

Inter-American Court of Human Rights

Case of Bueno-Alves v. Argentina

Judgment of May 11, 2007 (Merits, Reparations, and Costs)

In the case of *Bueno-Alves*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal"), composed of the following judges:¹

Sergio García-Ramírez, President;
Cecilia Medina-Quiroga, Vice-President;
Manuel E. Ventura-Robles, Judge;
Diego García-Sayán, Judge;
Margarette May Macaulay, Judge; and
Rhadys Abreu-Blondet, Judge.

also present,

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

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

I

INTRODUCTION OF THE CASE AND PURPOSE OF THE APPLICATION

1. On March 31, 2006, pursuant to Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted an application to the Court against the Republic of Argentina (hereinafter "the State" or "Argentina"), originating in petition No. 11.425, forwarded to the Secretariat of the Commission on August 24, 1994 by Juan Francisco Bueno-Alves. On September 21, 1999, the Commission approved Admissibility Report No.

¹ Judge Leonardo A. Franco excused himself from hearing this case, which was accepted by the Court, pursuant to Articles 19 of the Rules of Procedure and 19 of the Statute of the Court (record on the merits, Volume III, folios 928-929).

101/99 and later, on March 7, 2005, it approved Report on the Merits No. 26/05 (hereinafter "Report No. 26/05") under the terms of Article 50 of the Convention, including certain recommendations for the State. The Commission decided to submit the instant case to the jurisdiction of the Court,² as "though having accepted the conclusions of Report No. 26/05, the State [did] not comply with the recommendations made therein."

2. In its application, the Commission stated that early in 1988 Mr. Bueno-Alves, a Uruguayan national residing in Argentina, of 43 years of age, a marble craftsman, engaged in a real estate sales transaction with Norma Lage, which at the end was not accomplished. As a result, in February 1988, Mr. Bueno-Alves accused Lage of fraud and threats in relation to the frustrated transaction, originating case No. 24.519. In turn, on March 10, 1988, Norma Lage accused Mr. Bueno-Alves and other persons of fraud and extortion, based on the same transaction, originating criminal proceedings No. 25.314. Later, case No. 25.314 was joined into case No. 24.519.³

3. On March 20, 1988 the parties agreed on the cancellation of the transaction. Notwithstanding, on April 5, 1988, at a meeting held for that purpose, Mr. Bueno-Alves and his attorney, Carlos Alberto Pérez-Galindo, were detained and the offices of the latter were searched by officials of the *División de Defraudaciones y Estafas de la Policía Federal Argentina* (Fraud and Embezzlement Division of the Argentine Federal Police), under order of the court in charge of criminal proceedings No. 24.519.

4. According to the Commission, Mr. Bueno-Alves was subjected to torture consisting in, *inter alia*, beating his ears with hollowed hands, while he was at the police station on the dawn of April 6, 1988, so as to force him to declare against himself and his lawyer, which was informed to the judge hearing the case. As a consequence of the beatings, Mr. Bueno-Alves allegedly suffered a hearing impairment of his right ear and the loss of his balance function.

5. The Commission stated that the criminal complaint reporting torture of April 8, 1988 originated judicial proceedings No. 24.079, which were closed before those responsible for the torture could be identified and punished. The Commission argued denial of justice with regard to the rights to judicial protection and to a fair trial as required for the investigation and punishment of those responsible.

6. The Commission requested the Court to declare that the State is responsible for the violation of the rights enshrined in Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Mr. Bueno-Alves. As a consequence of the aforementioned, the Commission requested the Court that the State be required to take measures of reparation on behalf of the alleged victim and his next of kin.

7. On July 20, 2006, the alleged victim's representative, Helena Teresa Afonso-Fernández (hereinafter "the representative"), filed a written brief containing the requests, arguments, and evidence (hereinafter "brief of requests and arguments") under the terms of Article 23 of the Rules of Procedure. Based on the statement of facts detailed in the

² The Commission appointed Florentín Meléndez, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and Elizabeth Abi-Mershed and Víctor H. Madrigal-Borloz as legal counsels. Later, the Commission also appointed attorneys Lilly Ching and Juan Pablo Albán as legal counsels.

³ Cf. Order of April 25, 1988 issued by Judge Hector Grieben (record of appendixes to the brief of requests, arguments and evidence, folio 4086).

application, the representative requested the Court to declare that, in addition to the violations alleged by the Commission, the State is internationally responsible for the violation of the rights enshrined in Articles 7 (Right to Personal Liberty), 11 (Right to Privacy), and 24 (Right to Equal Protection) of the American Convention, and Articles I, V, VI, XVII, XVIII, XXV, XXVI, and XXVIII of the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration"). By virtue of this, it requested the Court to order the State to adopt certain measures of reparation.

8. On September 26, 2006, the State filed a brief containing the answer to the application and its comments on the brief of requests and arguments (hereinafter "answer to the application").⁴ In said brief, the State reiterated, as it had done before the Commission, "[its] express acceptance [of] the conclusions contained in Report No. 26/05," as well as of the "legal consequences deriving therefrom." Notwithstanding, it questioned the arguments of the representative with regard to the alleged violation of the rights enshrined in Articles 7, 11, and 24 of the Convention and Articles I, V, VI, XVII, XVIII, XXV, XXVI, and XXVIII of the American Declaration, as well as the claims on reparations. The State further stated that on February 18, 2006 it had reiterated before the Commission its will to comply with the recommendations of Report No. 26/05 and it requested that, upon failure to reach an agreement on the reparations with the representative, "the Government and the Commission, in joint presentation, request the [...] Inter-American Court [...] to determine the reparations that might be adequate according to law in its capacity as the exclusive jurisdictional body of the system." Notwithstanding, the State argued that up to the date of notice of the application it had not received a formal response to said request.

II JURISDICTION

9. The Inter-American Court has jurisdiction to hear the instant case, pursuant to the terms of Articles 62(3) of the Convention, since Argentina has been a State Party to the American Convention since September 5, 1984, and accepted the contentious jurisdiction of the Court on that same date.

III PROCEEDING BEFORE THE COURT

10. The application filed by the Commission was served on the State and on the representative on May 26, 2006. During the proceeding before the Court, in addition to the main briefs forwarded by the parties (*supra* paras. 7 and 8), the President of the Court⁵ (hereinafter "the President") ordered that the following statements rendered before a notary public (affidavits) be admitted: a) a supplement to the statement given by Roberto Horacio Serrago; b) the statement of the alleged victim; and c) the accounting expert statement of José Esteban Cornejo. Likewise, it ordered that medical and psychological examinations be carried out and expert statements be given by teams of medical, psychiatric, or psychological specialists appointed from lists of three candidates proposed by the representative and the State. In consideration of the specific circumstances of the case, it also summoned the Inter-American Commission, the representative, and the State to a

⁴ The State appointed Jorge Nelson Cardozo as Agent and Alberto Javier Salgado as Deputy Agent (record on the merits, Volume I, folio 63).

⁵ *Cf.* Order of the President of the Inter-American Court of December 6, 2006, First Operative Paragraph (record on the merits, Volume II, folio 559).

public hearing in order to hear the statement of Jorge A. Caride, expert witness proposed by the representative, as well as the closing written arguments on the merits and possible reparations and costs in the instant case.

11. On January 22, 2007, the representative requested "that the [...] testimony of Mr. Bueno-Alves [be] considered rendered," since the "issues" on which he was going to testify "had already been addressed by the expert witnesses" who had carried out the medical and psychiatric examinations (*infra* para. 10).⁶ The testimony of Mr. Bueno-Alves was not submitted to the Court.

12. On January 25, 2007, the representative requested the Court to "authorize that the expert [r]eport [of Jorge A. Caride] be given before a notary public (affidavit)," as it was not possible "to afford the expenses of [his] attendance [...] at the [p]ublic [h]earing." Likewise, she requested that she be excused from attending the public hearing.⁷

13. On February 1, 2007, the President excused the representative as requested and pointed out that after the public hearing she would be entitled to "take up the proceedings at [any] stage," as set forth in Article 27(2) of the Court's Rules of Procedure.

14. The public hearing was held on February 2, 2007, during the 74th Regular Session of the Court.⁸

15. On February 16, 2007, the Secretariat, on instructions from the President and pursuant to Article 45(2) of the Rules of Procedure, requested the representative and the State to provide certain information and documents as evidence to facilitate the adjudication of the case, which were submitted within the period set for that purpose.

16. On March 7, 2007, the State forwarded its closing written arguments, while the Commission and the representative filed theirs on March 9, 2007.

IV PROVISIONAL MEASURES

17. On January 22, 2007, the representative requested the Court to adopt provisional measures, given the alleged "situation of fear, ten[s]ion, anguish, and uncertainty [caused by the] harassment [to] which [they] we[re] subjected by the State."⁹

⁶ Cf. Brief of January 22, 2007 submitted by the representative (record on the merits, Volume III, folio 1009).

⁷ Cf. Brief of January 22, 2007 submitted by the representative (record on the merits, Volume III, folio 1032).

⁸ At this public hearing there appeared: a) for the Inter-American Commission: Florentín Meléndez, Delegate; Elizabeth Abi-Mershed, Juan Pablo Albán, and Lilly Ching, advisors; and b) for the State: Jorge Nelson Cardozo, Agent; Javier Salgado, Deputy Agent; Gonzalo Bueno, Attorney for the Special Representation for Human Rights of the International Affairs Department of the Ministry of Foreign Affairs; Andrea Gualde, Director of the Office of International Affairs of the National Secretariat of Human Rights; Ana Badillos and Rosana Gargiulo, from the Office of International Affairs of the National Secretariat of Human Rights; Juan José Arcuri, Argentine Ambassador in Costa Rica; and Gustavo Alfredo Arambarri, Advisor to the Argentine Embassy in Costa Rica.

⁹ Cf. Brief of January 22, 2007 submitted by the representative (record on the merits, Volume III, folio 1009).

18. After analyzing the arguments supporting said request and the comments the State filed thereon, on February 2, 2007, the Court decided to dismiss the request as inadmissible.

V

ACCEPTANCE BY THE STATE OF REPORT NO. 26/05 OF THE INTER-AMERICAN COMMISSION

19. On February 18, 2006, the State declared that "it accept[ed] the conclusions of [R]eport No. 26/05 [(*supra* para. 8)] and ratified its will to comply with the recommendations contained therein."¹⁰

20. Later, through communication of March 30, 2006, the State expressed "its true intent to fully comply with the recommendations [...] contained"¹¹ in Report 26/05. It further stated that

the efforts made by the Government [...] to reach an agreement with the applicant as regards pecuniary reparations –the preferential compliance of which was specifically requested by the latter– have been unsuccessful, since the compensatory amounts claimed failed to conform to the applicable international standards.

In this regard [...] it formally request[ed] [the Commission] to [...] bring the instant case to the consideration of the [...] Inter-American Court of Human Rights so that, in its capacity as the only jurisdictional body of the system, it may determine the reparations due to the victim according to the facts and conclusions included in [R]eport 26/05.¹²

21. In the application filed with the Court, the Commission referred to the State's acceptance in the following terms:

[h]aving accepted the conclusions of Report 26/05, the State acquiesced to the conclusions of fact and law contained therein; therefore, said acquiescence has full legal effects. The Commission considers that the State's acquiescence constitutes a positive contribution to the development of this process.¹³

22. In its answer to the application, the State ratified that

it accepts the conclusions contained in [R]eport 26/05 adopted by the [...] Commission [...], as well as the legal consequences deriving therefrom. Without prejudice to this acceptance, the State fil[ed] some comments on different issues concerning the claims on reparations, as well as the persons [...] identified as possible beneficiaries, in relation to the comments on the brief of requests, arguments, and evidence filed by Mr. Bueno-Alves' representative.

23. Likewise, at the public hearing held in the instant case (*supra* para. 14), the State's Agent asserted, *inter alia*, that

in keeping with its traditional policy of cooperation with the bodies of the Inter-American system, the Argentine government decided to accept the conclusions of said report, undertaking full responsibility in the case and the legal consequences deriving therefrom.

¹⁰ Cf. Note No. 41/06 of February 18, 2006, issued by the Ministry of Foreign Affairs, International Trade, and Culture of Argentina (record of appendixes to the application, Appendix 3, folio 39).

¹¹ Cf. Record of appendixes to the application, Appendix 11, Volume III, folio 3673.

¹² Cf. Record of appendixes to the application, Appendix 11, Volume III, folio 3673.

¹³ Cf. Brief containing the application, (record on the merits, Volume I, folio 4).

24. In turn, in the brief of requests and arguments, the representative stated that “after [R]eport No. 26/05 was issued [...] the State has not even shown a single sign of [its] will to comply with at least one of [the recommendations made by the Commission].”

25. In the Court’s view, the statements made by the State constitute an acknowledgment of international responsibility for the facts and the violations referred to by the Inter-American Commission. The Court will now analyze the legal consequences deriving therefrom.

a) Regarding the facts

26. The Court understands that the State has accepted the conclusions of Report 26/05 (*supra* paras. 19, 22, and 23) and that its failure to raise objections to the facts described by the Commission in the application is construed as an admission that serves as the factual grounds of the case.

27. Therefore, the controversy regarding the facts alleged in the application, which are deemed to be proven as set forth in the following chapters, has ceased.

b) Regarding the legal claims

28. In Report No. 26/05, the Commission concluded that the State had violated the rights enshrined in Articles 5(1), 5(2), 8, and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Bueno-Alves. These violations were the ones described by the Commission in its application.

29. The State fully accepted the Commission’s conclusions (*supra* paras. 8, 19, 20, 22, and 23).

30. The Court considers that the State’s “acceptance” constitutes an acquiescence to the legal claims made by the Commission. Thus, the controversy regarding the violation of Mr. Bueno-Alves’ rights as established in paragraph 6 *supra* has ceased.

31. On the other hand, the Court notes that, in the answer to the application (*supra* para. 8), the State

categorically reject[ed] the responsibility attributed thereto in the brief [of requests and arguments] for the alleged violation of the right to personal liberty as enshrined in Article 7 of the Convention [...]. Likewise, the State deni[ed] the violation of the rights enshrined in Articles 11 and 24 of the American Convention of Human Rights to the detriment of Mr. Bueno-Alves [...] and related provisions of the American Declaration of [the] Rights and Duties of Man.

32. Therefore, the Court considers that a controversy still exists with regard to the alleged violation of Mr. Bueno-Alves’ rights as enshrined in Articles 7 (Right to Personal Liberty), 11 (Right to Privacy), and 24 (Right to Equal Protection) of the Convention and “related provisions” of the American Declaration.

c) Regarding reparations

33. Upon accepting the conclusions of Report No. 26/05, and expressly requesting the Court to “determine the reparations due to [...] Mr. Bueno-Alves,” the State acknowledged its duty to repair the violations committed against the alleged victim. The disagreement lies in the type, amount, and beneficiaries of the reparations. Therefore, the Court declares that there is a controversy over these matters.

*
* *

34. The Court considers that the acknowledgment of international responsibility made by the State constitutes an important step towards the development of this process, the proper fulfillment of the Inter-American human rights jurisdictional function and, in general, the enforcement of the principles enshrined by the American Convention.¹⁴

35. Considering that there is a controversy over the arguments of law made by the representative (*supra* para. 7), and taking into account the powers vested in the Court for the protection of human rights, the Court considers that a judgment adjudicating on the issues of fact and on all the elements of the merits of the case, as well as on the consequences thereof, would contribute to redress the damage inflicted upon Mr. Bueno-Alves and would help prevent similar facts from taking place in the future and, in sum, achieve the objectives of the Inter-American jurisdiction on human rights.¹⁵

VI EVIDENCE

36. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, as well as on the Court's case law regarding the evidence and the assessment thereof,¹⁶ the Court will now examine and assess the documentary evidence forwarded by the Commission, the representative, and the State at the different procedural stages or as evidence to facilitate the adjudication of the case as requested by the President, as well as the testimonial and expert statements offered through affidavits. In doing so, the Court will assess them on the basis of sound judgment, within the applicable legal framework.¹⁷

A) *Documentary, Testimonial, and Expert Evidence*

37. At the request of the President of the Court, the statements rendered before a notary public by the following witnesses and experts were admitted:

- a) *Roberto Horacio Serrago*: he rendered testimony on Mr. Bueno-Alves' occupation and the prices usually charged for marble works, as well as on Mr. Bueno-Alves and his brother's income from the marble business.
- b) *Doctors Julio Alberto Ravioli, Fernando Emilio Taragano, María del Socorro Nieves, and Germán Schlenker*: they evaluated the physical and mental or

¹⁴ Cf. *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, para. 56; *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 148, and *Case of Vargas-Areco*, Judgment of September 26, 2006. Series C No. 155, para. 65.

