INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF ARGÜELLES ET AL. V. ARGENTINA

JUDGMENT NOVEMBER 20, 2014
(*Preliminary Objections, Merits, Reparations and Costs)*

In the case of *Argüelles et al.,*

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

Humberto Antonio Sierra Porto, President;
Roberto F. Caldas, Vice President;
Manuel E. Ventura Robles, Judge;
Eduardo Vio Grossi, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

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

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

[1] Judge Alberto Pérez Pérez and Judge Diego García-Sayán did not take part in the deliberation and signing of this judgment for reasons of force majeure.

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I
INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* –On May 29, 2012, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court of Human Rights the case Hugo Oscar Argüelles et al. v. the Republic of Argentina (hereinafter "the State" or "Argentina"). According to the statement by the Commission, the case involves the alleged violation of the right to personal freedom and the right to a fair trial in the internal proceedings that began in 1980 against 20 military officers for the crime of military fraud, under the terms of Argentina's Code of Military Justice (hereinafter "CJM"). These crimes included at least the following: (i) irregular allocation of the credits of several Argentine Air Force units so as to obtain the monies for their own benefit, (ii) personal appropriation of funds from the different Air Force units, and (iii) document forgery for these purposes. The Commission submitted to the jurisdiction of the Court the facts and human rights violations allegedly committed by the State and that had continued since the time it accepted the contentious jurisdiction of the Court on September 5, 1984, that is, violation of the victims' right to personal freedom when they were kept in pretrial detention for excessive periods, and the right to be tried with due guarantees within a reasonable period, in injury of (1) Hugo Oscar Argüelles, (2) Enrique Jesús Aracena, (3) Carlos Julio Arancibia, (4) Julio César Allendes, (5) Ricardo Omar Candurra, (6) Miguel Oscar Cardozo, (7) José Eduardo di Rosa, (8) Carlos Alberto Galluzzi, (9) Gerardo Feliz Giordano, (10) Aníbal Ramón Machín, (11) Miguel Ángel Maluf, (12) Ambrosio Marcial (deceased), (13) Luis José López Mattheus, (14) José Arnaldo Mercau, (15) Félix Oscar Morón, (16) Horacio Eugenio Oscar Muñoz, (17) Juan Ítalo Óbolo, (18) Alberto Jorge Pérez, (19) Enrique Luján Pontecorvo and (20) Nicolás Tomasek (hereinafter "the alleged victims").

2. – *The following proceedings took place* before the Commission:

a) *Petition.* – From June 5, 1998 through October 28, 1998, the Inter-American Commision received petitions from the following persons: 1) Hugo Oscar Argüelles, (2) Enrique Jesús Aracena, (3) Carlos Julio Arancibia, (4) Julio César Allendes, (5) Ricardo Omar Candurra, (6) Miguel Oscar Cardozo, (7) José Eduardo di Rosa, (8) Carlos Alberto Galluzzi, (9) Gerardo Feliz Giordano, (10) Aníbal Ramón Machín, (11) Miguel Ángel Maluf, (12) Ambrosio Marcial (deceased), (13) Luis José López Mattheus, (14) José Arnaldo Mercau, (15) Félix Oscar Morón, (16) Horacio Eugenio Oscar Muñoz, (17) Juan Ítalo Óbolo, (18) Alberto Jorge Pérez, (19) Enrique Luján Pontecorvo, (20) Miguel Ramón Taranto and (21) Nicolás Tomasek.[2] The petitions claimed Argentina's responsibility for violating the rights set forth in articles 1(1), 5, 7, 8, 10, 24 and 25 of the American Convention. The petitions submitted gave very similar arguments of fact and law, and therefore they were joined into a single file numbered 12.167 for the purposes of the Admissibility Report.

b) *Admissibility Report.* – On October 9, 2002, the Commission approved Admissibility Report 40/02, declaring the petition admissible for alleged violation of articles 1, 5, 7, 8, 10, 24 and 25 of the American Convention, and insofar as applicable, articles I, XXV and XXVII of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration").[3]

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[2] The Commission had originally submitted its application for 21 of the alleged victims. However, on July 9, 2012, the Commission provided the Court with a fe de errata regarding the Report on Merits, stating that on January 25, 2006, Mr. Miguel Ramón Taranto had withdrawn from the process, and the total number of victims therefore was reduced to 20.

[3] *Cfr.* Admissibility Report No. 40/02 of October 9, 2002 (Commission working file, folios 4023 and 4040).

c) *Report on the Merits.* – On October 31, 2011, the Commission approved Report on Merits No. 135/11,[4] under the terms of article 50 of the Convention (hereinafter "Merits Report"), drawing a set of conclusions and offering several recommendations:

   a. *Conclusions.* — The Commission concluded that:

      i. The State was responsible for violating the right to personal liberty and the right to a fair trial (Articles 7 and 8 of the American Convention), read in conjunction with the obligation to respect and ensure the rights set forth in the Convention enshrined in Article 1(1);
      ii. The State was responsible for violating articles I, XXV and XXVI of the American Declaration concerning events that occurred prior to Argentina's ratification of the American Convention, and
      iii. The State was not responsible for violating the right to humane treatment, the right to compensation for miscarriage of justice, the right to equal protection before the law, or the right to access to justice (articles 5, 10, 24 and 25 of the Convention).

   b. *Recommendations.* – The Commission therefore recommended that the State proceed to grant the 20 victims full reparations, especially adequate compensation, for the violations declared.

d) *Notification to the State.* – The State was notified of the Report on Merits on December 29, 2011 and given a term of two months to report back on adoption of the recommendations.

e) *Request for extension and report on compliance* – On March 2, 2012, the State of Argentina sent a communiqué requesting more time to report on compliance with the recommendations, but refrained from filing preliminary objections concerning this deadline. On March 29, 2012, the Commission agreed to extend the term by two more months. On April 27, 2012, the State sent a report that in the view of the Commission, demonstrated no progress in complying with the recommendations, merely stating that the case should be brought before domestic judicial authorities, who could decide about damages.

f) *Submission to the Court.* – On May 29, 2012, the Commission submitted to the jurisdiction of the Inter-American Court the facts and human rights violations that the State of Argentina was alleged to have committed and that had continued since the time it came under the contentious jurisdiction of the Court on September 5, 1984, that is, violations of the victims' right to personal liberty by keeping them in pretrial detention for an excessive period and violating the right to trial with due guarantees within a reasonable period. The Commission appointed Commissioner Rodrigo Escobar and then-Executive Secretary Santiago Canton as its delegates, and Elizabeth Abi-Mershed, Assistant Executive Secretary, María Claudia Pulido and Tatiana Gos, attorneys with the Executive Secretariat, as legal counsel.

3. *Requests of the Inter-American Commission.* – Based on the foregoing, the Commission asked the Court to hold that the State was internationally responsible for violating the right to personal liberty (article 7 of the Convention) and the right to a fair trial (article 8 of the Convention), read in conjunction with the obligation to respect and guarantee the rights enshrined in the Convention, contained in article 1(1), in injury of the 20 alleged victims of this case.

II
PROCEEDINGS BEFORE THE COURT

4. *Common interveners* - When the alleged victims in the instant case failed to agree on a common representative, the Court authorized designation of more than one intervener, under

[4] *Cfr.* Merits Report No. 135/11. Case 12.167. Hugo Argüelles et al. v. Argentina, October 31, 2011 (file on the merits, folio 6).

the terms of article 25(2) of its Rules of Procedure. The alleged victims are represented by three common interveners, to wit: (1) Alberto De Vita and Mauricio Cueto represent five alleged victims;[5] (2) Juan Carlos Vega and Christian Sommer represent four alleged victims,[6] and (3) Clara Leite and Gustavo Vitale, in their capacity as Inter-American Defenders, represent 11 alleged victims.[7]

5. *Notification to the State and to the representatives of the alleged victims.* - The State and the representatives were notified on December 11, 2012 that the Commission had submitted the case.

6. *Brief with pleadings, motions and evidence.* – Because three common interveners are participating in the instant case, the Court received the several briefs of pleadings, motions and evidence (hereinafter "pleadings and motions brief") separately: (a) on February 1, 2013, from representatives Alberto De Vita and Mauricio Cueto; on February 6, 2013, from representatives Vega and Sommer, and on February 16, 2013, from the Inter-American Defenders. The alleged victims represented by the Inter-American Defenders also appealed to the Victims Legal Assistance Fund (hereinafter "Assistance Fund") of the Inter-American Court.

7. *Assistance Fund.* – The president of the Court, in an Order on June 12, 2013, stated that the petition lodged by the group of alleged victims represented by the Inter-American Defenders to apply for access to the Assistance Fund was admissible and approved a grant of sufficient financial aid for presenting up two statements and for the Inter-American Defender to attend the public hearing.[8]

8. *Respondent's answer.* - On August 8, 2013, the State submitted its brief to the Court containing preliminary objections, its response to the initial brief submitting the case to the Court, and observations on the briefs of pleadings and motions (hereinafter "Respondent's answer"). The brief presented by the State raised four preliminary objections: (i) lack of jurisdiction *ratione temporis*; (ii) lack of jurisdiction *ratione materiae*; (iii) drafting error in the text of a pleadings and motions brief, and (iv) failure to exhaust domestic remedies.

9. *Briefs of observations on preliminary objections.* – On October 16, 20, 24 and 28, 2013, the representatives of the alleged victims and the Commission submitted their observations on the preliminary objections lodged by the State in its answering brief.

10. *Summons.* - The president of the Court issued an order on April 10, 2014,[9] as follows: (i) summoning the expert witness Miguel David Lovatón Palacios, offered by the Inter-American Commission, to render his statement before a public attestor (in affidavit) and (ii) summoning the parties to a public hearing scheduled for May 27, 2014 in the city of San Jose, Costa Rica, during the 103rd Regular Session of the Court, to receive expert opinions from Marcelo Solimine, offered by the Inter-American Defenders, and Armando Bonadeo, offered

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5 Mr. Alberto de Vita and Mr. Mauricio Cueto represent the following alleged victims: Enrique Pontecorvo, Ricardo Candurra, Aníbal Machín, José Di Rosa Carlos Arancibia.

6 Mr. Juan Carlos Vega and Mr. Christian Sommer represent the following alleged victims: Miguel Angel Maluf, Alberto Jorge Pérez, Carlos Alberto Galluzzi and Juan Italo Óbolo.

7 The Inter-American Defenders represent the following alleged victims: Gerardo Félix Giordano, Nicolás Tomasek, Enrique Jesús Aracena, José Arnaldo Mercau, Félix Oscar Morón, Miguel Oscar Cardozo, Luis José López Mattheus, Julio César Allendes, Horacio Eugenio Oscar Muñoz, Hugo Oscar Argüelles and Ambrosio Marcial and his rightful claimants.

8 *Cfr. Case of Argüelles et al. v. Argentina*. Order of the president of the Inter-American Court, June 12, 2013.

9 *Cfr. Case of Argüelles et al. v. Argentina.* Order of the president of the Inter-American Court, April 10, 2014.

by the State, as well as final oral pleadings and observations from the parties and the Commission. On May 12, 2014 the Commission sent the Registrar the expert statement by Mr. Lovatón.

11. *Public hearing and additional evidence.* – Statements were taken at the May 27, 2014 hearing from the people who had been summoned (*supra* par. 10), along with observations from the Commission and final oral pleadings from the representatives and the State. Finally, the judges on the Court requested certain additional information and documentation from the parties to be supplied along with the final written pleadings and final written observations.

12. *Final written pleadings and observations*. – The representatives and the State submitted their final written pleadings on June 19, 26 and 30 and July 1, 2014. The Commission submitted its final written observations on June 30, 2014. The parties responded on July 17 and 18, 2014, filing their comments on the evidentiary documents that had been submitted and on the two final written pleadings on which comments had been requested.

13. *Deliberation of the case.* - The Court began deliberations on the instant case on November 19, 2014.

III
JURISDICTION

14. The Inter-American Court is competent to hear the instant case pursuant to article 62(3) of the Convention, as Argentina has been a State Party to the American Convention since September 5, 1984 and recognized the contentious jurisdiction of the Court on the same date. The State filed two preliminary objections, arguing that the Court is not competent to hear the instant case. The Court will therefore begin by addressing the preliminary objections filed (*infra* pars. 18 to 38) and then, if it is legally in order, it will judge on the merits and requested reparations.

IV
PRELIMINARY OBJECTIONS

15. The State raised four preliminary objections: (a) lack of jurisdiction *ratione temporis*; (b) lack of jurisdiction *ratione materiae*; (c) failure to exhaust domestic remedies, and (d) error in the drafting of a pleadings and motions brief. The Court recalls that preliminary objections are matters of a prior character that seek to prevent the analysis of the merits of a disputed matter by contesting the admissibility of an application or the Court's jurisdiction to hear a specific case or one of its aspects, owing to the person, matter, time or place, provided that these objections are of a preliminary nature.[10] If the assertions cannot be considered without previously analyzing the merits of a case, they cannot be examined as a preliminary objection.[11]

16. In the first place, the Court notes that in its fourth preliminary objection, "error in the drafting of the pleadings and motions brief," the State has pointed to inconsistencies allegedly contained in the brief by representatives Vega and Sommer between the facts of the case, individualization of the human rights allegedly violated, and the claims being pursued. The

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[10] *Cfr*. *Case of Las Palmeras v. Colombia*. *Preliminary Objections*. Judgment of February 4, 2000. Series C No. 67, par. 34, and *Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 28, 2014. Series C No. 283, par. 15.

[11] *Cfr*. *Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 6, 2008. Series C No. 184, par. 39, and *Case of Human Rights Defender et al. v. Guatemala*, par. 15.

State thus cannot see clearly what particular human rights it is accused of having breached, and this has a direct impact on its right of defense. It therefore asks the Court to strike this brief of pleadings and motions, or alternatively, order that it be corrected. The Court finds that this argument by the State does not specifically question whether the Court has jurisdiction to hear the instant case and therefore, this request is out of order.

17. Therefore, the Court will proceed to consider the other three preliminary objections in the order in which they were cited by the State.

A. Lack of jurisdiction ratione temporis

A.1 Arguments by the State, the Commission and the representatives

18. The **State** has said that Argentina ratified and accepted the contentious jurisdiction of the Court on September 5, 1984, expressly declaring that this jurisdiction would cover anything that might occur as of that date and into the future. As a result, the scope of the obligations the State acquired was envisioned to exclude from the Court's jurisdiction any event, situation, motive, cause, origin or reason associated with events that had occurred prior to that date. The State also drew attention here to the fact that the Court's case law has distinguished between one-time acts versus on-going or permanent actions, and on this basis, it believed that forced disappearance of persons was the only exception to the principle of non-retroactivity of treaties, while actions taken as part of domestic judicial proceedings could not be described as on-going or permanent and could not justify a "pseudo exception" to the nonretroactive principle of international treaties.

19. The State therefore argued that events associated with the pursuit of investigative proceedings from September 9, 1980 through September 5, 1984 fell outside the contentious jurisdiction of the Court, meaning particularly, the following facts: (a) arrest warrants of the applicants; (b) the duration of the process in this period; (c) the solitary confinement ordered as a precautionary measure for some of the alleged victims; (d) the exhortation to tell the truth when formal opening statements were taken during that period; (e) the order for and enforcement of the precautionary measure of pretrial incarceration of the alleged victims in the common facilities of the Air Force during that time, and (f) the lack of qualified defense counsel.

20. The **Commission** had submitted the case to the Court on the grounds of actions and violations committed by the State as of the date when it ratified the American Convention and recognized the contentious jurisdiction of the Court. It clarified, however, that although the incarceration and the military justice processes had indeed begun before Argentina ratified the Convention and accepted the contentious jurisdiction of the Court, these situations had continued after the State's acceptance. The Commission also noted that the events that predated the recognition of the Court's jurisdiction would prove relevant when the Court proceeded to examine the facts that took place under its recognized jurisdiction. The Commission therefore asked the Court to dismiss this preliminary objection and declare that it had temporal jurisdiction to hear the instant case in the terms outlined in its note submitting the case.

21. All the **representatives** agreed that the events outlined by the Commission for the Court had occurred in part from 1980 to 1984, but in fact these breaches continued to take place after the Convention had gone into effect, and in that sense, they constitute on-going violations, and it would be impossible to set up artificial divisions among the many factors that constitute and characterize the violations. In particular, representative Vega argued that

the Court should not restrict itself to the notion that the concept of on-going breaches could apply exclusively to cases of forced disappearance of persons, and that indeed the conviction handed down against the alleged victims by the military court and subsequently by the civil courts upheld violations that had taken place since the Convention entered into effect even though they had begun earlier. The representatives therefore believed that the State's position on the preliminary objection *ratione temporis* should be dismissed.

A.2 Considerations of the Court

22. The Court must define temporal jurisdiction in accordance with article 62(1)[12] of the American Convention, considering the date when the State recognized its jurisdiction, the terms under which the recognition was given, and the principle of non-retroactivity provided for in article 28 of the Vienna Convention on the Law of Treaties of 1969.[13]

23. Argentina recognized the contentious jurisdiction of the Inter-American Court on September 5, 1984, and in its interpretive declarations, it noted that the Court would have jurisdiction over "acts that occur after the ratification of the above-mentioned instrument" of the American Convention,[14] which took place that same day.

24. In exercising the protection function assigned to it by the American Convention, the Court seeks a fair balance between protection imperatives, equity considerations and legal certainty, as may be clearly inferred from the Court's *jurisprudence constante*.[15] Based on this and on the principle of non-retroactivity, the Court cannot in principle exercise its contentious jurisdiction to apply the Convention and declare breach of its provisions when the State's actions or conduct alleged to invoke international responsibility predate recognition of the Court's jurisdiction.[16]

25. However, in the case of an on-going violation that began before the respondent State recognized the contentious jurisdiction of the Court and continues after this recognition, the Court is competent to examine the acts which took place after the acceptance of its competence.[17]

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12 Article 62(1): A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.

13 Article 28: Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

14 Argentina's recognition of jurisdiction on September 5, 1984 states, " the Government of Argentina recognizes the competence of the Inter-American Commission on Human Rights and the jurisdiction of the Inter-American Court of Human Rights. This recognition is for an indeterminate period and on condition of reciprocity on all cases related to the interpretation or application of the Convention [...], with the partial reservation and bearing in mind the interpretative statements contained in the instrument of ratification." *Cfr.* American Convention on Human Rights. Argentina, recognition of jurisdiction. Available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm.

15 *Cfr. Case of Alfonso Martín del Campo Dodd v. Mexico. Preliminary Objections*. Judgment of September 3, 2004. Series C No. 113, par. 84, and *Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 22, 2013. Series C No. 265, par. 25.

16 *Cfr*. *Case of Blake v. Guatemala. Preliminary Objections*. Judgment of July 2, 1996. Series C No. 27, par. 39 and 40, and *Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 28, 2014. Series C No. 282, par. 40.

17 *Cfr. Case of Blake v. Guatemala. Preliminary objections,* par. 39 and 40, and *Case of expelled Dominicans and Haitians v. Dominican Republic*, par. 40.

26. The legal concept of a continuous or permanent offense thus entails behaviors whose consummation extends over time as a single, continuous violation,[18] and the Court has used this concept primarily for cases of forced disappearance.[19] In the instant case, however, both the Commission and the representatives requested that the standard of on-going violation be applied to the incarceration and the proceedings pursued in the military courts in view of the fact that, while they began before Argentina had ratified the Convention and accepted the contentious jurisdiction of the Court, these situations persisted even after acceptance (*supra* par. 20 and 21).

27. In this regard, the Court recalls similar cases of alleged violation of a right involving detention or long-lasting domestic processes, in which the Court has restricted its scope of temporal jurisdiction to facts that occurred after the date of recognition of the jurisdiction by the particular State.[20] The same standard has been applied by the European Court of Human Rights.[21]

28. This Court therefore stands by its *jurisprudence constante* on the subject and admits the preliminary objection lodged by the State. Accordingly, it declares that it has no jurisdiction to hear facts and arguments associated with: 1) the 1980 arrest warrants against the applicants; (2) the adoption and duration of pretrial detention from September 9, 1980 through September 5, 1984; (3) the duration of procedures from 1980 through September, 1984; (3) the 1980 order for solitary confinement as a precautionary measure; (4) the "exhortation to tell the truth" in formal opening statements taken from September 1980 through September 1984, and (5) the lack of defense counsel until September 5, 1984. This Court also declares that it is competent to hear all the actions or events that occurred after September 5, 1984 regarding violations alleged by the Commission and the representatives.

B. Lack of jurisdiction ratione materiae

B.1 Arguments by the State, the Commission and the representatives

29. The **State** said that the representatives had asked the Court to hold the State liable for alleged violation of several articles of the American Declaration, but had not asked for a judgment on violation of article 29(d) of the American Convention. This, according to the State, must necessarily lead to dismissal of any claim to examine alleged responsibility based on the American Declaration. Therefore, because the Court's material jurisdiction in the exercise of its contentious role is limited to the provisions of the American Convention, the State asked the Court to declare itself not competent to judge on breaches of the provisions of the American Declaration, as the representatives would wish.

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18 *Cfr. Case of Alfonso Martín del Campo Dodd v. Mexico*, footnote 13, *Case of expelled Dominicans and Haitians v. Dominican Republic,* par. 40.

19 Among others, *cfr*. *Case of Blake v. Guatemala* par. 39 and 40, and *Case of the Río Negro Massacres v. Guatemala*. *Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 4, 2012. Series C No. 250, par. 37.

20 *Cfr. Case of Cantos v. Argentina. Preliminary Objections*. Judgment of September 7, 2001. Series C No. 85, par. 39; *Case of Caesar v. Trinidad and Tobago. Merits, Reparations and Costs.* Judgment of March 11, 2005. Series C No. 123, par. 111, and *Case of Grande v. Argentina. Preliminary Objections and Merits*. Judgment of August 31, 2011. Series C No. 231, par. 39 and 40

21 *Cfr.* ECHR, *Humen v. Poland* (26614/95), Judgment of October 15, 1999, par. 58-59; *Kudla v. Poland*, Grand Chamber (30210/96), Judgment of October 26, 2000, par. 102, 103 and 123, and *Ilaşcu v. Moldova and Russia*, Grand Chamber (48787/99), Judgment of July 8, 2004, par. 395-399.

30. The **Commission** stated that it had not brought the case to the Court for the violations of the American Declaration noted in its Merits Report, and therefore would not express a view on this preliminary objection.

31. **Representatives** Vega and Sommer stated that although the Court's "overarching" duty was to interpret and apply the Convention, this power could not be held as "exclusive jurisdiction," which would run counter to the very scope of article 29(d) of the text. They added that when they made reference to the articles from the American Declaration, they were implicitly pointing to article 29(d), and the Court could weigh this using the principle of *iura novit curia*. Representatives De Vita and Cueto noted that the State's argument was contradictory because, in their view, the State recognized that the Court did have jurisdiction. Finally, the Inter-American Defenders said that when the Court held up the Declaration as a source of international obligations, it was alluding to the legal instrument itself, which has come to be binding, such that a State's failure to abide by the Declaration incurs clear international responsibility and stands as a violation of the principle of good faith in complying with the international obligations they freely assumed when they founded the Organization of American States. Therefore, the representatives asked that the preliminary objection *ratione materiae* raised by the Stated be rejected.

B.2 Considerations of the Court

32. In keeping with articles 1(1),[22] 2,[23] 62(3),[24] 63(1)[25] and 77[26] of the American Convention, in principle the Court has jurisdiction to adjudge violations of the rights and freedoms protected by the Convention and its Protocols. Nonetheless, the representatives have asked the Court to hold the State responsible for alleged violation of several articles of the American Declaration, and their briefs of pleadings and arguments do not seek a finding on breach of article 29(d)[27] of the Convention; therefore the Court must decide whether its jurisdiction *ratione materiae* empowers it sufficiently to find violation of the provisions of the Declaration.

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22 Article 1. Obligation to Respect Rights: 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms (…).

23 Article 2. Domestic Legal Effects: Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

24 Article 62(3): The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction (…).

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

26 Article 77: 1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection. 2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

27 Article 29. Restrictions Regarding Interpretation: No provision of this Convention shall be interpreted as: (…) d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

33. The Court would cite its earlier judgment of a case involving Argentina,[28] when it said, "[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."[29] That is to say, "the American Declaration is for these States a source of international obligations related to the Charter of the Organization."[30] This is fully applicable to Argentina as a Member State of the OAS.

34. However, the matter of applying the Declaration underscores a distinction between the role of the Inter-American Commission and that of the Inter-American Court, and in the case of the Court, between its two jurisdictions: advisory and contentious.

35. In the case of the Commission, articles 1(2)(b) and 20 of its Statute and article 23 and Chapter III of its Rules of Procedure specify the Commission's jurisdiction regarding the human rights articulated in the Declaration.

36. It has already been established that the Court is well within the framework and boundaries of its advisory jurisdiction to interpret the American Declaration and render an advisory opinion on it, whenever the interpretation of these instruments so requires.[31]

37. Finally, within its contentious jurisdiction, "the Court generally takes into consideration the provisions of the American Declaration in its interpretation of the American Convention,"[32] but

> [f]or the States Parties to the Convention, the specific source of their obligations with respect 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.[33]

38. Therefore, this Court deems admissible the preliminary objection lodged by the State. Nevertheless, the Court holds that it can apply the American Declaration in the instant contentious case if it deems such to be timely and consistent with the Declaration's binding force, as it interprets the articles of the American Convention that are claimed to have been breached.

C. Failure to exhaust domestic remedies

C.1 Arguments by the State, the Commission and the representatives

39. The **State** claimed that the alleged victims had access to, but opted not to exercise, a joint suit for damages and redress against the State under the terms of article 330 of the Civil and Commercial Procedural Code based on the extra-contractual liability addressed in articles

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28 ***Case of Bueno Alves v. Argentina. Merits, Reparations and Costs.*** **Judgment of May 11, 2007. Series C No. 164, par. 55 to 60.**

29 *Cfr. 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, par. 45.

30 *Cfr. Advisory opinion OC-10/89*, par. 45.

31 *Cfr. Advisory opinion OC-10/89*, par. 44.

32 *Cfr. Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, par. 63, and *Case of Bueno Alves v. Argentina*, par. 59.

33 *Cfr. Advisory opinion OC-10/89*, par. 46.

1109 through 1113 of the Civil Code for the prejudicial effects of the breach of the general obligation not to cause damage to others. The State also argued that the alleged victims should have exhausted this domestic jurisdiction, especially in view of the fact that the reparations they are requesting pertain exclusively to pecuniary and nonpecuniary damage and they have refrained from requesting possible violation of article 10 of the American Convention.[34] Finally, the State cited the Commission's "Correa Belisle" case and noted that the victim had chosen, exercised and directed the claim for redress through this same domestic proceeding.

