the Committee on the Rights of the Child: Paraguay, November 06, 2001, CRC/C/15/Add.166, para. 46(a).

- a) the beneficiaries of the reparations are the relatives of Gerardo Vargas-Areco, namely: Pedro Vargas (his father); De Belén Areco (his mother); and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of them members of the Vargas-Areco family (siblings of Gerardo);
- b) as regards to pecuniary damage,
- i. the Court should take into account the efforts made by the relatives of the minor Gerardo Vargas-Areco to obtain justice, who sustained pecuniary damage as a consequence thereof; and
 - ii. the statements made by the State in the answer to the application and the hearing undoubtedly reflect acceptance of the reparations specified by the representatives;
- c) as regards to non-pecuniary damage,
- i. the relatives of the minor Gerardo Vargas-Areco have been victims of "severe psychological suffering;"
 - ii. the relatives of Gerardo Vargas-Areco sustained pecuniary damage; and
 - iii. the Court may determine, based on equitable grounds, the compensation for said damage;
- d) as regards to other types of reparation, the Court must order the State to:
- i. diligently and effectively investigate the facts through non-military authorities in order to identify, prosecute and punish all perpetrators and instigators, and other individuals responsible for the death of Gerardo Vargas-Areco with the aim to prevent and fight impunity;
 - ii. design and implement, in all recruitment and training programs available to the members of the Paraguayan Armed Forces, training material and regular courses in human rights and, particularly, international standards and rules regarding the involvement of minors in compulsory military service;
 - iii. eliminate the illegal practice of recruiting minors under the age of 18;
 - iv. restate its public apology in the presence of all relatives of Gerardo Vargas-Areco and, if possible, before the members of the community;
 - v. name after the minor Vargas-Areco a school in the community where the family of the minor Gerardo Vargas-Areco lives or, if not available, order construction of a school to receive that name and to announce said plan upon making its public acknowledgment of liability before the community; and
 - vi. publish the judgment in the Official Gazette and Paraguayan newspapers, together with its translation into Guarani, to reveal the truth to the Paraguayan community;

e) as regards to costs and expenses, the Court must order the State to pay the costs and expenses actually proven by the representatives incurred upon proceedings before the domestic jurisdiction and the Inter-American System.

Arguments of the representatives

136. The representatives stated that:

a) the beneficiaries of the reparations are the relatives of Gerardo Vargas-Areco, namely: Pedro Vargas (his father); De Belén Areco (his mother); and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of them members of the Vargas-Areco family (siblings of Gerardo);

b) as regards to pecuniary damage, the Court must:

i. recognize, based on equitable grounds, the expenses incurred by the relatives of Gerardo Vargas-Areco upon providing Gerardo Vargas-Areco a dignified burial, and the disbursements made during the last few years to expedite proceedings both in the domestic and international jurisdictions; and

ii. assess the amount of lost profits, considering that the minimum monthly salary is 387,014 Guaranies, which multiplied by 12 months and, lastly, by the number of remaining years based on a 70-year life expectancy would total 255,429,240 Guaranies;

c) as regards to non-pecuniary damage, the Court must grant, based on equitable grounds, a compensation to the relatives of Gerardo Vargas-Areco for their suffering as a result from the loss of their beloved one and from denial of justice;

d) as regards to other types of reparation, the Court must order the State to:

i. organize an official public act to acknowledge its international liability and to apologize to the relatives of Gerardo Vargas-Areco;

ii. publish the judgment of the Court in the Official Gazette of Paraguay and communicate through a nation-wide radio station, both in Spanish and Guaraní, the operative paragraphs of the Judgment;

iii. carry out an investigation to identify, prosecute and punish – through criminal and administrative proceedings- the perpetrators of the forced recruitment, alleged torture and death of the minor Vargas-Areco, releasing the child's relatives from the burden to expedite proceedings;

iv. cancel the reservation instrument deposited with the UN General Secretariat regarding the Optional Protocol to the Convention on the Rights of the Child in relation to the involvement of children in armed conflict, which establishes 18 years old as the minimum age for recruitment into compulsory or voluntary military service;

v. abrogate Section 10 and amend Section 5 of Law No. 569/75 to unconditionally prohibit the recruitment of minors under the age of 18 into military service;