¹⁵ Cf. *Case of La Cantuta*, *supra* note 14, para. 57; *Case of Vargas-Areco*, *supra* note 14, para. 66; *Case of Goiburú et al.* Judgment of September 22, 2006. Series C No. 153, para. 53, and *Case of Servellón-García et al.* Judgment of September 21, 2006. Series C No. 152, para. 78.

¹⁶ Cf. *Case of Almonacid-Arellano et al.* Judgment of September 26, 2006. Series C No. 154, paras. 66 to 69; *Case of Servellón-García et al.*, *supra* note 15, paras. 32 to 35, and *Case of Ximenes-Lopes*. Judgment of July 04, 2006. Series C No. 149, paras. 42 to 45.

¹⁷ Cf. *Case of La Cantuta*, *supra* note 14, para. 59; *Case of the Miguel Castro-Castro Prison*, *supra* note 14, paras. 182 to 185, and *Case of Nogueira-Carvalho et al.* Judgment of November 28, 2006. Series C No. 161, para. 55.

emotional damage suffered by Mr. Bueno-Alves as a result of the alleged torture and violations of the right to a fair trial and to judicial protection; the impairment of his daily life and work, and the treatment he has needed and would need to mitigate, overcome, or reduce those damages, pain, or suffering.

- c) *Doctor Jorge Alberto Caride*: he declared on Mr. Bueno-Alves' health condition; his clinical history; the evolution of the situation of the alleged victim since the expert witness met him; the consequences of the facts claimed on his daily life and that of his family; the treatment required and its duration, and his conclusions based on the treatment he has given him.

B) Evidence Assessment

38. In this case, as in others,¹⁸ the Court recognizes the evidentiary value of the documents submitted by the parties at the appropriate procedural stage, which have neither been contested nor challenged, and the authenticity of which has not been questioned.

39. Regarding the documents submitted as evidence to facilitate the adjudication of the case (*supra* para. 15), the Court admits them into the body of evidence of the instant case, pursuant to the provisions of Article 45(2) of the Rules of Procedure.

40. As to the documents and information requested from the parties (*supra* paras. 10 and 15), which have not been submitted, the Court observes that the parties must lodge with the Court the evidence so requested. In particular, the President ordered that the statement offered by Mr. Bueno-Alves before a notary public (*supra* para. 10) be admitted. This statement should have been submitted by the Commission, as it requested said evidence. The lack of the aforementioned statement prevented the Court from having the necessary elements for the analysis of the alleged violations.

41. The Commission, upon the representative's request, offered new documents regarding the proceeding started before it. The Court admits this evidence since it considers it useful.

42. Besides the documents submitted as annexes to the brief of requests and arguments, the representative filed additional evidence on several opportunities throughout the proceedings conducted before the Court. The representative, submitted, *inter alia*: i) copies of documents attached to case file No. 6229/06 regarding a claim for missing documents in case No. 24.519, as well as copies of documents pertaining to the proceedings before the Commission; ii) a certified copy of the psychiatric report of Mr. Bueno-Alves issued by Doctor Jorge A. Caride on August 9, 2000; iii) a copy of the claim of November 16, 2006 lodged by the representative before the Public Prosecutor's Office for the alleged threats against her. In said claim the representative argued that the death of Alejandro Gastón Oberlander, Mr. Bueno-Alves' attending physician, occurred "under suspicious circumstances;" iv) a copy of the evaluation performed by Doctor Jorge A. Caride on November 22, 2006, according to which due to his health condition, Mr. Bueno-Alves cannot attend the public hearing called in the instant case, and copies of documents pertaining to the proceedings before the Commission; v) information regarding the admission of Mr. Bueno-Alves to a private clinic "due to a worsening of his Depressive Disorder;" and vi)

¹⁸ Cf. *Case of La Cantuta*, *supra* note 14, para. 62; *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 188, and *Case of Nogueira-Carvalho et al.*, *supra* note 17, para. 58.

documents processed before the Secretariat of the Organization of American States (OAS) and the Commission in order to obtain the financial support that would allow him to afford the price of the ticket to Costa Rica and lodging expenses there.

43. The State objected to some evidentiary items filed by the Commission together with its application "as [their] authenticity had not been proven," as well as to all the evidence submitted by the applicant. In general, the evidence that was questioned consisted of documents referring to Mr. Bueno-Alves' health condition; receipts of travelling expenses; copies of some documents attached to case files No. 24.519 and No. 25.314 in Magistrate's Courts No. 30 and No. 21, respectively; briefs addressed to authorities of the Argentinean State and the Organization of American States; accounting instruments; and newspaper articles. Similarly, the State objected to some evidentiary items submitted by the representative (*supra* para. 42). Thus, it pointed out that the evidence attached (*supra* para. 42(ii)), "outreaches the purpose of the consultation and addresse[s], in an inadmissible manner, other aspects of the answer to [the] application filed by the State." It also objected to the documents submitted in relation to the suspicious death of Oberlander (*supra* para. 42(iii)), arguing that "those assumptions [...] have no apparent bearing on the submitted evidence under examination;" and it further objected to the evidence of the alleged admission of Mr. Bueno-Alves (*supra* para. 42(v)) to a health center, as "it is not clear whether hospitalization was merely a recommendation made by a health professional [...], or he was actually hospitalized." On the other hand, the State raised objections to the statements submitted by the representative.

44. In this regard the Court points out, in the first place, that part of the evidence furnished by the Commission, the authenticity of which has been questioned, consists of documents submitted in a proceeding started before Argentinean courts. The Court finds no reason to acknowledge the evidentiary value thereof.

45. With regard to the additional evidence submitted in the instant case (*supra* para. 42), the Court considers that said information may contribute to the determination by the Court of the facts described in this instant case, since they clarify certain aspects related to the context of the case, the search for justice, and the claims of the representative regarding reparations. The same considerations are to be made regarding the testimonial statements and expert reports offered by the representative. Therefore, the Court considers it convenient to assess this information on the basis of sound judgment, within the applicable legal framework, taking into consideration the observations filed by the State.

46. Regarding the press documents submitted by the parties, the Court considers that they may be assessed insofar as they refer to public and notorious facts or statements made by State officials which have not been rectified, or when they corroborate aspects related to the case¹⁹ and evidenced by other means.

47. Now, regarding the information submitted by the representative in relation to Alejandro Oberlander's death as occurring "in suspicious circumstances," the representative has not presented, beyond assumptions, sufficient arguments that somewhat link this death to the facts of the instant case, or that even link the State with said occurrence. Therefore, the Court considers that said information is not related to the purpose or object of the instant case and, consequently, it will not be taken into consideration. Thus, the request

¹⁹ Cf. *Case of La Cantuta*, *supra* note 14, para. 62, and *Case of Nogueira-Carvalho et al.*, *supra* note 17, para. 65, and *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, para. 86.

made by the State regarding the withdrawal of said documentation from the file is herein granted (*supra* para. 43).

48. On the other hand, along with the evidence to facilitate the adjudication of the case requested by the President of the Court, the representative sent additional documents which had not been requested. This file can be classified into seven parts. The first includes copies of documents already submitted by the representative herself or the Inter-American Commission. The second one includes copies of domestic laws. The third one is made up by documents referring to commercial transactions of construction materials (specifically marble) from different companies, some of which apparently are related to witness Roberto Serrago (*supra* para. 37). The fourth consists of a contract of a work union and a collective labor agreement. The fifth refers to a letter of recommendation in favor of Mr. Bueno-Alves for a job. The sixth corresponds to a contract between Mr. Bueno-Alves' brother, Delcio Ventura Bueno-Alves, and a third party, by which they created the company *Mármol Centro S.R.L.*, and some documents related to that company. Finally, the seventh consists of two statements: i) the supplemental testimonies of doctors Fernando Taragano and Julio Ravioli (*supra* para. 37), which were not made before a notary public, and ii) the testimony of Jorge Gustavo Malagamba, made before a notary public (affidavit).

49. The State argued that such evidence should be rejected "since forwarding it at this procedural stage is indubitably untimely." The Commission did not make any comments thereon.

50. The Court considers that no further comments are necessary regarding the documents submitted, which had been previously forwarded by the representative herself or by the Inter-American Commission, since they were already included in the record of the case. The domestic legislation and the letter of recommendation in favor of the alleged victim may be useful for the assessment of the claims on reparations; therefore, they are admitted and incorporated into the body of evidence. The documents regarding commercial transactions, as well as the labor and collective agreements that were untimely submitted, refer to companies or people foreign to or different from the alleged victim and his next of kin, have no bearing on the facts of the instant case, and, therefore, must be disregarded. The contract of Mr. Bueno-Alves' brother and the related documents, apart from showing that a company was created, do not disclose any information regarding the instant case, and were untimely submitted; therefore, they are disregarded. Finally, with regard to the statements submitted in the instant case, the Court points out that the representative did not request the Court or its President to authorize that the expert testimony of the physicians that came forward in these proceedings be supplemented, and that said supplemental testimonies were not offered before a notary public; therefore, they are not granted any evidentiary value. Regarding the statement given by Jorge Gustavo Malagamba, the President of the Court expressly stated in its Order of December 6, 2006 (*supra* para. 10) that "Malagamba's statement is not relevant for the adjudication of the instant case," whereby it decided "[n]ot to require the representative" to submit it. The representative disregarded the order of the President and forwarded the statement. In this regard, the Court considers that this evidence is inadmissible as it was deemed inappropriate by the President, and so it declares.

51. Finally, the representative, after submitting her closing written arguments and the evidence to facilitate the adjudication of the case requested by the President, filed additional documents that had not been requested, consisting of copies of some publications of a magazine specialized in housing and construction. The representative did not claim *force majeure* or a serious restraint that would have prevented her from forwarding that information on an earlier date. Said documents were forwarded to the State and the Inter-

American Commission for them to file their comments thereon. The State requested that said documents be rejected, for having been untimely submitted, and as their submission constitutes "an obvious sample of procedural disloyalty." The Commission did not file any comments thereon.

52. On this specific matter, the Court decides not to incorporate these documents into the record of the case, since they were submitted untimely, giving no reasons therefor.

53. As the evidentiary items incorporated into the body of evidence of the instant case have been assessed, the Court will proceed to analyze the alleged violations in the instant case, considering the facts which have already been acknowledged and those which may come to be proven,²⁰ included in each chapter as pertinent. Likewise, the Court will consider the parties' arguments which it deems relevant to analyze, taking into consideration the acknowledgment of facts and claims made by the State.

VII AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

54. The representative requested the Court to declare that the State is responsible for the alleged violation of the rights enshrined in Articles I, V, VI, XVII, XVIII, XXV, XXVI, and XXVIII of the American Declaration.

55. In this regard, it is important to take into consideration what has been previously pointed out by the Court, in that "[f]or the Member States of the Organization [of American States], the Declaration is the text that defines the human rights referred to in the Charter."²¹ That is, "for these States the American Declaration is a source of international obligations related to the Charter of the Organization."²² The foregoing considerations are fully applicable to Argentina, as a Member State of the OAS.

56. Notwithstanding, as regards the enforcement of the Declaration, a distinction should be made between the jurisdiction of the Commission and that of the Inter-American Court and, regarding the latter, between its advisory and contentious jurisdiction.

57. As regards the Commission, Articles 1(2)(b) and 20 of its Statute, Article 23, and Chapter III of its Rules of Procedure define the scope of its jurisdiction with regard to the human rights enshrined in the Declaration.

58. Regarding the advisory jurisdiction of the Court, it has already been established that:

[i]n view of the fact that the Charter of the Organization and the American Convention are treaties with regard to which the Court has advisory jurisdiction by virtue of Article 64(1), it follows that the Court is authorized, within the framework and limits of its competence, to interpret the American

²⁰ This Judgment does hereinafter contain facts which the Court considers to be proven based on the acknowledgment of facts made by the State, in the order and with the pertinent accuracy regarding the facts described in the application. Some of these facts have been supported with evidentiary items, in which case the footnotes are included on each pertinent page.

²¹ *Cf. Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 45.

²² *Cf. Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89, *supra* note 21, para. 45.

Declaration and to render an advisory opinion relating to it whenever it is necessary to do so in interpreting those instruments.²³

59. Lastly, regarding its contentious jurisdiction, “the Court generally takes into consideration the provisions of the American Declaration in its interpretation of the American Convention,”²⁴ but

[f]or the States Parties to the Convention, the specific source of their obligations with regard to the protection of human rights is, in principle, the Convention itself. It must be remembered, however, that, given the provisions of Article 29(d), these States cannot escape the obligations they have as members of the OAS under the Declaration, notwithstanding the fact that the Convention is the governing instrument for the States Parties thereto.²⁵

60. Based on the foregoing, the Court considers that the American Declaration may be applied in the instant contentious case, if deemed appropriate, to construe the Articles of the American Convention which the Commission and the representative consider that have been violated.

III ARTICLE 7 (RIGHT TO PERSONAL LIBERTY)²⁶ OF THE AMERICAN CONVENTION

61. The Inter-American Commission did not allege a violation of Article 7 of the Convention to the detriment of Mr. Bueno-Alves. The related allegations were made by the alleged victim's representative, who claimed that in the application the Commission repeated its “initial mistake regarding Report No. 101/99,” as it stated that “on April 5, 1988, Mr. Bueno-Alves and his attorney were arrested [...] as instructed by Judge Cardinali, who was in charge of criminal proceeding No. 24.519.”

62. In the opinion of the representative, Judge Héctor Grieben, in charge of Magistrate's Court No. 21, ordered the arrest of Mr. Bueno-Alves on April 5, 1988, under proceeding No. 25.314 initiated by Norma Lage.

63. According to the representative, the violation of Article 7 of the Convention was committed when Judge No. 21 (hearing the case of Lage v. Bueno-Alves *et al.*), after being informed that another proceeding involving the same parties and similar events was pending, failed to immediately disclose such circumstance to Judge No. 30 (hearing the case of Bueno-Alves v. Lage) and deliver the case file. Judge No. 21 continued hearing the case and ordered that the alleged victim be kept under arrest for fifteen days.

64. The State challenged the allegations of the representative. The State referred to Report No. 101/99, whereby the Commission declared the alleged violation of Article 7 of

²³ Cf. Interpretation of the American Declaration of Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89, *supra* note 21, para. 44.

²⁴ Cf. *Case of the Moiwana Community*, Judgment of June 15, 2005. Series C No. 124, para. 63.

²⁵ Cf. Interpretation of the American Declaration of Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89, *supra* note 21, para. 46.

²⁶ In that regard, Article 7 of the Convention provides that:

1. 1. Every person has the right to personal liberty and security.
2. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. 3. No one shall be subject to arbitrary arrest or imprisonment.

the Convention to be inadmissible. Moreover, the State pointed out that the essential requirements regarding his arrest had been complied with in the instant case. According to the State, Mr. Bueno-Alves “was arrested under the instructions of a competent, independent, and impartial judge, in accordance with the *nullum crimen nulla poena sine lege praevia* principle and pursuant to the legislation in force. [...] He was duly informed of the reasons that led to his arrest, [...] promptly brought before the court [and interrogated in] the presence of his defense counsel.”