40. The **Commission**, in turn, stated that although the objection had been raised at the proper stage of the proceedings, the State had not met the requirement of proving that the remedies being offered were appropriate and effective. The Commission therefore argued that during the admissibility stage, the State had not explained specifically what remedies could have been pursued by the victims, what rules governed them, or what arguments and evidence suggested that they were in fact appropriate and effective. In any case, the Commission held that the State's international obligation to redress victims of human rights violations was a direct and primary responsibility, that is, it pertained directly to the State and must not be subject to whether or not the alleged victims had attempted beforehand to pursue personal actions against such agents, regardless of what the domestic legislation may provide. The Commission also noted that a requirement for further exhaustion of a motion for damages, after all the remedies available in the criminal jurisdiction had been lodged and were awaiting resolution, would be unreasonable and would make access to the inter-American system an impossible dream.

41. **Representatives** Vega and Sommer said that during the admissibility stage, it had been proven that all the domestic remedies available in Argentina had been exhausted. Representatives De Vita and Cueto pointed out that the State's assertions were unsustainable because the applicants they represented had availed themselves of all possible solutions available through the domestic system; moreover, the provisions of Civil Law have no relevance to human rights violations protected by the Convention. They added that the reference to the "Correa Belisle" case was misguided because it had ended in a friendly settlement, while in the instant case, no such proposal had been received from the government at any time, and the decision by the Supreme Court had closed off all possibilities of pursuing satisfaction domestically. Finally, the Inter-American Defenders noted that the State had tacitly chosen to waive the objection of failure to exhaust domestic remedies as a defense, having cited it in general terms and with no further explanation, and therefore felt that the State was barred from raising it in the final phase of the proceedings before the inter-American system.

C.2 Considerations of the Court

42. Article 46(1)(a) of the American Convention establishes that for a petition or complaint filed before the Inter-American Commission to be admissible under Article 44 or 45 of the Convention, domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of International Law.[35] Along these same lines, the Court has sustained that an objection to the exercise of its jurisdiction based on the alleged failure to

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[34] Article 10. Right to Compensation. Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

[35] *Cfr. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, par. 85, and *Case of Human Rights Defender et al. v. Guatemala*, par. 20.

exhaust domestic remedies should be lodged at the correct stage of the proceedings, that is, during the admissibility state before the Commission.[36]

43. The rule on prior exhaustion of domestic remedies was conceived in the interest of the State, relieving it of the need to face international proceedings before resolving the dispute in the domestic sphere.[37] In order for a preliminary objection on failure to exhaust domestic remedies to be admitted, however, the State raising such an objection needs to spell out the particular domestic remedies that have not yet been exhausted and demonstrate that they were in fact available and were appropriate, fitting and effective.[38]

44. In this sense, if the State has alleged the failure to exhaust domestic remedies, it must indicate, at the appropriate stage, what remedies must be exhausted and their effectiveness.[39] It is not the task of the Court or the Commission to identify *ex officio* the domestic remedies that remain to be exhausted. The Court insists that international bodies are not expected to rectify a lack of precision in the State's arguments.[40]

45. It could be understood in this regard that the objection was raised at the right time in the process, that is, during the admissibility stage before the Commission. At that time, the State argued in general terms, in communications dated December 28, 1999, September 19, 2000, April 18 and October 2, 2001, that the petitioners failed to exhaust certain remedies in the civil and administrative jurisdiction for seeking the damages to which they claimed entitlement, but instead had exhausted only the domestic remedies in the military criminal processes lodged against them.

46. Moreover, in the procedure before the Court, the State had put forward detailed arguments in its answering brief concerning what procedure the applicants should undertake in the civil and administrative jurisdiction to obtain the damages they were claiming. It cited provisions of the Argentine Civil Code, Law No. 340 and its amendments, and the National Civil and Commercial Procedural Code under which the applicants could have chosen to file a class action suit for damages in the Federal Administrative Contentious jurisdiction. The State argued that this had not happened.

47. This Court notes that in the proceedings before the Court, the State gave a detailed listing of the remedies available for the applicants to lodge a domestic claim for compensation, but it had not supplied this body of evidence in the procedure before the Commission. Instead, in the admissibility stage, it had made only general mention that the petitioners had not exhausted domestic remedies for compensation as argued, but did not specify what they were; therefore, it also failed to demonstrate whether these remedies were available and appropriate, fitting and effective at the correct stage of the proceedings. The assertions made by the State in the proceedings before this Court on the specific remedies available for redress are therefore time-barred.

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36 *Cfr. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, par. 85, and ***Case of Human Rights Defender et al. v. Guatemala***, par. 20.

37 *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, par. 61, and *Case of expelled Dominicans and Haitians v. Dominican Republic*, par. 30.

38 *Cfr. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, par. 88 and 91, and ***Case of Human Rights Defender et al. v. Guatemala***, par. 20.

39 *Cfr. Case of Velásquez Rodríguez v. Honduras. Preliminary objections,* par. 88 and 89, and *Case of expelled Dominicans and Haitians v. Dominican Republic*, par. 30.

40 *Cfr. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, par. 23, and *Case of expelled Dominicans and Haitians v. Dominican Republic*, par. 30.

48. Accordingly, the Court dismisses this preliminary objection raised by the State.

V
PRELIMINARY QUESTION

49. Two of the **representatives** argued that the State had offered several tacit or explicit recognitions of international responsibility, and that the State's defense submitted to the Court would violate the principle of estoppel in the instant case. Therefore the Court will evaluate the representatives' and the State's arguments in this regard and give its views on: (i) whether the State's actions during the procedure before the Commission and the Court could have constituted a "tacit" or "explicit" recognition, and (ii) whether the doctrine of estoppel may apply in the instant case.

50. **Representatives** Vega and Sommer pointed to the friendly settlement procedure with the Inter-American Commission, arguing that the State had invoked it as a delaying tactic. They later argued that Argentina "undertook unilateral initiatives to recognize its international responsibility for failing to adapt its military judicial processes to inter-American human rights standards in Argentina in the context of the instant case, when it had first acquiesced to the friendly settlement process" before the Inter-American Commission. This act of recognition "was consolidated by another unilateral initiative when the State, in the exercise of its power, submitted legislative arguments concerning the need to amend the legal system of military justice with reference to the Argüelles case and the Correa Belisle case[.] This is why the scope of the estoppel doctrine in international law needs to be understood insofar as it is applicable to the instant case. The State may acknowledge that certain provisions in the Military Code of Justice that was in effect at the time contained irregularities or incompatibilities with international human rights standards on due process and the right to a fair trial; however, such a State cannot then arbitrarily deny the existence of the facts and violations in later briefs, given that it had earlier displayed actions contrary to its current stance[. Thus,] the doctrine of estoppel should apply to legislative actions starting in 2008."

51. In their final written pleadings, **representatives** De Vita and Cueto also claimed that the State had offered "explicit recognition" in at least the following ways: (i) when it requested "a time extension to implement the reparations recommended" by the Inter-American Commission, which in fact constituted an "acquiescence" by the State to the Commission's recommendations; (ii) at the hearing, when it admitted that it had not accepted responsibility in the instant case in view of the amounts being requested as redress; (iii) when it pointed to the Argüelles case at the time it submitted the congressional draft bill on the Military Code of Justice, and (iv) on March 5, 2004 at Commission headquarters, when it signed the opening notice to begin the dialog and "recognized" its failure to adapt military provisions to international standards of human rights.

52. The **State**, in turn, underscored that it had applied the friendly settlements "as a tool for institutional improvement that has brought many significant results, most notably, that the Military Code of Justice was repealed [...] and replaced with a system for the administration of justice and military discipline that fully respects relevant international standards currently in place. It should also be noted […] that the friendly settlement process undertaken in the instant case was intended most specifically to bring about comprehensive reform to the rules of military justice; however, in 2005 the petitioners pressed for more progress primarily in the question of possible pecuniary redress, until in 2007, three years after the process formally began [...], the petitioners notif[ied] the Commission that the process should be closed and calling for a Report on the Merits." The State also emphasized that "in no sense can the rejection of an exorbitant claim for redress be construed [...] as

recognition of responsibility. A process of friendly settlement, in the view of the State of Argentina, is a preferable option […] that demonstrates political willingness to seek a dispute settlement by non-adjudicatory means[.] Recognition of international responsibility is a much more complex route that requires action, interaction, expression of opinions and a final decision by a variety of government agencies, something that certainly did not occur in this case. Moreover, […] this process of friendly settlement began on the basis of a potential legislative reform that did [occur] later as part of a different case [(Correa Belisle)], undertaken at a petitioner's request[. Later, in the] public hearing that took place during the 119th Regular Period of Sessions of the Commission, […] the State of Argentina formally [set] in writing its political will to proceed in this direction. The simple fact that the State should sit at the table in good faith to negotiate a possible friendly settlement cannot in any case be held to constitute acquiescence."

53. The Court, exercising its inherent authority for international protection of human rights, can decide whether an acknowledgment of international responsibility by a respondent State before the bodies of the inter-American system offers sufficient basis, in terms of the American Convention, to proceed or not with its hearing on the merits and establishment of possible reparations.[41] To this end, the Court's practice is to examine the particular situation of each specific case.

54. First, the Court deems necessary to emphasize that the processing of each individual complaint seeking a jurisdictional decision by the Court requires the protection system established by the American Convention to work as an institutional whole. Before a contentious case can be brought before the Court alleging human rights violations by a State Party that has recognized the Court's contentious jurisdiction, a proceeding must be instituted before the Commission, and it begins when a petition is filed with the Commission.[42] The proceeding before the Commission provides safeguards both for the respondent government and for the alleged victims, their next of kin or their representatives, among which safeguards it is worth underscoring those concerning the requirements for the admissibility of the petition and those concerning the principles of adversarial procedure, procedural equality and juridical certainty.[43] It is during the proceeding before the Commission that the respondent State initially submits the information, allegations and evidence it deems relevant to the petition, and the evidence rendered in adversarial procedures may later be added to the case file before the Court.

55. In the instant case, the friendly settlement mechanism began during the proceedings before the Commission, but when the parties failed to reach agreement, the process was suspended at the request of the petitioner. The Court should clarify, with regard to friendly settlement procedures, that a State's participation in such does not mean it has accepted responsibility for the human rights violations held against it. Acts taken by the State in the framework of a friendly settlement process cannot be held as an acquiescence or recognition of responsibility in the terms of article 62 of the Court's Rules of Procedure. The situation is different from that of precedent cases adjudged by the Court in which certain States have

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41 *Cfr. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs.* Judgment of November 25, 2003. Series C No. 101, par. 105, and *Case of Acevedo Jaramillo v. Peru*. Preliminary objections, Merits, Reparations and Costs. Judgment of February 7, 2006. Series C No. 144, par. 173.

42 *Cfr. In the matter of Viviana Gallardo et al.* Series A No. G 101/81, Whereas clauses 12(b), 16, 20, 21 and 22, and *Case of Acevedo Jaramillo v. Peru*, par. 174.

43 *Cfr. Control of due process in the exercise of the powers of the Inter-American Commission on Human Rights (Articles 41 and 44 of the American Convention on Human Rights). Advisory Opinion OC-19/05* of November 28, 2005. Series A No.19, par. 25 to 27, and *Case of Acevedo Jaramillo v. Peru*, par. 174.

expressly and formally recognized their international responsibility.[44] A friendly settlement procedure requires participation and decision by all parties to the case. The Commission may extend its good offices to help the parties talk to each other, but the outcome is out of its hands.

56. Any party interested in a friendly settlement may propose it. In view of the purpose and objective of the Convention, which is to defend human rights protected in the text, the State's participation in such a process cannot be understood as a recognition of responsibility, but instead, as a good-faith gesture to uphold the purposes of the Convention.[45] The same is true for measures adopted to implement recommendations by the Inter-American Commission.

57. The other question is the argument that the State admitted responsibility in the domestic jurisdiction when it submitted the draft reform of the Code of Military Justice to the national congress in 2007, and the reform was enacted the following year; this cannot be held to have triggered effects in international law, as this was not the intention or objective of the measure. The State made clear reference to the fact that it had been challenged before the inter-American system in the Argüelles case and another case, as one of the reasons to pursue reform of the Military Code of Justice.[46] A simple reading of the text sent to congress by the minister of defense leaves no doubt that this is true. The Court would also note that an acquiescence can be held as valid only if it is a clear expression of the State's will.[47] This was not the case here.

58. As a consequence, the Court reaffirms that the State has not changed its position regarding the human rights violations alleged in the instant case, and it has expressed its objections from the very beginning of the proceedings before the Inter-American Court. In conclusion, the principle of estoppel[48] does not apply in this case.

VI.
EVIDENCE

A. Documentary and expert evidence

59. The Court received a number of documents submitted as evidence by the Commission, the representatives and the State, attached to their primary briefs (*supra* par. 1, 6, 8 and

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44 *Cfr*., among others, *Case of Barrios Altos v. Perú. Merits.* Judgment of March 14, 2001. Series C No. 75, par. 31; *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs.* Judgment of April 27, 2012. Series C No. 241, par. 15; *Case of García Cruz and Sánchez Silvestre v. Mexico. Merits, Reparations and Costs.* Judgment of November 26, 2013. Series C No. 273, par. 12.

45 *Case of Caballero Delgado v. Colombia*. Preliminary objections, par. 30.

46 *Cfr.* Evidence file, folio 4. Law 26.394 was enacted on August 26, 2008, repealing the Military Code of Justice and all its internal implementing rules, resolutions and provisions, and amending the Argentine Criminal Code and Criminal Procedural Code. The new body of laws created a new military justice system.

47 *Cfr. Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs.* Judgment of August 31, 2011. Series C No. 232, par. 16.

48 The Court has held in its case law that a State, having taken a particular stance that triggers legal effects, cannot later invoke the principle of estoppel and assume some other position that contradicts its original line and alters the state of matters on which the other party had built its position. The estoppel principle has been recognized and applied in general international law and in international human rights law. See, in this regard, the *Case of Neira Alegría et al. v. Peru. Preliminary Objections*. Judgment of December 11, 1991. Series C No. 13, par. 29, *Case of the Río Negro Massacres v. Guatemala*, par. 25, and *Case of Santo Domingo v. Colombia. Preliminary Objections, Merits and Reparations.* Judgment of November 30, 2012. Series C No. 259, par. 15. 148.

12). The Court also received the expert opinion of Mr. Miguel David Lovatón Palacios,[49] brought by the Commission. Additional evidence was delivered in the public hearing, when the Court heard the expert opinions of Marcelo Solimine,[50] offered by the Inter-American Defenders, and Armando Bonadeo[51], offered by the State.

B. Admission of evidence

60. In the instant case, as in other cases, the Court admits documents submitted by the parties and the Commission within established procedural time-limits (*supra* par. 1, 6, 8 and 12), so long as they have been neither contested nor opposed and their authenticity has not been challenged,[52] to the extent that they are pertinent and useful for determining the facts and possible legal consequences.[53]

61. The State submitted a press release[54] that the Court finds relevant as it relates publicly known, commonly held facts, it communicates declarations by government officials, and it corroborates certain matters associated with the case, and the Court will therefore admit it in its entirety.[55]

62. Similarly, with regard to certain documents accessible via electronic links provided by the parties and the Commission, the Court has established that, if a party gives at least the direct electronic link to a document cited as evidence, and it will remain available until the judgment is issued, legal certainty and procedural equality will not be impaired, because it can be located immediately by the Court and the other parties.[56] In this case, the content and authenticity of these documents was neither contested nor opposed by the other parties or the Commission.

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49 Statement by expert witness Miguel Lovatón on international standards for guarantees of due process and the right to personal liberty in military judicial proceedings against active-duty military personnel charged with crimes committed in the line of duty.

50 Statement by expert witness Marcelo Solimine on standards regarding jurisdiction to try military personnel for crimes stipulated in the Argentine Criminal Code, right to professionally qualified defense, use of solitary confinement, prohibition on self-incrimination, pretrial detention and incarceration, and whether Argentine legislation on time limits on pretrial detention and other proceedings are compatible with the inter-American system.

51 Statement by expert witness Armando Bonadeo on: (1) the jurisdiction and composition of military courts at the time the instant case occurred, based on Law 14.029, the Code of Military Justice; (2) article 455bis of Law 14.029, the Code of Military Justice; (3) the conditions for holding pretrial detention in military justice based on Law 14.029, the Code of Military Justice, the internal system for personnel prosecuted under the Argentine Air Force - Appendix I, Order 353/82 and Notification No. 6392, the persons governed by the Law for Military Personnel, its amendments and implementing regulations - Law No. 19.101-LA1 and implementing regulations for the Air Force under Law No. 19.101-LA1; (4) the reform of article 445bis of Law 14.029 based on Law 26.394; (5) penal provisions, inherently military crimes, misdemeanors and precautionary tools in the framework of Law 26.394, and (6) the jurisdiction and composition of military courts under Law 26.394.

52 *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits*, par. 140, and *Case of Landaeta Mejías Brothers et al. v. Venezuela*. *Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 27, 2014. Series C No. 281, par. 34.

53 *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits,* par. 140, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Indigenous Mapuche People) v. Chile. Merits, Reparations and Costs.* Judgment of May 29, 2014. Series C No. 279, par. 54.

54 *Cfr.* Press release printed in the "La Prensa" newspaper on June 23, 1983, entitled "El Sistema" (evidence file, folio 14941 to 14943).

55 *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits*, par. 146, and *Case of Landaeta Mejías Brothers et al. v. Venezuela*, par. 35.

56 *Cfr*. *Case of Escué Zapata v. Colombia. Merits, Reparations and Costs.* Judgment of July 4, 2007. Series C No. 165, par. 26, and *Case of Human Rights Defender v. Guatemala*, par. 56.

63. The State also argued that the brief of final pleadings by the Inter-American Defenders was time-barred, as it had been submitted after the final deadline of June 30, 2014. The Court notes that the records of the Court Registrar's email server show that the Inter-American Defenders did in fact submit their brief within the term defined in the president's order of April 10, 2014 (*supra* par. 12), but to an alternate Court email address. When they discovered this situation the next day, the Inter-American Defenders resubmitted their brief to the Court's primary email.

64. The Court recalls that this is an international proceeding and requires the submission by electronic means of a considerable volume of information; Articles 28 and 33 of the Court's Rules of Procedure allow the use of this medium, and the material was in fact submitted within the allotted time frame, and therefore it will admit the brief of final pleadings by the representatives and hold them to have been received within the term established in Article 28 of the Court's Rules of Procedure.[57]

65. The Court, moreover, will allow statements delivered during the public hearing and by affidavit only insofar as they meet the purpose defined by the president of the Court in the summons issued by Court order (*supra* par. 10).

66. With specific reference to the expert testimony given by Miguel Lovatón, the State has asserted that "it is riddled with references to rules, regulations, verdicts and internal documents of the State of Peru […] and the State of Argentina […] – matters unrelated and foreign to inter-American public order in the field of human rights, [and that he himself] expressed opinions on the analysis of the case, thus seriously overstepping the purpose of this expert testimony." The State therefore asked the Court to "withhold the following points from its consideration: (c) models of military justice, (f) circumscription of military crimes or crimes committed in the line of duty and (g) inter-American standards and Argentine military justice as expounded in the expert report produced by the [Commission] because it exceeded the purpose of the expert testimony and is unrelated to matters of international public order."

67. The Court replies that the State's remarks address the content of the expert opinion and therefore do not detract from its admissibility, but in any case, they will be taken into account when the Court weighs the statement alongside the full body of evidence. With respect to the argument that the expert witness did not limit his opinion to the purpose set forth in the order of the president, the Court will weigh the content of the expert statement insofar as it serves the purpose for which the expert was summoned.[58]

C. Weighing the evidence

68. Based on the provisions of articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure and on its *jurisprudence constante* regarding evidence and how it is assessed,[59] the Court will examine and weigh the evidentiary documentation adduced by the parties and the Commission within the procedural time-limits and the expert opinions given via sworn

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57 *Cfr. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, par. 37 and 39, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs.* Judgment of October 24, 2012, Series C No. 251, par. 21.

58 *Cfr. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, par. 42, and *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 19, 2014. Series C No. 277, par. 60.

59 Cfr. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 25, 2001. Series C No. 76, par. 51, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of October 15, 2014. Series C No. 285, par. 28.

statements rendered in the presence of a public attestor *(*affidavits) and during the public hearing. In so doing, it will abide by the principles of sound judicial discretion in the relevant regulatory framework, always cognizant of the full body of evidence and the allegations in the case.[60]

VII
FACTS

69. The Court will set out the proven facts in this chapter and then rule on the alleged violations in the instant case. The Court recalls that, in keeping with article 41(3) of its Rules of Procedure, it may hold as accepted any facts that have not been expressly denied and any claims that have not been expressly challenged. This chapter will also include information on relevant events that took place prior to the date when Argentina recognized the contentious jurisdiction of the Court (September 5, 1984), to help understand the circumstances under which the facts of the case unfolded after that date and to clarify the limits on the Court's jurisdiction *ratione temporis*.

A. Facts that occurred prior to the State's recognition of the contentious jurisdiction of the Court (September 5, 1984)

70. Certain irregularities were discovered in September, 1980 in the accounting and administrative services of agencies and units of the Argentine Air Force, and action was initiated in a Military Court of Criminal Investigation against at least 32 active-duty members of the Air Force, including the 22 alleged victims.[61]

71. Nineteen of the alleged victims in the instant case were arrested at the beginning of the process and held incommunicado[62] for presumed commission of the crime of military fraud as codified in article 843 of the then-current Code of Military Justice.[63] They were accused of the following conduct, which was later found illegal: (i) allocating credits from several Air Force units so they could then benefit personally from the amounts of these payments and funds, and (ii) failing to return the surplus from credits legitimately posted to the units, in their own benefit.[64] While they were in detention in September and October 1980, the alleged victims delivered initial formal statements to the Judge of Military Criminal Investigation[65] and were ordered into pretrial detention under the terms of article 314 of the Code of Military Justice, on the grounds that "the procedures undertaken and the evidence gathered in the case

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60 *Cfr*. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs*, par. 76, and *Case of Tarazona Arrieta et al. v. Peru*, par. 28.

61 Judgment by the Supreme Council of the Armed Forces, June 5, 1989 (evidence file, folio 43 to 53).

62 This did not apply to Mr. Carlos Alberto Galluzzi, who was arrested on April 1, 1982 for an earlier attempted escape. *Cfr.* Order to reincorporate Mr. Carlos Alberto Galluzzi into the process, September 4, 1995, handed down by Military Court of Criminal Investigation No. 1; warrant to arrest Mr. Ricardo Omar Candurra and Mr. Félix Oscar Morón and hold them incommunicado, September 20, 1980 (evidence file, folio 6416, and file on the merits, folios 449, 450, 571, 572, 636, 2029, 12320 and 12321).

63 Code of Military Justice (Law 14.029, July 4, 1951): "Art. 843. – Any active-duty personnel who, by reason of their service, hold money, credit bonds or any other property belonging to the State and divert it from its legal use for their own benefit or that of someone else, have committed military fraud."

64 *Cfr.* Judgment by the Supreme Council of the Armed Forces, June 5, 1989 (evidence file, folios 53ff).

65 Among others, *Cfr.* Certification by the Supreme Council of the Armed Forces, February 19, 1985, recording procedures undertaken with Mr. Miguel Oscar Cardozo, indicating that his formal statement had been taken at an initial hearing on September 23, 1980; formal statement at initial hearing by Mr. Alberto Jorge Pérez, October 7, 1980; formal statement at initial hearing by Mr. Félix Oscar Morón, September 18, 1980 (evidence file, folios 6509 to 6512, 6530 to 6534 and 7885; and file on the merits, folios 418, 459 and 636).

constitute semi-plena probatio of commission of the crime of military fraud […].”[66] The pretrial detention took place inside the installations of several Air Brigades[67] and included the right to free days (called regular, special or exceptional “leave”).[68]

72. On November 20, 1980, the Military Judge of Criminal Investigation issued a general order to freeze the possessions of nine of the alleged victims as a precautionary measure.[69]

73. On December 6, 1980, the case was turned over to Military Court of Criminal Investigation No. 1.[70] On October 4, 1982, the case was remitted to the Supreme Council of

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66 *Cfr.* Orders on procedural status handed down by Military Judge of Criminal Investigation No. 12 (evidence file, folios 6468 to 6488); in the case of Mr. Enrique Pontecorvo, Ruling No. 003/95 “C,” issued by the General Department of Military Personnel on August 31, 1995 on enforcement of the final and non-appealable judgment handed down by the Supreme Council of the Armed Forces (hereinafter Ruling 003/95 “C”), states that pretrial detention had begun on September 29, 1980; regarding Mr. José Eduardo Di Rosa, Ruling No. 003/95 “C” states that pretrial detention had begun on September 30, 1980, but the State maintained that the pretrial detention had begun on October 11, 1982, and the Inter-American Defenders set the beginning date at September 22, 1980; pretrial detention of Mr. Aníbal Ramón Machín began on September 19, 1980; Mr. Carlos Julio Arancibia, according to the State, had been placed in pretrial detention on September 25, 1980, although the representatives maintained that the pretrial detention had in fact begun on September 17, 1980, and Ruling No. 003/95 “C” set September 22, 1980 as the beginning date of the pretrial detention; regarding Mr. Ricardo Omar Candurra, the representatives stated that pretrial detention had begun on September 20, 1980, the State set the beginning date on September 25, 1980, and Ruling No. 003/95 “C” cited September 25, 1980; pretrial detention of Mr. Miguel Ángel Maluf began on September 26, 1980; pretrial detention of Mr. Juan Italo Óbolo began on September 23, 1980; pretrial detention of Mr. Alberto Jorge Pérez began on October 7, 1980; pretrial detention of Mr. Félix Oscar Morón began on September 19, 1980; pretrial detention of Mr. Ambrosio Marcial began on September 23, 1980 (file on the merits, folios 1004 to 1011, 1912, 2194, 2269, 12099, 12103 and evidence file, folios 12099 to 12103).

67 Regulations on Military Justice for the General Staff of the Air Force (Order No. 4093, July 5, 1968) state in paragraph 225: “ […](1) Rigorous pretrial detention: junior officers and troops placed in rigorous pretrial detention shall be assigned as provided for in the Law on Military Personnel and held in a suitable facility within the agency where they were assigned at the time they went into pretrial detention, or if facilities are not suitable, in the place ordered by the investigating prosecutor, if no military installation for this purpose is available under the jurisdiction of the Air Force […];” certification by the Supreme Council of the Armed Forces on February 19, 1985 on proceedings against Mr. Miguel Oscar Cardozo, stating that he was being held in rigorous pretrial detention in the First Air Brigade; petition by the defense of Mr. Félix Oscar Morón to change the venue of rigorous pretrial detention, November 6, 1980; report by Military Judge of Criminal Investigation No. 1, dated August 29, 1984, verifying that Mr. Félix Oscar Morón was being held in rigorous pretrial detention in the First Air Brigade (evidence file, folios 6562, 7885, 7963 and 13134).