- vi. amend Section 10 of Law No. 123/52, regarding the organization of *CIMEFOR*, to prevent the inclusion of minors under the age of 18 in this regime;
 - vii. design training material and regular courses in human rights for all recruitment, promotion and training programs available to the members of the Paraguayan Armed Forces, including international standards and rules regarding the involvement of minors in compulsory military service and the international law principles in force regarding the use of force;
 - viii. prepare educational material (audiovisual presentations) on the case of Vargas-Areco to be distributed on an annual basis at elementary and secondary schools, to thus illustrate the conditions and risks associated with compulsory military service;
 - ix. implement regular training courses for the members of the Attorney General's Office, Judicial Power, Police and Forensic Physicians Group regarding the gathering and assessment of forensic evidence;
 - x. name "Gerardo Vargas-Areco" the street where the residence of Gerardo's relatives is located and affix a commemorative plaque on the site;
 - xi. pass a law to offer reparation to all victims of death, torture, abuse and mistreatment while in compulsory military service in Paraguay; and
 - xii. provide full medical treatment, on a permanent and continuous basis, to the relatives of Gerardo and, particularly, to Mrs. De Belén;
- e) as regards to costs and expenses, the Court must order the State to:
- i. pay *SERPAPY* US\$ 9,017 (nine thousand seventeen United States dollars) for the expenses incurred during domestic and international proceedings; and
 - ii. pay *CEJIL* US\$ 23,383.83 (twenty-three thousand, three hundred and eighty-three United States dollars and eighty-three cents) for the expenses incurred during proceedings before the international jurisdiction, for which *CEJIL* submitted vouchers in the amount of US\$ 8,601.90 (eight thousand, six hundred and one United States dollars, and ninety cents).

Arguments of the State

137. The State argued that:

- a) as part of its ratification of the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflict, the State signed and deposited a declaration which sets forth that 18 years old is the minimum age for recruitment into the Paraguayan Armed Forces, and the Commander of the Military Forces of Paraguay had signed a project that would be sent to the National Congress to amend Law No. 569/75 ("Compulsory Military Service") and Law No. 123/52 (regarding *CIMEFOR*), in relation to the minimum age for recruitment into the Armed Forces;

- b) the Court should take into account said circumstance upon determining the reparations and costs based on the principles of justice and equity;
- c) the public request for forgiveness made by the State to the relatives of Gerardo Vargas-Areco should be accepted as initial reparation in the instant case; and
- d) the Court should consider that on June 21, 2006, the State of Paraguay made a public acknowledgment of international liability at the headquarters of the National Chancery, for the purposes of the instant case.

Considerations of the Court

138. In view of the acknowledgment of liability made by the State (*supra* paras. 20, 21, 30, 33 and 40 to 64), and in accordance with the foregoing considerations on the merits of the case, the Court found that the State violated Articles 8(1) (Right to Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, and Article 5(1) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, to the detriment of the relatives of the minor Gerardo Vargas-Areco (*supra* para. 97 and 110). Furthermore, the Court found that the State failed to fulfill the obligation to investigate the violation of the rights enshrined in Articles 4 and 5(1) of the Convention, in relation to Article 1(1) of said treaty, and Articles 6 and 8 of the Convention against Torture, to the detriment of the relatives of the minor Gerardo Vargas-Areco (*supra* para. 94).

139. This Court has repeatedly determined that it is a principle of International Law that any violations of an international obligation, which cause damage purport a duty to adequately make reparations.⁶⁷ The decisions of the Court on this subject are based on Article 63(1) of the American Convention, which sets forth:

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 party harmed 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 party harmed.

140. The aforementioned Section 63(1) of the American Convention codifies a customary rule that is one of the fundamental principles of contemporary International Law regarding the responsibility of States. Thus, upon occurrence of an internationally wrongful act attributable to a State, the international liability arises as regards to such State, with the corresponding duty to make reparations and to have the consequences of the violation remedied.⁶⁸

141. The reparation of the damage caused by the infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in restoring the state of affairs prior to the infringement. Should that not be

⁶⁷ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 115; and *Case of the Ituango Massacres*, *supra* note 3, para. 345; *Case of Baldeón-García*, *supra* note 3, para. 174.

⁶⁸ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 116; *Case of Ximenes-Lopes*, *supra* note 3, para. 207; and *Case of the Ituango Massacres*, *supra* note 3, para. 346.

possible, as it happens in most cases, the international court should determine the measures aimed at guaranteeing the rights that were affected, and making reparations for the consequences of the infringements and shall determine a compensation for the damage caused,⁶⁹ and prevent repetition of harmful events, such as those occurred in the instant case.⁷⁰ International Law governs all aspects (scope, nature, methods and determination of beneficiaries) of the duty to make reparations, which cannot be modified or unfulfilled by the State by relying on its domestic laws.⁷¹

142. Reparations consist in measures aimed at eliminating, moderating or compensating the effects of the violations committed. Their nature and amount depend on the characteristics of the violation and, at the same time, on the pecuniary and non-pecuniary damage caused. Such reparations shall not lead victims or their heirs to become richer or poorer and they must be consistent with the violations declared in the Judgment of the Court.⁷²

143. Pursuant to the foregoing criteria and in view of the circumstances of the instant case, the Court will analyze the allegations of the parties, identify the beneficiaries and adopt the necessary measures to redress the damage sustained.

A) BENEFICIARIES

144. Pursuant to Article 63(1) of the American Convention, the Court finds that the “injured parties” and, consequently, those entitled to the reparations, are the relatives of the minor Gerardo Vargas-Areco, namely: Pedro Vargas (his father), De Belén Areco (his mother), and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of them members of the Vargas-Areco family (siblings of Gerardo), in their capacity as victims of the violation of the rights embodied in Articles 4 and 5(1) of the Convention, in relation to Article 1(1) of said treaty, and Articles 6 and 8 of the Convention against Torture; the rights set forth in Articles 8(1) (Right to Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, and the violation of the right set forth in Article 5(1) (Right to Personal Integrity) of said instrument, in relation to Article 1(1) (Obligation to Respect Rights) thereof; all of it after March 26, 1993 (*supra* para. 94, 97 and 110).