65. The State considered that the fact that Mr. Bueno-Alves filed a complaint against Lage for events related to the purchase of a real property unit does not affect the legality of the arrest ordered by Judge No. 21, since such measure was supported by a complaint against Mr. Bueno-Alves filed by Lage, which was examined by a magistrate other than the one in charge of the investigation regarding the complaint filed by the alleged victim. In the opinion of the State, the possible connection between both cases should not result in the assumption that the arrest ordered by Judge No. 21 was illegal.

66. In that regard, the Court finds that, indeed, in Report No. 101/99 the Commission argued that:

[n]one of the allegations made by the petitioner leads the Commission to conclude that [its] allegations constitute a breach of the provisions of Article 7 of the Convention [...]. The petitioner was arrested “due to causes and in conditions established beforehand [...] by the laws of Argentina.

Likewise, it cannot be concluded from the statements made by the petitioner that the judge hearing proceeding No. 24.519, who ordered the arrest, acted in an illegal or openly abusive manner, exceeding the reasonable discretionary powers vested in his position.

Therefore, the Commission concludes that the petitioner’s arguments regarding his allegedly illegal arrest, even if confirmed, do not constitute a violation of the Convention, and specifically of Article 7, as required by Articles 47(b) thereof and [...] 41(b) of the Rules of Procedure of the Commission. On the contrary, it is the Commission’s opinion that said allegations are outright groundless, pursuant to the provisions of Articles 47(c) and 41(c) of the Rules of Procedure of the Commission.

And declared:

the allegations included [in] the instant case regarding [the] violation of Article 7 of the Convention inadmissible.²⁷

67. The Commission adopted the foregoing decision in accordance with the powers granted thereto under Article 47 of the American Convention and pursuant to its Rules of Procedure. The Court does not find any reasons to modify the decision made by the Inter-American Commission in the instant case.

IX
ARTICLE 5 (RIGHT TO HUMANE TREATMENT)²⁸ IN RELATION TO ARTICLE 1(1)
(OBLIGATION TO RESPECT RIGHTS) OF THE
AMERICAN CONVENTION

²⁷ Cf. Admissibility Report No. 101/99, issued by the Inter-American Commission on Human Rights on September 21, 1999, para. 69(2) (record of appendixes to the application, Volume I, Appendix 2, folios 35 to 37).

²⁸ Article 5 of the Convention sets forth, in its relevant parts, that:
1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with regard for the inherent dignity of the human person.

68. The Inter-American Commission has claimed that Argentina violated Mr. Bueno-Alves' right to humane treatment "as a result of the torture inflicted upon him while he was under the custody of the State." The alleged victim's representative raised allegations in the same direction.

69. The State acknowledged the alleged violation of Mr. Bueno-Alves' right to humane treatment, a circumstance that has been positively assessed by the Court (*supra* para. 34). Notwithstanding, and without prejudice to the foregoing, the Court considers that certain aspects of such acknowledgement should be analyzed in this chapter.

70. Furthermore, even though the Inter-American Commission and the representative have not expressly alleged a violation of Article 5 of the Convention to the detriment of the alleged victim's next of kin, they stated that the rights of the victim's next of kin were impaired and thus, in their opinion, they are entitled to be redressed. The State had the possibility to challenge these allegations, and so it did (*infra* para. 97). Based on the foregoing and taking into consideration the *iura novit curia* principle, whereby the Court is authorized to classify the legal relation or situation at stake in a manner other than as established by the parties as long as it is strictly based on the facts of the case, it is relevant to analyze whether in the instant case the right to humane treatment of Mr. Bueno-Alves' next of kin has been violated (*infra* paras. 96 to 104).

A) Regarding Juan Francisco Bueno-Alves

71. On April 8, 1988, in his first statement before the judge who ordered his arrest, Mr. Bueno-Alves declared as follows:

[o]n the 6th day of this month [of April] at approximately 1:00, inside the room where he was kept under arrest, in an office referred to as "Anti-kidnapping," at the Central Police Department where he was kept, the same Police Officer [who arrested him] –whose name, surname, and rank he ignores, but who claimed to be a lawyer and dressed civilian clothes-, hit him with his 'hollowed' hand on both ears. Due to these blows, at that moment he felt a discomfort in the right ear, like buzzing; thus he requested to be examined by a doctor. Not only was he beaten by that official, but also by another person who was also wearing civilian clothes and stood behind the deponent and who, as ordered by the Official, hit him with his 'hollowed' hands on the right ear. After being beaten in that way, the deponent reacted by saying 'kill me;' therefore, the Officer made a signal to the other police officer, who put a fire weapon on his right temple. He was also insulted because of his nationality.²⁹

72. On May 4, 1988, Mr. Bueno-Alves supplemented his initial statement and reiterated that he had been beaten "on the ears with a hollowed hand, which caused him pain and buzzing that still persist," adding that "he had also been beaten on the stomach with the fists, and that the beating only stopped when he said [...] he suffered from an ulcer." Moreover, he alleged that he had been deprived of his medication for the ulcer. Mr. Bueno-Alves claimed that "said beating was aimed at having him confess or render testimony against Pérez-Galindo,"³⁰ who had been his attorney until then.

73. Mr. Bueno-Alves later identified René Jesús Derecho³¹ as the police officer who arrested and mistreated him, and police officer Horacio Soto as a "witness of the aggression

²⁹ Cf. Preliminary examination statement of Juan Francisco Bueno-Alves of April 8, 1988 (record of appendixes to the application, Volume I, Appendix 7, folio 223).

³⁰ Cf. Supplemental statement of Juan Francisco Bueno-Alves of May 4, 1988, before Magistrate's Court 13 (record of appendixes to the application, Volume I, Appendix 8, folios 364 and 365).

³¹ Cf. Record of ratification of the statement rendered regarding a line-up on March 14, 1989, before Magistrate's Court 13 (record of appendixes to the application, Volume I, Appendix 8, folios 509).

against him, [who] laugh[ed] while he was being beaten, but who was not actively involved."³² He could not identify the person who also beat him under orders from Mr. Derecho.

74. From the evidence provided and the acknowledgment made by the State regarding the facts of the instant case (*supra* para. 26), the Court held as proven the fact that Mr. Bueno-Alves was beaten on the ears³³ and the stomach, insulted because of his nationality and deprived of his medication for the ulcer by police agents, while he was arrested and kept under their custody,³⁴ with the aim of having him declare against Pérez-Galindo,³⁵ who was also under arrest.³⁶

75. After the facts mentioned have been proven in the foregoing paragraphs, the Court will now determine if said events constitute acts of torture. Before doing so, the Court highlights that the State did not challenge the fact that the Commission and the

³² Cf. Certificate of ratification of the statement rendered regarding a line-up on March 14, 1989, before Magistrate's Court 13 (record of appendixes to the complaint, Volume I, Appendix 8, folio 508).

³³ The medical report issued by doctor José Bello on April 26, 1988, established that there was "a 2mm-diameter perforation of the eardrum membrane" resulting in a "hearing deficit" that was "in the process of healing." This diagnosis was confirmed through several subsequent medical examinations. On May 13, 1998, two forensic doctors concluded that there was a "perforation of the right eardrum with hypoacusia located in tones 4000 and 8000." A new medical report was issued on December 7, 1988, which confirmed the existence of "perceptive hypoacusia in the right ear with typical signs of hypoacusia." The reports of April 13 and May 13, 1988, were supplemented by a new medical report issued on December 20, 1988, which concluded that "the right eardrum perforation had disappeared, though perceptive hypoacusia symptoms remained thus showing typical signs of hypoacusia." On June 16, 1992, another medical examination was carried out, which showed that "[t]he hearing test performed on this date reveals a perceptive hypoacusia of the right ear" and that "audiometry findings are consistent with a perceptive unilateral hearing impairment (hearing loss)." Lastly, a new examination was carried out by a medical expert in these international proceedings, which concluded that the eardrum membrane of the victim showed "a reduction [...] of approximately 2 mm, as a consequence of a perforation." (Medical reports issued by doctors Julio Alberto Ravioli, Jorge A. García-Blanco, José Bello, and Mariano Castex. Record of appendixes to the complaint, Volumes I, II and III, Appendixes 7 and 8, folios 307 to 309, 440, 441, 464, 866, 867, and 1045).

³⁴ The report on the otorhinolaryngologic test performed on Mr. Bueno-Alves on May 13, 1988, established that "the injury described reflects a cause-effect connection with the reported injury. [...] The triggering factor is compatible with the version of the person examined, and it should be borne in mind that in these cases, this type of injuries are the result of beatings with the palms in the outer ears, which suddenly increases the pressure in the external ear canal, leading to an eardrum perforation and causing the displacement of the bone chain into the inner ear." The medical report issued by doctors Julio Alberto Ravioli, Jorge García-Blanco, and Mariano Castex on December 20, 1988, established that "the injury in the right ear has a four-sided cause-effect connection (chronologic, topographic, etiological, and symptomatic) with the traumatism described by the decedent [...]; therefore, we believe that his lesion dates back from that time." In these international proceedings, in their report of January 19, 2007, the medical experts appointed by the President of the Court held that the "injury [...] in the right ear [...] is consistent with a traumatism, which resulted in a minor hypoacusia in that ear." Moreover, the medical report of June 16, 1992, points out that "any toxic, vascular, or hereditary-degenerative factors are excluded" (medical reports issued by doctors Julio Alberto Ravioli, Jorge García-Blanco, Mariano Castex, and José Bello. Record of appendixes to the complaint, Volume I, Appendixes 7 and 8, folios 308, 309, 440, 441, 866 and 867 and expert's report (affidavit) of doctors Ravioli, Taragano, Nievas, and Schlenker. Record on the merits, Volume III, folios 1042 and 1045).

³⁵ The judge who ordered the dismissal of the criminal proceedings initiated against Bueno-Alves reached an identical conclusion. Indeed, considering the statements made by Pérez-Galindo in that "the Federal Police, through the Fraud and Embezzlement Division, had used this case to obtain a warrant to search his professional office, given his capacity as Defense Counsel of one of the key accused in the renowned 'SIVAK' case," the aforementioned judge considered that such explanations "have sufficient grounds" and found that "the allegations and explanations provided by the defendant PÉREZ-GALINDO regarding the true motive for the police action carried out were fully supported." Cf. Judgment of October 5, 1988, (record of appendixes to the complaint, Volume I, Appendix 7, folios 245 to 253).

³⁶ Cf. Search warrant and search procedure of April 5, 1988 (record of appendixes to the brief of requests and arguments, Appendix A1, folios 4030, 4031, and 4034).

representatives qualified said events as “torture.” Indeed, in its answer to the application, the State referred to the treatment suffered by the alleged victim as “acts of torture.” Notwithstanding such acknowledgment, which at other stages of the proceedings would excuse the Court from further analysis, the Court will proceed to examine the appropriate issues of law.

76. Firstly, the Court reasserts its case law in the sense that International Human Rights Law strictly prohibits torture and cruel, inhuman, or degrading punishment or treatment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international *jus cogens*. Said prohibition remains valid even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and other crimes, state of siege, or a state of emergency, civil commotion or domestic conflict, suspension of constitutional guarantees, domestic political instability or other public emergencies or catastrophes.³⁷

77. Various universal³⁸ and regional³⁹ instruments set forth said prohibition and enshrine the right of all human beings not to be tortured. Similarly, various international instruments enshrine this right and reaffirm that prohibition,⁴⁰ including international humanitarian law.⁴¹

78. Now, in order to define the concept of “torture” in the light of the provisions of Article 5(2) of the American Convention, the Court should consider the definition provided in the first part of Article 2 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “ICPPT”),⁴² and the various definitions contained in some of the instruments mentioned in the paragraph above. This is particularly important for the Court as, in accordance with its case law, “the interpretation of a treaty must take into account not only

³⁷ Cf. *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 271; *Case of Baldeón-García*. Judgment of April 6, 2006. Series C No. 147, para. 117, and *Case of García-Asto and Ramírez-Rojas*. Judgment of November 25, 2005. Series C No. 137, para. 222.

³⁸ International Covenant on Civil and Political Rights, Article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2; Convention on the Rights of the Child, Article 37, and International Convention on the protection of the rights of all migratory workers and the members of their families relatives, Article 10.

³⁹ Inter-American Convention to Prevent and Punish Torture, Article 2; African Charter on the Rights of Men and of People, Article 5; African Charter on the Rights and Welfare of the Child, Article 16; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (*Convención de Belém do Pará*), Article 4, and European Convention for the Protection of Fundamental Freedoms, Article 3.

⁴⁰ Set of principles for the protection of all individuals subject to any form of detention or imprisonment, Principle 6; Code of conduct for law enforcement officers, Article 5; UN Rules on Juveniles Deprived of the Liberty, Rule 87(a); Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live, Article 6; Rules for the Administration of Juvenile Justice (Rules of Beijing), Rule 17(3); Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Article 4, and Guidelines on the European Council of Ministers on human rights and the fight against terrorism, Guideline IV.

⁴¹ Article 3 common to the four Geneva Conventions; Geneva Convention governing war prisoners (Convention III), Articles 49, 52, 87, 89, and 97; Geneva Convention relative to the protection of civilian persons in time of war (Convention IV), Articles 40, 51, 95, 96, 100 and 119; Additional Protocol to the Geneva Conventions of August 12, 1949, on protection of victims in international armed conflict (Protocol I), Article 75(2)(ii), and Additional Protocol to the Geneva Conventions of August 12, 1949, on protection of victims of non-international armed conflict (Protocol II), Article 4(2)(a).

⁴² Article 2 of the ICPPT, in its relevant part, sets forth that:
For the purposes of this Convention, torture shall be understood to be any act intentionally performed, whereby physical or mental pain or suffering is inflicted upon a person for the purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose [...].

the agreements and instruments related to the treaty (paragraph 2 of Article 31 of the Vienna Convention), but also the system of which it is part (paragraph 3 of Article 31 of said Convention)."⁴³ This concept is particularly relevant for International Human Rights Law, which has shown substantial progress through the evolution in the interpretation of international protection instruments.⁴⁴

79. Based on the foregoing, the Court understands that the elements of torture are as follows: a) an intentional act; b) which causes severe physical or mental suffering, c) committed with a given purpose or aim.⁴⁵

80. The Court will now analyze the facts of the instant case in view of the foregoing considerations.

i) Intentionality

81. The evidence attached to the record of the case proves that the acts committed were deliberately inflicted upon the victim and not the result of negligent conduct, an accident or *force majeure*.

⁴³ Cf. *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 156; *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005. Series C No. 125, para. 126, and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 144.

⁴⁴ Cf. *Case of Tibi*, *supra* note 43, para. 144; *Case of the Gómez-Paquiyaury brothers*. Judgment of July 8, 2004. Series C No. 110, para. 165, and *Case of the "Street Children" (Villagrán-Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paras. 192 and 193.