68 Communication by the Head of the Air Brigade to Military Judge of Criminal Investigation No. 1 (evidence file, folio 6486); Air Force personnel in the process of investigation were placed under a system (Law No. 353/82) that provided two kinds of leave (free days), regular and exceptional. Such leave “[m]ay be granted by the head of the unit, twice a year, for a term of up to SEVEN (7) days, at an interval of at least THREE (3) months between the two, and may include Christmas, New Year's Day, Independence Day or a family or personal event scheduled in advance,” and under exceptional circumstances, “[m]ay be granted by the head of the unit for the least amount of time necessary to serve their purpose, in the following instances:

(1) For surgery or special health treatment prescribed by the military medical authority and requiring the applicant's presence in a place off the base.

(2) For death, accident or serious illness of a direct family member if death appears imminent.

(3) For flood, fire, serious loss or other calamity in the person's private home.

(4) For any other unforeseen circumstance that is considered a contingency and that requires the immediate, indispensable presence of the inmate to resolve, prevent or mitigate the effects. […] This type of leave may be granted to personnel who have not yet completed THREE (3) months of service or who are not entitled to leave, but in all cases, the inmate shall be escorted by guard personnel” (evidence file, folio 14505 and 14506).

69 General freeze on the sale or encumbrance of property for Mr. Nicolás Tomasek, Mr. Julio César Allendes, Mr. Enrique Jesús Aracena, Mr. Gerardo Félix Giordano, Mr. Horacio Eugenio Oscar Muñoz, Mr. Ambrosio Marcial, Mr. Hugo Oscar Argüelles, Mr. Miguel Oscar Cardozo, Mr. Félix Oscar Morón, ordered by Military Judge of Criminal Investigation No. 12 on November 20, 1980 (evidence file, folios 6915 to 6925).

70 Order for transfer of proceedings, December 6, 1980 (evidence file, folios 6930 to 6931).

the Armed Forces, as the competent judicial body, because some of the accused were higher-level officers.[71]

74. On September 8, 1981, Military Judge of Criminal Investigation No. 1 ordered the release of Mr. Julio César Allendes[72] and Mr. Luis José López Mattheus.[73]

75. On October 29, 1982, defense counsel was assigned to 10 of the accused.[74] The then-current Code of Military Justice provided expressly that defense counsel should be an active-duty or retired officer who could be selected by the accused or appointed by the Court on its own motion.[75]

76. From September, 1983 through August, 1984, the record shows several statements and petitions by the accused, addressed to the Supreme Council of the Armed Forces, requesting amnesty under National Pacification Law No. 22.924 for allegedly having belonged to the "Vulcan Agency," a body claimed to have been created to obtain funds for anti-subversion work, as well as several motions to challenge the constitutionality of Law 23.040 that repealed Law 22.924.[76] Both the Prosecutor General of the Armed Forces and the Supreme Council of the Armed Forces denied these motions, claiming there was no evidence that the "Agency" existed, that the funds pilfered from the armed forces were not used in the fight against subversion or terrorism, and that these allegations were groundless.[77]

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71 Decision by Military Judge of Criminal Investigation No. 1, October 4, 1982 (evidence file, folios 8037 to 8051).

72 Order issued by Military Judge of Criminal Investigation No. 1 on September 8, 1981 (evidence file, folios 7624 and 7625).

73 Order issued by Military Judge of Criminal Investigation No. 1 on September 8, 1981 (evidence file, folios 7627 and 7628).

74 Listing of defenders provided by Air Operations Command, October 29, 1982 (evidence file, folio 7640).

75 Code of Military Justice (Law 14.029, July 4, 1951): "Article 97. - The defense counsel before military courts should always be an active-duty or retired officer. Defense shall be a voluntary service for retired personnel, but if they accept, they shall be subject to military discipline in all matters associated with the performance of this duty." […]

"Article 344. - Once everything is submitted, a note of verification shall be included in the record, and if the accused has not appointed defense counsel, the president of the court shall order in the notification papers that this be done, with the warning that the court will do so on its own motion if necessary" (evidence file, folios 12805 and 12856).

76 *Cfr.* Documented letters from Mr. Félix Oscar Morón, September 30, 1983; Mr. Gerardo Félix Giordano, September 30 and December 14, 1983; Mr. Nicolás Tomasek, October 5, 1983; an appeal of exception (*recurso extraordinario*) lodged by Mr. Félix Oscar Morón, December 27, 1983; a constitutional motion filed by Mr. Gerardo Félix Giordano, January 4, 1984 and April 26, 1984; a constitutional motion filed by Mr. Nicolás Tomasek, January 4, 1984; a constitutional motion filed by Mr. Félix Oscar Morón, January 5, 1984 and April 16, 1984; notification and appeal by Mr. Félix Oscar Morón, August 20, 1984; notification and appeal by Mr. Nicolás Tomasek, September 11, 1984 (evidence file, folios 6933 to 6936, 6947, 7915 a 7919, 7949, 7952, 7961 and 7962). Also see judgment by the National Appeals Chamber (evidence file, folio 2297).

77 Opinion No. 7970, November 9, 1983, by the Prosecutor General of the Armed Forces in response to petitions for amnesty by Mr. Miguel Ángel Maluf, Mr. Enrique Luján Pontecorvo, Mr. Aníbal Ramón Machín, Mr. Gerardo Félix Giordano, Mr. José Eduardo Di Rosa, Mr. Nicolás Tomasek, Mr. Félix Oscar Morón, Mr. Ricardo Omar Candurra and Mr. Carlos Julio Arancibia; Opinion No. 8083, February 2, 1984, by the Prosecutor General of the Armed Forces on filings by Mr. Miguel Ángel Maluf, Mr. Enrique Luján Pontecorvo, Mr. Aníbal Ramón Machín, Mr. Gerardo Félix Giordano, Mr. José Eduardo Di Rosa, Mr. Nicolás Tomasek, Mr. Félix Oscar Morón and Mr. Carlos Julio Arancibia; Opinion No. 8123, May 8, 1984, by the Prosecutor General of the Armed Forces on the appeal of exception by Mr. José Eduardo Di Rosa, Mr. Miguel Ángel Maluf, Mr. Enrique Luján Pontecorvo, Mr. Aníbal Ramón Machín, Mr. Gerardo Félix Giordano and Mr. Félix Oscar Morón; Decision, November 25, 1983, by the Supreme Council of the Armed Forces, on petitions for amnesty by Mr. Miguel Ángel Maluf, Mr. Enrique Luján Pontecorvo, Mr. Aníbal Ramón Machín, Mr. Gerardo Félix Giordano, Mr. José Eduardo Di Rosa, Mr. Nicolás Tomasek, Mr. Félix Oscar Morón, Mr. Ricardo Omar Candurra and Mr. Carlos Julio Arancibia; Decision, December 2, 1983, by the Supreme Council of the Armed Forces; Decision, February 28, 1984, by the Supreme Council of the Armed Forces, on appeals of exception by Mr. Aníbal Ramón Machín, Mr. Enrique Luján Pontecorvo, Mr. Félix Oscar Morón, Mr. José Eduardo Di Rosa and Mr. Miguel Ángel Maluf; Decision, July 23, 1984, by the Supreme Council of the Armed Forces on submissions by Mr. Nicolás Tomasek, Mr. Enrique Luján Pontecorvo, Mr. Gerardo Félix Giordano, Mr. Miguel Ángel Maluf, Mr. Aníbal Ramón Machín, Mr.

77. On May 10, 1984, the defense counsel of Mr. Ambrosio Marcial filed a petition for a change in procedural status, invoking article 316 of the Code of Military Justice[78] and arguing that "[t]he lengthy amount of time that has passed, nearly four years, which so far shows no sign of imminent solution, is causing profound psychological and emotional instability in my client, making it impossible for him to take part in normal life with his family[;] this is compounded by the lack of resources as he is receiving only 50% of his wages."[79] The case file contains no reply to this motion.

B Facts subsequent to the State's recognition of the contentious jurisdiction of the Court (September 5, 1984)

78. Mr. Óbolo was released on March 31, 1987.[80]

79. On July 23, 1987, the National Appeals Chamber ordered the release of Mr. Oscar Cardozo in response to a motion lodged by his defense challenging the military court's "tacit denial" of his request for release[81] and offered the following considerations:

> "proceedings ha[d] far exceeded six and a half years, with no sign of a date certain for completion, even though the accused Cardozo had already exceeded in pretrial detention the maximum term allowable for the lesser alternative sentence (article 537) and over half of the maximum for the most severe sentence (article 845), which suggest[ed], based on the guidelines of article 579 subparagraph 2, that he ha[d] essentially served whatever sentence he may have eventually been given if found guilty.
>
> Under these circumstances, keeping Miguel Oscar Cardozo in rigorous pretrial detention [wa]s a violation of article 18 of the Constitution, because precautionary arrest ha[d] ceased to function strictly as a safeguard and had become in fact an anticipatory sentence."[82]

80. On August 11, 1987, a decision by the Supreme Council of the Armed Forces ordered the release of 16 alleged victims: Mr. Galluzzi, Mr. Pontecorvo, Mr. Di Rosa, Mr. Giordano, Mr. Tomasek, Mr. Machin, Mr. Mercau, Mr. Aracena, Mr. Maluf, Mr. Candurra, Mr. Arancibia, Mr. Morón,[83] Mr. Argüelles, Mr. Muñoz, Mr. Marcial and Mr. Pérez. The Supreme Council of the

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Carlos Julio Arancibia and Mr. Félix Oscar Morón (evidence file, folios 1066 to 1069, 6941 to 6944, 6948 to 6050, 6957 to 6962, 7938 to 7941, and 7956 and 7957).

78 Code of Military Justice (Law 14.029, July 4, 1951): "Art. 316. – In all other instances of military trials, the process against the accused will proceed while they remain on release and in service, but they are required to attend all matters of the trial.

If they fail to respond immediately to this obligation, they will be placed in attenuated pretrial detention." (evidence file, folio 12850).

79 Petition for change of procedural status by Mr. Ambrosio Marcial, May 10, 1984 (evidence file, folios 7869 and 7870).

80 *Cfr.* Evidence file, folio 1010; merits file, folio 2269.

81 The decision by the National Appeals Chamber on July 23, 1987 stated, "[t]he petition by the defense to obtain a change in the procedural status of the accused, in view of the lengthy incarceration he has been serving in rigorous pretrial detention, received no response by the military court. The motion to challenge this tacit denial was admitted by this Chamber" (evidence file, folios 8054 to 8058).

82 Decision by the National Appeals Chamber, July 23, 1987 (evidence file, folios 8054 to 8058).

83 Mr. Félix Oscar Morón, according to both the State and the Inter-American Defenders, had been released on December 27, 1984 (brief of final pleadings by the Inter-American Defenders, merits file, folio 2194 and respondent's answering brief, merits file, folio 1007). This is clear from notices submitted by Mr.Félix Oscar Morón in which he stated that he was free, which led to the request for information by the Supreme Council of the Armed Forces in a decision on July 23, 1984 (evidence file, folios 7956 and 7957). In a reply on August 24, 1984, Judge of Military

Armed Forces stated at that time: "[t]he initial proceedings conducted by the Judge of Criminal Investigation, according to the extensive evidence provided by the accused (approximately THREE HUNDRED (300) pages) took nearly THREE AND A HALF YEARS. The case was out of the hands of the Supreme Council for over TWO YEARS because the […] Supreme Court and the National Criminal and Correctional Appeals Chamber of the Federal Capital took it up on several occasions in response to motions that had been lodged. [This being the case,] nothing prevents this body from setting aside the opinion of the [National Appeals] Chamber when it advises that the accused whose time of incarceration exceeds the TWO (2) YEAR term allowed in article 379, subparagraph 6 of the Code of Criminal Prosecution, be placed in the situation provided in article 316 of the Code of Military Justice, that is, released immediately, while the case continues."[84]

81. On August 19, 1988, the Prosecutor General of the Armed Forces brought charges against the alleged victims as criminally liable for the crime of conspiracy, as prescribed in article 210 of the Criminal Code,[85] aggravated by military fraud[86] and forgery[87] under the Code of Military Justice.[88] The defense briefs of the accused were submitted on October 3.[89] Finally, on June 5, 1989, the Supreme Council of the Armed Forces convicted the accused, ordered them to pay monetary fines to the Armed Forces and sentenced them to full and permanent disqualification concurrently with discharge for the crime of military fraud aggravated, for 18 alleged victims, by falsification and for eight, conspiracy. The time they had served in pretrial detention was credited to their prison sentence.[90]

Investigation No. 1 reported that "the accused First Lieutenant D. Félix Oscar MORON [wa]s in rigorous pretrial detention in the First Air Brigade" (evidence file, folios 7917, 7963).

84 Decision by the Supreme Council of the Armed Forces, August 11, 1987 (evidence file, folios 7977 to 7979).

85 Criminal Code (Law 11.179, December 21, 1984): "ARTICLE 210.- - Participation in a grouping or band of three or more persons for the purpose of committing crimes shall be subject to three to ten years of imprisonment or incarceration for the sole fact of being a member of such an association" (evidence file, folio 12742).

86 Code of Military Justice (Law 14.029, July 4, 1951): "Art. 843. – Any active-duty personnel who, by reason of their service, hold money, credit bonds or any other property belonging to the State and divert it from its legal use for their own benefit or that of someone else, have committed military fraud."

Art. 845. – Military fraud shall be sanctioned with up to ten years of incarceration or imprisonment and full and permanent disqualification, notwithstanding the provisions of article 590.

In time of war, the sanction shall be death, imprisonment or incarceration and full and permanent disqualification" (evidence file, folios 13061 and 13062).

87 Code of Military Justice (Law 14.029, July 4, 1951): "Art. 855. – Military personnel shall be sanctioned with incarceration or imprisonment for three to six years for committing falsehood by means of documents that are public or issued by the competent authorities and could result in damage, thus abusing their position, by:

(1) Forging or falsifying handwriting, a signature or a seal; (2) implicating others in actions when they were not involved; (3) implicating persons who were involved in the actions by attributing to them statements or claims they did not make; (4) describing the facts untruthfully; (5) falsifying dates; (6) applying modifications or additions to a genuine document, changing its meaning; (7) releasing a copy of an allegedly authentic document that makes statements contrary to or different from the content of the original; (8) concealing, removing or destroying any official document, to the detriment of the State or an individual person" (evidence file, folio 13063).

88 Judgment by the Supreme Council of the Armed Forces, June 5, 1989 (evidence file, folios 43 to 53).

89 *Cfr.*, among others, defense brief by Mr. Argüelles, October 3, 1988; defense brief by Mr. Candurra (evidence file, folios 1311 to 1329 and 1801 to 1909).

90 Judgment by the Supreme Council of the Armed Forces, June 5, 1989 (evidence file, folio 346 to 350). The convicted men were ordered to pay the following amounts, set jointly and severally, in Argentine peso (ARS) equivalences as of the date of payment: Mr. Galluzzi, Mr. Aracena and Mr. Morón were ordered to pay ARS 290,000,000; Mr. Aracena and Mr. Tobares, ARS 22,598,000, ARS 10,297,500 and ARS 23,810,540; Mr. Aracena and Mr. Benegas, ARS 720,000,000; Mr. Aracena, ARS 7,228,800; Mr. Galluzzi, Mr. Maluf, Mr. Muñoz and Mr. Pérez, ARS 3,500,000,000; Mr. Galluzzi, Mr. Morón and Mr. Argüelles, ARS 91,778,615; Mr. Galluzzi, Mr. Morón, Mr. Candurra and Mr. Óbolo, ARS 95,690,000; Mr. Candurra, ARS 139,876,847 and ARS 132,000,000; Mr. Arancibia, Mr. Cardozo an Mr. Óbolo, ARS 150,000,000; Mr. Arancibia, ARS 8,012,880; Mr. Galluzzi, Mr. Tomasek and Mr. Morón, ARS 13,109,995; Mr. Tomasek, ARS 193,023,005; Mr. Galluzzi and Mr. Tomasek, ARS 30,000,000; Mr. Galluzzi, Mr. Giordano and Mr. Morón, ARS 299,813,322; Mr. Galluzzi, Mr. Di Rosa, Mr. Morón and Mr. Cardozo,

82. That same day, under the terms of Decision 17/87, arrest warrants were issued against 18 of the alleged victims, whose pretrial detention had exceeded the allowable term therefor.[91] A constitutional motion against the arrests was lodged on June 6 and 8,[92] along with a writ of habeas corpus.[93] On June 9, 1989, the motion for constitutional relief lodged by Mr. Marcial and Mr. Argüelles was denied on grounds that it would encroach on military jurisdiction.[94]

83. On June 14, 1989,[95] the Prosecutor General of the Armed Forces and the convicted defendants invoked a provision in article 445 bis of the Code of Military Justice[96] to forward the case to the National Appeals Chamber.[97]

ARS 599,999,260; Mr. Di Rosa, ARS 140,144,219; Mr. Galluzzi and Mr. Pontecorvo, ARS 220,000,000; Mr. Galluzzi, Mr. Machín and Mr. Morón, ARS 413,373,833; Mr. Galluzzi and Mr. Machín, ARS 156,300.00; Mr. Galluzzi, Mr. Mercau, Mr. Luis José López Mattheus and Mr. Allendes, ARS 1,314,892,784.

91 Decision 17/89, issued by the Supreme Council of the Armed Forces on June 5, 1989, ordering the arrest of Mr. Galluzzi, Mr. Pontecorvo, Mr. Di Rosa, Mr. Giordano, Mr. Tomasek, Mr. Machín, Mr. Candurra, Mr. Aracena, Mr. Maluf, Mr. Candurra, Mr. Arancibia, Mr. Morón, Mr. Argüelles, Mr. Cardozo, Mr. Mattheus, Mr. Allendes, Mr. Muñoz and Mr. Óbolo (evidence file, folios 7990 to 7992).

92 Motion of "appeal" (constitutional relief) lodged by Mr. Cardozo, Mr. Argüelles, Mr. Mattheus, Mr. Allendes, Mr. Pérez, Mr. Marcial, Mr. Muñoz, Mr. Óbolo, Mr. Arancibia, Mr. Morón, Mr. Candurra on June 6, 1989 (evidence file, folios 7993 and 7994).

93 Writ of habeas corpus filed by the spouse of Mr. Argüelles on June 8, 1989 (evidence file, folios 1514 to 1522).

94 Decision by the National Judicial Branch, June 9, 1989 (evidence file, folios 1528 to 1530).

95 Judgment of the National Chamber of Criminal Cassation, April 3, 1995 (evidence file, folio 2057).

96 Code of Military Justice (Law 14.029, July 4, 1951): "Art. 445 bis – subparagraph 1: In peacetime, appeals may be lodged against final determinations by military courts addressing strictly military crimes and be remitted to the Federal Chamber of Appeals with jurisdiction in the place where the acts occurred that led to the prosecution of the case.

Subparagraph 2: Allowable grounds for the appeal may be:

(a) Noncompliance with or mistaken application of the law;

(b) Noncompliance with essential procedures prescribed in the law for the process;

Noncompliance with procedures prescribed in the law for the process may be declared, particularly, for those decisions that:

I. Limit the right to defense;

II. Disqualify evidence that is essential for resolving the case.

(c) Existence of evidence that could not be brought forward or submitted for well-founded reasons. […]

Subparagraph 7: Hearings shall be governed by the following rules:

A. Debate shall be public, unless the court has grounds to issue an order to the contrary for reasons of morality or safety.

B. The hearing shall be continuous; otherwise it may be declared null and void. If necessary, it shall continue to be held over the course of consecutive days and may be suspended only for a maximum of 10 days if necessary to resolve incidental matters that require time to be decided upon; if any kind of evidence needs to be produced away from the venue of the hearing; if the process requires the presence of a witness, expert witness or interpreter who is absent at the time; in case of illness of a judge or any of the parties, or if a new fact comes to light and the parties need time to exercise their right of defense. […]

D. With the authorization of the president, the parties and the members of the court may freely cross-examine witnesses or experts. The president shall disqualify leading, suggestive or unnecessary questions and, on his own motion or at the request of the parties, may order that the transcripts or audio recording of the statements, in whole or in part, be added to the case material (evidence file, folios 13025 and 13026).

97 Appeal by the attorney of Mr. Argüelles (evidence file, folios 1304 to 1306).

84. From July 25 to 30, 1989, the National Criminal and Correctional Appeals Chamber of the Federal Capital ordered release of the alleged victims who had been in detention since June 5, 1989, after they were convicted by the Supreme Council of the Armed Forces.[98]

85. On November 14[99] a complaint of judicial error was submitted as grounds for appeal. Under the terms of article 445 bis, subparagraphs 1, 2 clauses (a) and (b) and 4 of the Code of Military Justice, a pleading was filed to challenge the constitutionality of article 237 of the Code of Military Justice[100] and secondarily, it was argued that the criminal action had lapsed under the statute of limitations.[101]

86. On April 23, 1990, the National Appeals Chamber admitted the appeals against the judgment handed down by the Supreme Council of the Armed Forces.[102]

87. On December 5, 1990, the National Appeals Chamber held that the criminal action for the crimes classified as military fraud and forgery had lapsed under the statute of limitations, but denied the statute of limitations for the crime of conspiracy to commit a crime, codified in article 210 of the Criminal Code. It held that the nullifications would be considered in the discussion of the merits.[103]

88. On July 30, 1991, the Supreme Court considered a motion by the prosecutor of the Chamber challenging the decision to invoke the statute of limitations and decided to reverse the decision of the National Appeals Chamber and set aside its application of the statute of limitations.[104]

89. Law 24.050 was enacted on December 6, 1991, changing the composition of the judiciary (published in the Official Gazette on January 7, 1992).

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98 Release order for Mr. Argüelles, July 26, 1989 (evidence file, folio 2239). Also see merits file, folios 1912, 2194, 2195 and 2269.

99 Judgment by the National Chamber of Criminal Cassation, April 3, 1995 (evidence file, folio 2057).

100 Code of Military Justice (Law 14.029, July 4, 1951): "ARTICLE 237. - Statements shall be taken separately from each of the persons implicated in the crime or offense, and declarants cannot be required to swear or promise to tell the truth, although they can be urged to do so" (evidence file, folio 12835).

101 Brief of the complaint of judicial error lodged by the attorney of Mr. Giordano, Mr. Tomasek, Mr. Mercau, Mr. Arancibia, Mr. Argüelles, Mr. Cardozo, Mr. Muñoz and Mr. Candurra (evidence file, folios 1110 to 1245).

102 Admissibility of remedies lodged against the judgment of the Supreme Council of the Armed Forces, April 23, 1990 (evidence file, folios 7998 to 8035).

103 Considerations of the grounds for the finding by the National Criminal and Correctional Appeals Chamber of the Federal Capital, December 13, 1990 (evidence file, folio 1331 to 1336). The court held, "[a]lthough it is a universally accepted principle that the mere change of classification does not per se worsen of the situation of the appellant, there is no question that in this particular case, the issue at hand is the applicability of a system whose statute of limitations is more severe, under which the correctional penalty would remain in effect, and the change of legal subordination which has been under discussion would bring certain harm which in turn would nullify the argument of absence of fiscal injury […] Although article 601 of the Code of Military Justice makes reference to the time periods set in the Criminal Code, […] it would be wrong to lose sight of the fact that the text of the law refers exclusively to common crimes, which as has been said, cannot be applied here to military fraud." The court added that the Code of Military Justice itself, in article 2, "disallows any application of criminal provisions different from those of the military code in cases not so stipulated in the code," which means that the Criminal Code cannot be applied because there is no specific authorization to do so, and "it yields to the specialized precepts of the military system of laws." It did accept, however, that the Supreme Court in earlier judgments had held that the crime of fraud under the Code of Military Justice "does not differ essentially from that codified in article 261 of the Criminal Code;" certified by the Registrar of the National Criminal and Correctional Appeals Chamber of the Federal Capital, December 28, 1990 (evidence file, folio 1338).

104 Decision by the Supreme Court, July 30, 1991 (evidence file, folio 469).

90. The National Appeals Chamber decided on October 6, 1992 to postpone the hearing required under article 445 bis subparagraph 5 of the Code of Military Justice,[105] which stipulated that once motions were admitted, a hearing should be scheduled within a period not to exceed 30 days to air arguments on the complaints of judicial error and production of evidence and to decide whether the judgment being challenged is upheld, voided or reversed.[106]

91. On September 16, 1993 the National Appeals Chamber disqualified itself from continuing to hear the case. The National Chamber of Criminal Cassation received the case files on November 16, 1993, declined to exercise competence and returned the case to the originating court.[107] The National Appeals Chamber upheld its opinion and forwarded the case files to the Supreme Court, which ruled that the National Chamber of Criminal Cassation was the competent body to proceed with the remedy set forth in article 445 bis.[108]

92. On June 7, 1994 the prosecutor of the National Chamber of Criminal Cassation claimed that the order of admissibility of appeals against the judgment by the Supreme Council of the Armed Forces had expired, arguing that over four years had elapsed since it had been declared on April 23, 1990, "and nothing has been done to comply with the strict mandate given in subparagraph 5 *in fine* of art. 445 bis." The prosecutor added, "...the failure to respect [the] deadlines – a requirement of action, not of word – entails violation of due process, not only for unreasonable delays in the trial […] but also for discrediting evidence that could have been adduced," and therefore it requested that the order of admissibility be reversed with the exception of evidence that had already been supplied and joined to the cases.[109]

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105 Decision by the National Criminal and Correctional Appeals Chamber, October 6, 1992 (evidence file, folios 846 to 849). The Chamber said in its decision that one of the reasons why the deadline could not easily be met was that "as a result of the events of December 3, 1990, the President issued executive orders 2540/90 and 2632/90, ordering the Supreme Council of the Armed Forces to hold separate trials for the groups of servicemen involved in this matter, and by obligation, the judgments would be reviewed by this Chamber. This meant several cases would be tried involving different numbers of accused, and the hearings would take several days. As a result, "this Chamber now finds itself materially and legally (principle of continuity) unable to hold two trials jointly, and it gave priority to processing those cases that, unlike the instant case, involve persons being held in detention The volume and complexity of these trials are compounded by the fact that the number of regular actions has grown by 60 percent as a result of narcotics law 23.737 that gave jurisdiction to this chamber. […] In addition, this Chamber may be subject to changes in its membership due to the reform of the Criminal Procedural Code introduced under Law 23.9841."

106 Article 445 bis, subparagraphs 6 and 8 of the Code of Military Justice (Law 14.029, July 4, 1951) (evidence file, folio 13026).