145. Should any of the beneficiaries die before receiving the related compensation, the corresponding amount will be distributed in accordance with applicable domestic legislation.⁷³

⁶⁹ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 117; *Case of Ximenes-Lopes*, *supra* note 3, para. 209; and *Case of the Ituango Massacres*, *supra* note 3, para. 347.

⁷⁰ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 117; *Case of Baldeón-García*, *supra* note 3, para. 176; *Case of López-Álvarez*, *supra* note 34, para. 182.

⁷¹ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 117; *Case of Ximenes-Lopes*, *supra* note 3, para. 209; and *Case of the Ituango Massacres*, *supra* note 3, para. 347.

⁷² Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 118; *Case of Ximenes-Lopes*, *supra* note 3, para. 210; and *Case of the Ituango Massacres*, *supra* note 3, para. 348.

⁷³ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 124; *Case of Ximenes-Lopes*, *supra* note 3, para. 219; and *Case of the Ituango Massacres*, *supra* note 3, para. 363.

B) *PECUNIARY DAMAGE*

146. Pecuniary damage purports a loss or detriment to the victims' income, the expenses made as a result of the events and the pecuniary consequences of the facts of the instant case. The Court will establish the compensations to be paid for the violations declared in this Judgment,⁷⁴ based on the State's acknowledgment of liability, the circumstances of the case, the evidence submitted, the arguments of the parties and the criteria established in the Court's precedents.⁷⁵

147. The Court will not analyze the loss of income suffered by the minor Vargas-Areco. The events that may purport a violation of the child's rights occurred before the State recognized the jurisdiction of the Court. Moreover, the parties have not alleged that the relatives of the minor Vargas-Areco suffered a loss of income as a result of the violations declared in the instant case; therefore, the Court will not assess any amount to be paid in that regard.

148. The Court recognizes that the relatives of Gerardo Vargas-Areco incurred in expenses upon offering Gerardo a proper burial. Therefore, the Court has decided to order payment of compensation, determined on equitable grounds, in the amount of US\$ 3,000 (three thousand United States dollars) or its equivalent in Paraguayan currency. Said amount must be delivered to the parents of Gerardo Vargas-Areco in equal parts.

C) *NON-PECUNIARY DAMAGE*

149. Non-pecuniary damage may include distress and suffering resulting from violations, tampering with the victim's core values, and changes of a non-pecuniary nature in the person's everyday life. Given that it is not possible to assess the value of non-pecuniary damage in a precise monetary equivalent, the Court must order other means to redress in full the damage sustained. Firstly, said compensation will be made effective by paying an amount of money to be reasonably determined at the Court's discretion, based on equity principles. Secondly, said compensation will be made effective through public actions or works, such as the publication of an official message repudiating the human rights violations at stake and committing to prevent similar violations in the future. These acts are aimed at restoring the victims' memory, recognizing their dignity and comforting their relatives.⁷⁶ The first aspect of the reparation of non-pecuniary damage will be analyzed in this section and the second aspect in the section on other forms of reparation.

150. Judgments, pursuant to repeated international precedents, constitute in and of themselves a form of reparation.⁷⁷ However, owing to the circumstances of the

⁷⁴ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, supra note 4, para. 126; *Case of Ximenes-Lopes*, supra note 3, para. 220; *Case of the Ituango Massacres*, supra note 3, para. 370.

⁷⁵ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, supra note 4, para. 126; *Case of Ximenes-Lopes*, supra note 3, para. 220; *Case of the Ituango Massacres*, supra note 3, para. 370.

⁷⁶ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, supra note 4, para. 130; *Case of Ximenes-Lopes*, supra note 3, para. 227; *Case of the Ituango Massacres*, supra note 3, para. 383.

⁷⁷ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, supra note 4, para. 131; *Case of Ximenes-Lopes*, supra note 3, para. 236; *Case of the Ituango Massacres*, supra note 3, para. 387.

instant case, the suffering the events have caused to the relatives of the minor Gerardo Vargas-Areco, the changes in their way of living and other consequences of a non-pecuniary nature they bore, the Court considers appropriate to order payment of compensation, assessed on equitable grounds, for the non-pecuniary damage sustained.⁷⁸ In prior cases, the Court has found that once a State acknowledges its international liability, no evidence is to be submitted to prove the damage caused.⁷⁹ The Court has taken into account the testimonies of witnesses and expert witnesses.