⁴⁵ The foregoing is also consistent with the precedents of this Court. Thus, in the *case of Cantoral Benavides v. Peru*, the Court pointed out that the elements that constitute torture include "the intentional infliction of physical or mental pain or suffering for certain purposes, such as obtaining information from a person, or intimidating or punishing him/her" (Cf. *Case of Cantoral-Benavides*. Judgment of August 18, 2000. Series C No. 69, para. 97). Later, in the *case Bámaca-Velásquez v. Guatemala*, the Court held that "the acts denounced [...] were deliberately prepared and inflicted, in order to obtain information that was relevant for the Army from Efraín Bámaca-Velásquez. According to the testimonies received in this proceeding, the alleged victim was submitted to grave acts of physical and mental violence during a prolonged period of time for the said purpose and, thus, intentionally placed in a situation of anguish and intense physical suffering, which can only be qualified as both physical and mental torture." (Cf. *Case of Bámaca-Velásquez*. Judgment of November 25, 2000. Series C No. 70, para. 158). In the *case of Maritza Urrutia v. Guatemala*, the Court found that "the elements of the concept of torture established in Article 2 of the Inter-American Convention against Torture include methods to obliterate the personality of the victim in order to attain certain objectives, such as obtaining information from a person; or intimidation or punishment, which may be inflicted through physical violence or through acts that produce severe mental or moral suffering in the victim. [...] some acts of aggression inflicted on a person may be classified as mental torture, particularly acts that have been prepared and carried out deliberately against the victim to eliminate his mental resistance and force him to accuse himself of or confess to certain criminal conducts, or to subject him to other punishments, in addition to the deprivation of freedom itself." (Cf. *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, paras. 91 and 93). In the *case of the Gómez-Paquiyaury brothers v. Peru*, the Court stated that "the components of the concept of torture [...] include physical or mental suffering inflicted on an individual, for whatever purpose," and explained as an example that "[i]n general, in situations of massive human rights violations, the systematic use of torture has the aim of intimidating the population." (Cf. *Case of the Gómez-Paquiyaury brothers*, *supra* note 44, para. 116). Later, in the *Case of Tibi v. Ecuador*, the Court found that "the acts of violence intentionally committed by agents of the State against Daniel Tibi caused him grave physical and mental suffering. The aim of repetitive execution of these violent acts was to diminish his physical and mental abilities and annul his personality for him to plead guilty of a crime. It has also been proven in the *sub judice* case that the alleged victim was threatened and suffered harassment during the period when he was detained, and this made him feel panic and fear for his life. All this is a form of torture, under the terms set forth in Article 5(2) of the American Convention." (Cf. *Case of Tibi*, *supra* note 43, para. 149). In the *Case of Caesar v. Trinidad and Tobago* the Court carried out an objective analysis of the corporal punishment of flagellation and held that said punishment constitutes a "means of torture" and a violation *per se* of the right to personal integrity and an "institutionalization of violence". Based on the cases mentioned above, the Court considered the intentionality, the level of suffering and the purpose of the treatment, before qualifying it as torture (Cf. *Case of Caesar*. Judgment of March 11, 2005. Series C No. 123, paras. 72 and 73).

ii) *Purpose*

82. In his statement rendered before the judge investigating the acts of mistreatment (*supra* para. 71), Mr. Bueno-Alves alleged that said acts were aimed at having him make a confession against Carlos Alberto Baltasar Pérez-Galindo, his counsel at the time. In view of these facts and considering the acknowledgement made by the State, the Court considers that said mistreatment was specifically aimed at forcing Mr. Bueno-Alves to make a confession.

iii) *Suffering*

83. Lastly, upon determining the degree of suffering endured by the victim, the Court must take into account the specific circumstances of each case, in view of objective and subjective factors. The former refer to the characteristics of mistreatment, such as the duration, the method or manner used to inflict harm, and the physical and psychological effects such harm may cause. The latter refer to the characteristics of the individual undergoing mistreatment, including age, gender, health condition, and any other personal circumstance.⁴⁶

84. The suffering endured by Mr. Bueno-Alves is reflected in his initial statement, in which he claimed that “after being beaten in that manner, [...] he reacted saying ‘kill me.’”⁴⁷ Similarly, the physical effects of such mistreatment are also particularly relevant. Based on the findings of the medical experts who submitted their reports (*supra* para. 37), the mistreatment suffered by Mr. Bueno-Alves caused him “a 2mm-diameter perforation of the eardrum”⁴⁸ which resulted in a 0.3 percent and 16.7 percent hearing loss in the left and right ears, respectively, as well as deep psychological suffering. Indeed, the psychiatrists that rendered their reports in these proceedings stated that:

As regards the facts of the instant case [...], his statement is clear, emotional but discreet at the same time. It is not grandiloquent and it is not meant to cause emotional impact on the audience. The summary is plausible. [...] After such episode, which occurred more than eighteen years ago, all events in his existence seem to be associated in some way or another to said fact. As symptoms derived therefrom, he mentions [...] amnesia, sleeping disorders, permanent fear and alert feelings, total work inactivity and a social and emotional lifestyle conditioned by the safety and security measures implemented after the events occurred in 1988. It was then, according to his sayings, particularly while he was under arrest, that he started suffering from skin and eating disorders. [...] His mental activity and his daily life [...] seem to be governed by this issue, which seems to be his *raison d'être*. All his psychological energy is focused on that. He has implemented a system of continuous preventive measures, together with a hyper-vigilant attitude. [...] There are no indicators of simulation.⁴⁹

⁴⁶ Cf. *Case of the Street Children (Villagrán-Morales et al.)*, *supra* note 44, para. 74, and *Case of Loayza-Tamayo*. Judgment of September 17, 1997. Series C No. 33, para. 57.

⁴⁷ Cf. Statement of Mr. Bueno-Alves of April 8, 1988 (record of appendixes to the application, appendix 7, folio 223).

⁴⁸ Cf. Medical report issued by doctor José Bello on April 26, 1988 (record of appendixes to the application, appendix 7, folio 307).

⁴⁹ Cf. Expert's report (affidavit) of doctors Ravioli, Taragano, Nievas, and Schlenker (record on the merits, Volume III, folios 1051 and 1052).

85. Moreover, the experts concluded that the disorders caused by such mistreatment prevented and still prevent Mr. Bueno-Alves from “carrying out his daily activities,” and require ongoing psychiatric and psychological treatment “for life.”⁵⁰

86. Based on the foregoing considerations and in view of the acknowledgment made by the State (*supra* paras. 19, 22, 23, and 26 to 29), the Court considers that the events alleged by the Commission and the representative, which have been proven in the instant case, amounted to torture to the detriment of Mr. Bueno-Alves, thus entailing a violation by the State of the right enshrined in Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof to the detriment of the above-mentioned individual.

87. Notwithstanding the foregoing, the Court agrees with the arguments of the State in its answer to the application in that “the acts of torture committed against Mr. Bueno-Alves are under the protection [...] of the [American] Convention; however, this does not mean that said acts should be classified *per se* as a crime against humanity,” as alleged by the victim’s representative, since such acts were not part of a generalized or systematic attack against the civilian population.⁵¹

*
* *

88. As regards the obligation to guarantee the right enshrined in Article 5 of the American Convention, the Court pointed out that said obligation embodies the duty of the State to investigate possible acts of torture and other cruel, inhuman or degrading treatment.⁵² The duty to investigate is reinforced through the provisions of Articles 1, 6, and 8 of the ICPPT, which set forth that the State is bound to “take effective measures to prevent and punish torture within its jurisdiction,” and “prevent and punish other cruel, inhuman, or degrading treatment or punishment.” Moreover, pursuant to the provisions of Article 8 of the Convention,

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

89. In the same sense, the Court has previously stated that:

in the light of the general obligation to guarantee all persons under their jurisdiction the human rights enshrined in the Convention, established in Article 1(1) of the same, along with the right to humane treatment pursuant to Article 5 (Right to Humane Treatment) of said treaty, there is a state obligation to start *ex officio* and immediately an effective investigation that allows it to identify, prosecute, and punish the responsible parties, when there is an accusation or well-grounded reason to believe that an act of torture has been committed.⁵³

⁵⁰ Cf. Expert’s report (affidavit) of doctors Ravioli, Taragano, Nievas, and Schlenker (record on the merits, Volume III, folios 1063 and 1065).

⁵¹ The Inter-American Court has held that crimes against humanity include “the commission of inhuman acts, [...] committed in a context of generalized or systematic attacks against civilians.” (Cf. *Case of Almonacid-Arellano et al.*, *supra* note 16, para. 96).

⁵² Cf. *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 344; *Case of Vargas-Areco*, *supra* note 14, para. 78; and *Case of Ximenes-Lopes*, *supra* note 16, para. 147.

⁵³ Cf. *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 345; *Case of Vargas-Areco*, *supra* note 14, para. 79, and *Case of Gutiérrez-Soler*. Judgment of September 12, 2005. Series C No. 132, para. 54.

90. In sum, the duty to investigate constitutes an imperative obligation of the state that derives from international law and cannot be disregarded or conditioned by domestic acts or legal provisions of any nature. As has been stated by the Court, in cases of serious breaches to fundamental rights the imperious need to avoid the repetition of said facts depends, to a great extent, on the avoidance of their impunity and satisfying the right of both victims and society as a whole to have access to the knowledge of the truth of what happened. The obligation to investigate constitutes a means to guarantee said rights, and failure to comply with it brings about the State's international responsibility.⁵⁴

91. In the next chapter of this Judgment, the Court will analyze in detail the proceedings initiated to investigate the torture endured by Mr. Bueno-Alves; however, the Court considers that in the first place it should analyze how the lack of judicial relief affected Mr. Bueno-Alves' personal integrity.

92. Indeed, the Commission argued that

the psychological damage caused by the acts of torture was compounded by the fact that his claims before judicial authorities were dismissed. Mr. Bueno-Alves made his best efforts to overcome the impunity prevailing in the instant case, but the only answer he received were recurrent denials from judicial authorities. The suffering and anguish originated in the torture and deepened due to persistent impunity.

93. The representative submitted arguments in the same line and the State has not challenged any of these allegations.

94. The psychological expert examination carried out on instructions from the President of the Court (*supra* para. 37) shows that:

the lack of relief by the Argentine judicial system [...] has affected [Mr. Bueno-Alves]. The degree of damage is serious as it resulted in a delirious, depressive, and adaptive syndrome. [...] The proceedings that [Mr. Bueno-Alves] claims to have started and the lack of response thereto, which have acted as chronic stressful factors, have contributed to his inability to work.⁵⁵

95. Based on the foregoing, the Court considers that the lack of judicial relief affected Mr. Bueno-Alves' personal integrity, thus rendering the State responsible for the violation of the right enshrined in Article 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the victim.

B) Regarding Juan Francisco Bueno-Alves' next of kin

96. Both the Commission and the representatives pointed out that Mr. Bueno-Alves' next of kin have been affected by the facts of the case. In fact, the representative stated that one of his brothers, Delcio Ventura Bueno-Alves, and his mother, Tomasa Alves-De Lima had been deeply affected by Juan Francisco's misfortune and their health was severely affected, which later caused their death. The Commission and the representative have identified Mr. Bueno-Alves' next of kin (on behalf of whom they requested reparation) as follows: Tomasa Alves-De Lima (mother); Delcio Ventura Bueno-Alves and Manuel Bueno-Alves (brothers); Inés María del Carmen Afonso-Fernández (ex wife); Juan Francisco Bueno

⁵⁴ Cf. *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 347; *Case of Vargas-Areco*, *supra* note 14, para. 81, *Case of Goiburú et al.*, *supra* note 15, paras. 164 and 165, and *Case of Montero-Aranguren et al.* (Detention Center of Catia). Judgment of July 5, 2006. Series C No. 150, paras. 137, 139, and 141.

⁵⁵ Cf. Expert's report (affidavit) of doctors Ravioli, Taragano, Nievas, and Schlenker (record on the merits, Volume III, folios 1063 and 1064).

(son), Ivonne Miriam Bueno and Verónica Inés Bueno (daughters); Sergio Oscar Roldán (son-in-law); Patricia Marcela Mereles (daughter-in-law); Carolina Elizabeth Mereles, Cristian Rodrigo Mereles, Marco Gabriel Bueno-Mereles, Juan Manuel Bueno, Mariana Gisele Bueno, Francisco Ernesto Roldán-Bueno, and Daniela Inés Roldán-Bueno (grandchildren).

97. The State has declared that there is no evidence that may allow to assert the existence of a “causality link” between the facts described in the instant case and the death of the victim’s brother and mother; that the victim’s grandchildren had not even been born at the moment of the occurrence of the facts, and that there is no evidence of the link between the victim’s son-in law and daughter-in-law and their respective children; that no evidence has been submitted to prove the degree of suffering that the next of kin had to endure and their involvement in the situation suffered by the victim; and that it has not been proven that the next of kin have suffered an alteration in their living conditions, their family and social relations, and the chance to develop their own life projects.

98. Among the evidentiary items submitted to the Court, there is a certificate issued by Jorge A. Caride, attending physician of Mr. Bueno-Alves, which states as follows:

his brother, Delcio Ventura, suffere[d] a heart attack [,] and as a consequence, he die[d] at the age of 49, apparently due to the stress that the whole family had to endure.
His mother, Tomasa Alves-de Lima, died in 2001.
The rest of Bueno-Alves’ family members could not avoid suffering from different conditions which are compatible with disorders caused by anxiety which required some kind of medical treatment [...]. Particularly his daughter, Verónica Inés, who at the moment of his arrest was fourteen years old; and also Mr. Bueno-Alves’ wife, Inés María del Carmen.
All the above must be understood as the sum of complications coupled with emotional and financial deterioration that Mr. Bueno-Alves and his entire [family] had to endure.
Apart from the above-mentioned daughter [...] he has two other children: Juan Francisco [and] Ivone Miriam; a son-in-law, Sergio Roldán [,] and four grandchildren: Mariana, Francisco, Daniela, and Jonathan, who due to the events that have occurred after the arrest of Mr. Bueno-Alves, have not had an adequate support from him.⁵⁶

99. Dr. Caride made a statement before a notary public (affidavit), wherein he declared that “[d]uring the last years [,] several members [of Mr. Bueno-Alves’] family have undergone psychological treatment,” and that the facts of the instant case “gradually caused a deterioration in [Mr. Bueno-Alves’] family relationships which ended up with a divorce.”⁵⁷

100. The expert psychiatrists concluded that the victim “possibly shows alterations in his family relations and that this kind of disorder generates stress on the family,” and recommended the continuity of psychological treatment for the victim’s “support group.”⁵⁸

101. Finally, the social worker that rendered a statement before a notary public (affidavit) declared that Mr. Buenos-Alves had told her “that the events which took place had affected him emotionally and had affected his family as well.” Furthermore, she stated that currently the victim

is living with his former spouse, his daughter [Verónica Inés], his son-in-law, and his two grandchildren, there being strong family bonds and a good emotional link among the family members.

⁵⁶ Cf. Record of appendixes to the application, Volume I, Appendix 4, folios 63 and 64.

⁵⁷ Cf. Expert report (affidavit) of Dr. Caride (record on the merits, Volume III, folios 1217 and 1218).

⁵⁸ Cf. Expert reports (affidavits) of Drs. Ravioli, Taragano, Nievas, and Schlenker (record on the merits, Volume III, folios 1063 and 1065).

Mr. Bueno-Alves also maintains strong and affective ties with his other children and grandchildren, which indicates that there is a family unit that gives him emotional support.⁵⁹

102. On other occasions the Court has stated that the next of kin of the victims of violations to human rights may be, in turn, victims themselves.⁶⁰ Among other issues, it should be considered whether there exists a close family tie, the particular circumstances of the relationship with the victim, the manner in which the next of kin witnessed the events that constitute a violation and the degree of involvement in the quest for justice and the answer provided by the State to the different steps undertaken.⁶¹

103. In this case, in order to support the emotional bond necessary to consider the next of kin as victims of the facts in violation of Article 5 of the American Convention, there is evidence only as to the relationship between Mr. Bueno-Alves and his mother,⁶² former spouse,⁶³ and children,⁶⁴ but there is no evidence which proves the relationship with his siblings, grandchildren, son-in-law, and daughter-in-law. Furthermore, the evidence submitted is not sufficient to prove that the death of his mother and his brother may be attributed to the facts endured by the victim.

104. In view of the foregoing, the Court considers that only the family members belonging to the closest circle of Mr. Bueno-Alves, that is to say, his mother, his former spouse, and his children are victims of the violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof, due to the emotional damage caused by the torture inflicted upon Mr. Bueno-Alves by State agents and the subsequent denial of justice.