107 Decision by the National Chamber of Criminal Cassation, November 16, 1993 (evidence file, folios 1340 to 1346). It said, "Law 24.121, art. 12[,] disallows altering the judicial system for remedies already in process with the National Criminal and Correctional Appeals Chamber of the Federal Capital through September, 1993 […]. The exceedingly protracted – in terms of both time and development – progress of resolving this remedy before said chamber should have led the court to consider that the attitude it is now taking – a strike against continuity of cognizance – would culminate in a sterile debate whose predictable and irreparable outcome would be to delay the process even further. Additionally, this delay would ultimately be contrary to the essential principles of procedural economy, undermining the right of the accused to obtain a decision that, respecting their position before the law and society, would put an end, as quickly as possible, to the state of indecision and confinement inherent to any criminal proceedings."

108 Judgment by the National Chamber of Criminal Cassation, April 3, 1995 (evidence file, folios 2295 and 2296).

109 Pleading for expiration of the order of admissibility by the prosecutor of the National Chamber of Criminal Cassation (evidence file, folios 2198 to 2202).

93. On February 20, 1995, Mr. Candurra's defense team argued that the statute of limitations had run out on the criminal action, based on the amount of time the process had taken.[110]

94. The hearing required under article 445 bis subparagraph 5 took place from February 22 through March 20, 1995.[111] The judgment was delivered on the latter date, as follows: (i) the pleadings to invoke the statute of limitations were denied; (ii) the requests for amnesty based on Law 22.924 for National Pacification and Law 23.521 for Due Obedience were denied; (iii) the pleadings for constitutional relief were denied; (iv) the arguments on conspiracy to commit a crime submitted by the Prosecutor General of the Armed Forces were partially overruled; (v) the other arguments for nullification put forward by the defense teams were denied;[112] and therefore, (vi) the penalties as ordered were reduced and Mr. Ambrosio Marcial was acquitted.[113]

95. On April 20, 1995 the defense teams lodged appeals of exception, *recurso extraordinario*,[114] which were denied by the National Chamber of Criminal Cassation on July

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110 Motion for the statute of limitations on the criminal action under article 75 subparagraph 22 of the Constitution, by Mr. Candurra's legal team, February 20, 1995 (evidence file, folios 2159 to 2174).

111 Transcription of the hearings before the National Chamber of Criminal Cassation, February 22, 23, 24 and March 10, 16, 17 and 20, 1995 (evidence file, folios 12110 to 12126).

112 Judgment by the National Chamber of Criminal Cassation, March 20, 1995 (evidence file, folios 2253 to 2280); reasoning for the judgment of March 20, 1995, by the National Chamber of Criminal Cassation, April 3, 1995 (evidence file, folios 2282 to 2392).

113 Judgment by the National Chamber of Criminal Cassation, March 20, 1995 (evidence file, folios 2255 to 2280) sentencing Mr. Galluzzi to 7 years of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Pontecorvo, 3 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Di Rosa, 4 years of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Giordano, 3 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Tomasek, 4 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Machín, 4 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Mercau, 5 years of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Aracena, 4 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Maluf, 5 years of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Candurra, 4 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Arancibia, 3 years of imprisonment and full and permanent disqualification concurrently with discharge; Mr. Morón, 6 years of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Argüelles, 3 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Cardozo, 3 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects; Mr. Mattheus, 3 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge; Mr. Allendes, 3 years of imprisonment and full and permanent disqualification concurrently with discharge; Mr. Marcial, acquitted; Mr. Pérez, 2 years and 1 day of incarceration and full and permanent disqualification concurrently with discharge; Mr. Muñoz, 3 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge; Mr. Óbolo, 3 years and 6 months of imprisonment and full and permanent disqualification concurrently with discharge and other secondary legal effects. The judgment reversed the sentence of joint and several monetary payments to the Argentine Air Force for Mr. Aracena and Mr. Tobares and changed Mr. Aracena's fine to the amount of ARS 720,000 instead of the original ARS 720,000,000 and annulled the joint and several payment with Mr. Benegas; it annulled Mr. Candurra's fine of ARS 139,876,347; it annulled Mr. Arancibia's fine of ARS 8,012,880; it changed Mr. Tomasek's fines to ARS 30,476.895 and ARS 25,355,110; it annulled Mr. Morón's fine for joint and several payment with Mr. Galluzzi and Mr. Machín. The other fines were upheld. Finally, the judgment stipulated the formula to be used in all cases to express the amount of the fine in current terms.

114 *Recurso extraordinario* by Mr. Giordano, Mr. Tomasek, Mr. Mercau, Mr. Arancibia, Mr. Argüelles, Mr. Cardozo and Mr. Muñoz, April 20, 1995; by Mr. Candurra; by Mr. Pontecorvo and Mr. Di Rosa, October 19, 1995; by Mr. Morón, April 18, 1995 (evidence file, folios 990 to 1071, 1547 to 1574, 2204 to 2225 and 2410 to 2480).

7, 1995, stating that "the complaints of judicial error raised by the defense via this type of exceptional proceedings ha[d] already been argued in the pleadings by the defense in the appropriate procedural venue." The Chamber added that the judgment being challenged did not contain "any causal factor that might demonstrate a clear departure from applicable laws or total lack of grounds that might prevent its being held as a valid judicial act."[115]

96. On August 7, 1995 motions of grievance (*recursos de queja*) were lodged with the Supreme Court to challenge the denial of the appeals of exception.[116] The National Prosecutor General held on April 30, 1996 that the motions should be denied because they had already been settled by the National Chamber of Criminal Cassation.[117] In the end, the motions of grievance were denied on April 28, 1998 by the Supreme Court, which held that they cited no grounds separate from those claimed in the appeal of exception that had already been denied.[118]

VIII
MERITS

97. The Court will offer its analysis concerning violations of the following Convention-based rights in the instant case: (1) the right to personal liberty and the right to be presumed innocent, for the alleged victims who were detained, and (2) the right to a fair trial and the right to judicial protection. The Court will then give its view on the alleged violations of (3) freedom from ex post facto laws and (4) the political rights of some of the alleged victims.

VIII-1
RIGHT TO PERSONAL LIBERTY AND RIGHT TO BE PRESUMED INNOCENT

A. Arguments of the parties and of the Commission

98. The **Commission** stated that the Code of Military Justice did not set required time limits for the military court to resolve the situation of a person in detention. It added that because the alleged victims had been in pretrial detention for a length of time that exceeded reasonable limits, with no justification whatsoever, the State had violated articles 7(2) and 7(5) in conjunction with Article 1(1) of the Convention.

99. The Commission added in its final brief of observations that "a central precept for determining [whether] the pretrial detention was compatible with the American Convention is to understand the grounds on which these detentions were ordered and to verify whether these grounds remained in effect or changed after the State had ratified the American Convention." Along these same lines, it noted that the pretrial detentions, which from the very beginning had been arbitrary, had continued despite the fact that the State was now under obligation to cease arbitrary actions. "[T]here is no disagreement that no regular review was conducted to determine whether the grounds that had led to the pretrial detentions of the victims were or were not compatible with the Convention." It therefore concluded that, given that the arbitrariness continued even following ratification, the State was in violation of article 7 of the Convention. The Commission added in its final observations that, because the

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115 Order of inadmissibility of the *recursos extraordinarios* by the National Chamber of Criminal Cassation, July 7, 1995 (evidence file, folios 1072 and 1073).

116 Motion of grievance by Mr. Giordano, Mr. Tomasek, Mr. Mercau, Mr. Arancibia, Mr. Argüelles, Mr. Cardozo and Mr. Muñoz; by Mr. Candurra; and by Mr. Morón and Mr. Aracena, all filed on August 7, 1995 (evidence file, folios 576 to 645, 1249 to 1262, and 2180 to 2185).

117 Decision by the National Prosecutor General, April 30, 1996 (evidence file, folios 859 and 860).

118 Decision by the Supreme Court, April 28, 1998 (evidence file, folio 2177).

regulations that had made it possible to prolong pretrial detentions were still in effect, the State had violated article 2 of the Convention. Finally, the Commission broadened the initial argument given in the Merits Report, adding that the lengthy periods of confinement became in fact an advance penalty against the alleged victims, in violation of articles 7(5) and 8(2) of the American Convention.

100. **Representatives** De Vita and Cueto argued that the alleged victims were convicted to prison for a sentence lesser than the time they had already served, that their right to personal liberty had been violated due to the excessive time spent in pretrial detention by Mr. Pontecorvo, Mr. Candurra, Mr. Di Rosa, Mr. Machín and Mr. Arancibia, and that this excessive period was acknowledged by the National Chamber of Criminal Cassation in its reasoning of the conviction handed down on April 3, 1995. They added that the orders for pretrial detention did not specify the grounds for the measure and did not meet the minimum requirements given in the Code of Military Justice, thus violating article 7(3) of the Convention. For all these reasons, they asked the Court to find violation of articles 7(2), 7(3) and 7(5).

101. **Representatives** Vega and Sommer pointed out that Mr. Maluf, Mr. Pérez, Mr. Galluzzi and Mr. Óbolo had been placed in pretrial detention illegally and for excessively long periods of 7 and 8 years, "while no judicial decisions whatsoever were made." They argued that the length of pretrial detention in some cases even exceeded the term applicable to final convictions. They also emphasized that "the measure […] was at no time explained on the basis that the accused could have interfered with the criminal proceedings against them or may be likely to evade justice. Based on the official documents in the case, the State at no time said that the accused had committed, or intended to commit, delaying tactics that could have interfered with the process or pushed the case into impunity." They claimed that this also violated the principle of innocence because pretrial detention, when it is excessively long, becomes a premature sentence. They added that any pretrial detention that lasts longer than allowed under domestic legislation should be considered *prima facie* unlawful. In the instant case, the military laws did not set any specific time limits for the military court to resolve the case, but national justice systems did have such parameters.

102. They noted in their final written pleadings that the arbitrary nature of the proceedings was not corrected later by the civilian courts. They asked for all these reasons that the State be held responsible for violations of articles 7(2), 7(5) and 1(1), in conjunction with article 8(1) and 8(2).

103. The **Inter-American Defenders** argued that there had been no explanation of the reasons to proceed with the arrests, which suggests that no competent judge had ordered them on legal grounds, nor was there any oversight of the legality of the measures of confinement. With respect to the violation of article 7(3), they argued that the arrests and the warrants for pretrial detention of the alleged victims were arbitrary.

104. They added that pretrial detention "is not compatible with the presumption of innocence, as the of this case is for the guilty parties to receive suitable punishment." They argued that the pretrial detention of Giordano, Mr. Tomasek, Mr. Aracena, Mr. Mercau, Mr. Morón, Mr. Cardozo, Mr. Mattheus, Mr. Allendes, Mr. Marcial, Mr. Muñoz and Mr. Argüelles was arbitrary because it had lasted an excessively long time in the terms of article 7(5) of the Convention, according to which, "...the State is always under obligation to conduct regular reviews of pretrial detention to ascertain whether the reasons they were ordered remain in effect, and have suspects released if circumstances have changed or if the measure has lasted an unreasonable amount of time."

105. They noted, however, that on the two occasions when the alleged victims were in pretrial detention, Argentina had no laws in force setting a maximum term for the incarceration of persons presumed innocent. From the beginning of the case, standards had always been in effect in the inter-American human rights system that bound the State to recognize the right to release after a reasonable period. Thus, they reaffirmed the view that, for States that have not set a maximum lawful term for pretrial detention, the measure can never exceed two-thirds of the minimum sentence applicable under criminal law as punishment for the alleged crime. They therefore held that the amount of time the alleged victims were incarcerated without having been convicted was "in any case unreasonable," and added that the prison term ordered on conviction was greatly exceeded by the time spent in pretrial detention.

106. In their final written pleadings, the Inter-American Defenders reaffirmed that the alleged victims, very much aware of the unreasonable length of their pretrial detention, "petitioned for release, but were denied." They added that the State had neglected its duty to verify whether the alleged acts had been committed, whether sufficient evidence existed to reasonably assume guilt, the procedural purpose (risk of hindering the proceedings, risk of escape), and whether the measure was appropriate or necessary. Despite the availability of less onerous procedural measures, there was no effort to monitor whether the pretrial detention was a matter of exception or was proportional, the duty to monitor pretrial detention to prevent any violation of the principle of presumption of innocence was overlooked, and there was apparently no judicial decision justifying and assuring that the procedural requirements demanded by the American Convention were in place.

107. For all these reasons, they asked the Court to declare violation of articles 7(1), 7(2), 7(3), 7(5), and 8(2), read in conjunction with articles 1(1) and 2 of the Convention.

108. The **State** held that the process of each of the applicants should be examined separately in regard to the precautionary measure of pretrial detention because the dates are different. The State further asserted that the applicants had chosen to pursue a military profession, thereby submitting to the laws and regulations governing this work, and that matters of military and service personnel constitute a special legal framework.

109. The State added that the arrest and pretrial detention were consistent with the provisions of articles 309 and 312 of the Code of Military Justice. The State therefore acted in accordance with the international order set forth in article 7(2) of the Convention as pertains to all the applicants. In fact, the warrants for arrest and the orders for pretrial detention were consistent with the requirements for a warrant to be issued by the competent authority, based on an already existing law, and setting out the grounds for the measure.

110. The State then pointed to the method applied to enforce the pretrial detention, noting that the alleged victims were at no time "arrested and ordered into pretrial detention in prison wards, but in environments proper to military activities, such as the officers' and junior officers' clubs." Moreover, the rules of military justice allowed for "taking leave, exiting the facility where they were being held for precautionary measures, receiving visitors, continuing to work, etc."

111. The State also discussed the question of whether the detention was arbitrary, noting that the Inter-American Commission had not found violation of article 7(3). It added that the causes that triggered the arrest of the applicants "were based on the certainty of probable guilt of the accused for committing a crime of military fraud and forgery in the military setting," and that the pretrial detention was justified by the conduct of the applicants, specifically the flight of Mr. Galluzzi until April 5, 1982 and the requests of the applicants for self-amnesty. The State therefore held that if it had not applied this precautionary measure,

the judicial process would have been frustrated both by the flight and by the failure of the applicants to appear. It also stated that the pretrial detention had come under regular review when the applicants were ordered to be released in August, 1987 "as a consequence of the September, 1984 entry into force of the [American Convention]."

112. The State then discussed the question of whether the amount of time they were held was reasonable and emphasized that the conduct of the applicants was sufficient justification to prolong the pretrial detention. It also claimed that the analysis should not include those applicants whose precautionary measure had been applied before the Convention went into effect, but consider only the pretrial detention that occurred after the date of ratification of the American Convention. In view of all this, the State assured that the amount of time was reasonable, considering the complexity of the case and the conduct of the applicants. The State then spoke on the alleged conversion of pretrial detention into a prison sentence, noting that "all the applicants were convicted of the crime of military fraud in the first trial, under military justice, and in the second and third trials through the federal courts and the Supreme Court." They therefore asked the Court to declare that article 7 of the Convention had not been breached.

B. Considerations of the Court

113. Before beginning its analysis of this particular case, the Court would emphasize that Mr. Allendes and Mr. López Mattheus were released on September 8, 1981 (*supra* par. 74), and consequently, the Court is not competent to examine their arrest warrants or pretrial detention. Moreover, in keeping with the decision made under the preliminary objection *ratione temporis*, the Court is not competent to hold that the American Convention has been violated for the events that took place prior to the State's recognition of its jurisdiction (*supra* par. 28). The Court therefore has no jurisdiction to examine the alleged illegal or arbitrary nature of the arrest warrants or the orders for pretrial detention of the alleged victims that took place in September and October 1980, but only during the period of pretrial detention as of September 5, 1984.

114. The Court has noted that the essence of article 7 of the American Convention[119] is the protection of the liberty of the individual from arbitrary or unlawful interference by the State.[120] This Court recalls that article 7 of the American Convention contains two distinct types of regulations: one general, the other specific. The general one is found in the first

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[119] Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.

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. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.[…]

[120] *Cfr. Case of "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 2, 2004. Series C No. 112, par. 223; and *Case of Torres Millacura et al. v. Argentina. Merits, Reparations and Costs.* Judgment of August 26, 2011. Series C No. 229, par. 76.

paragraph: "[e]very person has the right to personal liberty and security." The specific one is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (article 7(2)) or in an arbitrary manner (article 7(3)), to be informed of the reasons for the detention and the charges brought against him (article 7(4)), to judicial control of the deprivation of liberty (article 7(5)) and to contest the lawfulness of the arrest (article 7(6)).[121] Any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1).[122]

115. Next, in accordance with its decision on the preliminary objection *ratione temporis* (*supra* par. 28), the Court will now examine the alleged violations of article 7 of the American Convention regarding the amount of time the alleged victims were held in pretrial detention between the date Argentina recognized the jurisdiction of the Court (September 5, 1984) and the date each one of the accused was released (March, July or August, 1987).

i) Unlawful and arbitrary nature of the arrest and regular review of the pretrial detention

116. Article 7(2) of the American Convention states, "[n]o 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." This Court has held that a State's constitution, as well as the laws "established pursuant thereto," can be examined to determine whether they are compatible with article 7(2) of the Convention, and this must entail a review of whether the law's requirements were met as specifically and as far "beforehand" as the laws allow in terms of the "reasons" and "conditions" for depriving a person of liberty. If domestic provisions have not been upheld, either materially or formally, when a person is taken into custody, the confinement is unlawful and contrary to the American Convention,[123] in light of article 7(2).

117. The Court, in addressing the legality of the detention, recalls the dates of its jurisdiction over the instant case, wherefore it is unable to declare violation of article 7(2) of the Convention with respect to lawfulness of the arrest warrants and the orders for pretrial detention in September and October, 1980 (*supra* par. 28).

118. Representatives Vega and Sommer have argued that the Argentine system of justice contained standards setting specific terms for pretrial detention (*supra* par. 101), but no evidence in this regard was submitted to the Court, and therefore, in the instant case it has not been shown that Argentina during the full time of the pretrial detention had any rules setting a maximum term for such measures to be in force. The Court believes, however, that this matter should be examined under the terms of article 7(5) of the Convention (*infra* par. 129ff).

119. The Court has held, regarding the provisions in the Convention's article 7(3) on arbitrary arrest, that no one may be subject to arrest or imprisonment for reasons and by methods that – although classified as lawful – may be deemed incompatible with respect for the

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121 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2007. Series C No. 170, par. 51, and *Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 27, 2013. Series C No. 275, par. 125.

122 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, par. 54, and *Case of J. v. Peru*, par. 125.

123 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, par. 57; *Case of Yvon Neptune v. Haiti. Merits, Reparations and Costs.* Judgment of May 6, 2008. Series C No. 180, par. 96; *Case of Torres Millacura et al. v. Argentina*, par. 74, and *Case of Hermanos Landaeta Mejías et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 27, 2014. Series C No. 281, par. 158.

fundamental rights of the individual because they are, among other qualities, unreasonable, unpredictable or disproportionate.[124]

120. A measure for deprivation of liberty will not be considered arbitrary if the following parameters are met: (i) that the purpose be compatible with the Convention,[125] such as to ensure that the accused will not prevent the proceedings from being conducted or elude the system of justice;[126] (ii) that they be appropriate for achieving the objective sought;[127] (iii) that they be necessary; in other words, they must be absolutely essential to achieve the established objective and there is no available measure less injurious to the right affected;[128] (iv) that they be strictly proportional,[129] so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained by this restriction and the achievement of the intended purpose;[130] (v) any restriction of liberty that does not include sufficient justification to gauge whether it is in keeping with the above conditions will be arbitrary and, therefore, violate Article 7(3) of the Convention.[131]

121. Here it should be stated that a pretrial arrest or detention should be subject to periodic review and not be continued when the reasons for its adoption no longer exist.[132] In this sense, the judge does not have to wait until an acquittal is delivered for a person who has been detained to recover his freedom, but must periodically assess whether the grounds for the measure remain, and whether the measure continues to be necessary and proportional, and also if the duration of detention has exceeded legal and reasonable limits. Whenever it appears that the pretrial detention does not meet these conditions, release should be ordered, without prejudice to the continuation of the respective proceedings.[133]

122. It is the national authorities who are responsible for assessing the pertinence of maintaining the precautionary measures they issue pursuant to their own laws. When carrying out this task, national authorities should provide sufficient grounds to permit the interested parties to know the reasons why the restriction of their liberty is being maintained[134] and, to

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124 *Cfr. Case of Gangaram Panday v. Suriname. Merits, Reparations and Costs.* Judgment of January 21, 1994. Series C No. 16, par. 47; *Case of expelled Dominicans and Haitians v. Dominican Republic*. *Preliminary objections, Merits, Reparations and Costs.* Judgment of August 28, 2014. Series C No. 282, par. 364.

125 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, par. 103; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 312.

126 *Cfr. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, par. 77; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 312.

127 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, par. 93; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 312.

128 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, par. 93; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 312.

129 *Cfr. Case of Suárez Rosero v. Ecuador*, par. 77; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 312.

130 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, par. 93; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 312.

131 *Cfr. Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, par. 128; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile,* par. 312.

132 *Cfr. Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of May 6, 2008. Series C No. 180, par. 74; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 311.

133 *Cfr. Case of Bayarri v. Argentina*, par. 76; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 311.

134 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, par. 107; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile,* par. 311.

ensure that this is compatible with Article 7(3) of the American Convention, it must be based on the need to ensure that the detainee will not impede the efficient conduct of the investigations or evade justice,[135] and that it be proportional. Likewise, when a request is received for the release of those detained, the judge must explain the grounds, even if very briefly, on which he considers that preventive detention should continue.[136] Despite this, even when there are reasons for keeping a person in pretrial detention, the length of time should not exceed reasonable limits as established in Article 7(5) of the Convention.[137]

123. Moreover, although the Commission in the Merits Report for this case spoke in general terms about violation of article 7 of the Convention, without specifying or declaring violation of Article 7(3), it did note in its final written observations that the arbitrary nature of pretrial imprisonment persisted even after the ratification of the Convention despite the State's duty to put a stop to this type of arbitrary action (*supra* par. 99). Representatives Vega and Sommer offered similar views in a section of their pleadings (*supra* par. 102).

124. The Inter-American Defenders asserted that the applicants had petitioned for release but received decisions of denial (*supra* par. 106). However, they offered no evidence in this regard dated after September 5, 1984. Mr. Óbolo received release orders on March 31, 1987 (*supra* par. 78), and Mr. Cardozo, on July 23, 1987 (*supra* par. 79), in both cases because they had lodged a writ of "*queja*" and received a response,[138] and these were the petitions that finally led the Supreme Council of the Armed Forces to issue Decision 429/87, releasing the remaining applicants on August 11, 1987.[139]

125. Notwithstanding these events, the Court notes that during the period from September 5, 1984 to the months of March (for Mr. Óbolo), July (for Mr. Cardozo) and August (for the others), 1987, the case file shows no evidence that the authorities conducted any review of the pretrial detention of applicants still being held, indicating no verification as to whether sufficient grounds remained to prolong the pretrial detention, that is, whether the accused might have impeded the development of the proceedings or evaded the action of justice.

126. The State argued, in this regard, that the review performed by the National Appeals Chamber and subsequently by the Supreme Council of the Armed Forces in 1987 demonstrates that the State did in fact review the pretrial detention of the alleged victims (*supra* par. 111). This argument by the State, it is worth noting, suggests that there had been no previous review by a judge during the period under study.

127. The State later asserted before the Inter-American Court that the pretrial detention was justified by the flight of Mr. Galluzzi and the requests for an order of self-amnesty by the applicants (*supra* par. 111), although the case file contains no evidence of a domestic judicial decision on the matter. The Court therefore dismisses these arguments in view of the fact that potential risk to the proceedings is not to be presumed, but must be verified based on

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135 *Cfr. Case of Bayarri v. Argentina*, par. 74; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 311.

136 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, par. 117.

137 *Cfr. Case of Bayarri v. Argentina*, par. 74.

138 *Cfr.* Decision by the National Appeals Chamber, July 23, 1987, and Decision by the Supreme Council of the Armed Forces, August 11, 1987 (evidence file, folios 7978 and 7979, and 8054 to 8058).

139 *Cfr.* Decision by the Supreme Council of the Armed Forces, August 11, 1987 (evidence file, folios 7978 and 7979).

true, objective circumstances of the specific case.[140] With regard to this argument, it is important to emphasize that the conduct of one of the accused is not sufficient grounds to hold the others in pretrial detention. Likewise, the petition to benefit from Argentina's law on self-amnesty, which entailed statements admitting that the crimes had been committed allegedly as a justified move to combat subversion, does not constitute per se a reason to validate the presence of a risk to the proceedings and does not objectively and unequivocally demonstrate an intent to interfere with justice.

128. The Court therefore holds that the State, by failing to weigh whether the purposes, need and proportionality of the measures of confinement remained unaltered for approximately three years, impinged on the personal liberty of the accused and therefore constitute a violation of article 7(1) and 7(3) of the American Convention, in conjunction with article 1(1) thereof, in injury of Mr. Argüelles, Mr. Aracena, Mr. Arancibia, Mr. Candurra, Mr. Cardozo, Mr. Di Rosa, Mr. Galluzzi, Mr. Giordano, Mr. Machín, Mr. Maluf, Mr. Marcial, Mr. Mercau, Mr. Morón, Mr. Muñoz, Mr. Óbolo, Mr. Pérez, Mr. Pontecorvo, and Mr. Tomasek.

ii) Duration of pretrial detention

129. Article 7(5) of the American Convention guarantees the right of any person held in pretrial detention to be tried within a reasonable time or released, without prejudice to the continuation of the proceedings. This right imposes temporal limits on the duration of pretrial detention and, consequently, on the State's power to protect the purpose of the proceedings by using this type of precautionary measure. When the duration of pretrial detention exceeds a reasonable time, the State can restrict the liberty of the accused by other measures that are less harmful than deprivation of liberty by imprisonment and that ensure his presence at the trial. This right also imposes the judicial obligation to process criminal actions in which the accused is deprived of his liberty with greater diligence and promptness.[141]

130. The general rule must be the liberty of the accused while their criminal responsibility is being decided,[142] because they enjoy a legal status of innocence and this requires that the State accord them a treatment in keeping with their situation as persons who have not been convicted.[143] This Court has asserted the State's obligation not to restrict the liberty of a detained person beyond the limits strictly necessary to ensure that he will not impede the efficient development of an investigation and that he will not evade justice.[144]

131. In this sense, pretrial detention must strictly conform to the provisions of Article 7(5) of the American Convention: it cannot be for longer than a reasonable time and cannot endure for longer than the grounds invoked to justify it.[145] Anything else would be tantamount to an advance sentence, which is at odds with universally recognized general principles of law, including the principle of presumption of innocence.[146] Consequently, a protracted pretrial

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140 *Cfr. Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs*. Judgment of November 17, 2009. Series C No. 206, par. 115; and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 312.