151. Considering the various aspects of the non-pecuniary damage caused, the Court orders, based on equitable grounds, payment of the amount of US\$ 62,000.00 (sixty-two thousand United States dollars) or its equivalent in Paraguayan currency as compensation for the non-pecuniary damage sustained by the relatives of the minor Vargas-Areco. Said amount must be delivered as follows (*supra* para. 144, beneficiaries):

- a) US\$ 20,000.00 (twenty thousand United States dollars) or its equivalent in Paraguayan currency to the child's mother, Mrs. De Belén Areco, for the significant suffering endured;
- b) US\$ 15,000.00 (fifteen thousand United States dollars) or its equivalent in Paraguayan currency to the child's father, Mr. Pedro Vargas; and
- c) US\$ 3,000.00 (three thousand United States dollars) or its equivalent in Paraguayan currency, to each brother or sister of Gerardo Vargas-Areco, namely: Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of them members of the Vargas-Areco family.

D) OTHER FORMS OF REPARATION
(MEASURES OF SATISFACTION AND NON-REPETITION GUARANTEES)

152. As regards to measures of satisfaction aimed at redressing non-pecuniary damage,⁸⁰ the Court finds:

- a) *Obligation to investigate the events that resulted in violations in the instant case, and to identify, prosecute and punish those responsible*

153. The Court has repeatedly found that States have the duty to avoid and fight impunity, defined as the "overall failure to investigate, arrest, prosecute and convict those responsible for violations of the rights protected under the American

⁷⁸ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 131; *Case of Ximenes-Lopes*, *supra* note 3, para. 235; *Case of the Ituango Massacres*, *supra* note 3, para. 387.

⁷⁹ Cf. *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 96; *Case of Trujillo Oroza, Reparations* (art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 85; *Case of Garrido and Baigorria, Reparations* (art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 49.

⁸⁰ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 136; *Case of Ximenes-Lopes*, *supra* note 3, para. 240; *Case of the Ituango Massacres*, *supra* note 3, para. 396.

Convention.”⁸¹ Impunity must be attacked using all legal means available, considering the need to seek justice in the specific case and also the fact that impunity fosters the chronic repetition of human rights violations and renders victims completely defenseless.⁸²

154. In the instant case, impunity has not been complete since corporal 2nd class López-Insfrán was prosecuted and found guilty of “wrongful homicide” (*supra* para. 71(22)). However, the State did not carry out an investigation to know if the child suffered acts of torture or other illegal treatment.

155. In this regard, the Court restates the obligation of the State of Paraguay to adopt, within a reasonable time, all measures necessary to identify, impose liability upon and punish the perpetrators of the violations committed in the instant case as regards to criminal proceedings and any other matters resulting from the investigation of the events. To that effect, the State must adopt the judicial and administrative measures necessary to reopen the investigation of the facts of the instant case. Said investigation must refer to the facts related to the alleged torture of the minor Vargas-Areco. The relatives of Gerardo Vargas-Areco or their representatives must have full access and capacity to act at all stages and instances of the corresponding proceedings, pursuant to domestic legislation and the American Convention,⁸³ releasing the child’s relatives from the burden to expedite proceedings. Furthermore, the State must guarantee effective compliance with the decision made in the domestic jurisdiction to fulfill this obligation.

156. As regards to this obligation, it should be noted that as repeatedly established in the Court’s precedents,⁸⁴ pursuant to international law, no domestic law or regulation may prevent a State from fulfilling its duty, declared by the Court, to investigate and punish the perpetrators of human rights violations such as those committed in the instant case.

b) Plaque to commemorate Gerardo Vargas-Areco and public acknowledgement of international liability, public apology and redress

157. As stated in prior instances (*supra* para. 65), the Court values and appreciates the acknowledgment made by the State of Paraguay (*supra* para. 20, 21, 30, 33 and 40 to 64), the request for forgiveness addressed to the relatives of Gerardo Vargas-Areco by the State during the public hearing in the instant case (*supra* para. 46) and the public acknowledgement of international liability made by the State on June 21, 2006, at the headquarters of the National Chancery.

⁸¹ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 137; and *Case of the Ituango Massacres*, *supra* note 3, para. 299; *Case of Baldeón-García*, *supra* note 3, para. 195.

⁸² Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 137; and *Case of the Ituango Massacres*, *supra* note 3, para. 299; *Case of Baldeón-García*, *supra* note 3, para. 168 and 195.

⁸³ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 139; and *Case of the Ituango Massacres*, *supra* note 3, para. 339; *Case of Baldeón-García*, *supra* note 3, para. 199.

⁸⁴ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 141; and *Case of the Ituango Massacres*, *supra* note 3, para. 402; *Case of Baldeón-García*, *supra* note 3, para. 201.

158. However, given that the relatives were not present at the public acknowledgment of liability made on June 21, 2006, and considering that the State has accepted the corresponding claim, the Court orders that the public acknowledgment of liability be repeated in the presence of the relatives of Gerardo Vargas-Areco, as a measure of satisfaction, in the community where the family of the minor Vargas-Areco resides, in the presence of the State's civil and military authorities. In the course of said act, a plaque, whose text and wording will be agreed upon with the relatives of the child, will be affixed in order to keep his memory alive and prevent repetition of events such as those occurred in the instant case.

c) Medical and psychological treatment

159. It has been proven that the physical, psychological and emotional distress suffered by the relatives of Gerardo Vargas-Areco as a result of the violations recognized in the instant case have lasted through to this day and have impaired their respective life projects (*supra* para. 71(28) 95 and 96). On account of the foregoing, the Court, as in other opportunities,⁸⁵ is of the opinion that reparations must also include psychological and psychiatric treatment for all the relatives of Gerardo Vargas-Areco, at their discretion.