X

ARTICLE 8 (RIGHT TO A FAIR TRIAL)⁶⁵ AND 25 (JUDICIAL PROTECTION)⁶⁶ IN RELATION TO ARTICLE 1(1) THEREOF (OBLIGATION TO RESPECT RIGHTS) OF THE AMERICAN CONVENTION

⁵⁹ Cf. Report of social worker Rull of March 16, 2007 (record of evidence filed by the State to facilitate the adjudication of the case, folios 5624 and 5625).

⁶⁰ Cf. *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 335; *Case of Vargas-Areco*, *supra* note 14, para. 83, and *Case of Goiburú et al*, *supra* note 15, para. 96.

⁶¹ Cf. *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 335; *Case of Servellón-García et al*, *supra* note 15, para. 128, and *Case of Bámaca-Velásquez*, *supra* note 45, para. 163.

⁶² Tomasa Alves-De Lima, Mr. Bueno-Alves' mother, died on January 28, 2001, i.e. after the facts. Cf. Death certificate issued by the Office of Civil Registry of Uruguay on February 16, 2001 (record on the merits, Volume III, folio 1309).

⁶³ Inés María del Carmen Afonso-Fernández was married to Bueno-Alves until October 20, 1993, i.e. after the facts. Cf. Decree of Divorce No. 140 of October 20, 1993 (record on the merits, Volume III, folios 1289 and 1290).

⁶⁴ Mr. Bueno-Alves' son and daughters are: Juan Francisco Bueno and Ivonne Miriam Bueno and Verónica Inés Bueno. Cf. Birth certificates of October 26, 1975 and January 26, 1977, issued by the General Department of Civil Registry of Uruguay, Family Book No. 482488 of Roldán-Bueno, issued by the Office of Civil Registry of Buenos Aires (record on the merits, Volume III, folios 1037, 1294, and 1292).

⁶⁵ Article 8(1) (Right to a Fair Trial) of the Convention sets forth that:

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

⁶⁶ Article 25(1) (Right to Judicial Protection) of the Convention sets forth that:

105. The Commission alleged that “even though the national courts were informed about the abuse, the delayed [...] judicial actions taken did not contribute to clarify the facts that had been reported.” Particularly, as regards Proceeding No. 24.079, the Commission alleged that the judicial authorities had not made a diligent effort to investigate the precise circumstances in which Mr. Bueno-Alves was admitted to a health institution. According to the Commission this was reflected in the dismissals ordered by the judicial authorities, which were based on the insufficiency of the evidence. It further alleged that the State conducted the criminal action as if it were a civil action between private parties. Additionally, the Commission pointed out that though Mr. Bueno-Alves had not denounced the beatings in his stomach and the deprivation of medicines until a month after his arrest, thus limiting certain investigation means, this has not released the State from its obligation to act with due diligence. The Commission further stated that the final decision in Proceeding No. 24.079 was issued almost nine years after the occurrence of the facts. Finally, the Commission alleged that the State did not inform Mr. Bueno-Alves about his right to contact a consular officer of the country of which he is a national.

106. The representative, besides concurring with the points alleged by the Commission, further stated that the State did not show any interest in giving an answer to the request for justice made by the victim.

107. The State accepted the conclusions drawn by the Commission regarding the violations of the rights enshrined in Articles 8 and 25 of the Convention, in relation to Article 1(1) thereof. Notwithstanding the foregoing, the Court considers it convenient to make some references regarding the alleged violations.

108. As regards the obligation to guarantee the right enshrined in Article 5(1) of the Convention, the Court has pointed out that this obligation implies the duty of the State to conduct an adequate investigation into the possible acts of torture and other cruel, inhuman or degrading treatment.⁶⁷ As regards the effective investigation and the documentation, the following principles are applicable: independence, impartiality, competence, diligence, and promptness, which must be adopted by any judicial system and applied to all investigations involving alleged tortures.

109. In the instant case, on the basis of the claim made by Mr. Bueno-Alves, an obligation arises for the State to fully investigate the facts, taking also into account that said facts had occurred while the victim was under police custody.

110. Judge No. 21, who ordered the arrest of Mr. Bueno-Alves, was informed about the alleged “blows on the ears” on April 8, 1988, when he also personally received Mr. Bueno-Alves’ preliminary examination statement. On that date, the judge ordered a medical examination to be carried out “urgently” regarding such claims. The medical examination was made on April 13, 1988 by forensic medical examiners⁶⁸ who were unable to draw any

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

⁶⁷ Cf. *Case of Vargas-Areco*, *supra* note 14, para. 78; Cf. *Case of Ximenes-Lopes*, *supra* note 16, para. 147, and *Case of the Moiwana Community*, *supra* note 24, para. 92.

⁶⁸ Cf. Record of appendixes to the application, Volume I, Appendix 8, folio 354.

significant conclusions and who pointed out the need to conduct an otorhinolaryngological examination, which was subsequently made on April 26, 1988.⁶⁹

111. It is important to emphasize that in those cases where alleged torture or mistreatment have been claimed, the time elapsed till the performance of the pertinent medical examinations is essential in order to unquestionably determine the existence of damage, specially when there are no witnesses other than the perpetrators and the victims themselves, and consequently, the evidence may be scarce. Thus, it may be concluded that in order for an investigation regarding facts involving torture to be effective, the same must be promptly conducted.

112. Being a timely investigation essential for the determination of the facts, the Court considers that the medical examination of Mr. Bueno-Alves should have been immediate.

113. On the other hand, the Court notes that in the substantiation of case No. 24.079, the judicial authorities did not investigate the facts diligently and the procedural burden fell for the most part on Mr. Bueno-Alves. The role that the Public Prosecutor's Office and the Judge played was notoriously passive. The judge only received the requests for evidence filed by the applicant, some of which have not been upheld, and the Public Prosecutor's Office has not made any efforts to gather all the pieces of evidence which might be useful to establish the truth of the facts. Likewise, no investigations were conducted regarding the claims made by the victim reporting blows to the stomach and deprivation of medicines. On the other hand, those persons identified as responsible for the blows inflicted upon Mr. Bueno-Alves were not included in the early stages of the criminal process and instead they were included long after the commencement of the process; and despite the fact that Mr. Bueno-Alves reported the presence of a third person while he was being beaten on the ears and the stomach, no efforts were made in order to identify such person. To sum up, the criminal process did not contribute to identify or punish any person, it almost entirely depended on the activities of the victim, and it did not provide reparation for the damages caused thereto.

114. By the same token, the Court notes that, pursuant to the allegations of the Commission, and the record of the case filed with the Court, the judicial action commenced in April 1988 and ended with the decision of the Supreme Court of Justice of the Nation on April 15, 1997. That is to say, it was pending in court for almost nine years.

115. Taking into account the acknowledgement made by the State and the criteria established by the Court as regards the principle of the reasonable time limit,⁷⁰ the Court endorses the opinion of the Commission that Mr. Bueno-Alves was not heard within a reasonable time, as set forth in Article 8(1) of the American Convention.

116. Finally, the Court notes that there is no evidence which may prove that the State has given notice to Mr. Bueno-Alves, as a foreign detainee, of his right to communicate with a consular officer of his country of origin to get the assistance which is contemplated in Article 36(1)(b) of the Vienna Convention on Consular Relationships. A foreign detainee, upon being arrested and before rendering his first statement before the authorities, must be notified of his right to contact a consular officer of his country of origin and inform him that he is under the custody of the State. The Court has pointed out that the consul may assist

⁶⁹ Cf. Record of appendixes to the application, Volume I, Appendix 8, folio 442.

⁷⁰ Cf. *Case of La Cantuta*, *supra* note 14, para. 149; *Case of Ximenes-Lopes*, *supra* note 16, para. 196, and *Case of the Ituango Massacres*, *supra* note 43, para. 289.

the detainee in several defense acts, such as providing or retaining legal assistance, procuring means of evidence in the country of origin, controlling the conditions in which legal services are provided and controlling the detention conditions of the accused while in prison. In this regard, the Court has further pointed out that the individual right to request consular assistance from the country of origin must be acknowledged and considered as one of the minimum guarantees necessary to provide foreigners an opportunity to prepare their defense adequately and to have a fair trial.⁷¹

117. In view of the foregoing, and taking into consideration the acknowledgement made by the State, the Court concludes that Argentina has violated Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Bueno-Alves.

XI
ARTICLE 11 (RIGHT TO PRIVACY)⁷²
OF THE AMERICAN CONVENTION

118. The representative alleged that in the instant case the State showed indifference and lack of interest regarding the honor, dignity, and life of the victim and his next of kin. She further stated that Mr. Bueno-Alves was insulted and defamed when charged with "the commission of a malicious crime and a criminal conduct." This circumstance discredited him within his social environment, tarnished his professional reputation, and deeply affected his family."

119. The Commission has not alleged the violation of this Article.

120. The State objected to the allegations made by the representative by pointing out that they are time-barred, given the fact that Mr. Bueno-Alves had not made any reference to such violation in the claim he had filed before the Commission. Consequently, they constitute new and time-barred violations, regarding which the exhaustion of proceedings as set forth in Articles 48 and 50 of the Convention is not applicable.

121. The Court has determined that the alleged victim, his next of kin or his representatives may invoke rights other than those asserted in the petition filed before the Commission, on the basis of the facts described therein.⁷³ As regards the latter point, the Court has pointed out that it is not admissible to allege new facts other than those described in the application, except where they provide an explanation, clarification or grounds for dismissal of those facts included in such application, or else where they are intended to

⁷¹ Cf. *Case of Acosta-Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 125; *Case of Tibi*, *supra* note 43, paras. 112 and 195; *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 130, and *The Right to Information on Consular Assistance within the framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paras. 86, 106, and 122.

⁷² Article 11 of the Convention sets forth that:

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

⁷³ Cf. *Case of Acevedo-Jaramillo et al.* Judgment of February 7, 2006. Series C No. 144, para. 280; *Case of López-Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 145 and *Case of Gómez-Palomino*. Judgment of November 22, 2005. Series C No. 136, para. 59.

address the relief sought by the applicant. Furthermore, the Court has stated that the exception to this rule is applicable in the case of subsequent facts, *i.e.* facts occurring after the submission of any of the pleadings in the process (the application; the brief of requests, arguments, and evidence; and the answer to the application.)⁷⁴

122. In view of the foregoing, and taking into consideration that this is an issue of law rather than an issue of fact, the Court will proceed to the analysis of the alleged violation of Article 11 of the Convention. In that regard, the Court has considered that "a legal process does not constitute, in itself, an illegal violation of the honor and dignity of a person. The process is intended to solve a controversy, even though this may indirectly bring about nuisance for those who are subject to trial." If the contrary were held, "the resolution of controversies through contentious proceedings would be absolutely barred."⁷⁵ Thus, the Court considers that in the instant case the violation of Article 11 of the Convention by the State has not been proven.

XII ARTICLE 24 (RIGHT TO EQUAL PROTECTION)⁷⁶ OF THE AMERICAN CONVENTION

123. The victim's representative argued that the State violated Article 24 of the Convention; however, it merely alleged said violation without providing the Court with specific arguments in support of such allegations. The representative only stated that said right had been violated to the detriment of Mr. Bueno-Alves, "a foreign national."

124. The Commission did not submit any arguments regarding the violation of this right. Paragraph 121 of this Judgment applies in this regard.

125. The State rejected these allegations in the same terms as explained in connection with the allegations raised by the representative regarding the violation of Article 11 of the Convention (*supra* paras. 8 and 120).

126. The Court has noted that, other than the insults allegedly hurled at Mr. Bueno-Alves,⁷⁷ which were analyzed in Chapter IX of this Judgment together with the other allegations of mistreatment, there is no evidence that the victim was subjected to discriminatory treatment. As established in paragraph 82 *supra*, the torture inflicted upon him was not related to his nationality.

127. Based on the foregoing, the Court has arrived at the conclusion that Article 24 of the Convention has not been violated.

XIII

⁷⁴ Cf. *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 162; *Case of the Ituango Massacres*, *supra* note 43, para. 89, and *Case of the Sawhoyamaya Indigenous Community*. Judgment of March 29, 2006. Series C No. 146, para. 68.

⁷⁵ Cf. *Case of Cesti-Hurtado*. Judgment of September 29, 1999. Series C No. 56, para. 177.

⁷⁶ Article 24 (Right to Equal Protection) of the Convention provides that: "[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

⁷⁷ Cf. Preliminary examination statement of April 8, 1988 (record of appendixes to the application, Volume I, Appendix 8, folio 345).

REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)⁷⁸

128. It is a principle of International Law that any violation of an international obligation that has caused damage entails the duty to provide adequate reparation.⁷⁹ The Court has based its decisions on this particular subject pursuant to the provisions of Article 63(1) of the American Convention.

129. Considering the acknowledgment made by the State (*supra* paras. 8, 19, 20, 22, and 23), in accordance with the above considerations on the merits and the violations of the Convention declared to be such in the preceding chapters, as well as in the light of the criteria embodied in the Court's case law in connection with the nature and scope of the obligation to make reparations,⁸⁰ the Court will now address the requests for reparations made by the Commission and the victim's representative in order to adopt the measures required to redress the damage.

A) Injured party

130. The Court will now determine who are to be considered "injured parties" under Article 63(1) of the American Convention and, accordingly, the beneficiaries of the reparations set by the Court.

131. First of all, the Court considers Juan Francisco Bueno-Alves, in his capacity as victim of the violations which have been proven to be committed to his detriment, an "injured party," as a result of which he is entitled to such reparations as may be set by the Court for pecuniary and non-pecuniary damage, as the case may be.

132. Similarly, such next of kin of Mr. Bueno-Alves as were declared victims of the violation of the right enshrined in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, namely Tomasa Alves-De Lima, Inés María del Carmen Afonso-Fernández, Ivonne Miriam Bueno, Verónica Inés Bueno, and Juan Francisco Bueno will also be considered "injured parties." The victim's next of kin will be beneficiaries of the reparations set by the Court for pecuniary and non-pecuniary damage, as the case may be, in their capacity as victims.

B) Compensation

133. The Court's case law has developed the concept of pecuniary damage and the cases in which compensation therefor is due.⁸¹

⁷⁸ Pursuant to Article 63(1) of the Convention,

"If the Court finds that there has been a violation of a right or freedom protected by [the] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

⁷⁹ Cf. *Case of La Cantuta*, *supra* note 14, para. 199; *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 413; and *Case of Vargas-Areco*, *supra* note 14, para. 139.

⁸⁰ Cf. *Case of La Cantuta*, *supra* note 14, paras. 201 and 202; *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 162, and *Case of Dismissed Congressional Employees (Aguado-Alfaro et al.)*, *supra* note 19, paras. 143 and 144.

⁸¹ Cf. *Case of La Cantuta*, *supra* note 14, para. 213; *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 423; and *Case of Vargas-Areco*, *supra* note 14, para. 146.

134. In the instant case, the Commission stated that Mr. Bueno-Alves and his next of kin were forced to make substantial economic efforts to search for justice and pay for the necessary psychological treatment, in addition to the fact that the injuries suffered by the victim prevented him from continuing his activities and work. Moreover, the representative requested that the Court order the State to compensate the victim on account of the following: a) "property damage;" b) "loss of earnings;" c) "physical harm" –including both: i) "resulting disability," and ii) "medical, pharmaceutical, treatment, and rehabilitation expenses;" d) "future consequential damages;" and e) "legal defense [and] transfer expenses." Next, the Court will analyze each such request. To facilitate this analysis, the terminology used by the representative will be maintained.

a) *"Property damage"*

135. According to the representative, Mr. Bueno-Alves "was to be paid an amount of money for the cancellation of the sales transaction he had performed" with Mrs. Lage. Said amount totaled US\$ 21,000.00 (twenty-one thousand United States dollars). Allegedly, said amount of money had been seized by the State and "was never reimbursed." The representative also claimed for "compensatory interest" up to June 30, 2006, and requested that the State pay a total sum of US\$ 309,353.40 (three hundred nine thousand three hundred and fifty-three United States dollars and forty cents).