141 *Cfr. Case of Case of Bayarri v. Argentina*, par. 70; *Case of Barreto Leiva v. Venezuela*, par. 119 and 120.

142 *Cfr. Case of López Álvarez v. Honduras*, par. 67; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 310.

143 *Cfr. Case of J. v. Peru*, par. 157; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 310.

144 *Cfr. Case of Suarez Rosero v. Ecuador, Merits*, par. 77; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 312.

145 *Cfr. Case of "Juvenile Reeducation Institute" v. Paraguay*, par. 229.

146 *Cfr. Case of Suarez Rosero v. Ecuador*, par. 77; *Case of Bayarri v. Argentina*, par. 110.

detention becomes punitive rather than precautionary, which perverts the measure and breaches article 8(2) of the Convention.[147]

132. The dates to be used in determining the duration of pretrial detention in the instant case, in the context of jurisdiction of the Court, are September 5, 1984, when Argentina ratified the American Convention and recognized the contentious jurisdiction of the Court, through 1987, when the Supreme Council of the Armed Forces ordered the release of the 16 remaining applicants by means of Decision number 429/87.

133. The Court takes note that articles 309, 310 and 312 of the former Code of Military Justice were the legal instruments governing the arrests and pretrial detention of the accused. However, as the Commission and the Inter-American Defenders stressed, there were no provisions setting a maximum term or criteria for the release of a person held in detention beyond a reasonable period.

134. The prison convictions handed down to the applicants from the court of last resort were: (i) Galluzzi: 7 years in prison; (ii) Morón: 6 years in prison; (iii) Mercau and Maluf: 5 years in prison; (iv) Tomasek, Machín, Aracena and Candurra: 4 years, 6 months in prison; (v) Di Rosa: 4 years in prison; (vi) Pontecorvo, Giordano, Argüelles, Cardozo, Muñoz and Óbolo: 3 years, 6 months in prison; (vii) Arancibia: 3 years in prison, and (viii) Pérez, 2 years, 1 day in prison. Finally, Mr. Marcial was acquitted (*supra* par. 94).

135. The Court is also aware that in fact, the 18 alleged victims in pretrial detention until 1987 had remained in confinement for approximately four years after the Court's jurisdiction began (*supra* par.71). The Court therefore holds that the periods ranging from two and a half years to two years, 11 months when they remained in pretrial detention following the initiation of the Court's jurisdiction[148] and during which time the legal status of the accused was not resolved, exceeded the reasonable time requirements set forth in article 7(5) of the Convention. The Court would underscore a further example of the unreasonable length of time in pretrial detention in the instant case, to wit, that the amount of time several of the applicants remained in detention exceeded the sentences they were eventually given (*supra* par. 134).

136. Pretrial detention is also limited by the principle of proportionality, by virtue of which a person presumed innocent cannot be treated the same as or worse than a convicted person. The State must avoid imposing a measure of procedural coercion equally or more injurious to the defendant than the punishment to be expected in case of conviction.[149] The Court deems that the State should have ordered less severe measures, especially because the maximum prison sentence for the crime of which they were accused was ten years,[150] and bearing in mind that by September, 1984, the process was no longer in the early stages. This means that the pretrial detentions were in fact a premature sentence, and the accused were held in

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147 *Cfr. Case of Bayarri V. Argentina*, par. 110 and 111, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 310 to 312.

148 Mr. Galuzzi, Mr. Pontecorvo, Mr. Di Rosa, Mr. Giordano, Mr. Tomasek, Mr. Machín, Mr. Mercau, Mr. Aracena, Mr. Maluf, Mr. Candurra, Mr. Arancibia, Mr. Morón, Mr. Argüelles, Mr. Pérez, Mr. Muñoz and Mr. Marcial were in custody for 2 years, 11 months and 10 days; Mr. Cardozo, for 2 years, 10 months and 21 days and Mr. Óbolo, 2 years, 6 months and 27 days (merits file, folios 2073 to 2084).

149 *Case of Barreto Leiva v. Venezuela*, par. 122.

150 Code of Military Justice (Law 14.029, July 4, 1951): "ARTICLE 845. – Military fraud shall be sanctioned with up to ten years of incarceration or imprisonment and full and permanent disqualification, notwithstanding the provisions of article 590. [...]" (evidence file, folio 12972).

custody for a period that was disproportionately long in view of the punishment corresponding to the suspected crime.

137. The Court finds, therefore, that the State violated articles 7(1), 7(5) and 8(2) of the American Convention, in conjunction with article 1(1) thereof, in injury of the 18 suspects who remained in pretrial detention until 1987.

138. The Court also holds that the detention of the applicants from June 5, 1989 until July of the same year (*supra* par. 82 and 84), was the outcome of a judgment by the Supreme Council of the Armed Forces, which convicted them in a first trial to a term that exceeded the time they had already been in pretrial detention; accordingly, the Court does not hold the State responsible for a violation of the American Convention in this situation.

VIII-2
RIGHT TO A FAIR TRIAL AND RIGHT TO JUDICIAL PROTECTION

A. Guarantees of competence, independence and impartiality

A.1 Arguments of the Commission and the parties

139. The **Commission** discussed the special status of the military courts, arguing "[w]hen military justice in Argentina came under the Ministry of Defense, it [was] therefore under the Executive Branch, and [the military courts] [were] not independent or impartial and, even more importantly, [were] not part of the justice system."

140. It added, however, "[a]t no time did [the alleged victims] argue that the [Supreme Council of the Armed Forces] was not the appropriate court to try [them] or that they should have been tried in a general criminal court. The alleged victims were active, in-service military personnel who were tried and convicted for military offenses before a military court." The Commission concluded, accordingly, that the alleged victims "had access to an appropriate, impartial and independent court when their appeals were heard by the National Chamber of Criminal Cassation, and they also exercised their right to appeal to the highest court in the land, the Supreme Court of Argentina. [Therefore,] Argentina did not commit violation of articles 8 and 25 of the American Convention."

141. **Representatives** Vega and Sommer stated that the military courts, staffed by officers who were part of the hierarchy of the Executive Branch, are unconstitutional because they openly violate the provision that prohibits the executive from performing judicial duties. The military courts therefore cannot be considered a jurisdiction in the constitutional or international sense, but instead are administrative panels not qualified to apply criminal laws. These representatives claimed in their pleadings and motions brief that the State had been responsible for violating articles 8 and 25 of the Convention. In their final written pleadings, however, they asked the Court to find violation of articles 8(1), 8(2(d)), 8(2(g)) and 8(3) thereof.

142. The **Inter-American Defenders** stated, "[t]he bodies performing judicial duties lacked impartiality and independence insofar as the Code of Military Justice itself thwarted these principles by allowing judges and panel members of military courts to perform their duties within the hierarchical structure of which they were a part, because as official members of the armed forces, they were subject to the chain of command." They concluded, therefore,

that the Stated had not respected the guarantees of due process articulated in article 8 of the Convention.

143. The **State**, in turn, said that the alleged victims were members of the Armed Forces under the definition of military personnel, were tried for criminal conduct proper to the military arena as covered by the Code of Military Justice and endangered military assets, and this justified the exercise of military punitive power, and finally, the application of a sanction. Moreover, "military courts per se are not incompatible with the [Convention]. Their organization and concrete operations must be considered before deciding whether the principles of impartiality and independence of the judges have been impaired[.] In the case at hand, however, […] there has been no evidence of a single instance in which there was even the slightest suspicion of partiality or dependence by the judicial authorities who took part in the criminal proceedings." It therefore asked the Court to hold that articles 8(1) and 11 of the Convention had not been breached.

A.2 Considerations of the Court

144. Article 8(1) of the American Convention states, "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

145. Article 25(1) says, "[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties." The Court has held, "[a]rticle 25(1) of the Convention establishes the obligation of the States Parties to guarantee, to all persons subject to their jurisdiction, an effective judicial remedy against acts that violate their fundamental rights. In addition to the formal existence of remedies, such effectiveness supposes that these provide results or responses to the violations of rights provided for in either the Convention, Constitution, or by law."[151]

146. In principle, the jurisdictional function belongs intrinsically to the judicial branch, regardless of whether other bodies or public authorities may hold jurisdictional duties in certain specific situations. In other words, when the Convention refers to the right of everyone to be heard by a "competent...court or tribunal" for the "determination of his rights," this expression refers to any public authority, be it administrative, legislative or judicial, whose decisions determine individual rights and obligations. For that reason, this Court considers that any State organ that exercises functions of a materially jurisdictional nature has the obligation to adopt decisions that are in consonance with the guarantees of due legal process in the terms of Article 8(1) of the American Convention.[152]

i) Judicial independence

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151 *Case of Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 5, 2011, Series C No. 228, par. 95, and *Case of Liakat Alibux v. Suriname*, par. 116.

152 *Cfr. Case of the Constitutional Court v. Peru. Merits, Reparations and Costs.* Judgment of January 31, 2001. Series C No. 71, par. 71, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 28, 2013. Series C No. 268, par. 166.

147. This Court has held that one of the principal purposes of the separation of public powers is to guarantee the independence of judges.[153] The purpose of such protection lies in preventing the judicial system in general and its members in particular, from finding themselves subjected to possible undue limitations in the exercise of their functions, by bodies alien to the Judiciary.[154] Thus, judicial independence requires guarantees including an appropriate appointment procedure, tenure, and a guarantee against external pressure.[155] The Court has further held that the State must guarantee the autonomous exercise of the judicial function in both its institutional aspect, that is in relation to the Judiciary as a system, and also in relation to its individual aspect, that is, as regards the person of the specific judge.[156]

148. The Court has established that in a democratic State, the jurisdiction of military criminal courts must be restrictive and exceptional, applied only to the protection of legal rights intrinsic to the military system that have been harmed by active-duty military personnel in the performance of their duties.[157] Moreover, the Court has repeatedly affirmed that the military criminal courts have no competent jurisdiction to investigate or, if necessary, prosecute and punish the perpetrators of human rights violations; instead, the prosecution of such cases must always fall to the general justice system.[158]

149. In cases involving the use of military courts to try and sanction perpetrators of human rights violations, the Court has found the military jurisdiction failing to meet Convention-based requirements of independence and impartiality.[159] The Court has also addressed the organic structure and composition of military courts, holding that they lack independence and impartiality when "they are made up of active-duty military personnel who are hierarchically subordinate to higher-ranked officers through the chain of command, that their designation does not depend on their professional skills and qualifications to exercise judicial functions, that they do not have sufficient guarantees that they will not be removed, and that they have not received the legal education required to sit as judges or serve as prosecutors."[160]

150. Notwithstanding this, the Court is faced with the commission of offenses different from those seen in its earlier case law or procedural and substantive disputes and with a scenario of analysis different from those of earlier cases. During the time these events took place in Argentina, the military jurisdiction was defined by the Constitution and the Code of Military Justice and covered "crimes and misdemeanors of an essentially military character, to include all those offenses that, because they affect the existence of the military establishment, are

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153 *Cfr. Case of the Constitutional Court v. Peru,* par. 73, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador*, par. 188.

154 *Cfr. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008. Series C No. 182, par. 55, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador*, par. 188.

155 *Cfr. Case of the Constitutional Court v. Peru*, par. 75, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador*, par. 188.

156 *Cfr. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, par. 55, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador*, par. 198

157 *Cfr. Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, par. 117, and *Case of Osorio Rivera and Family Members v. Peru. Preliminary objections, Merits, Reparations and Costs.* Judgment of November 26, 2013. Series C No. 274, par. 189.

158 *Cfr. Case of La Cantuta v. Peru. Merits, Reparations and Costs.* Judgment of November 29, 2006. Series C No. 162, par. 142, and *Case of Osorio Rivera and Family Members v. Peru,* par. 189.

159 *Cfr*. *Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs.* Judgment of May 30, 1999. Series C No. 52, par. 132, and *Case of Nadege Dorzema et al. v. Dominican Republic*, par. 188.

160 *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135, par. 155.

defined and sanctioned exclusively by military laws."[161] Moreover, the organization of military courts in peacetime was handled, among others, by the Supreme Council of the Armed Forces.[162] More specifically, this Supreme Council reported to the Ministry of National Defense[163] and was made up of nine members appointed by the president of Argentina;[164] six were general officers or the equivalent from the combat units or the command structures, and three were professionals of the highest allowable rank from the audit corps of the armed institutions.[165]

151. The Code of Military Justice was reformed in February 15, 1984 under law 23.049. Expert witness Armando Bonadeo discussed the law, explaining that it was enacted two months after democracy was established in Argentina and introduced two substantial changes to the military code: (1) it placed boundaries on the competence of military courts to administer justice during peacetime, limiting it to essentially military crimes, and (2) it required the Federal Criminal Appeals Chamber (later renamed the National Chamber of Criminal Cassation) to conduct a comprehensive review of the judgments of military courts.[166]

152. On May 6, 2007, more than a decade after the National Chamber of Criminal Cassation handed down its decision on the instant case (March 20, 1995, *supra* par. 94), the Argentine Supreme Court delivered a judgment on a case involving the application of the Military Code of Justice in force at the time, the "López, Ramón Ángel" case, and said:

> "[n]o argument whatsoever can allow employees of the executive branch, subject to its orders, to enforce criminal laws; they may act only in a situation of need within the strict boundaries spelled out in the criminal code itself. If the jurisdiction of these courts derives from the role of the president as commander in chief (art. 99, cl. 12 of the Constitution), it is a question of administrative jurisdiction, and as such, has no criminal competence, which the president of the republic expressly lacks (art. 23, 29 and 109 of the federal constitution): if the head of the executive branch does not have this faculty, nor do the president's subordinates. […] Further, the administrative courts cannot try crimes, and the military jurisdiction, as established, is unconstitutional because it violates the American Convention, the International Covenant and the Universal Declaration."[167]

153. As a consequence of this line of reasoning, the Supreme Court admitted the appeal of exception that had been lodged; it declared null and void all the proceedings thus far and acquitted Mr. Ramón Ángel López,[168] bearing in mind that Mr. López had no access to the mandatory remedy of review provided in article 445-bis of the Code of Military Justice.

154. Later, on August 26, 2008, the Military Code of Justice was repealed under law 26.394, and it was determined that the military jurisdiction was applicable only for disciplinary charges, while the jurisdiction over crimes was transferred to the criminal courts in the general jurisdiction. Along the same lines, expert witness Bonadeo stated, "crimes […] committed by members of the Armed Forces should be tried by judges – jurisdictional principle – appointed

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161 *Cfr.* Article 108 of the Code of Military Justice (evidence file, folio 683).

162 *Cfr.* Article 9 of the Code of Military Justice (evidence file, folio 674).

163 *Cfr.* Article 16 of the Code of Military Justice (evidence file, folio 675).

164 *Cfr.* Article 14 of the Code of Military Justice (evidence file, folio 675).

165 *Cfr.* Articles 11 and 12 of the Code of Military Justice (evidence file, folio 675).

166 *Cfr.* Statement by expert witness Armando Alberto Bonadeo (merits file, folio 1873).

167 Judgment by the Supreme Court of Argentina in the case of "López, Ramón Ángel," May 6, 2007 (evidence file, folios 5258 and 5259).

168 *Cfr.* Judgment by the Supreme Court of Argentina in the case of "López, Ramón Ángel," May 6, 2007 (evidence file, folio 5261).

through legally established procedures, having functional independence and not coming under the hierarchy of the executive branch, in accordance with the provisions of article 8 subparagraph 1 of the American Convention on Human Rights."[169]

155. Expert witness Miguel Lovatón, in turn, explained that the dual, simultaneous status as military judge and officer was incompatible with the principle of balance of powers and judicial independence. Along the same lines, the expert witness explained that it would be unacceptable for a judge to be simultaneously answerable to and a member of the executive branch, most particularly, to a hierarchical and subordinate structure such as the Armed Forces; under the circumstances, it would be impossible speak of judicial independence because the judge would be subject to a military structure incompatible with guarantees of independence.[170]

156. Now, unlike the earlier cases judged by the Court, here there is no dispute as to whether the crimes were military in nature. The facts of the case clearly show that the military jurisdiction was used to investigate active-duty members of the Argentine Air Force for crimes of fraud and forgery of military documentation. In addition to the status of the alleged victims as active-duty military, the interest of the military criminal justice system was to protect military assets, grounded in the Military Code of Justice (the law already in effect at the time) such that the jurisdiction handed to the Supreme Council of the Armed Forces was not contrary to the Convention.

157. With respect to the independence of the military court that tried this case, the Court notes that neither the process of appointment, the term lengths nor the qualifications of the members of the Supreme Council (article 14 of the Code of Military Justice[171]) was challenged during the domestic proceedings or in the arguments submitted to the Inter-American system, so the Court will not judge the matter.

158. Moreover, although there had been no specific arguments about the lack of independence among members of the Supreme Council of the Armed Forces in the performance of their duties in this particular case, the Court believes that the very fact that the people sitting on the Supreme Council of the Armed Forces were active-duty military and were answerable and subordinate to their superiors, who were part of the executive branch, calls into question their independence and objectivity.[172]

159. The Court would also note that the Code of Military Justice at the time did not require legal training for six of the nine people serving as judges or members of the Supreme Council of the Armed Forces (article 12, CJM). None of this would be a problem for a strictly administrative or disciplinary panel, but it falls short of the standards given in article 8(2) of the American Convention for specifically criminal matters.[173]

160. After the case was processed by the military courts, the mandatory remedies were lodged in the general jurisdiction (*supra* par. 83). This was in compliance with the 1984 reforms to the Code of Military Justice, whose article 445-bis introduced a procedure for

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169 Statement by expert witness Armando Bonadeo (merits file, folio 1887).

170 Statement by expert witness Miguel Lovatón Palacios (merits file, folio 1835 and 1836).

171 Code of Military Justice, article 14 – "The members of the Supreme Council shall be appointed by the President; they shall remain in the position for six years and be eligible for reelection. They must take an oath of office before a quorum of members of the council. This oath will be taken by the chief justice of the court."

172 *Cfr. Case of La Cantuta v. Peru. Merits, Reparations and Costs.* Judgment of November 29, 2006. Series C No. 162, par. 141, and *Case of Nadege Dorzema et al. v. Dominican Republic*, par. 188.

173 *Cfr. Case of Palamara Iribarne v. Chile*, par. 155.

mandatory review of military court decisions by the general jurisdiction, without which the judgments of the Supreme Council of the Armed Forces could not become final unless they were validated by the National Appeals Chamber.[174] By making this change in the context of a transition to democracy, according to expert witness Bonadeo, the State introduced a process of balance among the branches of government, assigning judicial responsibilities to various bodies, consistent with enforceable international standards allowing military courts to be considered admissible and to remain in operation.[175]

161. The Court believes, in this connection, that the remedy created under article 445-bis of the Code of Military Justice was well suited to determine whether a human rights violation had been committed and provided the means to correct it,[176] because the accused had the opportunity to lodge a wide range of remedies on alleged judicial error, illegal actions and constitutional breaches, to be duly examined and resolved by the National Chamber of Criminal Cassation and the Supreme Court, which held general jurisdiction and were empowered to give finality to the judgment as delivered.

162. The Court takes note that, based on article 445-bis of the Code of Military Justice, the professionally qualified defense counsel of the accused challenged the following matters to the National Chamber of Criminal Cassation: (1) the Supreme Council of the Armed Forces had failed to apply Amnesty Law 22.924 or the Law of Military Obedience 23.521; (2) the criminal action had lapsed under the statute of limitations ; (3) the consistency principle had been violated; (4) the formal statements by the accused at the hearing had been nullified; (5) the expert testimony on accounting was nullified; (6) the accused had been held incommunicado for periods in excess of the legally permitted maximum; (7) essential evidence had not been brought forward; (8) promises were made to relieve the procedural situation of the case in exchange for cooperating in the investigation of the suspected offenses; (9) the actions by one of the military investigative judges were nullified, as it was understood that he was not in psychological condition to participate in the proceedings; (10) no evidence was available to verify the participation of the accused in the facts of the case; (11) a request to view seized documentation was denied; (12) all the actions were nullified because pages in the case file were missing, illegible or blank; (13) the principle of freedom from ex post facto laws contained in the more beneficial criminal law was violated by the

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174 *Cfr.* Articles 56 and 445-bis of the Code of Military Justice. Expert witness Bonadeo also stated that this institution, more than a remedy, was actually a mandatory process of review of the judgments of military courts and a procedure […] before a civilian chamber serving as a court of military jurisdiction." Statement by expert witness Armando Alberto Bonadeo (merits file, folio 1874).

175 Statement by expert witness Armando Bonadeo (merits file, folio 1873).

176 *Cfr*. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 7, par. 137, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador*, par. 228. See also: Article 445-bis of the Code of Military Justice: Subparagraph 2: Allowable grounds for the appeal may be: (a) noncompliance with the law or applying it incorrectly; (b) failure to uphold the essential forms that the law provides for the process; consideration shall be given to whether the forms the law provides for the process were neglected, particularly in decisions that: I. limit the right to defense; II. fail to consider evidence that is essential for judging the case; (c) existence of evidence that could not be adduced or submitted for well-founded reasons. […]

Subparagraph 4: Having received the case files, the Chamber shall summon the parties to speak and grant a term of 5 days for the accused to designate a professionally qualified defender; otherwise the court will do so on its own motion. This summons will be issued and documented and will set the dates for other writs to be delivered in writing. Within ten days after the order described in the above paragraph has been delivered, the appellant must submit grievances and the plaintiff will be served the brief and will have the same amount of time to respond. If multiple remedies have been lodged, the terms for expressing grievances of judicial error and replying to them will run simultaneously. The parties may use the same briefs to request permission to produce evidence on new facts or measures that, for admissible reasons, may not have been submitted or raised in the military courts. […]

Subparagraph 6: The hearing shall open with statements by the parties, summarizing their grievances or strengthening the grounds for their arguments. The same hearing will receive additional evidence that has been requested and admitted in advance. Defendants who so wish will be heard at this time.

application of law 23.049 to the new system of military jurisdiction; (14) the sanctions ordered by the Supreme Council of the Armed Forces were "exorbitant;" (15) irregularities took place during the deliberation; (16) no professionally qualified defender was present during the processing of the case in the military jurisdiction; (17) raids and seizures were conducted without warrants from the Military Judge of Criminal Investigation; (18) article 445-bis of the Code of Military Justice was unconstitutional; (19) article 366 of the Code of Military Justice was unconstitutional because it limited the right to defense by prohibiting subordinates from lodging charges against their superiors; (20) the lower court assigned an improper legal value to proven facts, and (21) the principle of equality before the law was violated because higher-ranking members of the Air Force did not come under criminal investigation.

163. The Court also found that the response by National Chamber of Criminal Cassation to each of the complaints of judicial error submitted by the defense of the accused was individual, well-founded, and consistent. In this regard, the Court would like to emphasize at least the following considerations articulated by the National Chamber of Criminal Cassation: (1) with respect to the application of the Amnesty Law and the Law of Military Obedience, it was argued that the accused had provided no evidence to demonstrate their relationship with the so-called "Vulcano" group, and therefore they did not qualify for consideration under these laws, and the petition by the defense was denied; (2) with respect to the statute of limitations on the case, the Chamber held that the reintroduction of the objection was based on the very same factors that had already been judged by the Supreme Court, and therefore, given that the circumstances weighed by the high court had not changed, its conclusions remained in effect and the petition for the statute of limitations was denied; (3) with respect to the alleged violation of the principle against ex post facto application of the most beneficial criminal law, the Chamber held that this rule was applicable only to the provisions of substantive criminal law, and not to procedural rules, so it denied this defense motion, and (4) regarding the lack of professionally qualified defense, the Chamber held that it had not been proven that the defense counsel assisting the alleged victims had in any way undermined their rights and that in the appellate stage, governed by article 445-bis, the defense is provided by attorneys.

164. The Court added that the defense attorneys had lodged appeals of exception to the judgment by the National Chamber of Criminal Cassation and the chamber had declared these remedies inadmissible because the complaints of judicial error already introduced by the defense had been settled, and the judgment being challenged had not been shown to depart in any way from the applicable laws or to lack grounds such as could have wrested validity from this judicial act.

165. The defense teams then filed a writ of *queja* with the Supreme Court for having denied the earlier appeal of exception, and it was dismissed for lack of independent grounds.

166. The Court therefore concludes, taking a full view of the entire process in the instant case, that the later intervention of judicial bodies in the general jurisdiction under the requirement for judicial review of decisions by the military courts, under article 445-bis of the Code of Military Justice, offered a new opportunity to litigate the points challenged in the military courts and establish appropriate criminal liabilities. The judgments originally handed down by the Supreme Council of the Armed Forces were amended as a result, the sentences were reduced, one charge was dismissed and one of the accused was acquitted. The action by the general jurisdiction did not breach guarantees of judicial competence, independence and impartiality. Thus the Court, given the particular details of the instant case and the question of its jurisdiction *ratione temporis*, and by virtue of the judicial review of the case in the general jurisdiction, which upheld guarantees of due process and the principles of judicial independence and impartiality, holds the State not to be in violation of articles 8(1) and 25(1) of the American Convention in injury of the alleged victims.

ii) Impartiality

167. The Court has held that impartiality demands subjective guarantees by the judge, as well as sufficient objective guarantees to quell any doubt the party or the community might entertain as to the judge's lack of impartiality.[177] The Court has clarified, moreover, that such challenges are a procedural means of protecting the right to be heard by an impartial body.[178]

168. The guarantee of impartiality implies that members of the court have no direct interest in, a preestablished viewpoint on, or a preference for one or another of the parties, that they are not involved in the dispute[179] and that they inspire the necessary trust and confidence in the parties to the case and in the citizens of a democratic society.[180] Lack of impartiality cannot be assumed, but must be assessed on a case-by-case basis.

169. In the case at hand, the Court assures that the alleged victims at no time asked for the judges on the Supreme Council of the Armed Forces to be disqualified.[181] Nor did the alleged victims petition in the domestic jurisdiction for the judges on the National Chamber of Criminal Cassation or the Supreme Court to be recused, nor did they adduce any evidence in the current proceedings to demonstrate partiality by these judges while the case was being processed, for any subjective reason. Furthermore, there is no evidence that the functional hierarchy of the members of the Supreme Council of the Armed Forces interfered with their impartiality in this specific case. The Court deems, accordingly, that insufficient evidence is available to conclude that the judges who participated in trying the process lacked impartiality.

B. Right to be assisted by legal counsel of one's own choosing

B.1 Arguments of the parties and of the Commission

170. The **Commission** argued, "article 97 of the Code of Military Justice [did] not grant the alleged victims the right to an attorney, but allow[ed] them to be defended by an active-duty or retired military officer. The right to be defended by an attorney was addressed in article 252 of the Code of Military Justice, once the accused had delivered a statement before the court." In this sense, "bearing in mind that the nature and the activities of an effective, technically qualified defense necessitate […] the services of a legal professional, the Commission deem[ed] that the restriction imposed by the [Code of Military Justice] led to a dual violation of the right enshrined in article 8(2)(d) of the Convention: [f]irst, that the [alleged] victims were unable to have "legal counsel of [their] own choosing," but instead were assigned a person from the armed forces, someone under the military chain of command

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177 *Cfr*. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela.*, par. 56, and *Case of J. v. Peru*, par. 282.