160. For the purposes specified above, the State must provide the required medical and psychological treatment, individually and in group, based on the nature of the case and as determined by the professionals in charge of said treatment, through public health institutions, for free and including the related examinations and medicines.

d) Education in human rights

161. The State must design and implement training programs and regular courses in human rights available to all members of the Paraguayan Armed Forces.

e) Publication of the relevant parts of the Judgment

162. As a measure of satisfaction, the State must publish at least once in the Official Gazette and in another nationwide daily newspaper, the chapter on Proven Facts of this Judgment, without the corresponding footnotes, and the related operative paragraphs.

f) Adapting domestic legislation to the American Convention

163. The State informed that it deposited an instrument that is part of the ratification of the Optional Protocol to the UN Convention on the Rights of the Child regarding armed conflict, which sets forth that the minimum age to serve in the Paraguayan Armed Forces is 18 years old. Furthermore, the State alleged that the Commander in Chief of the Armed Forces signed a project to be sent to the National Congress to amend Laws No. 569/75 ("Compulsory Military Service") and 123/52 (regarding *CIMEFOR*), in relation to the minimum age for recruitment into the Paraguayan Armed Forces.

⁸⁵ Cf. *Case of the Ituango Massacres*, *supra* note 3, para. 403; *Case of Baldeón-García*, *supra* note 3, para. 206; *Case of the Pueblo Bello Massacre*, *supra* note 21, para. 274.

164. Given that to the date of issuance of this Judgment the Court has not been informed of any amendment to Laws No. 569/75 (“Compulsory Military Service”) and 123/52 (regarding *CIMEFOR*), the State should be ordered to modify its domestic legislation regarding the recruitment of minors under the age of 18 into the Paraguayan Armed Forces, pursuant to applicable international standards.

E) *COSTS AND EXPENSES*

165. As the Court has stated on previous occasions,⁸⁶ costs and expenses are contemplated within the concept of reparations as enshrined in Article 63(1) of the American Convention, inasmuch as the steps taken by the victims to obtain justice at the domestic and international level, which lead to expenses that must be compensated when the State’s international responsibility has been determined in a judgment of conviction. As regards to their reimbursement, the Court must thoroughly assess its extent, which includes the expenses incurred upon acting before domestic authorities, as well as those incurred in the course of proceedings before the Inter-American System, taking into account the particular circumstances of the specific case and the nature of the international jurisdiction for human right protection. Such assessment may be made based on equitable grounds.

166. It has been proven in the instant case that the relatives of the minor Vargas-Areco, *SERPAJ PY* and *CEJIL*, carried out activities at the national and international level with the aim of knowing the truth about the facts and obtaining justice. The Court finds that the State must grant a compensation for the direct disbursements made by the victim’s parents and the representatives, provided said disbursements have a direct cause-effect connection with the illegal acts of the instant case, based on the State’s international liability for the wrongful acts declared in this Judgment.

167. The Court finds that the evidence on the records of the case is not adequate to determine with accuracy the expenses incurred by the relatives of the minor Gerardo Vargas-Areco as a result of proceedings. Based on the specific circumstances of the case and taking into account the efforts made by the relatives of the minor Gerardo Vargas-Areco, as well as *SERPAJ PY* and *CEJIL*, to find justice both in the domestic and international jurisdiction, the Court has decided to order payment of a compensation for costs and expenses in the amount of US\$ 8,000.00 (eight thousand United States dollars) or its equivalent in Paraguayan currency. Said amount must be delivered to the parents of Gerardo Vargas-Areco, collectively, who will submit to *SERPAK PY* and *CEJIL* the amounts deemed appropriate, pursuant to any express or implied agreement between the parties, in order to compensate the expenses made before authorities within the domestic jurisdiction and during proceedings before the Inter-American System.

XI
METHOD OF COMPLIANCE

168. The State shall pay the compensations for pecuniary and non-pecuniary damage, and reimburse the costs and expenses incurred (*supra* para. 148, 151, and 167) within one year following notice of this Judgment. Furthermore, the State shall

⁸⁶ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 4, para. 152; *Case of Ximenes-Lopes*, *supra* note 3, para. 252; and *Case of the Ituango Massacres*, *supra* note 3, para. 414.

provide medical and psychological treatment to the relatives of the minor Vargas-Areco, at their discretion, after notice of this Judgment and for as long as necessary, as established in paragraph 160 of this Judgment. The State shall fulfill, within a reasonable time, the obligation to adapt its domestic legislation regarding the recruitment of minors under the age of 18 into the armed forces, pursuant to the applicable international standards (*supra* para. 164), and to carry out an investigation of the facts and to identify, prosecute and punish those responsible for the violations committed in the instant case (*supra* para. 153 to 156). Furthermore, the State shall implement training programs and regular courses in human rights, which must be made available to all members of the Paraguayan Armed Forces (*supra* para. 161). The State shall make a public acknowledgement of international liability, public apology and redress no later than one year following notice of this Judgment (*supra* paras. 157 and 158). Lastly, the State shall publish the relevant parts of this Judgment (*supra* para. 162) within one year from the date notice of this judgment is served upon it.