136. The State argued, *inter alia*, that "said claim could not be a part of the compensation sought from the State [...], as the transaction was the result [of] an act between private parties [...] in which the State had not been involved."

137. In this regard, it should be noted that in the domestic proceedings it was not proven that Mr. Bueno-Alves had been the victim of a crime on account of the failed real estate purchase and sale transaction, or that Mr. Bueno-Alves had been entitled to any reimbursement for such failed transaction. Even on the assumption that reimbursement of the amount allegedly paid by Mr. Bueno-Alves was due to him, said obligation would fall on whoever was actually paid the money, not the State. Likewise, the Court has found no evidence that the amount claimed was seized by State agents. Therefore, the representative's claims for "property damages" are inadmissible.

b) *"Loss of earnings"*

138. The representative argued that "[t]he consequences of the injuries suffered by the victim, both physical and psychological, put an end to [the] work activity [of Mr. Bueno-Alves,] as his disability turned from partial to total, which prevented him from earning any sort of income required to support his family." The representative based the calculation of damages for loss of earnings on the alleged income generated by Mr. Bueno-Alves, and requested that the amount due be computed from January 12, 1988 to the age of retirement provided by the Argentine legislation, which is 65 years of age for men. The total sum sought as compensation on this account amounts to US\$ 15,689,696.00 (fifteen million six hundred eighty-nine thousand six hundred and ninety-six United States dollars).

139. In its closing written arguments, the State pointed out that it "definitely acknowledges that Mr. Bueno-Alves is legally entitled to reparations in accordance with the extent of his disability, as determined by the expert reports, all in line with such liability as [the] Court may consider attributable to the State."

140. Thus, the Court understands that there is no controversy between the parties as to the fact that Mr. Bueno-Alves must be compensated for the work disability that resulted

from the facts of the instant case. However, differences have arisen as to the amount of compensation due. To settle this issue, the Court will analyze the evidence submitted thereto in order to determine: i) Mr. Bueno-Alves' income as of the time of the facts; ii) his percentage of work disability; iii) mitigation of damage, and iv) whether Mr. Bueno-Alves has completely ceased to earn income since the occurrence of the facts.

i) Mr. Bueno-Alves' income

141. It is the representative's view that the Court should consider it an established fact that Mr. Bueno-Alves earned \$15,000.00 (fifteen thousand australes) to \$20,000.00 (twenty thousand australes). Such view is based on the victim's preliminary examination statement rendered before Court No. 21 in case No. 25.314. In such statement, the victim said as follows:

since he is self-employed, he does not earn a fixed monthly income; at times, however, he earns a monthly average income of approximately fifteen to twenty thousand australes.⁸²

142. The representative considers that this statement carries "full legal force and thus unquestionable value as a public document which serves as sufficient evidence of the victim's monthly income." For its part, the State challenged such alleged monthly income and the evidentiary value of the preliminary examination statement.

143. It is the Court's view that the victim's preliminary examination statement is not in itself sufficient evidence of the victim's monthly income, even though it is part of the documentary evidence submitted in these proceedings. Said document, which reflects an allegation of one of the parties, provides an evidentiary element which, though valid, requires to be collated against the rest of the body of evidence. Consideration should also be given to the fact that, in said statement, Mr. Bueno-Alves declared that "he does not earn a fixed monthly income," that "sometimes" he earned such income, that "he [was] self-employed [...] thus earning a variable income," and that he did not "own real property, automobiles, bank accounts, or assets of any nature."⁸³ Moreover, Mr. Bueno-Alves had previously stated that he earned a monthly salary of \$4,000.00 (four thousand australes). All these inconsistencies confirm the Court's view that the victim's statement should not be considered conclusive evidence of his monthly income.

144. The other evidentiary items provided by the representative consist of brochures from Menfis company and a certificate issued by said company director, as well as various advertising brochures on work allegedly performed by Mr. Bueno-Alves, and two witness statements rendered before a notary public (affidavit), as well as a supplement to one of such statements.

145. As to the brochures, it is the Court's opinion that even though they could prove that the victim actually performed said work, they do not evidence that his salary totaled the amount claimed.

146. Regarding the affidavits, these included the statement of Demetrio González, a former employee of CAMPOLONGHI S.A. He stated that he met Mr. Bueno-Alves and his brother, Delcio Ventura Bueno-Alves, as they had a business relationship with the aforementioned company; that they were the "the marble masons recommended to our best customers and for major or more complex works;" that they did high-quality work;

⁸² Cf. Record of appendixes to the application, Appendix 11, Vol. II, folio 3050.

⁸³ Cf. Record of appendixes to the application, Appendix 11, Vol. II, folio 3053.

that the company processed 1,000 m² of marble, 35 to 40 percent of which was delivered to the Bueno-Alves brothers for "installation;" and that he stopped seeing them around the company "in mid-1988." For his part, witness Roberto Horacio Serrago, who was allegedly the president of "Todo Mármol," stated that the Bueno-Alves brothers were "on high demand in the marble business due to their work capacity and work quality;" that they were craftsmen that worked with the appropriate machinery, materials and staff; that they were recommended by the firm; that they worked on "major projects," and that their relationship with the company came to an end in 1988. In the supplement to his original statement, the same witness said that Mr. Bueno-Alves and his brother were professional craftsmen who worked in the marble business on a self-employed basis; that he cannot estimate "for certain a fixed income for either one of the brothers;" and that both split their earnings in equal parts. Finally, said witness made an estimate based on the "income from the marble processed and delivered" by his company to the Bueno-Alves brothers. As per such estimation, the brothers earned a "monthly net income" in the amount of US\$ 7,740.00 (seven thousand seven hundred and forty United States dollars); *i.e.*, each of them earned US\$ 3,870.00 (three thousand eight hundred and seventy United States dollars).

147. In the Court's opinion, such statements show that Mr. Bueno-Alves and his brother were well-reputed marble masons; notwithstanding, they do not allow estimating a figure for the victim's monthly income. The representative has not produced any other type of documents such as receipts or invoices issued for their work, contracts signed with different companies, or accounting books related to the Bueno-Alves brothers' business. Another aspect to be taken into consideration is that, as per the certificates issued by the *Administración Federal de Ingresos Públicos* (Federal Public Revenue Service) and the *Administración Nacional de la Seguridad Social* (National Social Security Agency) and submitted by the State, there is no evidence that Mr. Bueno-Alves has paid taxes or social security contributions on his alleged monthly income.

148. To sum up, the Court has not been furnished with enough documents to consider Mr. Bueno-Alves' alleged income proven and, accordingly, the Court does not consider it appropriate to take into account the estimates made by accountant José Esteban Cornejo and submitted by the representative, as they are based on a salary which remains unproven.

149. At the request of the Court, the State submitted the official estimates for the real and total pay of construction workers from 1988 to 2006,⁸⁴ a report issued by the *Instituto Nacional de Estadísticas y Censos* (National Institute of Statistics and Census) on the indexes set for masonry and reinforced concrete labor categories from January 1993 through January 2007,⁸⁵ and labor legislation.⁸⁶

150. In this regard, the representative argued that "the index for t[he] average salary of a salaried worker could not possibly be used, as [Mr.] Bueno-Alves was never a salaried worker, considering that he was always a self-employed [...] businessman."

⁸⁴ Cf. Report of the Ministry of Labor, Employment, and Social Security of March 6, 2007 (record of evidence submitted by the State to facilitate adjudication of the case, Volume I, folios 5563 and 5664).

⁸⁵ Cf. Report of the National Institute of Statistics and Census of March 9, 2007 (record of evidence submitted by the State to facilitate adjudication of the case, Vol. I, folio 5642).

⁸⁶ Cf. Labor Contract Law No. 20.744, Law No. 21.297. Labor Contract Regulations. Amendment to Labor Contract Regulations approved by Law No. 20.744. Law No. 20.695 repealed; Labor Unions Law No. 23.551, Collective Bargaining Agreement – Construction. Workers in general. 76/75 and Salary Agreements 83/05 (record of evidence submitted by the State to facilitate adjudication of the case, Volume I, folios 5665 to 5810).

151. It is the Court's view that the specific activities of Mr. Bueno-Alves were not those of a construction worker but those of a self-employed marble craftsman. Nevertheless, given the lack of sufficient evidence, which the representative should have furnished to the Court, the Court will take into consideration the aforementioned official documents and will assess them together with the rest of the body of evidence, on the basis of sound judgment.

ii) Work disability

152. The Commission and the representative argued that the damage caused to Mr. Bueno-Alves is permanent. The representative also stated that the victim has total work disability. For its part, the State declared that "it cannot be asserted that [the] alleged [physical] injury amounted to permanent damage."

153. The State also stated that there are facts related to Mr. Bueno-Alves' personal and family life of Mr. Bueno-Alves that were previous to the torture he suffered and which allegedly created a "preexisting [...] mental pathology," meaning "the predisposing situation that allowed the traumatic events to have the effect they did and explains the reason therefor," and that for "the determination of the psychological damage it is not clear which specific traumatic event had a decisive bearing on [Mr.] Bueno-Alves' current pathology."

154. It has been established that Mr. Bueno-Alves suffers physical and psychological damage. The medical experts who rendered testimony in the instant case (*supra* para. 37) stated that Mr. Bueno-Alves' hearing disability represents a 0.3 percent hearing impairment of his left ear and a 16.7 percent impairment of his right ear, with aggregate disability (for both ears) of 2.35 percent. According to the experts, such disability "should not cause him problems in his everyday life." The experts stated that, considering his profession, "in the first months after the trauma, his impaired balance should cause him temporary disability." Such impairment in balance has been corrected. The experts consider the hearing impairment to be permanent. They concluded that "[t]he possibility of continuing to work in his professional or occupational field after the facts of the instant case occurred was and is not attributable to physical causes [...]. From a physical standpoint there is no information to believe that he has a disability that may prevent him from engaging in work activities of a different kind."

155. On the other hand, the psychiatric experts stated that Mr. Bueno-Alves

has a delusional disorder, mixed type (with persecutory and grandiose ideas). A major depressive disorder which is recurrent -in partial remission-, and an adjustment disorder with mixed disturbance of emotions and conduct. The above disorders have superimposed on a previous personality disorder [. According to his biographic history, said personality disorder first manifested itself in his teenage years. However, the clinical symptoms detected on his present-day examination [...] have a direct causal bearing on the facts described, and are still present. [...] The damage suffered had a psychological impact that has prevented Mr. Bueno-Alves from carrying out his daily activities. Regarding the degree and percentage of disability, taking into account the global activity for work and the specific activity for his profession, we have estimated that the impairment is of 65 percent for the former and of 100 percent for the latter.⁸⁷

156. Based on the foregoing, the Court has arrived at the conclusion that Mr. Bueno-Alves suffered physical work disability in the first months after being tortured. Thereafter, even though the victim suffered a permanent hearing impairment, especially of his right ear, he was not physically prevented from resuming profession or taking up a different occupation. Notwithstanding, he does have total mental disability (100 percent) preventing him from

⁸⁷ Cf. Expert report (affidavit) by doctors Ravioli, Taragano, Nievas, and Schlenker, record on the merits, Volume III, folios 1062 and 1063).

practicing his profession, and partial disability (65 percent) which prevents him from taking up a different occupation. To put it differently, as a result of the facts of the instant case, Mr. Bueno-Alves was, is, and will continue to be unable to practice his trade as a marble craftsman, and he can only engage –to a very limited extent– in a different occupation.

157. In the Court's opinion, as a general rule, the State must consider the victim in the condition the victim was in prior to the occurrence of the injurious events. Where a given act by the State further aggravates a preexisting condition or even causes the victim's death, the State is responsible for all the consequences, as they would not have existed had it not been for the State's action.

158. In the instant case, even though Mr. Bueno-Alves had, in fact, preexisting personality disorders, these did not keep him from practicing his profession, and "he functioned in a balanced manner." Indeed, as stated in the previous paragraphs, he was a well-reputed craftsman. It is as a consequence of the torture inflicted upon him, a fact subsequently aggravated by the denial of justice, that the victim suffered a "breakdown [,] disrupting his fragile personality structure [and] generating a new mental condition on the base structure."

159. In light of the above, the Court will hold the State responsible for Mr. Bueno-Alves' work disability.

iii) Mitigation of damage

160. The State raised two arguments regarding the courses of action the victim could have taken to minimize the damage. The first argument holds that "domestic mechanisms aimed at mitigating his suffering were available [...]" to the victim. Specifically, he could have requested disability benefits to Argentina's Ministry of Social Welfare, under [L]aw [No.] 18.910/70." The second argument rests on the fact that the victim did not seek professional help for his preexisting personality disorders or professional treatment after the torture.

161. Regarding the first argument, the Court has noted that the State itself stated that, in order to qualify for "disability" benefits, physical or mental disability of 76 percent is required. Mr. Bueno-Alves does not meet such disability threshold. His general mental disability stands at 65 percent, according to the psychiatric experts who testified in these proceedings (*supra* para. 37).

162. Regarding the second argument, it is the Court's view that Mr. Bueno-Alves' failure to seek professional help for his preexisting disorders does in no way affect the conclusions reached by the Court. As previously stated, the State must consider the victim in such condition as he was in prior to the facts that entailed a violation of his human rights.

163. In analyzing the argument regarding the lack of professional treatment after the facts, it should be noted that victims cannot obtain reparations for such damage as they could have prevented themselves by taking such measures as could reasonably be expected to be adopted, such as seeking professional help, following the attending physician's instructions, undergoing proper treatment, and taking the prescribed medication. In other words, in deciding on the relevant reparations, the Court should consider whether the victim took such measures as should have reasonably been taken to mitigate the damage or keep it from worsening. To determine whether the victim's actions were reasonable, the Court will assess all the facts of the case as well as the victim's personal situation. Regarding the

burden of proof, the State is required to prove that the victim failed to act as he could have reasonably been expected to act.

164. In the instant case, the Court considers that it is a proven fact that Mr. Bueno-Alves went about eleven years without psychological treatment. In this regard, the psychiatric experts concluded that “the time elapsed without adequate treatment acted as an aggravating and chronifying factor.”

165. The Court must analyze whether it was reasonable to expect Mr. Bueno-Alves to seek psychological help prior to the date on which he actually did so. According to the expert report issued by Jorge A. Caride, Mr. Bueno-Alves attending physician, in April 1999 the victim suffered a myocardial infarction and was treated at a health center’s Cardiology Unit. In accordance with the Unit’s assessment, such infarction was caused by a “situation of chronic stress.” Therefore, the victim was referred to the Psychiatric Unit, where he was diagnosed with “Reactive Depression due to about ten years of Post-Traumatic Stress Disorder without proper treatment.” The expert reported that the lack of treatment was, in the victim’s own words, due “to his unawareness of the need to receive treatment.” Furthermore, Mr. Caride considered that “due to [Mr.] Bueno-Alves’ preexisting personality, featuring narcissistic and omnipotent traits, he would not have asked for help and he expressed to believe that he could overcome the situation of stress on his own (seeking no specialized help) without suffering significant organic consequences.”

166. The Court considers that Mr. Bueno-Alves’ preexisting psychological issues were worsened by the torture suffered, which, in turn, was aggravated by the courts’ inaction, all of which led the victim not to acknowledge the need to receive specialized treatment. Due to the heart attack, the cardiologists detected the stress issue, owing to which the psychiatrists detected his mental problems. Once Mr. Bueno-Alves became aware of these disorders, he started and has so far undergone permanent treatment.

167. Therefore, it is the Court’s view that Mr. Bueno-Alves has acted in a reasonable manner and, accordingly, the State’s arguments on this particular issue must be disregarded.

iv) Mr. Bueno-Alves’ alleged income after the facts

168. The State held that the allegation that Mr. Bueno-Alves had stopped earning any income as a consequence of the facts has not been duly proven.