178 *Cfr. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela,* par. 64, and *Case of J. v. Peru*, par. 282.

179 *Cfr. Case of Palamara Iribarne v. Chile*, par. 146.

180 *Cfr. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107, par. 171.

181 The defense team in the domestic procedure also petitioned the courts to nullify the actions by one of the judges on the Military Court of Criminal Investigation who was not psychologically competent to perform these duties, and the National Chamber of Criminal Cassation held that the clinical history noted by the defense was not sufficient to demonstrate that the judge was physically or psychologically unable to conduct the investigation of the case. In any event, this claim is unrelated to the impartiality of the judge in the specific case, as clarified in paragraph 162 of this judgment.

over whom even the military judge had powers of discipline and control. Second, it was not a technically qualified defense lent by a legal professional, as required by international law." The Commission added, "the totality of these restrictions on the right to defense during the stage of the procedures before military justice was not rectif[ied] in the subsequent civilian jurisdictions that heard the process. The victims' right to defense was therefore undercut constantly during the entire process, as was the principle of equality of arms that should be safeguarded by judicial authorities in criminal proceedings." The Commission therefore held that the State had violated the right of the alleged victims to be assisted by an attorney during the procedures in the military jurisdiction, in violation of article 8(2)(d) and (e).

171. The **representatives** agreed in general terms with the Commission's arguments. Representatives De Vita and Cueto added that the petitioners they represented had experienced violations of articles 8(2)(b), (d) and (e) of the Convention, while representatives Vega and Sommer posited in the pleadings and motions brief that the State was responsible for violating articles 8 and 25 of the Convention; however, in their final written pleadings, they asked to Court to judge violation of article 8(1), 8(2)(d), 8(2)(g) and 8(3).

172. The **Inter-American Defenders** stated, "[i]n the development of the process before the military courts, the petitioners we represent were prevented from receiving the assistance of defense attorneys, and this severely constrained their right to defense, producing a procedural imbalance and leaving the alleged victims unprotected from the exercise of punitive power. They concluded, therefore, that the State had violated the right to be assisted by legal counsel during the proceedings in the military jurisdiction and to communicate freely and privately with their counsel, as required in articles 8(1), 8(2)(b), (d) and (e) of the Convention.

173. The **State** said only that the lack of technically qualified defense is a matter that lies outside the temporal jurisdiction of the Court.

B.2 Considerations of the Court

174. Article 8(2) of the Convention, subparagraph (d), establishes "the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel." Subparagraph (e) outlines the "the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law".

175. This Court has established that it should be possible to exercise the right to defend oneself as soon as a person is named as a possible perpetrator of, or participant in, an illegal act and only culminates when the proceedings end. Affirming the contrary implies that the convention-based guarantees that protect the right to defend oneself, including Article 8(2)(b), are contingent on the investigation being at a specific procedural stage, leaving open the possibility that, prior to this, the rights of the accused are affected by acts of authority that he is unaware of or that he cannot control or oppose effectively, which is evidently contrary to the Convention. The right to defend oneself obliges the State to treat the individual at all times as a true subject of the proceedings, in the broadest sense of this concept, and not simply as its object.[182]

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182 *Cfr. Case of Barreto Leiva v. Venezuela*, par. 29, and *Case of J. v. Peru*, par. 194.

176. Hence, the Court has ruled that only counsel provided by a law professional will meet the requirements of qualified defense, through which the accused are guided through the process and advised, inter alia, on the possibility of appealing acts that may undermine their rights. To prevent the accused from being advised by counsel is to severely limit the right to defense, which leads to procedural imbalance and leaves the individual unprotected before the sanctioning authority.[183]

177. The Court has also held in earlier cases that defense assistance should be provided by a law professional who is the guarantee of due process in which persons under investigation receive guidance concerning their rights and duties, and that this be respected. A qualified attorney can also exercise, among other things, critical control to ensure that the proceedings for the production of evidence are lawful[184] and serves to offset the very vulnerable situation of persons being held in detention as regarding effective access to justice on an equal footing.[185]

178. There is no dispute as to the merits of this matter, as the State's defense merely argued a question of timing for the period when the accused did not have qualified defense.

179. In the instant case, regarding the appointment of defense counsel in the military jurisdiction, the Court would note that article 96 of the Code of Military Justice stated, "[a]ll those accused before military courts must appoint defense counsel. If they are unable or unwilling to do so, a court-appointed attorney is assigned by the chief magistrate of the trial court."[186] Article 97 stated, moreover, that "defense counsel must always be an active-duty or retired officer," but there was no requirement for the person to be a law professional.

180. The fact that the alleged victims had no opportunity to be defended by a professional attorney was discussed in the judgment handed down on April 3, 1995 by the National Chamber of Criminal Cassation. Nevertheless, this same Chamber of Criminal Cassation held that in the specific case before it (defendant Galluzzi), "it has not been proven that the legal defense assisting [him] in the military venue undercut his rights in any way, and it is not evident that this circumstance violated the right to defense at trial, so long as the proper pursuit of legal due process protected by article 18 of the Constitution is satisfied with the judicial review governed by article 445-bis of the Code of Military Justice, the appeals stage in which defense is exercised by attorneys."

181. The Court's conclusion, on this basis, is that very evident regulatory shortcomings directly injured the right to defense and the principle of equality of arms of the alleged victims in the proceedings before the military justice system. In this specific case, the State did not demonstrate that the court-appointed defenders of the alleged victims were law professionals. More specifically, the evidence adduced does not show that any of the defenders was an attorney, but rather the opposite.[187] The result in this case was a procedural imbalance for

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183 *Cfr. Case of Barreto Leiva v. Venezuela*, par. 61 and 62, and *Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2010. Series C No. 218, par. 132.

184 *Cfr. Case of Barreto Leiva v. Venezuela*, par. 61.

185 *Cfr. Case of Vélez Loor v. Panama,* par. 132.

186 *Cfr.* Article 108 of the Code of Military Justice, July 16, 1951 (evidence file, folio 683).

187 As an example, the Court emphasizes that in a brief dated October 3, 1988, defense officer Ricardo Coletti stated, "it is quite clear, based on a reading of the prosecutor's charges and in accordance with the provisions of chapter II of the Code of Military Justice, how legally qualified the prosecution is, while this defense, due simply to lack of legal training, does not have equal standing. Even so, despite having consulted with a law professional, this defense cannot be compared to the personal perspective of the case that an attorney would take; this is evident in

the petitioners during the proceedings in the military jurisdiction, as they had no opportunity to present a proper defense to the allegations made against them by the prosecutorial agency from September 5, 1984 through June 5, 1989.

182. This Court therefore holds that the State is responsible for violating the right of the accused to be assisted by qualified legal counsel of their own choosing as set forth in article 8(2), subparagraphs (d) and (e) of the Convention, in conjunction with article 1(1) thereof, during the time from September 5, 1984, when Argentina accepted the contentious jurisdiction of the Court, and June 5, 1989, when they were convicted by the Supreme Council of the Armed Forces, in injury of Mr. Allendes, Mr. Argüelles, Mr. Aracena, Mr. Arancibia, Mr. Candurra, Mr. Cardozo, Mr. Di Rosa, Mr. Galluzzi, Mr. Giordano, Mr. Machín, Mr. Maluf, Mr. Marcial, Mr. Mattheus, Mr. Mercau, Mr. Morón, Mr. Muñoz, Mr. Óbolo, Mr. Pérez, Mr. Pontecorvo and Mr. Tomasek.

C. Reasonable time limit

C.1 Arguments of the parties and of the Commission

183. The **Commission** argued that "[t]he parties agree that the process pursued against the [alleged] victims of the case lasted 18 years, of which 14 were under the jurisdiction of the Court. While the State has attempted to justify this length of time because of the large number of accused, the volumes of pages in the case files and the difficulty of performing accounting and handwriting tests, the Commission notes that all these matters in fact constitute the usual activities of courts of justice." Nevertheless, "the Commission believe[d] that the unreasonable nature of this process should be weighed in its entirety[,] considering that until the date when the State recognized the jurisdiction of the Court, the great majority of the victims were held in custody arbitrarily, awaiting the outcome of a process that in most cases, eventually sentenced them to terms less than the time they had already served." It therefore found that the 18-year duration of the processes exceeded what could be considered reasonable, in violation of article 8(1) of the Convention.

184. The **representatives** and the **Inter-American Defenders** offered arguments similar to those of the Commission, except that representatives De Vita and Cueto also asked for violation of article 7(5) of the Convention, and representatives Vega and Sommer did not apply the considerations used more generally to analyze the notion of a reasonable period to the body of facts of the case.

185. The **State**, in turn, said, "[t]he complexity of the military criminal case is manifestly evident in this case, not only because of the large volume of judicial proceedings in both the military and the civilian courts, but also because of the nature of the crime under investigation. The mere volume of the case files, the number of pages, reveals how difficult and diverse it has been in terms of procedural difficulty and complexity. It is important to understand that this was not a case of investigating and prosecuting the responsibility of a single person, but at the beginning, there were more than forty. Another factor that had a particular impact on the complexity of the case was the type of crime being investigated: a crime of management fraud. The military criminal case was not in reference to a concrete fact, materially easy to identify and committed one time only, but rather a whole range of accounting and financial maneuvers performed by several different people over the course of around three years in various places around the country."

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his direct participation and his knowledge of the law, many legal details that this defense may fail to perceive despite their importance." Defense brief, October 3, 1988 (evidence file, folios 1311 and 1312).

186. The State argued, regarding procedural actions by the petitioners, that "the documentary evidence in the case file leaves no doubt concerning the relationship between the lengthy procedural periods in the military criminal case and the exercise by the [alleged victims] of their right to defense, particularly through the appeals processes. The number of claims, petitions, submissions and remedies lodged by [the alleged victims] in the general courts, that impeded both the military criminal investigative judges and the [Supreme Council of the Armed Forces] from continuing to process the case, included the lodging of remedies of nullification, claims of unconstitutional actions, releases, statutes of limitations, jurisdiction, self-amnesty, and more, all of which necessarily had an impact on the total amount of time that the military criminal process lasted."

187. With regard to the conduct of judicial authorities, the State noted, "the public authorities replied to every one of the petitions brought by the accused in the domestic process. The exact dates of the actions show that this is true. In addition, the public officials undertook these actions without undue delay, even though there were no arbitrary time limits." Finally, regarding the impact on the legal situation of persons involved in the process, the State said, "[t]he judicial process (…) revealed no peculiarities that might oblige public officers to rush through the process with undue speed. (…) Similarly, [the alleged victims] have not shown how the judicial process caused them permanent damage or worsened their legal situation, as they were convicted in every judicial decision." For all these reasons, they asked the Court to find no violation of articles 8(1) and 1(1) of the American Convention.

C.2 Considerations of the Court

188. The concept of a reasonable period of time contemplated in Article 8 of the American Convention is closely linked to the notion of effective, simple and prompt recourse envisaged in Article 25.[188] The Court has held that a reasonable period of time should be determined in relation to the duration of the entire procedure, from the first action until the final judgment is handed down, including any appeals that may be filed.[189]

189. At the same time, in its consistent case law the Court has established that four elements must be considered in order to determine whether this rule is fulfilled in each case: the complexity of the case; the conduct of the judicial authorities; the procedural activity of the interested party,[190] and the adverse effect of the duration of the proceedings on the judicial situation of the person involved.[191]

190. In relation to determining the complexity of the case, this Court has taken several criteria into account. These include the complexity of the evidence, the number of parties or the number of victims involved in the proceedings, the time that has elapsed since the violation, the nature of the remedies embodied in the domestic legislation and the context in which the violation occurred.[192] Similarly, the European Court has ruled that complexity should be determined by the nature of the charges, the number of accused and the political

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188 *Cfr. Case of Baldeón García v. Peru. Merits, Reparations and Costs.* Judgment of April 6, 2006. Series C No. 147, par. 155, and *Case of Luna López v. Honduras. Merits, Reparations and Costs.* Judgment of October 10, 2013. Series C No. 269, par. 188.

189 *Cfr. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, par. 71, and *Case of Luna López v. Honduras,* par. 188.

190 *Cfr. Case of Suárez Rosero v. Ecuador*, par. 72, and *Case of Luna López v. Honduras*, par. 189.

191 *Cfr*. *Case of Valle Jaramillo et al.*, par. 155, and *Case of Luna López v. Honduras*, par. 189.

192 *Cfr.* inter alia, *Case of Genie Lacayo v. Nicaragua. Preliminary Objections*. Judgment of January 27, 1995. Series C No. 21, par. 78, and *Case of Luna López v. Honduras*, par. 190.

and social situation prevailing in the place and at the time when the events occurred.[193] The Court can therefore apply its criteria to determine the complexity of the case, observing that the following features are present: (1) a large number of accused; (2) a complex political and social situation, and (3) difficulty collecting evidence.

191. The dates to be used in determining a reasonable amount of time, in the context of the Court's jurisdiction, are September 5, 1984, when Argentina ratified the American Convention and recognized the contentious jurisdiction of the Court, through April 28, 1998, when the Supreme Court turned down the writs of *queja* against the denial of the appeal of exception (*supra* par. 96).

192. The case file before the Court details in particular the following actions taken by the State: (1) August 11, 1987, decision by the Supreme Council of the Armed Forces to order the release of 17 alleged victims; (2) August 19, 1988, charges filed by the Prosecutor General of the Armed Forces; (3) June 5, 1989, judgment by the Supreme Council of the Armed Forces convicting the alleged victims to pay fines to the Air Force and to imprisonment and full and permanent disqualification concurrently with discharge from service; (4) June 9, 1989, decision to deny the constitutional motion lodged by Mr. Marcial and Mr. Argüelles; (5) June 14, 1989, decision, based on an appeal, to send the case to the National Appeals Chamber; (6) April 23, 1990, decision by the National Appeals Chamber to admit the appeals; (7) December 5, 1990, decision by the Appeals Chamber to declare that the criminal action had lapsed under the statute of limitations; (8) July 30, 1991, decision by the Supreme Court to vacate the decision to invoke the statute of limitations; (9) December 6, 1991, enactment of law 24.050, restructuring the composition and criminal jurisdiction of the judicial branch; (10) October 6, 1992, decision by the Appeals Chamber to delay the hearing stipulated in article 445-bis of the Code of Military Justice; (11) September 16, 1993 decision by the Appeals Chamber disqualifying itself from continuing to hear the case; (12) November 16, 1993, decision by the National Chamber of Cassation denying jurisdiction; (13) February 21, 1994, decision by the Supreme Court finding that the National Chamber of Criminal Cassation held jurisdiction; (14) March 20, 1995, judgment by the National Chamber of Cassation denying the petitions to invoke the statute of limitations, to declare nullity and to grant amnesty, lightening the sentences already ordered, and acquitting one of the alleged victims; (15) July 7, 1995, decision by the National Chamber of Criminal Cassation to deny the appeal of exception lodged by the defense teams; (16) April 28, 1998, decision by the Supreme Court to deny the grievance, or writ of *queja* filed in response to the denial of the appeal of exception, and (17) June 2, 1998, decision by the Supreme Court to deny the remedy of fact lodged by two of the alleged victims (*supra* par. 80 to 96).

193. Furthermore, regarding the procedural actions by the parties, the Court has seen: (1) August 11, 1987, decision by the Supreme Council of the Armed Forces stating that the case had been outside of the Supreme Council for over two years, having been taken over by the Supreme Court and the National Appeals Chamber on several occasions in response to remedies that had been brought (*supra* par. 80); (2) October 3, 1988, the alleged victims submitted their different defense briefs (*supra* par. 81); (3) June 6 and 8, 1989, the alleged victims filed a constitutional motion and a writ of habeas corpus against the detentions ordered under decision 17/87 (*supra* par. 82); (4) November 14, 1989, the defense teams filed complaints of judicial error, based on the provisions of article 445-bis of the Code of Military Justice (*supra* par. 85); (5) February 20, 1995, Mr. Candurra's attorneys requested invocation of the statute of limitations on the criminal action; (6) April 20, 1995, the defense teams lodged an appeal of exception against the judgment of the National Chamber of

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193 *Cfr.* ECHR, *Case of Milasi v. Italy.* Judgment of June 25, 1987, par. 16. This was also cited in the *Case of Luna López v. Honduras,* par. 190.

Criminal Cassation (*supra* par. 95), and (7) August 7, 1995, the defense teams submitted writs of *queja* to the Supreme Court for denying the appeal of exception (*supra* par. 96).

194. The Court can also verify that the National Chamber of Criminal Cassation, in its April 3, 1995 judgment, stated, "[i]t is true that the process has been underway for over 14 years […], [b]ut considering the particular characteristics of this case and its uncommon volume, the large number of objections, including by those convicted and by those acquitted, the complexity of the offenses under investigation that involved 14 Air Force units located in various parts of the country, and the many difficulties that such a circumstance naturally entails, it is clear that the amount of time the process lasted in the military jurisdiction cannot be considered on a par with the type of "extraordinary and inordinate" delay suggested by the Supreme Court as grounds for its judgment in the […] 'Mozzatti' case."

195. Based on the actions as outlined, the Court deems that during the processing of the case in the domestic system, both the judicial authorities and the defense teams of the alleged victims took many actions that clearly constituted delaying tactics in the processing of the case. The Court deduces, nonetheless, from the evidence supplied, that the process did not entail a simple, effective remedy to determine the rights of the victims involved.

196. Finally, with respect to the fourth factor involving the question of whether the duration of the proceedings has produced an adverse effect on the legal situation of the persons involved, the Court has said on this point that the determination of whether the amount of time is reasonable needs to consider the adverse effect of the duration of the proceedings on the legal situation of the person involved, bearing in mind, among other elements, the matter in dispute. This Court has thus held that if the passage of time has a significant impact on the legal situation of the individual, the proceedings should be carried out more expeditiously so that the case is decided as soon as possible.[194] In the instant case, the Court has already stated that the pretrial detention of the accused exceeded a reasonable period (*supra* par. 135). In this regard, the Court holds that in fact, during the time the accused were being held in pretrial detention, the State was under obligation to exercise greater diligence in investigating and prosecuting the case in order to prevent any disproportional damage to their freedom.

197. Based on all this, the Court concludes that the State failed to take a reasonable amount of time to try the accused, in violation of article 8(1) of the Convention, read in conjunction with article 1(1) thereof, in injury of Mr. Allendes, Mr. Argüelles, Mr. Aracena, Mr. Arancibia, Mr. Candurra, Mr. Cardozo, Mr. Di Rosa, Mr. Galluzzi, Mr. Giordano, Mr. Machín, Mr. Maluf, Mr. Marcial, Mr. Mattheus, Mr. Mercau, Mr. Morón, Mr. Muñoz, Mr. Óbolo, Mr. Pérez, Mr. Pontecorvo and Mr. Tomasek.

VIII-3
PRINCIPLE OF FREEDOM FROM EX POST FACTO LAWS

A. Arguments of the parties

198. **Representatives** De Vita and Cueto made reference to the July 30, 1991 decision by the Supreme Court, rescinding the National Appeals Chamber's December 5, 1990 declaration that the criminal action for the crimes of military fraud and forgery under the Code of Military Justice had lapsed under the statute of limitations, in the understanding that the conduct "[did] not constitute specifically military crimes per se, which meant that the case would be

194 *Cfr. Case of Valle Jaramillo et al. v. Colombia*, par. 155, and *Case of Kawas Fernández v. Honduras*, par. 115.

subject to procedures of the general jurisdiction;" and this Supreme Court decision was based on the notion of "consequences of the trial," which the Military Code does not name as a causal factor for blocking the statute of limitations. They added that the Supreme Court decision resulted from a time-barred appeal by the prosecutor of the National Appeals Chamber.

199. They argued further that "the change in the proceedings occurred only with regard to the use of the statute of limitations, because if the provisions of the general criminal jurisdiction had been applied, the petitioners should have been released immediately. […] [The decision] order[ed] that the provisions of the criminal code should apply, even though the text itself recognized the existence of an apparent conflict between the two bodies of law and the unmistakable federal character of the Code of Military Justice, which by virtue of the principle of specialization should have required the application of the military code instead of the provisions of the criminal code."

200. They therefore stated that when the process reverted to the provisions of the Code of Military Justice, the result was harsher sentencing. They held that the Constitution and the Pact of San Jose, Costa Rica were higher-level instruments that limited the scope of article 67 of the Criminal Code.[195] The same argument was offered by Mr. Candurra's defense team during the hearing held under article 445 bis of the Code of Military Justice, with no response. They also held that part of the reason the concept of "consequences of the trial" was not applicable was the fact that the events that blocked the advance of the statute of limitations had not taken place within reasonable periods or without undue delay.

201. The **State** said that the arguments by the applicants addressed certain components of article 8(1) of the Convention, but "[h]ave no bearing, in this order of ideas, on the provisions of article 9 of the Convention."

202. The State added that the important consideration for examining article 9 was that "the three bodies of law that were applied, that is, the former [Code of Military Justice], the since-rescinded Criminal Procedural Code, the still-current Criminal Code and the current Criminal Procedural Code of Argentina were the type of prior laws applicable to the case[.] The decision by the Supreme Court to apply the Criminal Code's rules on the statute of limitations – which furthermore had been correctly applied by the highest court in Argentina because article 510 of the [Code of Military Justice] referred back to the provisions of Book I of the general substantive criminal laws – could not in any sense be considered as the application by the State of Argentina of criminal laws enacted subsequent to the facts."

203. The State clarified that the two legal systems were interconnected by article 510 of the Code of Military Justice, which read: "(a) the provisions of Book I of the Criminal Code shall be applicable to military crimes to the degree that the nature of such crimes so allows, and are not contrary to the statutes of limitations stipulated herein."

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[195] Criminal Code (Law 11.179, December 21, 1984): Article 67.- The period for the statute of limitations is suspended in the case of crimes whose prosecution would require decisions on preliminary or pretrial questions that need to be settled in a separate process. Once the cause for suspension of the statute has been settled, the limitation period resumes. The period can also be suspended for crimes committed in the exercise of public duties for all those who participated, so long as any of them continues to hold public office. […] The period for the statute of limitations can be suspended only for: (a) commission of another crime; (b) the person receives a first summons as part of a trial to deliver an initial formal statement for the crime under investigation; (c) formal presentation of charging documents to open the case or take it to trial, according to the provisions of applicable procedural legislation; (d) the order summoning to trial or an equivalent procedural act; and (e) the handing down of a conviction, even if it is still subject to appeal. […] (evidence file, folio 12682).

204. Finally, it held that "the case involved no 'change in the procedural rules,' but rather, was a disagreement with the standard of interpretation used by the Supreme Court of Argentina for rules of applying the statute of limitations in criminal procedures." The State therefore requested that the arguments by applicants regarding breach of article 9 of the Convention be dismissed.

B. Considerations of the Court

205. The Court will examine in this chapter the arguments by representatives De Vita and Cueto and by the State as to whether the Supreme Court's application of the concept of "consequences of the trial" in its decision concerning the statute of limitations violated the principle of freedom from ex post facto laws. The Court notes that the Inter-American Commission made no reference to this alleged violation of the American Convention.

206. Article 9 of the American Convention reads:

> [n]o one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

207. In this regard, the *jurisprudence constante* of the Court has held that the definition of an act as unlawful, and the determination of its legal effects must precede the conduct of the person being regarded as an offender. Otherwise, people would be unable to fit their actions to an existing, certain legal order that expresses social condemnation and the consequences of such actions.[196] The Court has also stated that the right to freedom from ex post facto laws is designed to prevent a person being penalized for an act that, when it was committed, was not an offense or could not be punished or prosecuted.[197] The principle of freedom from ex post facto laws as applied to the most favorable criminal laws also means that, if subsequent to the commission of the offense the law provides for the imposition of a more lenient punishment, the guilty person shall benefit therefrom.[198]

208. The Court, in this regard, has analyzed the principle of freedom from ex post facto laws in its case law as applicable to criminal conduct and sentencing, as well as the principle of favorable application of sanctions.[199] In the case at hand, representatives De Vita and Cueto point to violation of this principle when a provision in the Criminal Code was invoked to reject the applicants' request for application of the statute of limitations. The Court will therefore examine whether the application of the concept of "consequences of the trial" by the Supreme Court met the requirements of lawfulness and predictability as outlined in its *jurisprudence constante*.

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196 *Cfr. Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs.* Judgment of February 2, 2001. Series C No. 72, par. 106, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 161.

197 *Cfr. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111, par. 175, and *Case of Liakat Alibux v. Suriname. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 30, 2014. Series C No. 276, par. 60.

198 *Cfr. Case of Ricardo Canese v. Paraguay*, par. 178, and *Case of Liakat Alibux v. Suriname*, par. 60.

199 *Cfr. Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs.* Judgment of May 30, 1999. Series C No. 52, par. 121; *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, par. 162.

209. The Court, viewing the evidence adduced in the case file, notes first of all that the application of common criminal laws was expressly allowed under article 510 of the Code of Military Justice (*supra* par. 203). That is, the special laws (the military code) pointed to the substantive general laws (provisions from Book I of the Criminal Code) to supplement its own in cases of military crimes. The Court therefore holds that the specific application of the provisions from Book I of the Criminal Code – including article 67 and the institution of "consequences of the trial" – was legal and predictable, as stated by the Supreme Court. An examination of the relevant law shows that the application of the general criminal provisions had been established prior to the military criminal laws.

210. It is thus clear that there was no "change" in the procedural rules or violation of the principle of freedom from ex post facto laws in the decision by the Supreme Court to reject the request to apply the statute of limitations to the criminal action.

211. Still unanswered is the argument by the representatives that the application of the military criminal law led to more severe punishment for their clients. It is necessary in this matter to clarify that the decision by the Supreme Court did not limit the court that would eventually judge the appeal on the merits (National Chamber of Criminal Cassation) in terms of setting the sentence, nor did it order the use of the military criminal rules in preference to the general criminal rules. To the contrary, the sentencing decision was made, as this Court has recommended in the past, in strict adherence to the provisions of the law, rigorously matching the criminal conduct to the codified crime. The evidence in the case file shows that the National Chamber of Criminal Cassation performed this task by handing down final sentences for the defendants, such that the decision on the statute of limitations did not entail a harsher penalty, as the representatives have claimed, and therefore, this argument should be dismissed.

212. The Court would also discuss the claim that Mr. Candurra received no reply to his petition for the statute of limitations during the article 445 bis hearing (that is, following the Supreme Court decision). In the first place, it is clear that when the National Chamber of Criminal Cassation judged the matter, it adhered to the earlier decision by the Supreme Court, because the claim was based on the same facts and arguments that had already been weighed. Nevertheless, the National Chamber of Criminal Cassation, in the discussion of its decision on the appeal, also addressed the argument for invoking the statute of limitations in the following terms:

> The reintroduction of [the petition] before this Chamber to invoke the statute of limitations […] is based on the same grounds that the Supreme Court already considered when it resolved the matter; therefore, because the circumstances examined by the High Court at that time have not changed, it is mandatory to uphold its view and not to admit the declaration of the statute of limitations as requested. […]
>
> [Regarding the] petition lodged […] by Mr. Mastroestéfano and Mr. Cueto based essentially on the view that since the early stages of the proceedings there have been undue delays that undercut the guarantees set forth in the American Convention […], recently incorporate[d] into the Constitution[,] it is evident that the amount of time the process took in the military jurisdiction cannot compare to the "unusual and extended" period cited by the Supreme Court as the basis for its judgment in the "Mozzatti" case being cited [in which the Court declared null and void the actions conducted and invoked the criminal statute of limitations].[200].

[200] Grounds for the March 20, 1995 judgment by the National Chamber of Criminal Cassation, April 3, 1995 (evidence file, folios 2299 to 2301).

213. It can therefore be concluded that the argument brought by representatives De Vita and Cueto is inadmissible, and that in fact the National Chamber of Criminal Cassation responded to the grievance brought before it, explained the reasons why the argument as submitted did not apply to the case and, based on the complexity of the matter and the numerous judicial decisions and remedies filed, rejected the request for the statute of limitations because it foresaw no situation that could imply "moving the process back to an earlier stage and delaying the delivery of a final, unappealable judgment."[201] This means that the National Chamber of Criminal Cassation did not bypass any rule or regulation that could have led to a more lenient sentence for the accused; it was instead a difference of opinion by the representatives and not an irregular or erroneous application of the law by the Chamber of Criminal Cassation.

214. For these reasons, the Court holds there was no violation of article 9 of the American Convention in the instant case.

VIII-4
POLITICAL RIGHTS

A. Arguments of the parties

215. **Representatives** De Vita and Cueto argued that the criminal process culminated in the "civic death" of the alleged victims and their family members due to disqualification from conducting business to which they were subjected even in the absence of a conviction. They also held that when they were condemned to full and permanent disqualification from holding public office, "it banished them from the civic life to which every person is entitled, denying them the right to nationality that all persons possess and prolonging the effects of the crime over time, with no possibility whatsoever of regaining the place every person holds in the heart of a society." Accordingly, they claimed that "the sentence to full and permanent disqualification contravenes principles and freedoms," is contrary to articles 1, 2 and 23 of the Convention "and should be set aside." The Inter-American Commission made no reference to this alleged violation of the American Convention.

216. The **State** commented on the general order blocking the accused from selling or encumbering their property, stating that it was a precautionary measure established in article 319 of the Code of Military Justice for cases when the accused's assets were unknown or insufficient, and in this case, the defendants subject to the measure could request that it be replaced with a sufficient personal or real bond. The measure did not produce "civic death," as the representatives suggested, but instead was intended to safeguard the criminal process for the actual commission of the criminal offenses of fraud, forgery of a public document, and conspiracy, and was strictly reasonable, necessary and proportional. "Indeed, the general block on the sale or encumbrance of assets as ordered was fully justified in view of the fact that the alleged act being criminally investigated – and subsequently proven – was in fact fraudulent handling of public property for personal gain or that of third parties." They added that the claims of not being able to lead a decent commercial life were ill-founded because the applicants received 50% of their monthly wage. "The inability to undertake commercial activities or take out commercial credit is a natural consequence of the precautionary measure because these are the very activities that could have been undertaken with public funds implicated in the crime of fraud."

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[201] Grounds for the March 20, 1995 judgment by the National Chamber of Criminal Cassation, April 3, 1995 (evidence file, folios 2303).

217. The State also clarified that full and permanent disqualification, as a measure of punishment, is not a precautionary measure, but a sanction under the Argentine Criminal Code. It stated, therefore, that "[the Code of Military Justice], currently repealed, did not provide for a sentence of disqualification. The order for this sanction now brought before the Court is the consequence of the application of article 510 of the former [Code of Military Justice], under which the general provisions of the Argentine Criminal Code were applicable to military criminal proceedings."

218. The State added, "[d]isqualification is a removal of rights that could be either permanent or temporary and, depending on the particular rights it affects, may be either full or specific […]. In the case of the applicants, the criminal sanction as ordered was full disqualification according to the scope defined in article 19 of the Argentine Criminal Code. The descriptive word "full" is part of the technical nomenclature in the legislation and is not the equivalent of "civic death." Regarding the duration of the sentence, full and permanent disqualification "[i]n no sense whatsoever […] means eternal."

219. Moreover, the law provides the remedy of reinstatement to restore the use and enjoyment of the rights and capacities that were stripped from the person sentenced to disqualification, "a remedy that does not entail returning to the same position from which the person was removed, or retaking the responsibilities or guardianship that were terminated." Under the terms of article 20-ter of the Argentine Criminal Code, certain conditions must be in place for reinstatement to be ordered after full disqualification – the passage of 10 years and, "to the degree possible," having made restitution for the damage."[202] The State affirmed, in this sense, that the current restriction on the victims' rights was a consequence of the applicants' failure to take any further action, as to date they had not requested reinstatement.

220. He concluded that the material content governed by article 23 did not include the right to conduct business or the right to apply for commercial credit. Finally, he commented, "[a]lthough the representatives are patently refraining from identifying exactly what damage was caused […], it can be assumed that their harm had to do with the inability to exercise the right to vote and be elected and to have access to public service. These grievances were not alleged by the applicants, and the State of Argentina therefore is under no compulsion to comment on them. Nevertheless, it is worth noting that the restriction placed upon them under the application of the criminal sanction known as full and permanent disqualification […] entailed no stripping of their political rights, but rather a legitimate restriction thereof in accordance with the provisions of paragraph 2 [of article 23]." For these reasons, they asked the Court to find no violation of article 23 of the American Convention.

B. Considerations of the Court

221. The Court has already said that article 23 of the Convention recognizes citizen rights exercised individually. Paragraph 1 of the article attributes the following rights to all persons: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the

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202 Criminal Code (Law 11.179, December 21, 1984): Article 20-ter.: Persons sentenced to full disqualification may be reinstated to the use and enjoyment of the rights and capacities taken from them if they have conducted themselves properly for half of the term ordered for disqualification, or ten years in the case of a life sentence, and have made restitution of the damage as much as possible. […] If the disqualification meant loss of a public position or a role of responsibility or guardianship, restitution shall not include being restored to the same positions. For all relevant purposes, the term ordered for disqualification shall not include the affected person's time as a fugitive or while being held in detention or custody.

will of the voters; and (c) to have access, under general conditions of equality, to the public service of his country.[203]

222. Paragraph 2 of article 23 of the Convention states that the law may regulate the exercise and opportunities of these rights "only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings." The provision that limits the reasons for which it is possible to restrict the use of the rights of paragraph 1 has only one purpose – in light of the Convention as a whole and of its essential principles – to prevent the possibility of discrimination against individuals in the exercise of their political rights. It is evident that the inclusion of these causal factors refers to the conditions that the law can impose on the exercise of political rights. Restrictions based on these criteria are common in national electoral laws, which provide for the establishment of the minimum age to vote and to be elected, and some connection to the electoral district where the right is exercised, among other regulations. Provided that they are not disproportionate or unreasonable, these are limits that the States may legitimately establish to regulate the exercise and enjoyment of political rights and that refer to certain requirements that the holders of political rights must meet to be able to exercise them.[204]

223. Considering all this, the Court holds, first, that the "disqualification from conducting business," or "civic death," clearly does not fit into the situations protected under article 23 of the American Convention, and accordingly, the Court dismisses this argument by the representatives. The Court will therefore examine only whether the sanction of permanent disqualification ordered in the criminal conviction constituted an undue restriction of the political rights of Mr. Candurra, Mr. Arancibia, Mr. Di Rosa, Mr. Pontecorvo and Mr. Machin, alleged victims represented by Mr. De Vita and Mr. Cueto.

224. The Court has defined the conditions and requirements that must be in place when regulating or restricting the rights and freedoms embodied in the Convention[205] and will proceed to analyze the legal measure being examined here in light of them.

225. The question of whether the restriction meets the requirement of lawfulness means that the general circumstances and conditions that authorize a restriction on the exercise of a specific human right must be clearly established by law.[206] The instrument setting the restriction must be a law in both the formal and material sense.[207] In the case at hand, the law on full disqualification was defined in article 19 of the Argentina Criminal Code[208] and regulated under article 20-ter, such that it did meet this first requirement.

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203 *Cfr. Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 23, 2005. Series C No. 127, par. 195 to 200, and *Case of López Mendoza v. Venezuela*. *Merits, Reparations and Costs.* Judgment of September 1, 2011 Series C No. 233, par. 106.

204 *Cfr. Case of Castañeda Gutman v. Mexico*, par. 155.

205 *Cfr. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, par. 39; and *Case of Castañeda Gutman v. Mexico, par.* 175.

206 Article 30 of the American Convention reads:

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

207 *Cfr. The Word "Laws" in Article 30 of the American Convention on Human Rights.* Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, par. 27 and 32, and *Case of Castañeda Gutman v. Mexico*, par. 176.

208 Criminal Code (Law 11.179, December 21, 1984): Article 19.- Full disqualification constitutes:

1. disbarment from the employment or public position the accused had held, regardless of whether it derived from popular election; 2. removal of electoral rights; 3. disqualification from obtaining positions, appointments and public

226. The second limit on any restriction is related to the purpose of the restrictive measure; in other words, that the cause invoked to justify the restriction should be among those permitted by the American Convention and established in specific provisions included in certain rights (for example, to protect public order or public health, in Articles 12(3), 13(2)(b), and 15, among others), or in the norms that establish the legitimate general purposes (for example, "the rights and freedoms of others," or "the just demands of the general welfare in a democratic society," both in Article 32).[209] The secondary legal effect of permanent disqualification in this case specifically points to one of the assumptions by which the State may "regulate the exercise of the rights and opportunities" protected by article 23(1), to wit, "sentencing by a competent court in criminal proceedings."

227. The next question is whether a measure, even if it is lawful and serves a purpose allowable under the Convention, is necessary and proportional.[210] The Court will examine the restrictive measure under consideration in light of this requirement and must determine whether it: (a) serves a pressing social need, that is, whether it is intended to respond to an overriding public interest; (b) is the option that least restricts the protected right, and (c) narrowly serves to achieve the legitimate objective.

228. The sentence of permanent disqualification was ordered by the Supreme Council of the Armed Forces (*supra* par. 81) and later upheld by the National Chamber of Criminal Cassation (*supra* par. 94), whose judgment will be taken as final and unappealable for the purposes of this analysis.

229. An examination of the nature and length of the sentence of disqualification under articles 19 and 20-ter of the Argentine Criminal Code, as well as the arguments presented by the State in the instant case, shows that the sanction is a block on labor rights (disbarment from public jobs and positions), electoral rights (removal of the right to vote and be elected) and pension rights (suspension of the enjoyment of retirement or pension benefits). The duration of the measure is not eternal or perpetual, but rather is conditional upon the restitution of damages "to the extent possible" and a 10-year term.

230. The Court sustains, based on these considerations, that the measure was invoked to settle a criminal conviction associated with the commission of financial crimes against the Argentine Air Force and served the purpose of protecting the public treasury by preventing a person convicted of crimes of fraud and forgery from gaining access to public position and taking part in elections for a specific period of time. Another tenet is to place the least possible restriction on the protected right – in this case, the political rights of the accused – and in the view of the Court, the measure was not permanent, but limited to the term set by law. Finally, the Court sustains that, given the particular features of the instant case, the record does not contain sufficient evidence to hold that the measure, including the time it had already been effect, was unfit to serve the legitimate purpose of safeguarding the public interest when it limited electoral participation by the accused for a predetermined period.

231. The Court therefore judges that the application of the 10-year secondary legal effects, known as "full and permanent disqualification" ordered for Mr. Candurra, Mr. Pontecorvo, Mr. Di Rosa, Mr. Arancibia and Mr. Machin, conform to the provisions of article 23(2) of the Convention, which allows the State to regulate the exercise of political rights based on a

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commissions; 4. suspension of access to all retirement, pensions or benefits, whether civilian or military, the amount of which shall be credited to family members holding pension rights.

209 *Cfr. Case of Castañeda Gutman v. Mexico*, par. 180.

210 *Cfr. Case of Castañeda Gutman v. Mexico*, par. 184.

criminal conviction by a competent court. The State also demonstrated that the measure met the requirements of lawfulness, necessity and proportionality. The Court therefore holds that the State did not violate article 23 of the American Convention in injury of the alleged victims.

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

232. Pursuant to the terms of article 63(1) of the American Convention,[211] the Court has held that every violation of an international obligation which results in harm creates a duty to make adequate reparation[212] and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[213]

233. The Court has established that reparations must have a causal nexus with the facts of the case, the alleged violations and the proven damages, as well as with the measures requested to repair the resulting damages. Therefore, the Court must observe such coincidence in order to adjudge and declare according to law.[214]

234. Based on the discussion of the merits and the violations of the American Convention as sustained in Chapter VIII of this judgment, the Court will proceed to examine the arguments and recommendations brought forth by the Inter-American Commission and the claims of the representatives of the victims, in light of the criteria established in the Court's case law regarding the nature and scope of the obligation to make reparations, in order to adopt the measures required to repair the damage caused to the victims.[215]

A. Injured Party

235. The Court, under the terms of article 63(1) of the Convention, holds as an injured party anyone who has been declared the victim of violation of a right recognized therein. Therefore, this Court holds the "injured parties" to be Mr. Hugo Oscar Argüelles, Mr. Enrique Jesús Aracena, Mr. Carlos Julio Arancibia, Mr. Julio César Allendes, Mr. Ricardo Omar Candurra, Mr. Miguel Oscar Cardozo, Mr. José Eduardo Di Rosa, Mr. Carlos Alberto Galluzzi, Mr. Gerardo Giordano, Mr. Aníbal Ramón Machín, Mr. Miguel Ángel Maluf, Mr. Ambrosio Marcial, Mr. Luis José López Mattheus, Mr. José Arnaldo Mercau, Mr. Félix Oscar Morón, Mr. Horacio Eugenio Oscar Muñoz, Mr. Juan Italo Óbolo, Mr. Alberto Jorge Pérez, Mr. Enrique Luján Pontecorvo and Mr. Nicolás Tomasek, who as victims of the violations declared severally in Chapters VIII-1 and VIII-2, will be held as beneficiaries of the reparations ordered by the Court.

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211 Article 6i3(1) of the American Convention states, "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

212 *Cfr. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7, par. 25, and *Case of Human Rights Defender et al. v. Guatemala*, par. 243.

213 *Cfr. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, par. 25, y *Case of Human Rights Defender et al. v. Guatemala*, par. 243.

214 *Cfr. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, par. 110, and *Case of Human Rights Defender et al. v. Guatemala*, par. 245.

215 *Cfr. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, par. 25 and 26, and *Case of Human Rights Defender et al. v. Guatemala*, par. 244.

236. Some of the representatives asked that family members also be held as victims of human rights violations in the instant case. The Court recalls in this regard that article 35(1) of the Court's Rules of Procedure stipulates that the case shall be presented through the submission of the Report on Merits, which should "identify the alleged victims." It corresponds to the Commission, and not to the Court, to identify precisely the alleged victims in a case before the Court,[216] so that after the Merits Report it is no longer possible to add new alleged victims. The only exception is the specific circumstance addressed in article 35(2) of the Court's Rules of Procedure,[217] which is not applicable in this case as it refers to situations in which "it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations." Therefore, under this article 35, which is clear and unambiguous, it is the *jurisprudence constante* of this Court that the alleged victims must be identified in the Merits Report issued pursuant to Article 50 of the Convention.[218]

B. Measures of restitution requested

B.1 Arguments of the parties and of the Commission

237. The **Commission** recommended in its Merits Report that the State of Argentina grant the 20 victims full reparations, and most particularly, adequate compensation, for the violations declared in this judgment. It stated in its final observations that although "the repeal of the Code of Military Justice [in 2008] marks considerable progress as a measure toward non-recurrence of the violations committed in this case, still pending is comprehensive redress for the victims who suffered violations of their rights as a direct consequence of having been subject to the proceedings lodged against them under the Code."

238. **Representatives** Vega and Sommer pled on behalf of Mr. Maluf, Mr. Pérez, Mr. Galuzzi and Mr. Óbolo, that they should be reinstated into the Argentine Air Force in the status of "effective withdrawal" two ranks higher than the grade they would have held if they had continued with their military careers, plus retirement rights and benefits, as well as the free access to retirement benefits that officers and junior officers receive from the institutions of the armed forces. They also requested restoration of civil and political rights.

239. **Representatives** De Vita and Cueto pled the following redress for the applicants Mr. Pontecorvo, Mr. Candurra, Mr. Di Rosa, Mr. Machín and Mr. Arancibia: (a) that the full and permanent disqualification be lifted, thus restoring their political rights to vote and be elected; (b) that the blocks and disqualification on business and banking activities be lifted and (c) that the applicants "holding the status of effective withdrawal" be reinstated at the grade level

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216 *Cfr. Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 1, 2006. Series C No. 148, par. 98, and *Case of Human Rights Defender et al. v. Guatemala*, par. 47.

217 Article 35(2) of the Rules of Procedure of the Court says, "[w]hen it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Tribunal shall decide whether to consider those individuals as victims." *Cfr. Case of García and family members v. Guatemala. Merits, Reparations and Costs.* Judgment of November 29, 2012. Series C No. 258, par. 34, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile,* par. 29.

218 *Cfr. Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2007. Series C No. 168, par. 65, and *Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 28, 2014. Series C No. 282, par. 29.

they would have held if they had continued their military careers, including all the benefits and honors pertaining to that rank in retirement.

240. The **Inter-American Defenders** pled on behalf of Mr. Giordano, Mr. Tomasek, Mr. Mercau, Mr. Morón, Mr. Cardozo, Mr. López Mattheus, Mr. Allendes, Mr. Marcial, Mr. Muñoz and Mr. Argüelles, asking that the judicial proceedings lodged against them be overturned, and arguing that the process was a consequence of violation of the guarantees of due process enshrined in article 8 of the American Convention, in view of the fact that trials of military personnel before military courts for crimes committed in peace time are not consistent with international human rights standards, as they do not meet the requirements of independence and impartiality. They also asked that the applicants be moved into retirement at the military rank corresponding to each one by virtue of the regular promotions and assignments they would have received if the violation resulting from their detention had not occurred.

241. The **State**, in turn, denied that the applicants were entitled to the measures of restitution as requested because "the applicants themselves did not deny, but instead recognized, their participation in the commission of the offenses for which they were tried." It also held that "domestic legislation provides for reinstatement of military rank only if it is proven that the conviction was handed down based on error." According to the State, this was not the case of the applicants, and it therefore argued that such a claim was inadmissible.

242. The State added, in its final written pleadings, that the overturning of the criminal proceedings lodged against the applicants was out of order because "the inter-American contentious jurisdiction […] is not a fourth-tier court of appeals for judicial decisions delivered by domestic judicial bodies, but rather an international judicial institution that judges state responsibilities regardless of which branch of government took the actions addressed by the case."

243. The State also made reference to the request to reinstate the alleged victims into the armed forces with a promotion of two ranks and status of withdrawal from active service, protesting that this was inadmissible because the applicants' loss of military status was the result of their own criminal actions, tried and convicted by both military and general courts. Therefore, reinstatement of military rank as requested would be tantamount to overlooking the effects of a final, unappealable judgment that has not been challenged in this case; similarly, it would suggest a rehabilitation that the applicants never performed under the terms of article 20 of the Argentine Criminal Code.

244. The State also argued that the loss of military status was a legitimate restriction or ruling derived from criminal conviction. The loss of military rank cannot be held, therefore, as an arbitrary, disproportionate or unlawful restriction.

245. The State in its final pleadings also addressed the restoration of civil and political rights requested by the representatives, noting that it was not clear exactly which civil rights the applicants had been unable to enjoy, as it would appear that their grievance referred partially to rights affected by the criminal sentence of disqualification; the State also recalled that none of applicants had impugned the sentence as a breach of the principle of freedom from ex post facto laws in article 9, or of articles 5(2), 5(3) or 30 of the Convention during the proceedings before the inter-American system. It stated, with respect to political rights, that this restriction pertained exclusively to the effects of the sentence of full and permanent disqualification handed down in the judgment on the criminal trial, and the grounds of this restriction were considered allowable under article 23(2) of the Convention.

B.2 Considerations of the Court

246. This Court would reiterate the views it outlined in Chapter VIII-2 regarding the alleged violation of articles 8(1), 8(2)(d) and 25 of the Convention, on which the applicants based the request to overturn the criminal proceedings against them, thereby restoring their military ranks and their civil and political rights. The Court has held, in this regard, that when procedural decisions stem from torture, cruel treatment or any other type of coercion, the consequences of such a violation of the right to a fair trial can be terminated decisively by overturning the proceedings.[219] The Court also deems that counsel in all proceedings must be provided by a law professional in order to meet the requirements of qualified defense, through which the accused at trial are advised, inter alia, on the possibility of appealing acts that may undermine their rights. To prevent the accused from being advised by counsel is to limit the right to defense, which leads to procedural imbalance and leaves the individual unprotected before the sanctioning authority.[220]

247. Nevertheless, the applicants did not challenge the jurisdiction of the Military Judge of Criminal Investigation or the Supreme Council of the Armed Forces in the domestic proceedings, nor did they request that the members of these courts be disqualified. This Court also notes that in the instant matter, the applicants did have the opportunity to appeal the conviction that culminated in the sentences of disqualification and dismissal before two of the highest national criminal courts in the general jurisdiction, that is, they had access to an appropriate court to lodge all their appeals and counteract those decisions that the complainants had violated their guarantees of due process. This did clearly occur, and the grievances and errors stemming from the military process were resolved and corrected in the general courts.

248. This Court therefore finds that the violations declared, taken in the overall context of the case, with its particular details and the actions of the courts in the general jurisdiction, do not justify an order to overturn the criminal proceedings lodged against the applicants, and therefore it dismisses this plea.

C. Measures of satisfaction requested

C.1 Arguments of the parties

249. **Representatives** Vega and Sommer asked for publication of the "recognition and responsibility for the violations committed by the State of Argentina" in two widely read national newspapers.

250. The **Inter-American Defenders** also asked for publication of the Court's judgment at least once in the Official Gazette and in another widely read national newspaper; for a public ceremony to be held recognizing the State's responsibility and apologizing publicly to the alleged victims; and for the names of the alleged victims to be struck from public registries where they are listed as a consequence of the full and permanent disqualification against them and in criminal records resulting from this case.

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219 *Cfr. Case of Bayarri v. Argentina*, par. 108 and *Case of Cabrera García y Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010, Series C No. 220, par. 166.

220 *Cfr. Case of Barreto Leiva v. Venezuela*, par. 61 and 62 and *Case of Nadege Dorzema et al. v. Dominican Republic,* par. 164.

251. The **State** argued in its final pleadings that the request for an apology was inadmissible because the applicants themselves had recognized their guilt for committing the illegal acts that had been taken to trial. It also noted that it was out of order to grant such a request because the Court, in its case law, has usually ordered such measures for cases of serious violations, such as violation of the right to life, humane treatment and personal freedom. The State cautioned, however, that none of these situations was under dispute in the instant case.

252. The State added in its final pleadings that if the names of the applicants were expunged from public registries of criminal sentences, "such a measure […] would be tantamount to holding the applicants innocent, that is, acquitting them of crimes for which they were investigated, tried and convicted." It clarified that the applicants' disqualification under the criminal conviction would be struck from the public record if they so requested under the procedure of reinstatement provided by article 20 of the Argentine Criminal Code. Such restitution had not been requested ever since the sentence of disqualification had been ordered in 1995 by the National Chamber of Criminal Cassation. The State therefore asked that this measure be denied.

253. The State took no position regarding the request to publish the judgment as a measure of satisfaction, believing that the decision pertained to the Court

C.2 Considerations of the Court

254. The Court considers it pertinent, as it has in other cases,[221] to order the State to publish, within a period of six months from notification of this Judgment, an official summary of this judgment prepared by the Court, one time only, in the Official Gazette of Argentina.

255. Similarly, the Court holds that, there being insufficient evidence on which to vacate the criminal processes lodged against the applicants (*supra* par. 248), it cannot justify ordering measures of reparation for the effects these proceedings had on the applicants. It therefore denies the measures being requested to strike the victims' names from public criminal records and the registries of disqualifications of the victims, as requested by the representatives.

256. This Court would note, however, that Mr. Marcial, who was acquitted by the second appeals court as ordered by the National Chamber of Criminal Cassation on March 20, 1995, had his rights restored in 1995 and received his retirement pension until the time of his death in 2010.[222]

257. With respect to the measure of public recognition of responsibility, this Court deems that it is not necessary to order the measure requested by the representatives, as the delivery and publication of this judgment will, per se, be sufficient, appropriate measures.

D. Guarantees of non-recurrence

D.1 Arguments of the parties and of the Commission

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221 *Cfr. Case of Cantoral Benavides v. Peru. Reparations and Costs.* Judgment of December 3, 2001. Series C No. 88, par. 79 and *Case of Human Rights Defender et al. v. Guatemala*, par. 261.

222 *Cfr.* Ruling No. 02/95 "C," May 17, 1995, by the General Personnel Department of the Air Force, and a June, 25, 2013 communication from the Financial Assistance Bureau for Payment of Military Withdrawals and Pensions, which reports to the Ministry of Defense (evidence file, folios 12058, 12059 and 14945).

258. The **Commission** stated in its final pleadings that the Code of Military Justice, the main source of the violations in this case, had been repealed in 2008 as the result of the State's move to fulfill one of the commitments it had assumed in the friendly settlement agreement for violations committed against active-duty serviceman Rodolfo Correa Belisle. The Commission recognized that this repeal marked critically important progress as a measure to prevent the recurrence of the violations present in the case at hand.

259. The **Inter-American Defenders** asked the Court to order the State to adopt provisions in domestic law to set a mandatory maximum time limit on proceedings, after which the criminal action lapses, in order to prevent future situations of uncertainty such as that experienced by these applicants.

260. They also asked for amendment of Law No. 24.390, which under the current wording, reformed by Law 25.430, does not set a maximum term limit on pretrial detention, even though this would not necessarily imply release for the suspect. They pointed out that article 1 of Law 24.390[223] sets a maximum of two years for pretrial detention, which can be extended for one more year in the presence of a well-founded decision. Article 2 of the same law, however,[224] states that this time limit will not be applied if the time is served *after* the judgment is handed down, even if it is not final and may still be appealed. They asserted, therefore, that for cases in which a judgment is delivered before the two or three year maximum limit on pretrial detention is served, as provided in article 1 of Law 24.390, under the terms of article 2 of the law, those accused who are in prison while the process advances through later appeals and processes to have the first trial court's decision either reversed or upheld, do not have a legal maximum on pretrial detention, which could continue indefinitely under such conditions. They therefore asked that the text of article 2 be removed or, alternatively, amended such that a maximum term would apply in such cases.

261. The Inter-American Defenders added in their final pleadings that, even beyond repeal of article 2 of Law 24.390 (amended under Law 25.430), it is also necessary to legally repeal articles 3 and 11 of Law 24.390, which in their view, allow for indefinite pretrial detention of certain suspects. Finally, they asked the Court to order the State to create a commission that would monitor the procedural situation of persons brought to trial but who remain in pretrial detention, to guarantee their right to a final decision within a reasonable period.

262. The **State** asked that this guarantee of non-recurrence be denied for two reasons. First, the law under discussion had not been in effect or applied to the case in question, as the facts subject to cognizance under the adjudicatory jurisdiction of this Court must fit into the period from September 5, 1984, until the Supreme Court delivered its last decision in 1998. The second reason given by the State is that the case law developed by this Court concerning a reasonable time for judicial process, under the guarantee given in article 8(1) of the Convention, favors the thesis of judicial discretion by contrast to legislative discretion.

D.2 Considerations of the Court

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223 Article 1 (text of law 25.430, B.O. 06/01/2001) states: "Pretrial detention may not exceed two years without a judgment. However, if the number of crimes attributed to the suspect, or if the clearly complex nature of the case prevent the trial from being completed during this time, the term may be extended for one more year, based on a well-founded ruling that must be communicated immediately to the relevant higher court for accounting purposes."

224 Article 2 (text of law 25.430, B.O. 06/01/2001) states: "The time limits established in the above article shall not be calculated for the purposes of this law if they are served after the conviction is handed down, even if it is subject to appeal."

263. This Court reiterates that, as stated in Chapter VIII-1 (*supra* par. 113 to 137), the State is responsible for violating articles 7(1), 7(3), 7(5) and 8(2) of the Convention, in conjunction with article 1(1) thereof, for the arbitrary and excessive time of detention to which the victims were subjected. Nonetheless, this Court also notes that Law 24.390 was published on November 22, 1994, and was amended under Law 25.430, enacted on June 1, 2001. The Court would further remark that several requests by the Inter-American Defenders were not raised at the right time in the proceedings, that is, in their pleadings and motions brief. These time-barred requests for reparation (*supra* 261) will therefore not be considered by this Court.

264. In view of the fact that the applicants were held in pretrial detention from 1980 to 1987 and from June to July of 1989, this same law and its reforms did not exist during these periods, and therefore are not applicable to the case. This Court accordingly cannot give a specific view on Law 24.390 and its reform or repeal under Law 25.430.

E. Compensatory redress for pecuniary and nonpecuniary damage

E.1 Arguments of the parties and of the Commission

265. The **Commission** asked in general terms for the State to grant comprehensive reparations, and most particularly, appropriate compensation to the 20 victims for the violations found in the Report on Merits.

266. **Representatives** De Vita and Cueto said that their clients had experienced multiple pecuniary and nonpecuniary types of damage as a consequence of the unreasonable amount of time they were subject to the process, the excessive time they were held incommunicado and the time they spent in pretrial detention, even exceeding the length of the sentence handed down by the National Chamber of Criminal Cassation, which caused them physical, emotional and spiritual impairment. They said that the applicants spent an average of seven years in pretrial detention and were eventually sentenced to prison terms of three to four years. Their family groups were damaged by the absence of the applicants during that time.

267. They said that the sentences of permanent and commercial disqualification, as well as the 50% cut in their wages during the time they were in pretrial detention wreaked economic and labor damage on themselves and their families, undermining the applicants' life plans and aspirations.

268. With respect to pecuniary damages of lost wages and loss of earnings, representatives De Vita and Cueto requested repayment of the applicants' blocked assets in the amount of USD 167,029.53 for the time elapsed from the moment they were arrested and held incommunicado in September, 1980 until March, 2004, when the Foreign Ministry of Argentina requested a proposal for reparation in the framework of the friendly settlement talks with the Commission.

269. They explained that the employment damage associated with their dismissal and loss of their military rank, the sentences of permanent, economic and commercial disqualification and the nonpecuniary damage experienced by the applicants and their families as a consequence of the irregular process they underwent should be quantified on the basis of 85.9% of the amount of assets withheld. This percentage is the average of the compensatory guidelines this Court has adopted in its body of case law, and when applied to the amounts requested by the applicants, comes to USD 143,478.37.

270. This brings the total request to USD 310,507.90 for each applicant under the heading of comprehensive redress. They also asked this Court to "consider the possibility of including an additional amount to the request in the form of interest, and/or any other items: lost earnings, pecuniary damage, consequential damages and pain and suffering."

271. **Representatives** Vega and Sommer agreed with representatives De Vita and Cueto. They further noted that the direct pecuniary damage was a result of the violations identified by the Commission, and that the pain and suffering should be quantified on the basis of 30% of the pecuniary damage. They particularly asked the Court to order redress for the damage experienced by the victims for the seven years of "unlawful pretrial detention" and for the injurious effects and consequences of this detention, which the Commission had declared illegal. They pointed specifically to the impact of the sentences of disqualification, arguing that the consequences had been an inability to freely practice their profession or a block on conducting business or taking credit, among other problems.

272. They requested the following individual amounts in redress: (a) for Mr. Galuzzi, USD 270,000.00 in pecuniary and nonpecuniary damage; (b) for Mr. Maluf, USD 290,000.00 for lost income, the block on practicing his profession and the resulting inability to continue paying the mortgage on his home, as well as USD 775,000.00 in lost earnings and loss of potential job prospects; for Mr. Pérez, USD 576,000.00 for pecuniary damage and lost earnings, USD 42,000.00 for his family's travel and lodging expenses to the pretrial detention center, and USD 75,000.00 for pain and suffering due to the breakup of the family group, and for Mr. Óbolo, USD 647,500.00 for his family's pain and suffering, lost earnings and loss of potential job prospects.

273. The **Inter-American Defenders** said that the applicants' pretrial detention and resulting 50% loss of wages during that time, along with the sentences of full and permanent disqualification and being stripped of their military rank, resulted in loss of the right to buy, sell or dispose freely of their assets or qualify for credit, the inability take part in civic life because they could not vote or be elected, and loss of public employment, social benefits and in some cases, loss of the homes where they lived as members of the Air Force. They claimed that this situation had a negative impact on the applicants and their families, "because the detrimental consequences, including economic and commercial, labor and civic, and in terms of honor and dignity, undeniably affected the whole family."

274. The Inter-American Defenders further held that the alleged violations had produced nonpecuniary damage, and the requested redress "is a response to the emotional suffering experienced by [their] clients and their families, expressed as the distress, uncertainty, hopes and despairs that a judicial proceeding lasting nearly eighteen years must needs produce, for the pain or affliction caused by the loss of freedom while in pretrial detention for twice as long as the eventual sentence and 'civic death,' lasting up to the present, as well as damage to the social life and relationships [of the applicants and their families in their environment]."

275. They therefore asked the Court to order compensation in equity and as redress as follows: (a) consequential damages, including expenditures and outlays incurred because of the inappropriate incarceration, court costs for domestic judicial processes and the procedure before the Inter-American Commission and income withheld during the time they were in detention; (b) pecuniary damage for lost income and lost wages subsequent to the final conviction handed down by the Supreme Court in 1995; (c) nonpecuniary damage and (d) impairment of their life plans.

276. Altogether they estimated compensation under these headings, for each applicant, in the amounts of: for Mr. Giordano, USD 1,124,185.74; for Mr. Tomasek, USD 1,125,228.12;

for Mr. Aracena, USD 1,246,278.00; for Mr. Mercau, USD 1,123,156.90; for Mr. Morón, USD 1,217,451.20; for Mr. Argüelles, USD 1,238,697.80; for Mr. Cardozo, USD 1,169,737.94; for Mr. López, USD 660,585.50; for Mr. Allende, USD 660,585.50; for Mr. Marcial, USD 1,098,043.94 and for Mr. Muñoz, USD 1,094,805.00.

277. The **State**, in turn, denied the existence of the facts on which the representatives based their claims for compensation, arguing that they had been neither proven nor verified. Among other things, they denied that the applicants should be indemnified for pecuniary damage, lost earnings and retained wages, that the applicants and their families had experienced nonpecuniary harm or alleged damage to their life plans, and that the case law cited by the applicants was applicable for this purpose. The State therefore disputed the legal basis for the claims of redress for each and every one of the items contained in the petitions by the applicants.

278. They stated that if the Court should order some measure of redress holding the State responsible for the facts in the case, "these measures should not include the consequences of the precautionary measure of pretrial detention, which ought to be claimed in the domestic jurisdiction, but instead should be limited to […] the question of military due process."

279. They further argued that the applicants themselves should be the only beneficiaries of the proposed measures of redress, and not their families, as the Commission had recommended in its Report on Merits.

280. The State also made reference to the claims concerning pretrial detention, noting that the jurisprudence of Argentine courts had recognized the right to redress for prisoners for the time they remained in pretrial detention if followed by acquittal. It argued that the claims for compensation, both for this item and under the other headings, lacked any legal grounds in this international setting because no such claims had been undertaken in the domestic courts.

281. With respect to pecuniary damage, the State held that the petitions by the representatives were out of order because they lacked objective guidelines for legal and mathematical calculation, but were "simple estimates […] for which no particular data have been offered and no documentary backing adduced, and they are based merely on military wages received in due time by the applicants." It deemed the amounts being requested as "exorbitant," and stressed that there was no causal nexus between the alleged damage caused and the amounts of compensation, or any parameters to calculate these amounts.

282. The State also made reference to the idea of lost potential job prospects, explaining that such loss could be recognized only when the normal path of professional life or other endeavors is interrupted by actions or events extrinsic to the person, which was not the case here because it was the behavior of the applicants themselves that had led to their arrest and subsequent legal processes; by "committing serious crimes, they permanently interrupted their expectations for advancement in their military careers, or of aspiring to higher military ranks available in each area of specialization." They added that the representatives had not provided sufficient evidence to determine the probability of these conjectured damages.

283. The State then discussed the matter of lost earnings and lost wages, arguing that this claim was out of order, first, because during the time of pretrial detention, the applicants had continued to receive the legally-required 50% of their wages, and therefore could not petition for that period; and second, as of the time of the convictions, sentencing and subsequent discharge, the applicants were no longer entitled to receive military wages. The State pointed out that the loss of military wages and the lost earnings were a consequence of the applicants' conviction for criminal offense when they were found guilty of the crime of military fraud.

Therefore, the idea of loss of earnings, loss of military wages and dismissal of the applicants from the Air Force could not be seen as arbitrary actions attributable to the State and producing violations of the Convention, but instead, the whole matter was a response to the applicants' criminal activities. It also noted that the case file held no evidence whatsoever of difficulty finding jobs as a result of the full disqualification.

284. Finally, the State questioned the item of nonpecuniary damage, arguing that no legal basis or method of calculation had been held up as evidence that the amounts being claimed were reasonable. It also stressed the lack of proof that the alleged victims had experienced any type of suffering, affliction or change in their living conditions as a consequence of the alleged violations being attributed to the State, as "there is no evidence, such as medical or psychological certificates, lending credence to this assertion."

285. The State therefore held that the applicants, even though they were held under strict conditions of pretrial detention, had enjoyed certain benefits due to them as military personnel; for example, "it is known that they were held in different Air Force facilities and were able, on a voluntary basis, to perform certain tasks not incompatible with their procedural status. [They were] also able to take part in sports and recreational activities and had access to reading material, radio and television. They were given leave [free days] to spend time with their families in their own homes for religious celebrations or particular family events. Indeed, some of the applicants […] had children born during the time they were in pretrial detention, which gives the lie to the alleged situation of pain and suffering for their families."

E.2 Considerations of the Court

286. The Court has developed the concept of pecuniary damage in its case law, holding that it entails "loss or detriment to the victims' income, the expenses incurred as a result of the facts of the case and the monetary consequences that have a causal nexus with the facts."[225] The Court's case law has further developed the concept of non-pecuniary damage, holding that it "may include both the suffering and distress caused by the violation and the impairment of values that are highly significant to them, as well as any other nonpecuniary change in the living conditions of the victims or family members."[226] Given that it is not possible to assign a specific monetary value to non-pecuniary damage for the purposes of providing comprehensive reparation to the victim, it can only be compensated through payment of a sum of money or the delivery of goods or services that can be quantified in monetary terms, which the Court will determine by applying judicial discretion in a rational and equitable manner.[227] The Court also reiterates the compensatory nature of the indemnities; their nature and amount depend on the damage caused, and therefore they are not supposed to enrich or impoverish the victims or their heirs.[228]

287. This Court observes that the representatives' requests for compensation are intended essentially to obtain financial compensation as a consequence of the alleged violations that

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225 *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, par. 43, and *Case of Human Rights Defender et al. v. Guatemala*, par. 266.

226 *Cfr. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, par. 84, and *Case of Human Rights Defender et al. v. Guatemala*, par. 266.

227 *Cfr. Case of Cantoral Benavides v. Peru. Reparations and Costs.* Judgment of December 3, 2001. Series C No. 88, par. 53, and *Case of Human Rights Defender et al. v. Guatemala*, par. 266.

228 *Cfr. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs*, par. 79, y *Case of Human Rights Defender et al. v. Guatemala*, par. 266.

the applicants claim to have experienced in the criminal proceedings against them. The requests for pecuniary damages consist of lost income, lost earnings, damage to their labor prospects and pecuniary damages resulting from the criminal sentences of disqualification and being stripped of their military ranks, as well as expenses incurred by their families to travel to the centers of pretrial detention where the applicants were being held.

288. Although this Court has found the State responsible for violating articles 7(1), 7(3), 7(5), 8(1), 8(2) and 25 (*supra* Chapter VIII-1 and VIII-2), it has not seen sufficient evidence that the financial compensation being requested has a direct, reasonable causal nexus with the violations declared in this judgment. This is in view of the fact that the declaration of these violations does not nullify the criminal proceedings or the sentences handed down against the applicants, or the consequences thereof. This Court also notes that during pretrial detention, the applicants did receive half of the monthly wages applicable to the particular military ranks they held until they were arrested, as provided by law at the time the events occurred; under these circumstances, the evidence adduced by the applicants does not sufficiently demonstrate that this situation produced the damages they are claiming or that the amounts requested are the material consequences of the facts of the case. For these reasons, the measures of compensation for pecuniary damage requested by the representatives are denied.

289. This Court, having heard the parties' arguments concerning nonpecuniary damage and alleged harm to the applicants' life plans, finds that the representatives did not provide sufficient proof to demonstrate that the conditions and forms of pretrial detention experienced by the applicants wreaked the kind of nonpecuniary damage they claim to have suffered. Nevertheless, in consideration of the finding that the pretrial detention was arbitrary because of the failure to review and the unreasonable amount of time involved, the lack of qualified defense counsel of their choice and the violation of reasonable time limits for the process, the Court finds grounds to order an amount in equity of USD 3,000 (three thousand United States dollars) in compensation for nonpecuniary damage to each of the 20 victims in this case (*supra* par. 235).

290. The Court would reiterate, however, that the delivery and publication of this judgment constitute per se sufficient and appropriate measures of compensation for the violations declared herein and feels that it is not necessary to order any additional measures.

F. Costs and expenses

291. **Representatives** De Vita and Cueto asked the Court to set professional fees for this defense team as it deems appropriate, considering the work undertaken from 1998 until the present, the complexity of the case and its great significance for the inter-American human rights system. They submitted a similar request for the specific determination of court costs.

292. **Representatives** Vega and Sommer requested the sum of USD 25,000.00 to cover legal assistance in the local and international jurisdictions. They also asked for this Court to quantify court costs as it deems fit.

293. The **Inter-American Defenders** asked for reimbursement of expenditures incurred by Mr. Argüelles as the spokesperson for the victims before the Commission from 1998 until the Inter-American Defenders were appointed in 2012, and legal fees for professional counsel in the international jurisdiction. They explained that they had needed to incur major outlays because of the volume of activities undertaken, and, given "the amount of time that cannot be attributed to the alleged victims, and given the informality, it is impossible to expressly

quantify the itemized [expenditures]." This, they noted, is not grounds to reject fair reimbursement for such expenditures, as the Court can indemnify this amount in equity.

294. They asked, therefore, for reimbursement of travel expenditures for the Defenders' trips to the city of Buenos Aires to interview the victims, submit the briefs of pleadings, motions and evidence, and cover travel, lodging and perdiem expenses necessary to ensure that the applicants would be able to attend the hearing.

295. The Court reiterates that, in keeping with its case law,[229] legal fees and court costs are part of the body of reparations enshrined in article 63(1) of the American Convention given that the efforts made by the victims to obtain justice, both at the domestic and the international levels, entail expenses that must be compensated when the State's international responsibility is declared in a Judgment.

296. Regarding the reimbursement of expenses, the Court must prudently assess their scope, including the costs related to the proceedings before the domestic courts, and those incurred in the course of the proceedings before the Court, bearing in mind the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of fairness, taking into account the expenses indicated by the parties, as long as their *quantum* is reasonable.[230]

297. The Court has held, in this regard, that "the claims of the victims or their representatives in relation to costs and expenses, and the evidence supporting them, must be presented to the Court at the first procedural opportunity granted them, namely, in the brief containing pleadings and motions, without prejudice to those claims being updated subsequently, to include new costs and expenses incurred as a result of the proceedings before this Court."[231] The Court also recalls that it is not enough to merely remit probative documents; rather the parties must develop the reasoning linking the evidence to the fact under consideration and, in the case of alleged financial outlays, the items of expenditure and their justification must be described clearly.[232]

298. The Court notes in the instant case that Representatives De Vita and Cueto and Vega and Sommer did not submit vouchers for the expenditures they had incurred and did not itemize their outlays for the national and international litigation, nor did they submit additional evidence to this end. In view of the fact that the litigation lasted several years, both in the country and internationally, this Court nonetheless finds it reasonable to order USD 10,000.00 (ten thousand United States dollars) for representatives Vega and Sommer and USD 10,000.00 (ten thousand United States dollars) for representatives De Vita and Cueto for court costs and legal fees. The Court also takes note that in their pleadings and motions brief, the Inter-American Defenders expressly requested access to the Victims Legal Assistance Fund for the expenditures incurred in the defense of this case. Based on the same considerations, the Court deems fitting to order the State to reimburse USD 630.00 (six hundred thirty United States dollars) to the Inter-American Defenders Gustavo Luis Vitale and

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229 *Cfr. Case of Garrido y Baigorria v. Argentina. Reparations and Costs.* Judgment of August 27, 1998. Series C No. 39, par. 79, and *Case of Human Rights Defender et al. v. Guatemala*, par. 276.

230 *Cfr. Case of Garrido y Baigorria v. Argentina*, par. 82 and *Case of Human Rights Defender et al. v. Guatemala*, par. 277.

231 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, par. 275, and ***Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.*** **Judgment of August 27, 2014. Series C No. 281**, par. 328.

232 *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, par. 277, and ***Case of expelled Dominicans and Haitians v. Dominican Republic***, par. 496.

Clara Leite to cover their domestic expenditures during the processing of the case before the Inter-American Court of Human Rights.

299. The Court can also order the State to further reimburse the victims or their representatives for reasonable expenses incurred during the procedural stage of monitoring compliance with this judgment.

G. Reimbursement of expenditures to the Victims Legal Assistance Fund

300. The **Inter-American Defenders**, speaking on behalf of 11 of the alleged victims, applied for assistance from the Court's Victims Legal Assistance Fund to cover certain specific expenditures for submitting evidence. The president of the Court, in orders released on June 12, 2013 and April 10, 2014, authorized the fund to release financial assistance to the Inter-American Defenders Gustavo Vitale and Clara Leite to cover their costs for attending the public hearing and to pay travel and lodging expenses for expert witness Marcelo Solimine to deliver his statement in the hearing.

301. The State had the opportunity to give its view on the outlays made in this case, which totaled USD 7,244.95. It had no comments. It now falls to the Court, under the terms of article 5 of the regulations of the fund, to assess whether the respondent State should be ordered to reimburse the Victims Legal Assistance Fund for the expenditures incurred.

302. In view of the violations declared in this judgment, the Court hereby orders the State to repay the Fund in the amount of USD 7,244.95 (seven thousand two hundred forty-four United States dollars and ninety-five cents) for expenditures incurred. This amount should be paid to the Inter-American Court within a period of ninety days from notification of the present judgment.

H. Method of compliance with the payments ordered

303. The State must release payment of the compensation ordered and reimbursement of legal fees and court costs determined in the instant judgment directly to the individuals and institutions specified herein within one year of the date of notification of the judgment, under the terms detailed below.

304. If beneficiaries have passed away or should pass away prior to the payment of their due compensation, legal fees and court costs, the money shall be distributed directly to their heirs under the terms of applicable domestic legislation.

305. The State must fulfill all its monetary obligations by means of payment in Argentine pesos or the equivalent in United States dollars, calculated according to the exchange rate in effect on the New York stock exchange, United States of America, the day prior to the payment. If for causes attributable to the beneficiaries of the reimbursements or their heirs it should prove impossible to pay the amounts established within the required term, the State shall deposit the amounts to the beneficiaries into an account or certificate of deposit in a sound Argentine financial institution, in United States dollars, under the most favorable financial conditions allowed by law and by banking practice. If the compensation has not been claimed after ten years, the money shall revert to the State with interest.

306. The amounts allocated in this judgment as reimbursement of legal fees and court costs shall be disbursed in their entirety to the assigned individuals, as ordered in this judgment, with no deductions for possible fiscal fees.

307. If the State should fall overdue with its payments, including the reimbursement of expenditures to the Victims Legal Assistance Fund, it must pay interest on the amount owed at the current overdue interest rate being charged by the banks of the Republic of Argentina.

308. In accordance with its regular practice and based on its inherent powers and the provisions of article 65 of the American Convention, the Court is entitled to monitor full compliance with this judgment. The case shall be held as finalized once the State has complied fully with all the provisions of this judgment.

309. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures it has taken in fulfillment.

X
OPERATIVE PARAGRAPHS

310. Therefore,

THE COURT

DECIDES,

unanimously,

1. To admit the preliminary objection lodged by the State concerning lack of jurisdiction *ratione temporis*, under the terms of paragraphs 22 to 28 of this judgment.

2. To admit the preliminary objection lodged by the State concerning lack of jurisdiction *ratione materiae*, under the terms of paragraphs 32 to 38 of this judgment.

3. To deny the preliminary objection lodged by the State concerning failure to exhaust domestic remedies, under the terms of paragraphs 42 to 48 of this judgment.

DECLARES,

unanimously, that:

4. The State is responsible for violating the right to personal liberty, enshrined in articles 7(1), 7(3) and 7(5), and for violating the right to be presumed innocent, enshrined in article 8(2) of the American Convention on Human Rights, all of them read in conjunction with article 1(1) thereof, in injury of Mr. Argüelles, Mr. Aracena, Mr. Arancibia, Mr. Candurra, Mr. Cardozo, Mr. Di Rosa, Mr. Galluzzi, Mr. Giordano, Mr. Machín, Mr. Maluf, Mr. Marcial, Mr. Mercau, Mr. Morón, Mr. Muñoz, Mr. Óbolo, Mr. Pérez, Mr. Pontecorvo, and Mr. Tomasek, under the terms of paragraphs 113 to 137 of this judgment.

5. The State is responsible for violating the right of all persons to be assisted by professional legal counsel of their own choosing, as enshrined in article 8(2), subparagraphs (d) and (e) of the American Convention on Human Rights, read in conjunction with articles 1(1) thereof, in injury of Mr. Allendes, Mr. Argüelles, Mr. Aracena, Mr. Arancibia, Mr. Candurra, Mr. Cardozo, Mr. Di Rosa, Mr. Galluzzi, Mr. Giordano, Mr. Machín, Mr. Maluf, Mr. Marcial, Mr.

Mattheus, Mr. Mercau, Mr. Morón, Mr. Muñoz, Mr. Óbolo, Mr. Pérez, Mr. Pontecorvo, and Mr. Tomasek, under the terms of paragraphs 174 to 182 of this judgment.

6. The State is responsible for violating the right to a fair trial, enshrined in article 8(1) of the American Convention on Human Rights, read in conjunction with article 1(1) thereof, with regard to a reasonable period for the process, in injury of Mr. Allendes, Mr. Argüelles, Mr. Aracena, Mr. Arancibia, Mr. Candurra, Mr. Cardozo, Mr. Di Rosa, Mr. Galluzzi, Mr. Giordano, Mr. Machín, Mr. Maluf, Mr. Marcial, Mr. Mattheus, Mr. Mercau, Mr. Morón, Mr. Muñoz, Mr. Óbolo, Mr. Pérez, Mr. Pontecorvo, and Mr. Tomasek, under the terms of paragraphs 188 to 197 of this judgment.

7. The State is not responsible for violating the right to a fair trial and the right to judicial protection enshrined in articles 8(1) and 25 of the American Convention on Human Rights, under the terms of paragraphs 144 to 166 of this judgment.

8. The State is not responsible for violating freedom from ex post facto laws, enshrined in article 9 of the American Convention on Human Rights, under the terms of paragraphs 205 to 214 of this judgment.

9. The State is not responsible for violating the political rights enshrined in article 23 of the American Convention on Human Rights, under the terms of paragraphs 221 to 231 of this judgment.

AND ORDERS

unanimously, that:

10. This judgment constitutes per se a form of reparation.

11. The State shall issue the publication stipulated in paragraph 254 of this judgment.

12. The State must pay the amounts set forth in paragraphs 289 and 298 of this judgment for nonpecuniary damage and reimbursement of legal fees and court costs within one year of the date when notice of the judgment is served.

13. The State must reimburse the Victims Legal Assistance Fund of the Inter-American Court of Human Rights for the outlays made during the processing of the instant case, under the terms given in paragraph 302 of this judgment.

14. The State shall, within one year of the date when notice of this judgment is served, submit to the Court a report on the measures adopted to comply therewith.

15. The Court shall monitor full compliance with this judgment, in exercise of its authority and in compliance with its obligations pursuant to the American Convention on Human Rights, and shall declare this case closed when the State has fully complied with all the measures ordered herein.

Done in Spanish in the city of San Jose, Costa Rica, November 20, 2014.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Registrar

So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Registrar