169. The compensations established to the benefit of the victims in the instant case will be delivered directly to them. Should any of the persons specified above die before receiving the related compensation, the corresponding amount shall be distributed in accordance with applicable domestic legislation.

170. Any payment ordered to cover the costs and expenses resulting from the acts performed by the victim's representatives during domestic proceedings and international proceedings before the Inter-American System of Human Rights Protection shall be made to the benefit of the parents of the minor Gerardo Vargas-Areco (*supra* para. 167), who will in turn distribute such funds as appropriate.

171. If the beneficiaries of compensations cannot receive the payments within the specified term due to causes attributable to them, the State shall deposit said amounts in an account to the beneficiary's name or draw a certificate of deposit from a reputable Paraguayan financial institution, denominated in United States dollars, under the most favorable financial terms permitted by law and customary banking practice in force. If after ten years compensations were still unclaimed, the corresponding amounts plus accrued interests shall be returned to the State.

172. The State may discharge its pecuniary obligations by tendering United States dollars or an equivalent amount in the currency of Paraguay, at the New York, USA exchange rate quoted on the day prior to the date when payment is made.

173. Payments ordered as compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses shall not be affected, reduced or conditioned by tax reasons, be they present or future. Therefore, beneficiaries shall receive the total amount as per the provisions herein.

174. Should the State fall into arrears with its payments, Paraguayan banking default interest rates shall be paid on the amount owed.

175. In accordance with its constant practice, the Court retains the authority emanating from its jurisdiction and the provisions of Article 65 of the American Convention, to monitor full compliance with this judgment. The instant case shall be closed once the State implements in full the provisions herein. Paraguay shall, within a year, submit to the Court a report on the measures adopted in compliance with this Judgment.

XII
OPERATIVE PARAGRAPHS

176. Therefore,

THE COURT,

DECIDES,

Unanimously,

1. To admit the acknowledgment of international liability made by the State regarding the violation of the duty to guarantee the rights set forth in Articles 4 and 5(1) of the American Convention on Human Rights, together with Article 1(1) of said treaty and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, in accordance with paragraphs 52 to 58 and 64 of this Judgment.

2. To admit the acknowledgment of international liability made by the State regarding the violation of the right set forth in Article 5(1) of the American Convention on Human rights, in relation to Article 1(1) of said treaty, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, in accordance with paragraphs 52 to 58 and 64 of this Judgment.

3. To admit the acknowledgment of international liability made by the State regarding the violation of the right set forth in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of said treaty, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, in accordance with paragraphs 52 to 58 and 64 of this Judgment.

4. To reject the acknowledgement of international liability made by the State regarding the alleged violation of the right to special protection measures for children as set forth in Article 19 of the American Convention on Human Rights, in relation to Articles 1(1), 2 and 7 of said treaty, to the detriment of the children of Paraguay, in general, and the minor Gerardo Vargas-Areco, in particular, in accordance with paragraphs 59 to 63 of this Judgment.

DECLARES,

Unanimously, that:

5. The State violated the duty to guarantee the rights set forth in Articles 4 and 5(1) of the American Convention on Human Rights, together with Article 1(1) of said treaty and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, as set forth in paragraphs 84 to 94 of this Judgment.

6. The State violated the right set forth in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of said treaty, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, as set forth in paragraphs 95 to 97 of this Judgment.

7. The State violated the right set forth in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of said treaty, after March 26, 1993, to the detriment of the relatives of Gerardo Vargas-Areco, as set forth in paragraphs 98 to 110 of this Judgment.

8. This judgment is, *per se*, a form of reparation, as set forth in paragraph 150 herein.

AND RULES,

Unanimously, that:

9. The State shall adopt, in full compliance with the right to fair trial and within reasonable time, all measures necessary to identify, prosecute and punish the physical perpetrators of the violations committed in the instant case, as set forth in paragraphs 153 to 156 and 168 of this Judgment.

10. The State shall make a public apology and acknowledgement of international liability regarding the violations declared in this Judgment, in the community where the family of Gerardo Vargas-Areco lives, in their presence and that of the State's civil and military authorities. In the course of said act, a plaque in the memory of the minor Vargas-Areco will be affixed, as set forth in paragraphs 157, 158 and 168 of this Judgment.

11. The State shall provide medical, psychological and psychiatric treatment, as applicable, to Mrs. De Belén Areco, Mr. Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all members of the Vargas-Areco family, at their discretion and for as long as necessary, as set forth in paragraphs 159, 160 and 168 of this Judgment.

12. The State shall design and implement training programs and regular courses in human rights, which must be made available to all members of the Paraguayan Armed Forces, as set forth in paragraphs 161 and 168 of this Judgment.

13. The State shall publish at least once, in the Official Gazette and in another nationwide daily newspaper, the chapter on Proven Facts of this Judgment, without the corresponding footnotes, and the related operative paragraphs, as set forth in paragraphs 162 and 168 hereof.

14. The State shall adapt its domestic legislation regarding the recruitment of minors under the age of 18 into the Paraguayan Armed Forces to applicable international standards, as set forth in paragraphs 163, 164 and 168 of this Judgment.

15. The State shall pay to Mrs. De Belén Areco and Mr. Pedro Vargas the compensation for pecuniary damage in the amount established in paragraph 148 of this Judgment, as set forth in paragraphs 168 and 174 hereof.

16. The State shall pay to Mrs. De Belén Areco, Mr. Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of them members of the Vargas-Areco family, a compensation for non-pecuniary damage in the amount established in paragraph 151 of this Judgment, as set forth in paragraphs 168 and 174 hereof.

17. The State shall reimburse the costs and expenses incurred in the domestic jurisdiction and in the course of international proceedings before the Inter-American System for Human Rights Protection, pursuant to the amount established in paragraph 167 of this Judgment. Said amount must be delivered to Mrs. De Belén Areco and Mr. Pedro Vargas, as set forth in paragraphs 168 and 174 hereof.

18. The State shall monitor full compliance with this Judgment and the instant case shall be closed once the State implements in full the provisions herein. Within a year from the date notice of this Judgment is served upon it, the State shall submit to the Court a report on the measures taken to comply with the Judgment, as set forth in paragraph 175 herein.

Judge Sergio García Ramírez informed the Court of his Reasoned Opinion, which accompanies the judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on September 26, 2006.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez

President

Pablo Saavedra-Alessandri
Secretary

**SEPARATE OPINION OF JUDGE SERGIO GARCÍA-RAMÍREZ
ON THE JUDGMENT OF THE
THE INTER-AMERICAN COURT ON HUMAN RIGHTS
IN THE CASE OF VARGAS-ARECO V. PARAGUAY
OF SEPTEMBER 26, 2006**

1. In this *Vote* I will only address one aspect of the *Judgment* entered by the Inter-American Court of Human Rights on the *Case of Vargas-Areco v. Paraguay*, to wit: the criminal relevance of the deprivation of life committed against Gerardo Vargas-Areco, which was revealed through two criminal proceedings; one before military authorities and another before the ordinary courts.

2. Undoubtedly, I believe -inasmuch the same manner as my colleagues, who signed this *Judgment*, - that the Court is not entitled, based on its *ratione temporis* jurisdiction in force as from the date when the State accepted the Court's contentious jurisdiction, to rule on the deprivation of life committed against Vargas-Areco in violation of the provisions of the American Convention regarding this fundamental right. Therefore, I do not intend to analyze or qualify this fact based on the provisions of the Pact of San José.

3. In some cases, however, the Court has decided to make certain considerations regarding serious events brought to its attention. Upon doing so, the Court takes into account its function as a body entrusted with the protection of human rights, which is required to prevent the commission of illegal acts and to guide the conduct of States to that effect, even if it has no jurisdiction to thoroughly examine said events and, consequently, to include them in its decision.

4. In view of the foregoing circumstances, the Court only comments on the context in which the facts under its jurisdiction occurred. This is what happened regarding the incorporation of minors under the age of 18 into the armed forces and the aforementioned criminal relevance of the deprivation of life committed against the minor Gerardo Vargas-Areco, who was seventeen years old at the time of death, as set forth in the *Judgment*.

5. Upon expressing these concerns --which are fully explained in paragraphs 107 and 108 of the *Judgment*, -- the Court does not intend to address and solve an issue that falls exclusively under the State's domestic jurisdiction. The competent courts of the State must examine the facts and render the appropriate Judgment, pursuant to applicable legislation and in accordance with its jurisdictional powers.

6. The Inter-American Court, which is responsible for performing a "control of compliance" based on the confrontation of the facts at stake and the provisions of the American Convention, cannot and does not intend --indeed, it never did- to become a new and last resort to hear a controversy originated in the domestic jurisdiction. The idea that the Inter-American Court constitutes a third or fourth instance, and eventually a jurisdiction of last resort, arises from a popular belief that is rooted in reasonable grounds; however, this idea has absolutely no connection with the jurisdiction of the Court, the legal conflict brought before it, the parties to the corresponding proceedings and the nature of international proceedings for the protection of human rights.

7. For the purposes of the instant case, we could take as an example the mission of constitutionality courts, which cannot conduct civil or criminal proceedings, as the case may be, but are only empowered to verify that proceedings and any decisions rendered thereunder are consistent with the National Constitution. The situation with the Inter-American Court is similar. The Court can only confront domestic rules –laws, administrative acts, jurisdictional resolutions, without limitation- to the provisions of the Convention and rule on their consistency in order to establish, if applicable, the State's international liability for failing to fulfill its obligations thereunder. The Court does not develop a new stage –or instance- i.e. ordinary proceedings. Proceedings begin, develop and conclude in the domestic jurisdiction. Therefore, the international court, as much in the same manner as constitutionality courts and as opposed to trial courts, cannot assess the facts and the evidence, nor is it empowered to order an acquittal or conviction.

8. Nevertheless, the essence of the human rights protection system, applied to conventional rules, involves the need to value the fairness, opportunity, need, adequacy and proportionality of certain facts from the point of view of human rights. This is an undeniable fact that, as reflected by the Inter-American Court's precedents, has already been analyzed when considering the limits and restrictions applicable to the exercise of rights or the suspension of the State's obligation in that regard. The foregoing considerations also apply to the guarantee regime set forth in the Convention –inherent to the natural obligations imposed upon States,- which may and should also be subject to assessment patterns in order to estimate its efficacy and validity and, in that sense, its consistency with the Convention itself.

9. The State's general obligation to guarantee the respect for human rights as set forth in Article 1(1) of the Pact of San José embodies the duty to effectively promote prosecution of any illegal act that violates the provisions of the Pact and that affects interests enjoying legal protection as human rights. Evidently, the act of prosecuting (which may consist of a series of acts by the State: crime definition, formal accusation, judgment, enforcement; all of them having large criminal relevance and significant impact in other areas of the public rules system in the event of illegal conduct) must be consistent with the duty to safeguard certain rights embodied therein. Otherwise, the act of prosecuting would no longer fulfill said duty and would result in non-compliance with a State's obligation, which should not be fulfilled through inappropriate means, arbitrarily or unreasonably.

10. Indeed, said safeguard should in fact be consistent with a series of elements whose examination allows to assess the State's fulfillment of its duties: the legally protected interest, the extent and circumstances of infringement, the conduct of the perpetrator, the need to avoid leniency –which paves the way for impunity- and excesses –which result in tyranny. Both leniency and excess, which involve a disparity between the violation committed and the public legal reaction, are in conflict with the rationality rule that must always guide a State's conduct upon exercising its powers.

11. Therefore, the analysis of the events from the human rights perspective cannot disregard the necessary balance between the violation of rights committed and the enforcement of the safeguards –within the criminal jurisdiction- undertaken by the State. These considerations, as mentioned before, do not intend to replace the trial court with the international court in determining if the illegal conduct that violates human rights falls under the definition of the crime and in imposing liability and punishment.

12. Based on these considerations, the Court has expressed its concern as regards an evident lack of proportionality; a concept that should always be respected when a right is restricted or impaired, or when a decision is rendered to punish a violation committed under a legal provision or in the exercise of jurisdictional powers. Thus, the court in charge of controlling compliance does not act as domestic trial or legislating authority, but rather evaluates their performance in accordance with the Convention, even when its analysis consists merely in assessing and not in defining specific measures -which must be established by the State, - particularly if limitations apply as a result of the recognition of the jurisdiction of the Court, as in the instant case.

13. Therefore, upon analyzing these considerations, the Inter-American Court may reasonably raise questions to address the subject in the domestic jurisdiction; even though the Court may focus its own examination on the drafting of these questions and make no effort to find answers, which would ultimately call for a judgment of conviction that the international Court is not empowered to render.

14. For instance, consider the extra-legal execution of a 16-year old child who attempted to flee from the military post to which he had been assigned. Can it be classified -as held by the military justice- as a consequence of excessive diligence in the performance of duties; i.e. excess as a ground to void the illegal nature of the act or to limit liability? The first case probably applies if an excess is associated with an alleged breach of duty. Can said act be subject to an evidently favorable punishment, even though it involved the death of a child, a harmless person who was running ahead of this executor and could have been stopped by resorting to other intimidation measures? Moreover, is it appropriate to classify said execution, as held by the ordinary courts, as "wrongful homicide"; i.e. a non-intentional act, even though the conduct displayed by the military officer could result in the death of the individual; a foreseeable and avoidable possibility, apparently accepted by the perpetrator?

15. Notwithstanding the fact that the act matches the crime definition –as it was classified as an illegal act both in the military and civil jurisdictions, - the question would be if it was reasonable to impose an evidently favorable punishment (1 to 5-year imprisonment) based on the punishment scheme established by criminal law, despite the nature of the act committed, the age of the victim, his defenseless, harmless and vulnerable status.

16. It could be held that those responsible for analyzing these issues from a human rights perspective do not have a duty to foster strict compliance with crime definitions, severe punishment or the strengthening of the penalties imposed pursuant to the law. However, those individuals do have a duty to verify that the guarantee to respect human rights satisfies the proportionality rule, preventing it from falling into illusory measures that fail to effectively honor the quest for justice. If we admit the foregoing, setting crime definitions, determining possible punishments and procedural requirements, together with the decisions contained in judgments, become a key issue to be taken into account to effectively protect human rights.

Sergio García-Ramírez
Judge

Pablo Saavedra-Alessandri
Secretary