169. From the record of the case filed with the Court, it follows that Mr. Bueno-Alves tried to continue his activities as a marble mason after the torture;⁸⁸ however, whether he actually succeeded and earned any income at all remains unknown. Furthermore, in June 1993 Mr. Bueno-Alves “worked at a mini-convenience store.” There is no record of how long he worked there or evidence of his income earned.

170. On the other hand, consideration should be given to the fact that Mr. Bueno-Alves has a 100 percent disability to practice his profession and a 65 percent general disability. This means that, in principle, he could engage in a different occupation (although in a very limited manner) that would provide him some income. However, it is worth noting that, at

⁸⁸ Cf. Briefs of February 9, 2006; January 19, 1996; January 20, 1995; August 8, 1994; and July 20, 1989 to the Inter-American Commission; answer to notice before Magistrate’s Court No. 13, of October 12, 1988 (record of appendixes to the application, Appendix 4, Appendix 8 Volumes I and II, and Appendix 11 Volume I, folios 50, 58, 452, 973, 2783, and 2867).

the time of the facts, the victim was about 43 years old, which makes finding a different job difficult.

171. Based on the foregoing, the Court considers it a proven fact that Mr. Bueno-Alves tried to find a source of income, there being, however, no evidence of the results of his efforts.

*
* *
*

172. In the light of the above considerations, and since there is no proof of the income earned by Mr. Bueno-Alves prior to being tortured, considering the reference documents submitted to the Court regarding the average income earned in the construction sector (*supra* para. 149), taking into account his work disability, and considering that there is no certainty as to the earning of income from any alternative job, the Court has resorted to equity to hold that the State must pay the amount of US\$ 100,000.00 (one hundred thousand United States dollars) to Mr. Bueno-Alves as compensation for the earnings lost as a consequence of the facts of the instant case.

173. Likewise, taking consideration of the fact that the Mr. Bueno-Alves' disability is permanent, the Court has found it appropriate to set the amount of US\$ 48,000.00 (forty-eight thousand United States dollars) as compensation for the loss of future earnings, based on a life expectancy of 70.04 years for Argentine men.⁸⁹

c) *"Physical damage"*

i) "Resulting disability"

174. According to the representative, the State must compensate the victim for "resulting disability" with US\$ 1,568,969.60 (one million five hundred sixty-eight thousand nine hundred sixty-nine United States dollars and sixty cents). This amount "results from considering 10 (ten) percent of the amount claimed for loss of earnings." In the representative's opinion "[d]isability compensation seeks to cover not only the limitations to his work capacity, but also the impact disability has had on his entire personality, that is, his loss of self-confidence, the reduction of his vital capability [...] and the impairment of his future prospects." Furthermore, the representative pointed out that Mr. Bueno-Alves' work disability caused "a strong impact on his family economy," that Mr. Bueno-Alves' children "had to drop out of school and get a job in order to earn an income to help support the home," and that Mr. Bueno-Alves "still suffers from anxious-depressive syndrome."

175. Some of the arguments submitted by the representative regarding the victim's "resulting disability" were considered by the Court when analyzing his loss of earnings. The other arguments are related to the non-pecuniary damages caused to Mr. Bueno-Alves and his next of kin as a consequence of the facts described in the instant case. Therefore, this issue will be determined by the Court when analyzing compensation for non-pecuniary damages (*infra* paras. 198 to 207).

ii) Medical, pharmaceutical, treatment and rehabilitation expenses

⁸⁹ Cf. Life expectancy at birth 2000/01, Report by the National Institute of Statistics and Census of March 2, 2007 (record of evidence submitted by the State to facilitate adjudication of the case, Vol. I, folio 5643).

176. According to the representative, “pharmaceutical, medical, and transfer expenses must not necessarily be proven by means of documentary evidence, where the need to incur them results from the very nature of the injuries suffered or from the treatment undergone by the victim.” On this account, she requested the amount of US\$ 55,855.92 (fifty-five thousand dollars eight hundred fifty-five United States dollars and ninety-two cents). This amount includes expenses incurred as “comprehensive medical cover,” “psychiatry and medical psychology,” and “treatment medication,” all of which were estimated as from April 1999, when Mr. Bueno-Alves sought psychiatric treatment, to December 2016, “considering a life expectancy of ten more years [,] that is, until the [v]ictim is 71 years of age.”

177. The State pointed out that “it is aware that the events suffered by [Mr.] Bueno-Alves might have resulted in the victim’s need to undergo physical, psychological, and psychiatric treatment, which he is still undergoing.” But it questioned the amount claimed as compensation and resorted to the Court’s prior decisions to “set a reasonable compensatory amount on this account.”

178. The Court understands that as a result of certain types of violations of human rights, as would be the case of torture, the victims might have to seek medical and/or psychological treatment. But this should not be deemed to be the general rule. According to the particular characteristics of the person suffering torture or to the torture method used, medical treatment is not always necessary. It may be the case that some persons who needed special (medical or psychological) treatment may not have sought it. If that were the case, compensation would cover non-pecuniary damages and the pertinent pecuniary damages, among which future medical or psychological treatment might be included, but it would not cover expenses for treatment which was never received. In sum, whenever it is alleged that the victims have sought medical or psychological treatment, sufficient documentary evidence must be submitted so that the Court may estimate the expenses which have been actually incurred.

179. In view of the foregoing, the Court does not admit the representative’s argument that no evidence is required to prove that the expenses for which reimbursement is claimed have been actually incurred.

180. Furthermore, the Court notes that the representative estimated the amount of medical expenses for which compensation is sought up to December 2016, that is, as expenses that have already been incurred and expenses to be incurred. Later, when she requested compensation for “future consequential damages” (*infra* para. 186), she requested again compensation for future medical and psychological treatment. In this regard, the Court agrees with the allegation made by the State that the representative duplicated her claim, when estimating the same item in two different chapters. Therefore, in this chapter the Court will only consider the expenses which have been allegedly incurred to date, while future expenses will be analyzed in the chapter on “future consequential damages.”

181. The State alleged that the victim “had, and does have, the possibility to have access to the network of public and free health institutions where he could have received treatment without having to resort to a private health organization.” Notwithstanding, the State has not tendered any evidence which shows that there is a public system in the country which provides specialized treatment for the victim’s injuries, that such services are effective, and that Mr. Bueno-Alves had actual and effective access thereto. Likewise, the State has not tendered any evidence showing that it has offered to provide treatment to the victim through its own institutions. Therefore, the Court disregards this argument.

182. As evidence of the expenses incurred as psychological treatment, the representative submitted a certificate issued by Jorge A. Caride, the victim's attending physician, wherein he stated that "since the victim started undergoing psychiatric treatment, he has spent [...] an approximate monthly amount of US\$ 100 (one hundred United States dollars), including [professional] consultation. As [Mr.] Bueno-Alves has undergone treatment since 1999, to date (November 15, 2005), he has spent thereon [an] approximate total amount of US\$ 7,000 (seven thousand United States dollars)." No invoices or receipts have been submitted which prove Mr. Caride's statements. Furthermore, the representative submitted a certificate issued by said professional,⁹⁰ wherein he stated that Mr. Bueno-Alves was admitted to a psychiatric center from December 7, 2006 to January 19, 2007, which implied expenses amounting to \$150.00 (one hundred and fifty Argentinean pesos) daily. No invoices have been submitted which prove that such amount was paid.

183. Regarding expenses incurred as medication, the representative submitted a "budget" from a pharmacy, estimating the monthly cost of eleven different medicines which are allegedly to be taken by Mr. Bueno-Alves, and amounting to \$ 296.73 (two hundred ninety-six Argentinean pesos and seventy-three cents) monthly, as from April 1999. Notwithstanding, neither invoices nor receipts showing the purchase of such medicines or prescriptions ordering such medicines for Mr. Bueno-Alves were submitted. Furthermore, in the expert opinions ordered by the President (*supra* para. 37), the specialists stated that at present Mr. Bueno-Alves takes seven medicines, some of which are not the same as the ones listed in the referred to above pharmacy "budget."

184. Finally, regarding "comprehensive medical cover," as part of the evidence the representative tendered a copy of a table under the heading of "Medical Expenses," which included an estimate of medical expenses to be incurred by the victim throughout his life expectancy, and amounting to \$737.00 (seven hundred and thirty-seven Argentinean pesos) monthly, as from December 1, 2005, as well as a photocopy of a payment receipt for \$212.10 (two hundred and twelve Argentinean pesos and ten cents) paid to "*Solidaridad Obra Social Bancaria Argentina*," (Banking Personnel Health Care Organization) apparently incurred as medical cover.⁹¹ No documents showing that expenses were incurred as medical treatment or consultation were submitted.

185. Based on the evidence submitted by the parties and the reports requested by the President (*supra* para. 37), the Court finds it proven that Mr. Bueno-Alves has incurred expenses as medical and psychological treatment, as well as medication, particularly since from 1999. Notwithstanding, as it may be inferred from the foregoing paragraphs, no sufficient evidence has been submitted to the Court so that it may estimate the amount of expenses incurred by Mr. Bueno-Alves. In view of the foregoing, the Court sets in equity the amount of US\$ 30,000.00 (thirty thousand United States dollars) to be paid by the State to Mr. Bueno-Alves as reimbursement for expenses incurred as medical and psychological treatment.

d) *"Future consequential damages"*

⁹⁰ Cf. Certificate issued by Jorge A. Caride on February 20, 2007 (case file of appendixes to the closing written arguments submitted by the representative, Volume I, folio 4705).

⁹¹ Cf. Table of "Medical Expenses" including an estimate of medical expenses to be incurred by the victim throughout his life expectancy and payment receipt of March 5, 2007 (case file of appendixes to the closing written arguments submitted by the representative, Volume I, folios 4708 and 4711).

186. Regarding “future consequential damages,” the representative held that Mr. Bueno-Alves “will have to undergo permanent medical [and] psychological treatment.” The representative further stated that, according to her estimates, the State should cover 15 percent of the sum claimed as compensation for “physical damage,” which would amount to US\$ 235,345.44 (two hundred thirty-five thousand three hundred forty-five United States dollars and forty-four cents).

187. The State “di[d] not question the validity of this item insofar as [in] prior cases the Court has held it to be valid,” but questioned the amounts estimated made by the representative.

188. The evidence filed with the Court shows that Mr. Bueno-Alves will have to undergo medical and psychological treatment in the future, as a consequence of the injuries caused by torture and the consequences thereof, which were compounded by the lack of judicial relief. Specifically, medical expert witnesses pointed out that “the heart and coronary risk factors he suffers require and will require medical examinations,” while psychiatric expert witnesses declared that “it is advisable that he continue under psychiatric, psychological treatment [...], which he will have to undergo for life.”

189. Therefore, the Court considers, as it has in prior cases,⁹² that compensation should include future expenses for medical and psychological treatment. Notwithstanding, the Court finds no reason to estimate the compensatory amount due under this item on the basis of the percentage referred to above by the representative. Such estimate has no direct bearing on the costs which future specialized treatment and medical assistance will imply for Mr. Bueno-Alves. The basis for estimating an approximate amount for future expenses must be the expenses incurred in the past and the expenses currently incurred, as well as the characteristics of the injuries and suffering inflicted upon the victim. As stated in paragraph 185, no sufficient evidence has been submitted to the Court which proves the expenses which have already been incurred by Mr. Bueno-Alves; therefore, it cannot possibly calculate an accurate amount for future expenses.

190. In view of the foregoing, the Court sets in equity the amount of US\$ 45,000.00 (forty-five thousand United States dollars) to be paid by the State to Mr. Bueno-Alves as future expenses for medical and psychological treatment.

e) *Defense and transfer expenses*

191. The representative considered that the State must pay US\$ 4,625,925.60 (four million six hundred and twenty-five thousand nine hundred twenty-five United States dollars and sixty cents) for the “numerous [...] [m]inisterial and [j]udicial steps that had to be [taken] as a consequence of the fabrication of a proceeding, charging the [v]ictim with the commission of false and non-existing crimes, which has implied the payment of significant sums of money as professional fees for legal representation and advice, in addition to the expenses resulting from the proceedings.” Likewise, she pointed out that “seizures have been levied upon Mr. Bueno-Alves’ property as a result of the appeals filed before the Supreme Court of Justice of the Republic, since he could not afford to pay the amounts set as judicial deposits.” Finally, she pointed out that the remedies sought from the Commission and the Court have generated expenses for Mr. Bueno-Alves.

192. The State questioned this claim made by the representative in its entirety.

⁹² Cf. *Case of Tibi*, *supra* note 43, para. 249; *Case of Molina-Theissen*. Judgment of May 4, 2004. Series C No. 106, para. 71; and *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101, para. 266.

193. In some cases⁹³ the Court has deemed it necessary to grant compensation for the expenses incurred by the victims or their next of kin as a consequence of the alleged violations, inasmuch as such expenses have a direct bearing on said violations and have not been incurred in order to have access to justice, as the latter expenses are considered to be included in the item "reimbursement of costs and expenses" rather than "compensation."

194. In the instant case, the Court considers that all the expenses alleged by the representative have been incurred in order to have access to justice, whereby it will analyze them in paragraph D) of this Judgment rather than in this paragraph, which deals with compensation for pecuniary damages. The Court notes that the representative requested an amount which exceeds four million US dollars as "defense and transfer expenses," and an equal sum for "costs and expenses" (*infra* para. 217). In this regard, the State is right when it points out that "the amount of expenses considered under the same item has been duplicated," whereby the Court will not analyze separately the different allegations made regarding the same issue.

*
* *

195. In view of the foregoing, the Court sets in equity the following amounts as compensation for pecuniary damages in favor of Mr. Bueno-Alves.

<i>Item</i>	<i>Amount</i>
Loss of earnings	US\$ 148,000.00
Medical expenses incurred	US\$ 30,000.00
Future medical expenses	US\$ 45,000.00
Total:	US\$ 223,000.00

196. The State shall pay compensation for pecuniary damages within one year as from notice of this Judgment.

197. As to the victim's next of kin, the Court has found no evidence which shows that they have suffered pecuniary damages. Therefore, it will refrain from granting them compensation therefor.

*
* *

198. The Court must now rule on the reparations due as non-pecuniary damages, in accordance with the Court's prior cases.⁹⁴

199. The Commission argued that Mr. Bueno-Alves suffered and is still suffering physical and psychological consequences as a result of torture, which affected the living conditions of

⁹³ Cf. *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 427; *Case of Yakye Axa Indigenous Community*, *supra* note 43, para. 194; and *Case of the Serrano-Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, para. 152.

⁹⁴ Cf. *Case of La Cantuta*, *supra* note 14, para. 216; *Case of the Miguel Castro-Castro Prison*, *supra* note 14, paras. 430 and 431, and *Case of Dismissed Congressional Employees (Aguado-Alfaro et al.)*, *supra* note 19, para. 150.

the victim and those of his next of kin. In turn, the representative considered that the State must compensate Mr. Bueno-Alves and his next of kin for four items, namely: i) moral damages; ii) attack on the honor; iii) illegal deprivation of liberty; and iv) psychological damage. Taking into account all the above items, the representative deemed it "logical [...] to estimate [...] a sum equivalent to 30 percent of all pecuniary damages," which would amount to US\$ 5,270,405.40 (five million two hundred seventy thousand four hundred and five United States dollars and forty cents).

200. The State pointed out that the representative has not explained the reasons why she considered an amount equivalent to 30 percent of pecuniary damages as the basis to calculate non-pecuniary damages. Furthermore, it questioned all compensation items proposed by the representative, and concluded requesting the Court "to set compensation for non-pecuniary damages to [Mr.] Bueno-Alves in equity and according to the applicable international standards." The State considered that no compensation should be granted to the victim's next of kin for this item, as the representative "di[d] not submit even a single evidentiary item which proves the non-pecuniary damages they allegedly suffered."

201. In this regard, the Court will not analyze items ii) and iii) (attack on the honor and illegal deprivation of liberty) as requested by the representative, since it considers that the State has not violated the right to have one's honor respected (*supra* para. 122) and that no sufficient evidence has been tendered which allows modifying the Commission's prior decisions regarding his personal liberty (*supra* para. 67). The other two items (moral and psychological damages), in the Court's view, should be analyzed under the item of non-pecuniary damages.

202. Based on its opinion in prior cases,⁹⁵ the Court considers that the non-pecuniary damage suffered by Mr. Bueno-Alves is evident, as it is inherent to human nature that any individual who has been inflicted torture is bound to undergo deep suffering and feel anguish, fear, defenselessness, and insecurity, whereby this type of damage is not required to be proven by means of evidence. Furthermore, the Court refers to the conclusions contained in the chapter dealing with the right to humane treatment (*supra* paras. 71 to 95) regarding the physical and psychological consequences suffered by the victim as a result of torture, which were compounded by the dismissal of his judicial claims, and further invokes the acceptance made by the State of the allegation that it is "obvious [...] that any violation of the right to humane treatment causes not only physical but also psychological damage to the victim thereof." Finally, the Court takes into consideration that Mr. Bueno-Alves is no longer able to continue working as a marble craftsman as a result of the events of the instant case, which has caused him moral damages.

203. Now, the controversy lies in the amount that is to be granted to the victim as compensation for non-pecuniary damages. In this regard, the Court deems it advisable to consider a percentage of pecuniary damages as the basis for setting compensation for non-pecuniary damages. These are of a different nature and do not depend on each other. Furthermore, it is not possible to set an accurate amount of money which is equivalent to the non-pecuniary damages. Thus, for the purpose of granting comprehensive reparation to the victim through the payment of a sum of money or the delivery of goods or services susceptible of being assessed in terms of money, the Court, in its judicial discretion, will set

⁹⁵ Cf. *Case of La Cantuta*, *supra* note 14, para. 217, *Case of Goiburú et al.*, *supra* note 15, para. 157; and *Case of the Ituango Massacres*, *supra* note 43, para. 384.

an amount of money in equity,⁹⁶ taking into consideration that international case law has repeatedly held that the judgment is in and of itself a form of redress.⁹⁷

204. Consequently, the Court deems it appropriate to set in equity the sum of US\$ 100,000.00 (a hundred thousand United States dollars) as compensation for the non-pecuniary damages caused to Mr. Bueno-Alves as a result of the violations of his human rights as determined in this Judgment.

205. As for Tomasa Alves-De Lima, Inés María del Carmen Afonso-Fernández, Ivonne Miriam Bueno, Verónica Inés Bueno, and Juan Francisco Bueno, the victim's next of kin held to be victims in the instant case, the Court refers to the conclusions reached in the chapter regarding the violation of their right to humane treatment (*supra* para. 104) and deems it advisable to order in equity,⁹⁸ the payment of US\$ 10,000.00 (ten thousand United States dollars) to each of them, as compensation for non-pecuniary damages.

*
* *
*

206. Thus, the compensatory amounts set by the Court for non-pecuniary damages are as follows:

Beneficiaries	Amount
Juan Francisco Bueno-Alves	US\$ 100,000.00
Tomasa Alves de Lima (mother)	US\$ 10,000.00
Inés María del Carmen Afonso-Fernández (ex wife)	US\$ 10,000.00
Juan Francisco Bueno (son)	US\$ 10,000.00
Ivonne Miriam Bueno (daughter)	US\$ 10,000.00
Verónica Inés Bueno (daughter)	US\$ 10,000.00
Total:	US\$ 150,000.00

207. The State shall pay the compensatory amounts set for non-pecuniary damages directly to the beneficiaries, within one year as from notice of this Judgment, under the terms set forth in paragraphs 222 and 223 *infra*.

C) Measures of satisfaction and non-repetition guarantees

208. In this subparagraph, the Court will determine those measures of satisfaction aimed at redressing non-pecuniary damages, which will include measures to be publicly made known.

- a) *Obligation to investigate the facts which gave rise to the violations of the instant case*

⁹⁶ Cf. *Case of La Cantuta*, *supra* note 14, para. 228; *Case of the Miguel Castro-Castro Prison*, *supra* note 14, paras. 440 and 441; and *Case of Vargas-Areco*, *supra* note 14, paras. 153, 155, and 156.

⁹⁷ Cf. *Case of La Cantuta*, *supra* note 14, para. 219; *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 431, and *Case of Dismissed Congressional Employees (Aguado-Alfaro et al.)*, *supra* note 19, para. 147.

⁹⁸ Cf. *Case of La Cantuta*, *supra* note 14, para. 219; *Case of the Miguel Castro-Castro Prison*, *supra* note 14, para. 432, and *Case of Dismissed Congressional Employees (Aguado-Alfaro et al.)*, *supra* note 19, para. 151.

209. The Commission deemed that “the first and most important measure of reparation to be adopted in the instant case is to cease denial of justice,” and that it is “of vital importance that the truth about the facts and the resulting responsibilities [...] be established, in order to strengthen the notion that prohibition of torture is absolute and that failure to comply therewith entails real consequences.” In turn, the representative requested the Court that the State be required to “effectively conduct the necessary investigation into the facts so that those responsible for the serious illegal acts committed be prosecuted, tried, and punished,” and that administrative and judicial proceedings be started against the police personnel involved in the crimes described, and that all police members who had been unduly promoted be discharged. [T]he same request was made regarding all those who breached their duties, by concealing and/or committing illegal acts to the detriment of the proceedings which had been started.”

210. In this regard, the State argued that

it has accepted the recommendations made by the [Inter-American Commission] and has agreed to make its best efforts to conclude as soon as possible the investigations into the facts which caused damage to Mr. Bueno-Alves while he was held in the custody of the Judicial Power. Once such circumstances have been clearly determine[d], the State may adopt the appropriate measures so that the commission of crimes does not go unpunished, submitting those responsible for the acts of torture and denial of justice to the pertinent and most effective administrative and judicial proceedings for the fulfillment of such objective.

211. Taking the foregoing into consideration, as well as the Court's case law,⁹⁹ the Court requires the State to conduct forthwith the pertinent investigations so that those responsible for the facts described in the instant case be identified and punished according to law. The State must guarantee that the victim may have full access and capacity to take part in all stages and procedures during such investigations and proceedings, pursuant to the domestic legislation and the provisions of the American Convention.

b) Protection of the victim and his next of kin and transfer to the Oriental Republic of Uruguay

212. The representative requested the Court that Argentina be required to guarantee the life, physical integrity, and safety of the victim and his next of kin “during their stay in the territory of the Argentine Republic, while these proceedings are being conducted and until their return to their country of origin, the Oriental Republic of Uruguay. Furthermore, it requested that Argentina be required that “upon the [v]ictim's decision to return to his country of origin, it ordered that his son-in-law, Sergio Oscar Roldán, who works at the main offices of *Banco Nación Argentina* (Argentina's National Bank), be transferred to its [o]ffices in the city of Montevideo (Uruguay), with the same category he had at the moment such transfer were required.”

213. The State argued that there are no “factual grounds which may even allow examining this request.”

214. The Court finds that it has not been proven that the life, physical integrity or security of the victim or those of his next of kin are at risk. Furthermore, the Court considers that the above-mentioned claims have no bearing on the events under examination in the instant case. Therefore, it dismisses them.

⁹⁹ Cf. *Case of La Cantuta*, *supra* note 14, para. 228; *Case of the Miguel Castro-Castro Prison*, *supra* note 14, paras. 440 and 441, and *Case of Vargas-Areco*, *supra* note 14, paras. 153, 155, and 156.

c) *Publication of the Judgment*

215. Though no express request was made by the Commission or the representative in this regard, the Court deems it advisable to order, as it has in other cases,¹⁰⁰ that as a measure of satisfaction the State publish once in the Official Gazette and in another nationwide daily newspaper paragraphs 1 to 8, 71 to 74, 86, 95, 113, and 117 of this Judgment, without footnotes or the operative paragraphs thereof. Said publication shall be made within six months following notice of this Judgment.

D) *Costs and Expenses*

216. As held by the Court in prior cases, costs and expenses are included within the concept of reparation as enshrined in Article 63(1) of the American Convention.¹⁰¹

217. The representative pointed out that Mr. Bueno-Alves was not in physical or mental condition to “personally take the steps it has been necessary to take over eighteen years,” whereby he had to appoint a representative for that purpose. In order to estimate the amount to be paid as costs and expenses, the representative stated that “[c]onsidering the task developed by said representative [...], and being it necessary to set an amount for fees and expenses, [it] is deeme[d] appropriate to set a percentage of the total compensation due to the victim, which is set in the amount of [...] US\$ 4,525,925.60 [(four million five hundred twenty-five thousand nine hundred twenty-five United States dollars and sixty cents) for that item.”

218. As stated in paragraph 194 of this Judgment, the representative requested an equal amount for defense and transfer expenses.

219. Regarding the reimbursement of costs and expenses, the Court has pointed out that it must carefully assess their extent, which includes the expenses incurred in order to start proceedings before the domestic authorities, as well as those arising from the proceedings started before the Inter-American system, taking into account the particular circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. Such estimate may be made upon the basis of equitable principles and taking into consideration the expenses reported by the parties, provided they are reasonable.¹⁰²

220. In the instant case the representative has not forwarded to the Court sufficient evidence to support her claims regarding costs and expenses. The few documents which were forwarded for their most part fall within the category of expenses incurred in relation to the proceedings before the Court. The lack of documentary evidence cannot be offset by fixing a percentage of the compensatory amounts due as pecuniary and non-pecuniary damages. Therefore, the Court considers that the basis used by the representative to estimate said expenses was not appropriate and that the amount requested is not reasonable.

¹⁰⁰ Cf. *Case of La Cantuta*, supra note 14, para. 237; *Case of the Miguel Castro-Castro Prison*, supra note 14, para. 446, and *Case of Acevedo-Jaramillo et al.*, supra note 73, para. 313.

¹⁰¹ Cf. *Case of La Cantuta*, supra note 14, para. 243; *Case of the Miguel Castro-Castro Prison*, supra note 14, para. 455, and *Case of Dismissed Congressional Employees (Aguado-Alfaro et al.)*, supra note 19, para. 152.

¹⁰² Cf. *Case of La Cantuta*, supra note 14, para. 243; *Case of the Miguel Castro-Castro Prison*, supra note 14, para. 152, and *Case of Goiburú et al.*, supra note 15, para. 180.

221. In view of the foregoing, and taking into consideration the excessive period of time the processing of this case has taken, the Court sets in equity the amount of US\$ 30,000.00 (thirty thousand United States dollars) to be reimbursed by the State to Mr. Bueno-Alves, who will pay to his representative the amount he may deem appropriate as costs and expenses incurred before the domestic authorities, as well as expenses incurred throughout the proceedings before the Inter-American system. The State shall pay the amount set as compensation for pecuniary damage within one year as from notice of this Judgment.

E) Method of Compliance with the Payments Ordered

222. The compensatory amounts set in favor of Mr. Bueno-Alves and Inés María del Carmen Afonso-Fernández, Ivonne Miriam Bueno, Verónica Inés Bueno, and Juan Francisco Bueno shall be paid directly to the beneficiaries thereof. The same shall apply to the reimbursement of costs and expenses. Should any of these persons die before the pertinent above compensatory amounts are paid thereto, such amounts shall inure to the benefit of their heirs, pursuant to the provisions of the applicable domestic legislation.¹⁰³

223. The amount to be paid to Tomasa Alves-De Lima, the victim's late mother, shall be distributed among her heirs, pursuant to the provisions of the applicable domestic legislation.

224. The State must discharge its pecuniary obligations by tendering United States dollars or an equivalent amount in the Argentine legal currency, at the New York, USA exchange rate between both currencies prevailing on the day prior to the day payment is made.

225. If, due to reasons attributable to the beneficiaries of the above compensatory amounts, they were not able to collect them within the period set for that purpose (*supra* paras. 196 and 207), the State shall deposit said amounts in an account held in the beneficiaries' name or draw a certificate of deposit from a reputable Argentine financial institution, in US dollars and under the most favorable financial terms allowed by the legislation in force and the customary banking practice in Argentina. If after ten years compensation set herein were still unclaimed, said amounts plus accrued interests shall be returned to the State.

226. The amounts allocated in this Judgment as compensation and reimbursement of costs and expenses shall be delivered to the beneficiaries in their entirety in accordance with the provisions hereof, and may not be affected, reduced, or conditioned on account of current or future tax purposes.

227. Should the State fall into arrears with its payments, Argentinean banking default interest rates shall be paid on the amounts due.

228. In accordance with its consistent practice, the Court retains the authority deriving from its jurisdiction and the provisions of Article 65 of the American Convention, to monitor full compliance with this Judgment. The instant case will be closed once the State has complied in full with all the provisions herein. The State shall, within a year, submit to the Court a report on the measures adopted in compliance with this Judgment.

¹⁰³ Cf. *Case of La Cantuta*, *supra* note 14, para. 247; *Case of Vargas-Areco*, *supra* note 14, para. 145, and *Case of Goiburú et al.*, *supra* note 15, para. 162.

XIV
OPERATIVE PARAGRAPHS

229. Therefore,

THE COURT,

DECLARES,

Unanimously that:

1. It accepts the acknowledgment of international responsibility made by the State, under the terms of paragraphs 26 to 35 of this Judgment, and establishes the violation of the rights to humane treatment, judicial guarantees, and judicial protection as enshrined in Articles 5(1), 5(2), 8(1), and 25 of the American Convention on Human Rights, in relation to the obligation to respect rights as set forth in Article 1(1) thereof, to the prejudice of Mr. Bueno-Alves, under the terms of paragraphs 30, 86, 95, and 117 of this Judgment.

2. There are no grounds to modify the prior decisions taken by the Inter-American Commission on Human Rights regarding Article 7 of the American Convention on Human Rights, in accordance with the provisions contained in paragraph 67 of this Judgment.

3. The State has violated the right to humane treatment, as enshrined in Article 5(1) of the American Convention on Human Rights, in relation to the obligation to respect rights as enshrined in Article 1(1) thereof, to the prejudice of Tomasa Alves-De Lima, Inés María del Carmen Afoso-Fernández, Ivonne Miriam Bueno, Verónica Inés Bueno, and Juan Francisco Bueno, under the terms of paragraphs 96 to 104 of this Judgment.

4. The State has not violated the right to have one's honor respected, as enshrined in Article 11 of the American Convention on Human Rights.

5. The State has not violated the right to equal protection of the law, as enshrined in Article 24 of the American Convention on Human Rights.

6. This Judgment is in itself a form of redress.

AND DECIDES:

Unanimously that:

7. The State must pay the amounts set in this Judgment as compensation for pecuniary damages, non-pecuniary damages, and reimbursement of costs and expenses within one year as from notice of this [...] Judgment, under the terms of paragraphs 196, 207, and 221 thereof.

8. The State must conduct forthwith the necessary investigations so that those responsible for the facts of the instant case be identified and punished as provided by law, under the terms of paragraph 211 of this Judgment.

9. The State shall publish once in the Official Gazette and in another nationwide daily newspaper paragraphs 1 to 8, 71 to 74, 86, 95, 113, and 117, as well as the operative

paragraphs of this Judgment, within six months following notice of this Judgment and under the terms set forth in paragraph 215 hereof.

10. The State shall monitor full compliance with this Judgment and the instant case will be closed once the State has complied full with the provisions set forth herein. The State shall, within fifteen months as from the date of notice hereof, submit to the Court a report on the measures adopted in compliance with said provisions.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on May 11, 2007.

Sergio García-Ramírez
President

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Margarette May Macaulay, Judge;

Rhadys Abreu Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary