**INTER-AMERICAN COURT OF HUMAN RIGHTS**

***CASE OF ÓRDENES GUERRA ET AL. V. CHILE***

**JUDGMENT OF NOVEMBER 29, 2018**
**(Merits, Reparations and Costs)**

In the case of *Órdenes Guerra et al.,*

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

Eduardo Ferrer Mac-Gregor Poisot, President
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge
L. Patricio Pazmiño Freire, Judge,

also present,

Pablo Saavedra Alessandri, Registrar,

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

[*] Judge Eduardo Vio Grossi, a Chilean national, did not take part in the deliberation and signing of this judgment, pursuant to Articles 19(2) of the Statute and 19(1) of the Rules of Procedure of the Court.

## TABLE OF CONTENTS

# I
# INTRODUCTION OF THE CASE AND CAUSE OF THE ACTION

1. *The case submitted to the Court*. On May 17, 2017, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted the case of *María Laura Órdenes Guerra et al. against the Republic of Chile* (hereinafter "the State" or "Chile") to the jurisdiction of the Inter-American Court, pursuant to Articles 51 and 61 of the American Convention and Article 35 of the Court's Rules of Procedure. According to the Commission, the case concerns the alleged responsibility of the State for the violation of the rights to judicial guarantees and judicial protection as a consequence of the application of the statute of limitations to civil actions for reparations related to crimes against humanity. The alleged victims are seven groups of people[1] who, between 1997 and 2001, filed seven separate civil actions for damages for the kidnapping and disappearance or execution of their family members by State agents in 1973 and 1974, during the military dictatorship. These actions were rejected between 1999 and 2003, by first instance courts, appellate courts or the Supreme Court of Justice, based on the application of the statute of limitations established in the Civil Code. Although the alleged victims have received a monthly administrative pension under the provisions of Law 19.123 of 1992, as well as other benefits in some cases (reparation bonus or compensatory award), the Commission considered that the existence of an administrative reparations program does not prevent the victims of serious violations from claiming reparations through the courts and that, in the case of crimes against humanity, it is unreasonable to deny them their rights to reparations on the grounds that the statute of limitations has expired.

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

a. *Petitions*. On July 14, September 3 and October 24, 2003, as well as on January 22, 2004, the Commission received four petitions presented by the attorney Nelson Caucoto on behalf of the alleged victims.

b. *Admissibility reports*. On October 12, 2005, the Commission issued Admissibility Reports Nos. 60/05[2], 61/05[3], 62/05[4] and 59/05[5], which declared that petitions Nos. 511-03, 698-03, 862-03 and 381-04, respectively, were admissible.

---

[1] The alleged victims are the following: Next of kin of Augusto Andino Alcayaga Aldunate: María Laura Órdenes Guerra (wife), Ariel Luis Antonio Alcayaga Órdenes (son), Marta Elizabeth Alcayaga Órdenes (daughter), Augusto Oscar Amador Alcayaga Órdenes (son), Gloria Laura Astris Alcayaga Órdenes (daughter) and María Laura Elena Alcayaga Órdenes (daughter). On July 14, 2017, the representative reported that María Laura Órdenes Guerra had died and that her applications "[would] continue, but through her heirs, specifically her children", three of whom were granted a judicial mandate, namely: Gloria Laura Astrid, August Óscar Amador and María Laura Elena. Next of kin of Jorge Ovidio Osorio Zamora: Lucía Morales Compagnon (wife), Jorge Roberto Osorio Morales (son), Carolina Andrea Osorio Morales (daughter), Lucía Odette Osorio Morales (daughter) and María Teresa Osorio Morales (daughter). Next of kin of Hipólito Pedro Cortés Alvarez: Alina María Barraza Codoceo (wife), Eduardo Patricio Cortés Barraza (son), Marcia Alejandra Cortés Barraza (daughter), Patricia Auristela Cortés Barraza (daughter), Nora Isabel Cortés Barraza (daughter) and Hernán Alejandro Cortés Barraza (son). Next of kin of Mario Ramiro Melo Prádenas: Mario Melo Acuña (father), Ilia María Prádenas Pérez (mother) and Carlos Gustavo Melo Prádenas (brother). The representative reported that the parents of Melo Prádenas had died and that his brother would continue the applications. Next of kin of Ramón Luis Vivanco Díaz: Pamela Adriana Vivanco Medina (daughter). Next of kin of Rodolfo Alejandro Espejo Gómez: Elena Alejandrina Gómez Vargas (mother) and Katia Ximena Espejo Gómez (sister). Next of kin of Sergio Alfonso Reyes Navarrete: Magdalena Mercedes Navarrete (mother), Jorge Alberto Reyes Navarrete (brother), Patricio Hernán Reyes Navarrete (brother) and Víctor Eduardo Reyes Navarrete (brother). The representative reported that his mother and two of his brothers (Jorge Alberto and Víctor Eduardo) would continue with the applications.

[2] *Cf.* IACHR, Report No. 60/05 (Admissibility), Petition 511-03, María Órdenes Guerra; Chile, October 12, 2005. Available at: http://www.IACHR.oas.org/annualrep/2005sp/Chile511.03sp.htm

[3] *Cf.* IACHR, Report No. 61/05 (Admissibility), Petition 698-03, Lucía Morales Compagnon et al.; Chile, October 12, 2005. Available at: http://www.IACHR.oas.org/annualrep/2005sp/Chile698.03sp.htm

[4] *Cf.* IACHR, Report No. 62/05 (Admissibility), Petition 862-03, Alina María Barraza Codoceo et al.; Chile, October 12, 2005. Available at: http://www.IACHR.oas.org/annualrep/2005sp/Chile862.03sp.htm

[5] *Cf.* IACHR, Report No. 59/05 (Admissibility), Petition 381-04, Magdalena Mercedes Navarrete Faraldo et al.; Chile, October 12, 2005. Available at: http://www.IACHR.oas.org/annualrep/2005sp/Chile381.04sp.htm

c. *Joinder of cases*. On April 8, 2008, the Commission decided to join Cases N° 12.522 (Lucía Morales Compagnon et al.) and N° 12.523 (Alina María Barraza et al.) to Case N° 12.521 (María Laura Órdenes Guerra et al.), pursuant to Article 29(1)(d) of its Rules of Procedure in force at that time, on the grounds that they concerned similar facts. On April 30, 2009, the Commission informed the parties of its decision to join Case N° 12.520 (Mario Melo Prádenas et al.) to Case No. 12.521, in the same terms.

d. *Report on the Merits.* On November 30, 2016, the Commission approved Merits Report No. 52/16, pursuant to Article 50 of the American Convention (hereinafter "Merits Report" or "the Report"), in which it reached a series of conclusions and made several recommendations to the State.[6]

e. *Notification the State*. The Commission notified the Merits Report to the State on February 17, 2017, granting it two months to report on its compliance with the recommendations. The Commission noted that, subsequently, the State had indicated that the period granted was insufficient for these purposes; that there was already a unified case law criterion on the inapplicability of the statute of limitations in the context of civil actions for reparations for crimes against humanity and that, therefore, an effective domestic remedy exists. The State did not request an extension for the suspension of the time limit provided for in Article 51 of the Convention.

3. *Submission of the case before the Court*. On May 17, 2017, the Commission submitted to the Court all the facts and human rights violations described in Merits Report 52/16, in view of the "need to obtain justice for the [alleged] victims" and because it considered that the State had not indicated how the victims whose claims were previously dismissed could be redressed.[7]

4. *Requests of the Inter-American Commission*. Based on the foregoing, the Commission asked this Court to find and declare the State responsible for the violation of the rights established in its Merits Report and to order, as measures of reparation, the implementation of the recommendations contained therein.

## II
## PROCEEDINGS BEFORE THE COURT

5. *Notification of the case to the State and to the representative of the alleged victims*. The submission of the case by the Commission was notified to the State and to the representative of the alleged victims[8] (hereinafter "the representative") on September 4 and 6, 2017, respectively.

---

[6] The Commission concluded that the State of Chile is responsible for the violation of Articles 8(1) and 25(1) of the American Convention, in connection with the general obligations established in Articles 1(1) and 2 thereof, to the detriment of the victims in the present case. The Commission recommended that the State: "1. Make reparation to the victims for the violations declared in [its] report. As part of that reparation, the State must adopt the measures necessary to provide an effective judicial remedy so that the victims can file their claims and obtain a decision with respect to reparations. Compliance with this recommendation is independent of the administrative reparations program. 2. Adopt measures of non-repetition, in particular, legislative, administrative and other measures designed to align Chilean legislation and judicial practices with the standards described in this report regarding the prohibition of applying the statute of limitations to civil actions for reparation in cases such as this." *Cf.* IACHR, Report No. 52/16 (Merits), María Órdenes Guerra et al., Chile, OAS/Ser.L/V/II.159, Doc. 61, November 30, 2016. Available at: http://www.oas.org/es/IACHR/decisiones/Court/2017/12521FondoEs.pdf

[7] The Commission appointed the then Commissioner Paulo Vannuchi and Executive Secretary Paulo Abrão as its delegates, as well as Elizabeth Abi-Mershed, then Assistant Executive Secretary, and Silvia Serrano Guzmán, lawyer of the Executive Secretariat, as legal advisers.

[8] On June 15, 2017, following the instructions of the President of the Court, the Secretariat contacted Mr. Nelson Caucoto Pereira, indicated as the petitioner by the Commission, and asked him to confirm his representation of the alleged victims and, if applicable, to provide a power of attorney or document certifying such accreditation and a clear expression of their willingness to be represented by him. After requests for additional deadlines and extensions, between July 17 and August 8, 2017, Mr. Caucoto reported on his communications with the alleged victims and forwarded several powers of attorney granted by them. Regarding the representation of the alleged victims, when the case was notified, it was indicated that it had been decided to notify Mr. Caucoto, despite the fact that some powers of attorney had not yet been received, on the understanding that the representative acted as petitioner on behalf of or in favor of all the alleged victims in the proceedings before the

6. *Inadmissibility of the brief with pleadings, motions and evidence.* On November 10, 2017, the representative submitted, extemporaneously, his brief with pleadings, motions and evidence.[9] On December 6, 2017, the Secretariat, following the instructions of the President of the Court and in application of Article 40 of the Rules of Procedure, advised that said brief was inadmissible and, consequently, it was not transmitted to the State and the Commission nor was it included in the case file; thus, the deadline for the State to submit its response began to apply as of that last date.

7. *Answering brief and acknowledgement of responsibility.*[10] On February 5, 2018, the State submitted its brief in response to the submission of the case (hereinafter "answer" or "answering brief"), in which also acknowledged its international responsibility.

8. *Observations on the acknowledgement of responsibility*. On March 1, 2018, the representative and the Commission presented their observations on said acknowledgement.

9. *Decision not to open oral proceedings.* On March 15, 2018, the Secretariat announced that, pursuant to Article 45 of the Rules of Procedure,[11] the Plenary of the Court had evaluated the Merits Report submitted by the Commission as well as the State's answering brief and acknowledgement of responsibility. Thus, after confirming that the parties and the Commission agreed that the dispute on the merits has ceased, and without prejudice to the provisions of Article 62 of the Rules of Procedure, the Court decided that it was not necessary to call a hearing or to receive the opinion offered by the Commission. Furthermore, in relation to a "suggestion" by the representative that the Court propose a friendly settlement agreement to the parties, it was noted that the Court had not been informed of any agreement between the parties. Accordingly, the representative, the State and the Commission were granted a non-extendable deadline of April 16, 2018, to submit their final written arguments and final written observations, respectively, in relation to reparations.

10. *Final written arguments and observations*. On April 16, 2018, the parties and the Commission submitted their final written arguments and final written observations, respectively.[12]

11. *Deliberation of the instant case*. The Court began deliberation of this judgment on November 29, 2018.

---

Commission; that some alleged victims are deceased; that most of them had granted powers of attorney to the representative; and that the representative had expressed his willingness to continue representing all the alleged victims and that he would provide the respective documents as soon as possible or, in any case, would continue to act as unofficial agent.

[9] According to the respective records, the brief of submission of the case was notified to the representative on September 1, 2017, and that same day it was dispatched via courier together with all the annexes, which were received by the representative on September 6. In other words, on the following day, the two-month non-extendable term for the filing of the pleadings, motions and evidence brief began to run. The aforementioned brief of the representative was received by the Court on November 10, 2017 and the annexes thereto were received on that same day and on November 30, i.e., it was submitted outside the procedural term established in Article 40 of the Rules of Procedure.

[10] On October 3, 2017, the State of Chile, through the Minister of Foreign Relations, pursuant to Articles 23 and 39(3) of the Court's Rules of Procedure, appointed Hernán Quezada Cabrera, Óscar Alcaman Riffo, Sebastián Cabezas Chamorro and Diana Maquilón Tamayo as its agents for this case, as well as Beatriz Contreras, Isidora Rojas Fermandois, Oliver López Serrano and Juan Pablo González Jansana, as alternate agents. After the response, on February 13, 2018, the State announced that Mr. Quezada Cabrera and Mr. Cabezas Chamorro, as well as Mr. Juan Pablo González Jansana, would continue as agents and that Mrs. Contreras and Mr. López Serrano would continue as alternate agents. On April 13, 2018, the State announced that Juan Pedro Pablo Crisóstomo Merino, Gonzalo Fernando Candia Falcón and Juan Pablo González Jansana would act as agents and Mr. López Serrano and Ms. Consuelo Catalina Klaassen Burdiles as alternate agents.

[11] In its communication, the Secretariat recalled that Article 45 of the Rules of Procedure affirms the power of the Court or its President to determine the relevance and necessity of convening a hearing in each case, which shall be exercised with reasons and in a manner consistent with the characteristics of the case, the procedural requirements deriving therefrom and the due preservation of the rights of the parties.

[12] In addition, the representative and the Commission were granted a period to present their observations on the documents submitted by the State as annexes to its final written arguments. After an extension was granted, the Commission stated that it had no observations. On May 2, 2018, the representative submitted his observations. On May 29, the State asked that the representative's observations be disregarded and that the annex thereto not be admitted. In a note from the Secretariat dated May 31, 2018, it was announced that the request of the State would be brought to the attention of the President of the Court and decided in due course.

## III
## JURISDICTION

12. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention, since Chile has been a State Party to the American Convention since August 21, 1990, and accepted the Court's contentious jurisdiction on the same date.

## IV
## ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY OF THE STATE

### *Acknowledgement of responsibility by the State and observations of the Commission and the representative*

*i. Regarding the facts*

13. The ***State*** indicated that it "accepts the facts that have been considered proven by the […] Commission in Chapter IV of its Report. […] It emphasized that this acceptance of the factual framework of the case refers only to the judicial proceedings initiated by the alleged victims in this case in order to obtain civil reparations; therefore, any additional complaint referring to the criminal investigation of the events that occurred during the military dictatorship is outside the scope of this statement." The State considered that, "in order to find fair solutions to the particular problems of the instant case, […] it is important to make a specific ruling on the acceptance of the following facts: the persons who were detained, abducted and/or disappeared and executed by agents of the State during the military dictatorship in 1973 and 1974, who are mentioned in the IACHR Merits Report, are part of the list of victims of human rights violations recognized by the State of Chile in the Report of the National Truth and Reconciliation Commission (Rettig Commission), of February 8, 1991. […] The family members of the victims recognized by the State and mentioned in said Report […] have not received financial reparations through the courts. However, most of them have received various administrative benefits and other bonuses under the provisions of laws enacted as part of the reparations policy implemented by the State after democracy was restored.

14. The ***Commission*** considered that the acknowledgement of responsibility made by the State is complete, inasmuch as it includes the entire factual framework established in the Merits Report.

*ii. Regarding the merits of the case*

15. The ***State*** pointed out that "Chile acknowledges its full international responsibility for the violation of the rights to judicial guarantees and judicial protection, enshrined in Articles 8(1) and 25(1) of the American Convention, in connection with the general obligation to respect the rights recognized therein and the duty to adopt provisions of domestic law, established in Articles 1(1) and 2, respectively, to the detriment of the victims indicated in the Merits Report." In stating that it agrees with the Commission as to the subject matter of the instant case, the State recalled the case law of this Court on the rights of access to justice, truth and reparation; and the non-applicability of statutes of limitations to crimes against humanity, among others. In considering that such standards "constitute the variables of analysis for its declaration of international responsibility," the State indicated:

> "[…] its willingness to accept the conclusions and the related legal consequences contained in the Merits Report adopted by the IACHR. In particular, it accepts that it violated the right to judicial guarantees by not establishing the right of the alleged victims to obtain civil reparations. It also violated the right to judicial protection by not determining the right of the alleged victims to obtain civil reparations. In addition, it breached the right to judicial protection by not guaranteeing an effective remedy, in

> particular, by not taking the necessary steps to remedy human rights violations recognized as crimes against humanity by the State itself through the mechanism of the truth commissions. Likewise, the application of the civil statute of limitations to the legal actions filed by the alleged victims made it impossible to grant just reparations and made it difficult [for them] to make adequate use of a remedy that is suitable for redressing human rights violations. Based on the foregoing, there are sufficient grounds to consider that the State is objectively responsible for failing to comply with its duty to guarantee the rights of the victims […], by failing to restore the full right to obtain reparation; […] it also recognizes that the measures adopted in the judicial proceedings were not effective in accordance with international human rights law, a judicial practice that has been corrected in recent years with the change of criteria and jurisprudence on this matter adopted by the national courts and that is still in force today."

16. The ***State*** "points out that its acceptance of the facts and the claims […] is made in accordance with the principle of good faith established in international law, which also takes into account the nature and seriousness of the alleged violations and the interests of justice, based on the particular circumstances of the case." The State requested that "[its] statement be declared to be accepted."

17. The ***Commission*** considered that the acknowledgement of responsibility made by the State is complete, inasmuch as it includes the legal consequences of the facts in the same terms established in the Merits Report; therefore it considered that the dispute on the merits has ceased, a matter that it assesses very positively.

18. The ***representative*** welcomed and appreciated the State's acknowledgement of responsibility, highlighting this as progress in terms of the guarantee and respect for human rights.

*iii. Reparations*

19. The ***State*** argued that, "since there is no dispute regarding the main subject matter of this international litigation, the appropriate course of action is to reestablish the rights that have been deemed to have been violated and determine the payment of compensation to the injured party." Therefore, "prior to the declaration of the reparation measures to be adopted by [this] Court, it is important for the State to establish the following points: first, that the judicial cases referred to at the domestic level have been fully processed and the decisions handed down have the character of *res judicata*, which makes it legally impossible to reinstate the judicial proceedings in order to issue new judgments. Nevertheless, the State accepts that claims for reparation for gross violations of human rights are not subject to the statute of limitations; this principle is rooted in international custom, prior to the international human rights treaties signed, so that the passage of time cannot be an impediment for victims and their next of kin to obtain full reparation for the harm caused. Second, as regards the nature of the reparation measures to be adopted by the Court, and taking into account its broad jurisdiction established in Article 63(1) of the ACHR, the State is of the opinion that, since the instant case arises from the inability of a domestic court to hear the merits of an action for compensation for damages, the appropriate reparation to remedy the effects of the violation would be to determine a monetary compensation."

20. In addition to the above, the State indicated that, since the return to democracy in 1990, it has carried out a series of transitional justice initiatives in several areas (right to truth, justice, memory and due reparation for victims of human rights violations), with the conviction that such actions constitute a measure of non-repetition so that never again will the State of Chile violate human rights in a systematic, massive and institutionalized manner as occurred between 1973-1990. The State recalled the main milestones that summarize its institutional efforts in this regard since 1990.[13] Consequently, it requested that the Court recognize the following: that it has made

[13] The State referred to public policies in response to the need to find out the truth about the human rights violations committed during the dictatorship: The National Commission for Truth and Reconciliation (CNVR, known as the "Rettig Commission"), established in April 1990. It completed its work in February 1991, recording 2,279 victims of forced disappearance and execution, out of the 3,550 reports received. - National Reparations and Reconciliation Board (CNRR) created in February 1992 to coordinate, execute and promote the recommendations proposed by

substantial progress in this area; that in recent times the jurisprudence of the national courts has changed substantially, so that nowadays there is appropriate judicial action; and that it has adopted administrative measures aimed at bringing Chilean judicial practices into line with international standards. Based on the foregoing, the State requested that the reparations ultimately awarded be established only in relation to the facts for which it has acknowledged responsibility and in accordance with the standards of international human rights law. In its final arguments, the State made a series of clarifications and modified its initial position (*infra* paras. 111 and 115).

21. Without prejudice to its assessment on said acknowledgement, the ***Commission*** considered that the dispute continues regarding the scope of the reparations requested and those proposed by the State, particularly in relation to the component of restitution.

22. For his part, the ***representative*** noted that, to date, the victims have not been able to obtain reparation; thus, it is urgent that justice be done through a court ruling or through an agreement that settles the matter. This is especially important, considering that these were the first petitioners who paved the way for other victims who filed civil suits against the State, leading to a substantive jurisprudential change, which means that today the State complies with its obligation to compensate the victims of such crimes. He pointed out that, in spite of the above, the State Defense Council, the body that represents the interests of the State in domestic proceedings, continues to assert– in judicial proceedings for acts that constitute international crimes – the exception of extinctive prescription of civil claims, thus ignoring what the State has expressed in

---

the CNVR, as well as to review the cases that the CNVR was unable to consider due to a lack of background information or that were not submitted to it, recording 899 victims in its report. - National Commission on Political Imprisonment and Torture ("Valech" Commission or "Valech I Commission"), created in 2003 by Supreme Decree 1.040, and with a mandate to determine the persons who suffered imprisonment and torture for political reasons, through the acts of agents of the State or persons at its service, during the period between September 11, 1973, and March 10, 1990 (there is currently a bill that seeks to guarantee access to the information compiled by the "Valech I Commission" for the courts of justice). – Advisory Commission on the Classification of Disappeared Detainees, Victims of Political Executions and Victims of Political Imprisonment and Torture (known as the Valech II Commission), created by law in December of 2009, in order to receive new testimonies and background information about cases of disappeared detainees, political executions, political imprisonment or torture that had not been recognized by the previous commissions. In its final report of August 2011, the Commission referred to 30 new cases of disappeared and executed detainees as well as 9,795 political prisoners and tortured persons (Law No. 20,405 extended reparation benefits to the relatives of verified victims and Law Nº 20.874 determined the creation of a Single Reparation Contribution for verified Valech detainees and their surviving spouses, which allows victims of political imprisonment and torture to request payment of a single reparation contribution from the Social Security Institute).

In the area of justice it referred to: the Program Continuation Law 19.123 (Human Rights Program), created in June 1997 to provide legal and social advice to the relatives of the victims recognized by the CNVR and the CNRR. Together with the creation of the Sub-Secretariat of Human Rights (SDH), said Program (now called Human Rights Program Unit- UPDDHH) was transferred from the MINSP to the Ministry of Justice and Human Rights (MINJUDH). – The Inter-institutional Roundtable Group to assist the Justice system in the search for victims of forced disappearance operates since 2016. - The Interinstitutional Group of Patio 29 operates since October 2015. Human rights units or departments, which form part of the Executive Branch, execute judicial investigation orders. In the last 28 years, the Judiciary has incorporated human rights standards into its rulings on cases during the dictatorship. – Regarding international cooperation on judicial matters, the Republics of Chile and Argentina, Brazil and Uruguay signed a Memorandum of Understanding in 2014 for the exchange of documentation and files related to serious human rights violations that occurred during the military dictatorships in the region; in the context of the Meeting of High-Level Authorities on Human Rights of MERCOSUR (RAADH), the MOU between MERCOSUR countries and associated countries was approved.

In terms of reparations, Chile has developed a policy of comprehensive reparations, through various forms of pecuniary and non-pecuniary compensation: Law Nº19.123, and its amendment Law Nº19.980, which established benefits for the relatives of victims identified by the CNVR and the CNRR, extended to cases identified by the Valech II Commission (reparation pension for relatives; reparation bonus for children of victims over 25 years of age who had not been eligible for the pension benefit; 200 reparation awards for relatives not contemplated in the regulations, for particular situations of those entitled to a pension but without beneficiaries, spouses, among other cases; educational and medical benefits; exemption from compulsory military service for children of victims; and creation of PRAIS, under the Ministry of Health, for free health care for victims and family members). Law No. 20,377 on the Declaration of Absence due to forced disappearance was enacted. Finally, through the UPDDHH, psychosocial support is provided to the families of the victims.

In relation to symbolic reparations, it indicated that, until 2002, actions by the State had been isolated (construction of the Memorial to the Disappeared and Executed Political Detainees at Santiago's General Cemetery (1994), Monument to Salvador Allende (2000), the Villa Grimaldi Peace Park (1997), Los Hornos de Lonquén National Historical Monument (1996), etc.). Then, accepting the claims of the next of kin and the recommendations of the CNVR, the UPDDHH now allocates part of its budget for the construction of memorials, maintenance of historic memorial sites and other forms of symbolic reparation. In addition, various measures have been adopted to promote the historical memory (from 2014, the Interinstitutional Memory Group; in 2010, the Museum of Memory and Human Rights was inaugurated and in 2006, August 30 was instituted as the National Day of the Disappeared Detainees).

its acknowledgement of responsibility.[14] The representative stated that "the acknowledgement of responsibility expressed by the State of Chile – which could be seen as a positive step that would facilitate the settlement of this dispute, under Articles 62 and 63 of its Rules of Procedure, elicits [the] suggestion [to ask the Court to formulate] a proposal to the parties [to] reach a friendly settlement agreement." In such, case he requested that several claims for reparation be considered.[15] The representative reiterated this point in his final arguments, in which he also made further requests for reparations.[16]

### *Considerations of the Court*

23. In accordance with Articles 62 and 64 of the Rules of Procedure,[17] and in exercise of its powers of international judicial protection of human rights, a matter of international public order, it is incumbent upon this Court to ensure that acts of acknowledgement of responsibility are acceptable for the purposes sought by the inter-American system. In doing so, the Court must not only verify the formal conditions of said acts, but also examine them in relation to the nature and seriousness of the alleged violations, the requirements and interests of justice, the specific circumstances surrounding a particular case, and the attitude and position of the parties, in such a way that it can determine, as far as possible and in exercise of its jurisdiction, the judicial truth of what happened.[18]

---

[14] The representative forwarded copies of three recent letters from the State Defense Council in which the latter responded to claims filed by him in cases pending before the domestic courts.

[15] The representative made the following requests in his brief of observations on the State's acknowledgment of responsibility:

> 1) The State should issue an express statement, in the specific case, that the extinctive prescription is not applicable to civil actions arising from crimes under international law -particularly war crimes and crimes against humanity, such as those committed in Chile in the past- which are aimed at repairing the damage caused to the petitioners and relatives of the victims of these crimes.
>
> 2) The State, through the Judiciary or any other body it may designate, could define a legal mechanism that would allow for the repeal or annulment of the judicial rulings denounced, but only with regard to the declaration of the statute of limitations of the civil action or the civil part thereof, in the case of crimes under international law, or define some legal, administrative or other type of remedy that would provide for the corresponding reparation and compensation, ensuring that it is a quick, effective and efficient mechanism.
>
> 3) In relation to the amount of the reparation, the criteria for determining it are those contained in the jurisprudence of the Court; in the Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (United Nations, 2005); in previous solutions adopted (as in the case of Carmelo Soria Espinoza before the Commission, in which the State undertook in a compliance agreement to pay the sum of one million five hundred thousand dollars to his family as compensation, or in the case of Orlando Letelier and Ronni Moffit, in which the "Bryan" Commission of the United States ordered, *inter alia*, the payment of *ex gratia* compensation for moral damages of US$ 160,000.00 in favor of the widow and US$ 80.000,00 for each of the four children); as well as the standards currently applicable by the Chilean judiciary.
>
> 4) As a measure of non-repetition that would benefit other petitioners who are affected by a situation of violation of human rights identical to that in the present case, the creation of an effective mechanism to safeguard the right to judicial protection and judicial guarantees in these cases and the right to reparation for victims of crimes under international law.

In addition, the representative pointed out that there are several cases before the Inter-American Commission, where he acts on behalf of other persons, in which the subject matter of the cases coincides with that raised in the present case and in which the State should adopt a criterion of acknowledgement of responsibility identical to that expressed in the present case. Therefore, it would be appropriate to urge the State to express the same recognition in these cases and thus lay the groundwork for reaching an amicable settlement agreement and prevent these victims from being subjected to further delays that harm or hinder the realization of their rights.

[16] In addition to what was indicated in the previous note, in his final written arguments the representative asked the Court to order the State, as measures of non-repetition, "to offer a public apology to the petitioning parties, including an acknowledgment of the facts and acceptance of its responsibility," as well as "the inclusion of a precise account of the violations that occurred in the teaching of international human rights standards and international humanitarian law [and], in educational materials at all levels, in particular, in the Judicial Academy for judges of the Republic of Chile".

[17] Articles 62 and 64 of the Rules of Procedure of the Court establish the following: "Article 62. Acquiescence: If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or in the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects." "Article 64. Continuation of a case: Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles."

[18] *Cf. Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24; and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs.* Judgment of March 9, 2018. Series C No. 351, para. 27.

24. First, in relation the facts, the Court notes that there is agreement between the State (*supra* paras. 15 and 16) and the Commission[19] regarding the factual framework and the subject matter of the case. Consequently, with respect to the facts of the case, the Court considers that the dispute has ceased; therefore, there is no need to make its own determination of the facts of the case.

25. Secondly, regarding the merits, the State acknowledged its international responsibility in relation to the conclusions of the Commission's Report (*supra* paras. 15 and 16), a fact that was viewed positively by the Commission and by the representative. This Court considers that the State's acknowledgement constitutes an acceptance of the Commission's legal claims regarding the violation of the rights to judicial guarantees and judicial protection, to the detriment of the victims indicated in the Merits Report. The Court appreciates the State's acknowledgement of international responsibility, which constitutes a valuable contribution to the advancement of this process and to the validity of the principles that inspire the Convention, as well as, in part, to the victims' need for reparation.[20] Therefore, as it has in other cases,[21] the Court considers that this act produces full legal effects and that the dispute on the merits of the case has ceased.

26. Third, in relation to reparations, the Court notes that in this case the representative of the alleged victims did not submit his brief with pleadings, motions and evidence within the statutory period established for that purpose, for which reason it was declared inadmissible (*supra* para. 6).

27. In general terms, procedural inactivity results in the preclusion of the procedural opportunity to assert, within the period provided for this purpose, the corresponding rights. This may ultimately be prejudicial to the relevant party, when it voluntarily decides not to fully exercise its right of defense in full, or to carry out the procedural actions that are in its best interest, in accordance with the maxim *audi alteram partem.*[22] Nevertheless, in accordance with the provisions of the Court's Rules of Procedure[23] and its case law, a party that appears belatedly in the proceeding is allowed to participate in subsequent procedural actions, taking into account the stages that would have expired in accordance with the procedural moment.[24] In this regard, it has already been established that closing arguments essentially serve to systematize *de facto* and *de jure* arguments presented in a timely manner, and therefore these cannot properly replace the failure to submit the initial brief, nor are they a stage for presenting additional facts, evidence or requests, since they cannot be answered by the other parties.[25]

---

19 In its Report, the Commission made it clear that "the complaint was not about the criminal investigation of the acts that took place during the military dictatorship, but rather about 'the refusal of the Chilean courts to grant compensation' to the [alleged] victims in the instant case, especially after the Rettig Commission had recognized the State's liability for the serious violations of the human rights of family members [ …] and that in the case at hand 'the allegations refer only to the judgments handed down by the Chilean courts between 1999 and 2003.' Therefore] the facts […] deal only with judicial proceedings brought by the alleged victims in this case for the purpose of obtaining reparation and the responses they received."

20 *Cf. Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Series C No. 38, para. 57; *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 349, para. 25; and *Case López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 34.

21 *Cf. Case of Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of February 7, 2006. Series C No. 144, paras. 176 to 180; *Case of Poblete Vilches et al. v. Chile*, para. 25; and *Case of López Soto et al. v. Venezuela,* para. 30.

22 *Cf.,* See also, *Case of the Constitutional Court v. Peru. Jurisdiction*. Judgment of September 24, 1999. Series C No. 55, para. 60; and *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 16.

23 Article 29(2) of the Rules of Procedure, which regulates the "Default procedure," indicates that "When […] the victims, alleged victims, or their representatives, the respondent State or, if applicable, the petitioning State, enter a case at a later stage in the proceedings, they shall participate in the proceedings at that stage."

24 *Cf. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251, para. 19; and *Case of San Miguel Sosa et al. v. Venezuela*, para. 16.

25 *Cf. Case of Pollo Rivera v. Peru*. *Merits, reparations and costs*. Judgment of October 21, 2016. Series C No. 319, para. 23; and *Case of San Miguel Sosa et al. v. Venezuela*, para. 18.

28. Therefore, in application of Article 29(2) of the Rules of Procedure, and by virtue of the adversarial and equality of arms principles, the Court will not take into account the requests for reparations submitted by the representative in his observations on the State's acknowledgement and final arguments, because they were not presented at the appropriate procedural moment, unless they are related to matters raised by the Commission.[26]

29. On the other hand, as regards the "suggestion" made by the representative, and reiterated in his closing arguments, that this Court should propose to the parties a friendly settlement agreement, the Court recalls that, pursuant to Article 63 of the Rules of Procedure,[27] it is possible that the parties may reach friendly settlement agreements during the processing of a case before this Court, in which case they should inform the Court so that it may assess their appropriateness and legal effects.[28] However, at the time of issuing this judgment, the parties have not communicated any such agreement.

30. Finally, it is clear that, as a consequence of its acquiescence, the State has acknowledged its obligation to compensate the victims in the instant case. However, the Court notes that a dispute remains as to the appropriate measures of reparation for such purpose, and therefore it is necessary to open a chapter on this matter.

31. In order to ensure a clearer understanding of the State's international responsibility in the instant case, in the following chapters the Court deems it appropriate to: review the facts contained in the Merits Report, which were accepted in their entirety by the State; clarify some aspects of the human rights violations acknowledged by the State; and, finally, resolve the remaining dispute regarding the reparations.

## V
## FACTS

### *A.1 System of reparations of the Chilean State*

32. Following the end of the military dictatorship, on April 25, 1990, the then President Patricio Aylwin Azocar issued Supreme Decree No. 355 which created the Rettig Commission, and declared that "the moral conscience of the Nation demands that the truth about the serious human rights violations committed in the country between September 11, 1973, and March 11, 1990, be brought to light." The tasks of the Rettig Commission were: "a) To establish the most complete picture possible of those grave events, their background and circumstances; b) To gather evidence that will help to identify the victims and determine their fate or whereabouts; c) To recommend such measures of reparation and restoration as it considers to be just; and d) To recommend the legal and administrative measures which, in the view of the Commission, should be adopted to prevent or impede the acts referred to herein."[29]

33. Supreme Decree No. 355 defined serious violations as the "situations of those persons who disappeared after arrest, who were executed or who were tortured to death, in which the moral responsibility of the State is compromised as a result of actions by its agents or persons in its

---

[26] *Cf. Case of Pollo Rivera et al. v. Peru,* paras. 24 and 25; and *Case of San Miguel Sosa et al. v. Venezuela*, para. 24.

[27] Article 63 of the Rules of Procedure establishes that "[w]hen the Commission, the […] alleged victims or their representatives [or] the State […], in a case before the Court inform it of the existence of a friendly settlement, compromise or any other occurrence likely to lead to a settlement of the dispute, the Court shall rule upon its admissibility and juridical effects at the appropriate procedural moment."

[28] *Cf. Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Series C No. 38, paras. 55 and 57; and *Case of Gómez Murillo et al. v. Costa Rica.* Judgment of November 29, 2016. Series C No. 326, paras. 15 and 16. See also *Case of Escaleras Mejía et al. v. Honduras*, paras. 15 and 16.

[29] Supreme Decree No. 355 of April 25, 1990. In: Report of the Rettig Commission, Volume I, pages XI to XIV.

service, as well as kidnappings and attempts on the life of persons committed by private citizens for political purposes."

34. After completing its work, the Rettig Commission issued a report that was approved unanimously and was delivered to President Aylwin on February 8, 1991. He, in turn, released the report on March 4, 1991, and offered an apology to the victims of those violations. On that occasion, the President stated:

> As President of Republic, I dare to take it upon myself to represent the entire nation in order, on its behalf, to ask forgiveness from the family members of the victims [...] publicly and solemnly [to restore] the good name of the victims who were accused of crimes which were never proven and who were never given the opportunity or adequate means to defend themselves.[30]

35. The Rettig Commission made recommendations of restitution and symbolic reparations of a legal and administrative nature as well as recommendations in the area of social welfare.[31] On February 8, 1992, Law No. 19.123 established the National Reparation and Reconciliation Board (CNRR), the purpose of which was to "coordinate, execute, and promote the actions necessary to comply with the recommendations contained in the Report of the National Truth and Reconciliation Commission." This Law also stipulated that the CNRR was responsible for promoting reparation for the moral harm caused to the victims and granting the necessary social and legal assistance to their families to help them access the benefits contemplated in the law.[32]

36. To that end, a monthly pension was established for the family members of victims of human rights violations and of political violence, who were also granted the right to receive certain medical and educational benefits free of charge, and the children of the victims were exempted from compulsory military service, if they so requested.[33] Moreover, Article 24 of the aforementioned law established that the reparation pension would be compatible with any other type of reparation that the respective beneficiary "already enjoys or may be entitled to."

37. On November 11, 2003, the government established the Valech Commission, through Supreme Decree No. 1.040. Its task was to identify the persons imprisoned and tortured for political reasons during the military dictatorship and to propose austere and symbolic reparation measures for the victims.[34] The Valech Commission's final report was published on November 29, 2004.

38. On October 29, 2004, Law No. 19.980 was enacted, amending Law No.19.123, which expanded existing benefits and established new ones for the family members of victims, including: a 50 percent increase in the amount of the monthly reparation pension; the granting of a reparation allowance;[35] the empowerment of the President of the Republic to grant up to 200 government aid pensions (*pensiones de gracia*); and the expansion of health care benefits.[36]

---

30 Message to the Nation of President Patricio Aylwin when announcing the Report of the Rettig Commission, on March 4, 1991, Volume II, pages 887 to 894.

31 Report of the Rettig Commission, Volume II, pages 1254 to 1266.

32 Arts. 1 and 2(1) of Law No. 19.123, published in the Official Gazette on February 8, 1993.

33 Arts. 17 to 27, 28, 29 to 31 and 32 of Law No. 19.123.

34 Arts. 1 and 2 of Supreme Decree No. 1.040 of September 26, 2003.

35 Article 5: "This right is conferred on children alive on the date of publication of this law who are not benefiting from the reparation pension referred to in Article 17 of Law No. 19.123, provided that they apply for it within one year from the date this Law is published. Children in receipt of a lifelong reparation pension as persons with disabilities shall not be entitled to this benefit. " (Law No. 19.980 of 2004).

36 *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 82.31.

39. In addition to the abovementioned reparation measures, the State established and implemented: i) the Support Program for Political Prisoners who were deprived of their liberty as of March 11, 1990; ii) the PRAIS; iii) the Ministry of the Interior's Human Rights Program; iv) technological improvements to the Forensic Medicine Service; v) the National Office for the Return of Exiled Persons; vi) the Political Exoneration Program; vii) restitution or compensation for property confiscated or acquired by the State; viii) the Human Rights Dialogue Roundtable, and ix) the presidential initiative entitled "No tomorrow without yesterday" of President Ricardo Lagos.

### *A.2 Relevant provisions of the Civil Code*

40. The Chilean Civil Code (Volume Four: "Obligations in General and Contracts" Title XXXV "Offenses and Quasi Offenses" Article 2332) establishes that "the actions granted under this Title for damages or fraud shall prescribe in four years from the date on which the deed was perpetrated."[37]

41. In addition, Article 2514 in Title XLII, "Prescription", establishes that "prescription that extinguishes the actions and rights of others shall only require that said actions not be exercised for a given period of time. That time is counted from the moment the obligation became enforceable."

42. Article 2515 adds, "This period of time is generally three years for actions to initiate a summary lawsuit (*acciones ejecutivas*) and five years for ordinary actions. An action to initiate a summary lawsuit shall be converted into an ordinary action for a period of three years, and once converted into an ordinary action it shall last for only two more years."

### *A.3 Situation of María Laura Órdenes Guerra and her children and their case against the Chilean Treasury*

43. According to the report of the Rettig Commission, on September 17, 1973, Augusto Alcayaga, a militant of the *Partido Radical* and President of the Empresa Elecmetal Workers' Union, was arrested in the company premises by a contingent of police (*carabineros*) and military personnel. He was executed by State agents the following day, on September 18. His body with gunshot wounds was found on a street. In February 1991, the Rettig Commission decided that these facts constituted a violation of his fundamental rights without any due process of law or justification.[38]

44. Under the provisions of Law 19.123 of 1992, María Laura Órdenes Guerra received a monthly pension of 360,674.00 Chilean pesos, from July 1, 1991. Each of her five children was entitled to receive 15% of the total amount of the pension until the age of 25.

45. In 1997, María Órdenes filed a civil claim for damages (*demanda civil de indemnización*) before the Eighth Civil Court for moral prejudice caused by State agents for the kidnapping and murder of her husband Augusto Alcayaga, as well as for the denial of justice and lack of information about these events, thereby initiating the proceeding "Órdenes María v. Chilean Treasury."

46. On January 28, 1999, the Eighth Civil Court ruled that the extrajudicial execution of Augusto Alcayaga was committed by State agents, but declared that the action was subject to the statute of limitations because it was filed after the five-year term allowed under Article 2.515 of the Civil Code, counted from the date of the victim's death in 1973, and due to incompatibility with Law

---

37 Decree-Law 1. Published on May 30, 2000.

38 *Cf.* Report of the Rettig Commission, Volume I, page 144.

19.123.[39] The plaintiff then filed an appeal against this judgment with the Fourth Chamber of the Court of Appeals of Santiago (hereinafter "CAS") which upheld the lower court's decision and dismissed the appeal on October 24, 2002. Subsequently, the plaintiff filed a motion for annulment of the ruling on the merits, which was declared void by the Supreme Court of Justice (hereinafter "CSJ") on January 7, 2003. Finally, the case file was returned to the original court, which issued a "let it be executed" resolution on March 17, 2003.

47. In November 2005, under the provisions of Law 19.980 of 2004, the children of Augusto Alcayaga, who were not entitled to a pension because of their age, were granted a one-off reparation award of $10,000,000.00 Chilean pesos; meanwhile, those children who, because of their age received reparation pensions, were granted the difference between the amount of the pension received and the amount of the one-off award.

### *A.4 Situation of the next of kin of Lucía Morales Compagnon and their case against the Chilean Treasury*

48. According to the report of the Rettig Commission, Jorge Osorio, a militant socialist and university lecturer, was arrested by Investigations officers on September 17, 1973, at the premises of the Manesa Company and taken to "La Serena" Prison.

49. Hipólito Cortés, a worker, municipal employee, one of the leaders of the Construction Workers' Union and a Communist Party militant, was also taken to this prison, after being arrested at his workplace by the Ovalle police. Hipólito Cortés was drugged and beaten during his detention.

50. On October 16, 1973, Jorge Osorio and Hipólito Cortés were executed along with 13 other individuals at the Arica Military Regiment base, "as ordered by military courts in time of war." The executions were carried out by State agents without due process of law and the bodies were buried in a mass grave in La Serena cemetery.[40]

51. Pursuant to the provisions of Law 19.123 of 1992, the wife of Jorge Osorio, Lucia Morales Compagnon, has been receiving a monthly pension[41] since July 1991.

52. In 1997, the wife and children of Jorge Osorio filed a civil lawsuit for compensation for damages before the Eighth Civil Court, thereby initiating the "Morales Lucía v. the Chilean Treasury" proceedings (Case Record No. 4720-97), on account of Mr. Osorio's arrest and execution in 1973.

53. In 1998, the remains of Mr. Osorio were exhumed and identified; the findings showed that he had been tortured prior to his extrajudicial execution.[42] This victim is not included in the list of persons recognized as victims by the Valech Commission report.[43]

---

[39] The court considered that "the deed on which the claim for damages was based occurred on a given date in 1973, and between then and the date of notification of the claim in the instant case, far more time had elapsed than five years for the prescription of the case that the Court has deemed applicable in this case." *Cf.* Judgment of the Eighth Civil Court, Órdenes María v. the Chilean Treasury, *supra* (evidence file, ff. 25 and 26).

[40] *Cf.* Report of the Rettig Commission, Volume I, *supra,* pages 273 and 274.

[41] The amount received monthly from July 1991 until November 2007 totals $36,175,000 Chilean pesos. She continues to receive the pension. *Cf.* Brief of the State of November 21, 2008 filed before the Commission; and Eighth Civil Court. Judgment of January 27, 1999, Morales Lucía/Chilean Treasury, Case Record No. 4720-97, Twelfth and Fifteenth Considering paragraphs (evidence file, folio 82).

[42] *Cf.* Judgment of the Second Civil Court of La Serena, Patricia Cortés against the Chilean Treasury, March 9, 2001, Fifth considering paragraph (evidence file, folio 50)

[43] Commission Valech. List of Persons Recognized as Victims: http://www.indh.cl/wp-content/uploads/2011/10/Valech-1.pdf

54. On January 27, 1999, the Eighth Civil Court denied the request for reparation in this case, because it considered that under civil law provisions, the indemnity action was time-barred and incompatible with Law 19.123. The plaintiffs appealed this decision before the CAS, which upheld the lower court's decision on December 10, 2002. On December 18, 2002, the plaintiffs filed a motion for annulment before the Supreme Court, which dismissed it on March 25, 2003, for failure to have paid for some photocopies. The file was then returned to the original court.

55. Under the provisions of Law 19.980 of 2004, the four children of Jorge Osorio received reparation awards, namely: Carolina Andrea Osorio Morales (7,700,317.00 Chilean pesos), Jorge Roberto Osorio Morales (6,163,383.00 Chilean pesos), Lucía Odette Osorio Morales (10,000,000.00 Chilean Pesos) and María Teresa Osorio Morales (10,000,000.00 Chilean pesos).[44]

### *A.5 Situation of the next of kin of Patricia Cortés and their case against the Chilean Treasury*

56. In relation to the acts committed against Hipólito Cortés and Jorge Osorio (*supra* paras. 48 to 50), and under the provisions of Law 19.123 of 1992, Alina María Barraza Codoceo, wife of Hipólito Cortés, has been receiving a monthly pension[45] since July of 1991.

57. In 1998, the remains of Hipólito Cortés were exhumed and identified; the findings showed that he had been tortured prior to his extrajudicial execution.[46] Mr. Cortés is not included in the list of victims recognized in the report of the Valech Commission.[47]

58. In 1999, the wife and children of Hipólito Cortés filed a civil lawsuit before the Second Civil Court of La Serena (Case Record No. 1122-99) seeking reparation for damages on account of his death. On March 9, 2001, the judge in the case found the extrajudicial execution proven and decided that the reparation pensions and awards granted under Law 19.123 did not exclude compensation for moral prejudice.[48] Consequently, the court decided to admit the claim and to order compensation for moral prejudice for the sum of 15 million Chilean pesos for the spouse and each of the children. It also ordered that the amounts granted in the form of compensation awards and pensions be deducted from that sum.

59. On April 9, 2002, upon ruling on the appeal filed by the Chilean Treasury, the Court of Appeals of La Serena decided to revoke the judgment of the first instance court, considering that the five-year statute of limitations had expired, since the events had occurred in 1973. It therefore accepted the Treasury's arguments regarding the statute of limitations and that the compensation requested was incompatible with the application of Law 19.123.

60. On May 7, 2003, the Supreme Court rejected the motion for annulment filed by the plaintiff and the request that the judgment be quashed, noting that the action had been brought after the four-year statute of limitations period, provided for in Article 2.332 of the Civil Code, had elapsed. Faced with the motion for annulment, the Supreme Court considered that the contested judgment

---

44 *Cf.* Brief of observations of the State presented on November 21, 2008, before the Inter-American Commission.

45 The amount received monthly from July 1991 until November of 2007 totals $36,627,798 Chilean pesos. She continues to receive the pension (brief of observations of the State submitted on November 21, 2008, before the Inter-American Commission).

46 Judgment of the Second Civil Court of La Serena, Patricia Cortés v. the Chilean Treasury, March 9, 2001.

47 Valech Commission. List of Persons Recognized as Victims, *supra*.

48 Furthermore, that court considered that the second paragraph of Article 38 of the Chilean Constitution provides that "Any person whose rights have been adversely affected by the Administration of the State, its bodies or municipalities, is entitled to file a complaint in courts established by law, without prejudice to the responsibility which might affect the officer who caused harm." Therefore, since it is a question of the State's non-contractual liability which, in light of what was correctly adduced, has not prescribed, it should be determined that the petition formulated by the respondent is, on the contrary, admissible. *Cf.* Judgment of the Second Civil Court of La Serena, Patricia Cortés v. the Chilean Treasury, *supra* (evidence file, folio 46).

contained no errors, since Articles 130 and 131 of the Geneva Convention regarding the Treatment of Prisoners of War, adduced by the victim's next of kin as the legal basis for the contention that actions against war crimes are not subject to any statute of limitations, are not provisions that state that actions of a financial or pecuniary nature do not prescribe. Thus, the Supreme Court considered that in Chile's legal system there was no impediment to the application of the statute of limitations for actions to hold the Treasury liable for making reparation for damages other than criminal damages. The CSJ considered that the idea of applying the statute of limitations terminating an action for compensation contained in the Civil Code to actions addressing the non-contractual liability of the State "does not contradict its special nature, if one considers that they (such actions) affect the financial implications of that liability, and that, in the absence of positive provisions rendering them non-prescriptible, it was appropriate to apply the Common Law rules that refer specifically to the matter, including Article 2.332 of the Civil Code, which deals directly with the matter.

61. Under Law 19.980 of 2004, the seven children of Hipólito Cortés received the following reparation awards: Marcia Alejandra Cortés Barraza (10,000,000.00 Chilean pesos) Nora Isabel Cortés Barraza (8,230,371.00 Chilean pesos), Hernán Alejandro Cortés Barraza (9,207,049.00 Chilean pesos), Eduardo Patricio Cortés Barraza (10,000,000.00 Chilean pesos), Miriam del Rosario Cortés Barraza (10,000,000.00 Chilean pesos), Patricio Cortés Barraza (10,000,000.00 Chilean pesos) and Jorge Cortés Barraza (10,000,000.00 Chilean pesos).[49]

### *A.6 Situation of Pamela Adriana Vivanco Medina and her case against the Chilean Treasury*

62. According to the report of the Rettig Commission, on September 28, 1973, Ramón Vivanco, an active member of the Communist Party who worked at the San Bernardo de Ferrocarriles machine shop, was arrested along with 10 other people in a military operation carried out at that workplace. The detainees were later executed by soldiers on October 6, 1973, at the Cerro Chena detention center and their corpses were sent to the Institute of Forensic Medicine. The Rettig Commission concluded that the death of these victims constituted a human rights violation, carried out without due process of law by State agents.[50]

63. Under the provisions of Law 19.123 of 1992, Mr. Vivanco's daughter, Pamela Adriana Vivanco Medina, received a compensation award and a pension, issued from July 1, 1991, until December 31, 1993, when she became ineligible due to her age.

64. On August 30, 2000, Ms. Vivanco filed a civil lawsuit before the 16th Civil Court seeking compensation from the Chilean Treasury for moral damage caused by the death of her father. On October 4, 2002, the court dismissed her claim citing the five-year statute of limitations period for actions under ordinary law provided for in Articles 2.514 and 2.515 of the Civil Code. The judge considered that the action had been brought more than five years after the date on which it became enforceable, namely on March 4, 1991, the date on which the Rettig Commission published its report. On January 22, 2003, Ms. Vivanco appealed said judgment before the CAS, which declared the appeal void on May 6, 2003, because the appellant did not appear.

65. Under Law 19.980 of 2004, the daughter of the victim received a reparation award consisting of the difference between the amount she had received through the pension and the amount of the award, which was 10,000,000.00 Chilean pesos.

---

49 *Cf.* Brief of observations of the State presented on November 21, 2008, before the Inter-American Commission.

50 Report of the Rettig Commission, Volume I, pages 225 and 226.

### *A.7 Situation of the family group of Carlos Melo and their case against the Chilean Treasury*

66. According to the report of the Rettig Commission, on September 29, 1973, Mario Ramiro Melo Prádenas, a retired Army officer, private secretary and member of President Salvador Allende's security detail, who was also a socialist militant, was detained by a Chilean Air Forces (FACH) patrol and taken to the Ministry of Defense. He was last seen at the military base in Peldehue. The Rettig Commission reached "the conclusion that the person concerned has disappeared due to the responsibility of State agents, in violation of his human rights, […] and the fact that since that time there has been no news of his whereabouts or fate, and there is no record of his death or of any proceedings that would indicate that he is alive."[51]

67. Under Law 19.123 of 1992, María Ilia Prádenas Pérez received compensation equivalent to 40 percent (504,943.00 Chilean pesos) of a monthly pension when more than one beneficiary is involved. She received her pension from July 1, 1991, until her death on May 29, 2006.

68. On August 17, 2001, Carlos Melo Prádenas, Mario Melo Acuña, and María Ilia Prádenas Pérez, the brother and parents of the victim Mario Ramiro Melo Prádenas, filed a civil claim against the State before the Eighth Civil Court for moral damages. On September 27, 2002, said court dismissed the lawsuit, considering that the facts of the case had not been proven and that the action had prescribed. It also pointed out that the plaintiffs had already received compensation under Law 19.123. This judgment was appealed before the CAS, which declared the appeal void on June 12, 2003.

69. Mario Melo Acuña (father of the victim) has been receiving a monthly reparation pension since August 1, 2006, for the amount corresponding to a single beneficiary ($360,674.00 Chilean pesos). There is no record as to whether Carlos Melo Prádenas (brother of the victim) receives reparation benefits.

### *A.8 Situation of Katia Ximena Espejo Gómez and her mother and their case against the Chilean Treasury*

70. According to the report of the Rettig Commission, on August 15, 1974, Rodolfo Espejo was arrested at his home in Santiago. He was 18 years old, a high school student and an active member of the Socialist Party. His arrest was carried out by agents of the National Intelligence Directorate (DINA). In response to judicial inquiries as to his whereabouts, the authorities denied that he was being held. However, thanks to various testimonies, it was established that he had been detained at the Londres No. 38 and Cuatro Alamos detention centers. The Rettig Commission concluded that his disappearance was carried out by State agents, who violated his human rights.[52]

71. Under the provisions of Law 19.123 of 1992, the mother of Rodolfo Espejo, Elena Alejandrina Gómez Vargas, has been receiving a monthly pension of $360,674.00 Chilean pesos since July 1, 1991. She also received a compensation award. It is not known whether Mr. Espejo's sister receives any reparation benefits.

72. On July 19, 2000, Katia Ximena Espejo Gómez and her mother filed a civil lawsuit for damages before the 17th Civil Court (Case Record No. 2918-200). On June 19, 2002, said court declared that it had been proven that Rodolfo Espejo had been detained and disappeared by State agents, but dismissed the claim because it considered that the action had prescribed. The judge pointed out that the facts occurred on August 15, 1974, and therefore more time had elapsed than

---

[51] Report of the Rettig Commission, Volume I, page 166.

[52] Report of the Rettig Commission, Volume II, pages 840 and 841.

the four-year statute of limitations established in Article 2.332 of the Civil Code. The plaintiffs filed an appeal before the CAS, which declared it void on June 12, 2003.

### *A.9 Situation of the next of kin of Magdalena Mercedes Navarrete Faraldo and their case against the Chilean Treasury*

73. According to the report of the Rettig Commission, on November 16, 1974, Sergio Reyes Navarrete, an active member of the *Movimiento de Izquierda Revolucionaria* (MIR), was arrested at his home by DINA agents. From that moment on, he disappeared, with no certain evidence regarding his presence in the various detention centers. The Rettig Commission concluded that the victim was disappeared by State agents, in violation of his human rights.[53]

74. Under Law 19.123 of 1992, Mr. Reyes' mother, Magdalena Mercedes Navarrete Faraldo, received a compensation award as well as a monthly pension from July 1, 1991, for the sum of 360.674 Chilean pesos. Likewise, his wife, María Elisa Zepeda Rojas, received a compensation award and has received a monthly pension corresponding to 40% of 504,945 Chilean pesos since July 1, 1991. The victim's son received both a compensation award and a pension. There is no information as to whether Jorge Alberto, Patricio Hernán, and Víctor Eduardo Reyes Navarrete, brothers of Mr. Reyes, received reparation benefits.

75. On July 28, 2000, Mr. Reyes' mother and three brothers filed a civil lawsuit for damages for moral prejudice caused by his detention and disappearance (Case Record No. 3118-2000). On June 19, 2002, the 17th Civil Court declared it proven that he had been arrested and disappeared by State agents, but pointed out that the term for counting the statute of limitations ran from 1974 and considered that the four-year term provided for in Article 2.332 of the Civil Code had been exceeded. The plaintiffs then appealed that ruling, which was declared void by the CAS and on June 26, 2003, an order of "Let judgment be executed" ("cúmplase") was issued.

## VI
## MERITS

## RIGHTS TO JUDICIAL GUARANTEES[54] AND JUDICIAL PROTECTION[55] (ARTICLES 1(1), 2, 8(1) AND 25 OF THE AMERICAN CONVENTION)

76. In its jurisprudence, this Court has reiterated the broad content and scope of the right of access to justice, within the framework of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) of the Convention, in relation to Articles 1(1) and 2 thereof.

77. In particular, in cases involving serious human rights violations and blatant obstruction of justice, this Court has held that "in certain circumstances, international law considers statutes of limitations to be inadmissible and inapplicable, along with amnesty laws and exemptions from

---

53 Report of the Rettig Commission, Volume II, page 791.

54 Article 8 of the Convention establishes that: "1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

55 Article 25 of the Convention indicates: "1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake: a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b) to develop the possibilities of judicial remedy; and c) to ensure that the competent authorities shall enforce such remedies when granted."

liability, in order to maintain the State's punitive power in effect for actions which, because of their seriousness, must be stopped and also to avoid their repetition."[56] Such legal constructs or provisions are inadmissible when "they seek to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, summary, extra-legal or arbitrary executions and forced disappearances, all of which are prohibited because they contravene non-derogable rights recognized by international human rights law."[57]

78. In relation to the foregoing, this Court notes that there have been major advances in international law regarding the applicability of the statute of limitations to legal actions brought to obtain reparations for serious human rights violations.

79. Already in 1989, the United Nations Working Group on Enforced or Involuntary Disappearances stated in its General Comments on Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearances, that "civil claims for compensation shall not be […] made subject to statutes of limitation."[58]

80. In 1991, the then UN Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights, Theo Van Boven, pointed out that:

> "[…] the application of statutory limitations often deprives victims of gross violations of human rights of the reparations that are due to them. The principle should prevail that claims relating to reparations for gross violations of human rights shall not be subject to a statute of limitations. In this connection, it should be taken into account that the effects of gross violations of human rights are linked to the most serious crimes to which, according to authoritative legal opinion, statutory limitations shall not apply. Moreover, it is well established that for many victims of gross violations of human rights, the passage of time has no attenuating effect; on the contrary, there is an increase in post-traumatic stress, requiring all necessary material, medical, psychological and social assistance and support over a long period of time."[59]

81. Subsequently, the Updated Set of Principles for the Protection and Promotion of Human Rights through action to Combat Impunity, adopted by the United Nations Commission on Human Rights in 2005, included the following principles:

> Principle 23. Restrictions on prescription. Prescription of prosecution or penalty in criminal cases shall not run for such period as no effective remedy is available. Prescription shall not apply to crimes under international law that are by their nature imprescriptible. When it does apply, prescription shall not be effective against civil or administrative actions brought by victims seeking reparation […]
>
> Principle 32. Reparation procedures. All victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings subject to the restrictions on prescription set forth in principle 23.[60]

82. In 2006, the United Nations General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Principles 6 and 7 of that instrument indicate that:

---

[56] *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 207.

[57] *Cf., inter alia, Case Barrios Altos v. Peru. Merits.* Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of Herzog et al. v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of March 15, 2018. Series C No. 353, para. 288.

[58] *Cf.* Working Group on Enforced or Involuntary Disappearances, General Comments on Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, E/CN.4/1998/43, para. 73.

[59] *Cf.* United Nations Human Rights Council (UN-HRC), Final report presented by the Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, E/CN.4/Sub.2/1993/8, 2 July1993, para. 135.).

[60] *Cf.* UN Human Rights Council, Diane Orentlicher, UN Independent Expert to Update the Set of Principles for Action to Combat Impunity, E/CN.4/2005/102, February 18, 2005.)

> 6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.
>
> 7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.[61]

83. The Commission also mentioned some developments in the comparative law of certain countries. For example, in the case of Colombia, the Council of State has handed down several judgments disregarding the two-year prescription period for direct reparation claims against the State, in cases of harm caused by the commission of crimes against humanity. That conclusion was the result of an exercise to balance the legal certainty sought by statutes of limitation and the imperative to make reparation for the harm inflicted by these types of crime:[62]

> From this point of view, the statute of limitations is institutionalized as a temporary, peremptory and preclusive concept of order, stability, general interest and legal certainty for the associates and the administration from the procedural perspective, generating certainty and materializing the reasonable and proportional exercise that every person has to assert his or her rights before the judicial authorities.
>
> […] All of which is without prejudice to the exceptions formulated in this Council's jurisprudence when it has pointed out that the facts giving rise to the means of control over direct reparation allow it to be addressed as an act against humanity […]
>
> Thus, acts against humanity are construed as "those ominous acts that deny the existence and imperative validity of human rights in society by attacking human dignity through actions that degrade the human condition of persons, thereby affecting not just those who have suffered physically from those acts but attacking the conscience of humanity as a whole" […]
>
> Now, the importance of the notion of crimes against humanity, as far as the liability of the State is concerned, is that it predicates non-application of the statute of limitations in those cases involving such factors, because, consistent with the gravity and magnitude of such acts which are degrading for human dignity, there is a case for acknowledging that the passage of time does not generate negative consequences for those who (directly) were victims of such conduct and who seek a declaration of the State's liability for the unlawful harm inflicted on them, because it is evident that there the interests at stake are not merely private or subjective, but also general because they involve the whole community and humanity as a whole[…].
>
> Consequently, this Council considers that in cases where the elements of an act against humanity are found or give rise to the possibility that an act be treated as such, there shall be grounds for not applying prescription of the means for overseeing direct reparation, as has been shown.[63]

84. In Argentina, Article 2561 of the Civil and Commercial Code was amended so that the provisions on prescription and "special time limits" would establish that "civil actions arising from crimes against humanity are not subject to any statute of limitations."[64]

85. Similarly, as noted by the Commission and the State itself, in recent years the jurisprudence of the Chilean Supreme Court has changed substantially, since in numerous specific cases it has declared that the statute of limitations shall not apply for civil actions for compensation for damages arising from crimes against humanity, citing for this purpose arguments of international human

---

61 *Cf.* General Assembly (AG). A/RES/60/147, March 21, 2006. Resolution that adopted the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law."

62 The Colombian Council of State has drawn a distinction between expiration and prescription in the following terms: expiration refers to the extinction of the action, while prescription refers to the extinction of the right; the former must be alleged, while expiration operates *ipso iure*; prescription can be waived, whereas expiration cannot be waived, in any case; and while the terms of prescription can be suspended or interrupted, those of expiration cannot and while the terms of prescription may be suspended or interrupted, those of expiration are not subject to suspension, unless expressly provided for. See Council of State of Colombia, Ce SIII and 30566 of 2006.

63 *Cf.* Council of State. Counsel presenting the argument (Rapporteur): Jaime Orlando Santofimio Gamboa (E). Bogotá, D. C., May 2, 2016. Actor: Maria Faelly Cutiva Leyva et al. Defendant: Ministry of Defense - National Army et al. Reference: Appeal Decree Law 1437 of 2011 – Means for Oversight of Direct Reparation.

64 See Article 2561 of the aforementioned Civil and Commercial Code.

rights law. Thus, for example, in judgment 23.583-2014 of May 20, 2015, the Supreme Court considered the following:

> That, in the case of crimes such as those investigated, which the international community has characterized as crimes against humanity, the civil suit brought against the Treasury is designed to obtain comprehensive reparation for the damage inflicted by the acts of a State agent, consistent with the international treaties ratified by Chile and the interpretation of domestic law, pursuant to the Constitution of the Republic. Indeed, this right of victims and their next of kin is founded upon general principles of international human rights law and their incorporation in international treaties ratified by Chile, which oblige the State to recognize and protect this right to comprehensive reparation, by virtue of the second paragraph of Article 5 and Article 6 of the Constitution.
>
> That compensation for the harm caused by the crime, and the action for rendering such compensation effective, are of the utmost importance when it comes to administering justice, in matters of concern to the public interest and "material justice." In the case under analysis, given the context in which the wrongful act was committed, with the intervention of State agents during a period of extreme institutional abnormality in which they represented the government of the time, and in which -at least in the instant case- that power and representation were clearly abused, producing such serious grievances as the one under study here, the State of Chile cannot evade its legal responsibility to make reparation for that *de jure* debt […]
>
> Thus, in the present case, the provisions of domestic law provided for in the Civil Code on the statute of limitations for common civil actions for compensation for damages, invoked by the Treasury of Chile, are not relevant, since they are in contradiction with the norms of international human rights law, which protect the right of victims and their next of kin to receive due reparation, an international regulatory statute that Chile has recognized. […]
>
> That, in short, since the State has the obligation to make reparation to victims and their next of kin as established by international human rights law, domestic law cannot be adduced as a sustainable argument to exempt it from complying with that obligation […]
>
> That, under those circumstances, the judges involved did indeed commit an error of law when they accepted the objection that the civil claims brought against the State had prescribed: an error that substantively influenced the ruling in the judgment, so that the appeal for annulment on the merits will be upheld.[65]

86. According to the Commission, the judicial remedy available in the Chilean legal system to obtain compensation for human rights violations is a civil action for compensation. In all of the victims' cases, the judicial authorities rejected their claims in application of the statute of limitations for a civil action. These decisions are final.

87. The Commission considered that the application of the statute of limitations in such cases constituted an unreasonable restriction of the possibility of obtaining reparation. It noted that this does not imply a general opinion on that provision, but only with respect to its application to crimes against humanity. Thus, it considered that, while the principle of legal certainty seeks to contribute to public order and peace in social relations, the right to a judicial remedy to obtain reparation for crimes against humanity does not undermine this principle, but rather strengthens it and contributes to its optimization.

88. The Commission considered that the rationale for the inadmissibility of applying the statute of limitations to criminal proceedings in cases of serious human rights violations is related to the fundamental importance of shedding light on the facts and obtaining justice for the victims. Therefore, the Commission indicated that it finds no reason to apply a different standard to an equally fundamental aspect such as reparations in this type of cases; consequently, legal actions

---

[65] Supreme Court of Justice of Chile. 23583-2014. Non-applicability of the statute of limitations for reparatory actions against the Treasury for human rights violations. May 20, 2015. Available at: http://www.i-juridica.com/2015/05/21/suprema-23583-2014-imprescriptibilidad-de-la-accion-reparatoria-en-contra-del-fisco-por-violaciones-a-derechos-humanos/.

for reparations for the harm caused by international crimes should not be subject to statutes of limitations. Because of the dates on which they occurred, or began to occur, the Commission considered that the primary violations for which the victims in this case seek reparation- all of them occurred after September 1973 - are part of the crimes against humanity committed during the military dictatorship. Therefore, the application of the statute of limitations to their civil actions for reparation constituted an obstacle to effective access to justice in order to assert their right to reparations.

89. This Court considers that the foregoing considerations are reasonable. Insofar as the facts that gave rise to the civil actions for damages for acts characterized as crimes against humanity,[66] such actions should not be subject to the statute of limitations.

90. The Court emphasizes that, as acknowledged by the State, the wrongful act that gave rise to its international responsibility resulted from the rejection, by the domestic courts, of civil actions brought by the victims seeking reparations for the harm caused by acts classified as crimes against humanity, based on the application of the statute of limitations, alleged as an exception by the State Defense Council on behalf of the Chilean Treasury. This criterion prevented the courts from analyzing the merits of the case in order to determine compensation for the moral damage caused to the victims, thus restricting their possibility of obtaining fair compensation. In other words, there is no doubt that in this case the violations of rights recognized in the Convention were produced by a series of decisions taken by the State's judicial bodies, which prevented the victims from gaining effective access to justice to claim their right to obtain compensation.

91. However, the nature of those facts has led the State, based on the change in the jurisprudence of its highest judicial authority, to acknowledge before this Court that the statute of limitations is not applicable to civil actions that seek redress for damages caused by these types of acts (*supra* para. 15).

92. Indeed, the State shares the view that claims for reparation for gross violations of human rights are not subject to statutes of limitation and that the State cannot excuse itself on the grounds of the mere passage of time (the basis for the statute of limitations) for not complying with its international obligations to investigate, punish and make reparation for the serious human rights violations that occurred between 1973 and 1990, which includes the compensation aspect. In this sense, it pointed out that national jurisprudence has gradually incorporated international human rights law into the domestic legal system, so that subsequent legal amendments and the inclusion of international treaties in its rulings have permeated the case law of the country's highest court, which has recognized the admissibility of civil legal actions of the type mentioned. Part of this transition is explained by the inclusion, in the second paragraph of article 5 of the Chilean Constitution, of a provision that expressly incorporates into the legal system the international human rights treaties ratified by Chile.[67] This change has enabled the courts of justice to consistently apply these norms.

93. Thus, in reviewing the jurisprudence of the Supreme Court since 2015, the State affirmed that it has overcome the dichotomy between domestic law and international law, coherently

---

[66] In the *Case of Almonacid Arellano et al. v. Chile*, this Court indicated that: […] there is sufficient evidence to conclude that in 1973, […], the commission of crimes against humanity, including murder committed in the course of a generalized or systematic attack against certain sectors of the civil population, was in violation of a binding rule of international law. Said prohibition to commit crimes against humanity is a rule of *ius cogens*, and the punishment of such crimes is obligatory pursuant to the general principles of international law. *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para.99.

[67] Thus, the article states: "the exercise of sovereignty recognizes as a limitation the respect for the essential rights that emanate from human nature. It is the duty of the organs of the State to respect and promote such rights, which are guaranteed by this Constitution, as well as by the international treaties ratified by Chile and which are in force."

combining both regulatory sources in light of its international human rights obligations. [68] The State affirmed that this is not the result of an isolated criterion or a fortuitous decision, but rather that it is now a robust and consolidated position that considers international obligations to be binding on the State and that its primary obligation is to make reparations.

94. The State presented an extensive study of its case law regarding this type of action, as well as a certificate from the Supreme Court Secretariat containing a list of numerous cases adjudicated between 2008 and 2017, in which the Second Chamber of the Supreme Court declared the imprescriptibility of the civil action in this type of case.[69] Accordingly, the Court deems it appropriate to point out that the civil actions referred to in those cases were civil lawsuits for compensation, brought in the context of criminal proceedings; in other words, they were in some way dependent on the respective criminal actions. In this sense, the criteria of the Chilean Supreme Court of Justice to uphold such reasoning are the following:

> Fifth: That, beyond the reasoning of the judges *ad quem*, the reiterated jurisprudence of this Court specifies that, in the event of a crime against humanity – which has been declared in this case - the criminal prosecution is not subject to the statute of limitations. Thus, it is not consistent to understand that the correlative civil action for compensation is subject to the statute of limitations contemplated in domestic civil law, since this would be contrary to the express will set forth in international human rights law, which is part of the national legal system, in line with paragraph 2 of Article 5 of the Constitution, which establishes the right of victims and other legitimate parties to obtain due compensation for all the damages suffered as a result of the unlawful act, or even by the domestic law itself, which, by virtue of Law N° 19.123, explicitly recognized the undeniable existence of the damage and also granted to the relatives of those classified as disappeared detainees and those executed for political reasons, for human rights violations during the period 1973-1990, compensation of a financial or pecuniary nature. In this regard, SCS Nos. 20.288-14, of April 13, 2105; 1.424, of April 1, 2014; 22.652, of March 31, 2015, among others, have also been discussed. Therefore, any attempt to differentiate between the two actions and treat them unequally is discriminatory and does not allow the legal system to maintain the coherence and unity that are indispensable in a democratic State governed by the rule of law. Thus, seeking to use Civil Code provisions in relation to the liability arising from crimes against humanity that could be committed with the active collaboration of the State, as a common law supplementary to the entire legal system, is currently inappropriate.
>
> Seventh: That, in addition, the civil action brought here by the plaintiffs against the Treasury, seeking full reparation for the harm caused, is based on the general principles of international human rights law and its rules enshrined in international treaties ratified by Chile, which oblige the State to recognize and protect this right to full reparation, pursuant to the provisions of Articles 5, second paragraph, and 6 of the Constitution of the Republic. Articles 1(1) and 63(1) of the American Convention on Human Rights stipulate that the State's responsibility for this type of event is subject to the provisions of international law, which cannot be disregarded under the pretext of giving precedence to other precepts of domestic law, since, if an unlawful act attributable to a State is brought to light, the international responsibility of

---

[68] With respect to such actions, the State pointed out that, until 2015, the jurisprudence of the Supreme Court had fluctuated between declaring the civil action for compensation time-barred in accordance with the rules established in the Civil Code, or on the contrary, affirming the non-applicability of statutes of limitations based on Articles 1(1) and 63(1) of the American Convention and the obligation to provide redress to victims of serious, massive and systematic human rights violations, which cannot be excused by domestic legislation. The differing criteria in the case law on this matter were due mainly to the way in which the Supreme Court hears judicial cases through specialized chambers. Thus, the criminal chamber heard civil actions when they had been filed jointly with the criminal action and the civil chamber heard those that were filed separately. In order to unify the jurisprudence on the matter, the Supreme Court, in an Agreed Resolution dated January 16, 2015, which distributes the matters heard by the specialized chambers, determined a change in the distribution of the cases. As a result, currently, the Supreme Court only hears these civil actions through the Second Chamber (criminal chamber), regardless of how they are filed. Since then, the Supreme Court has focused its arguments on: (a) the need for the State's organs to comply with the State's international obligation to provide comprehensive reparation to victims of serious violations, generally dismissing arguments that tend not to grant reparation; b) has established a hierarchy of rules, under which legal norms can only be applied as long as they are not in contradiction with the principles and standards of international human rights law; and c) has held that, according to its own jurisprudence and in order to give it unity and coherence, a civil action cannot be deemed to be time-barred if the criminal action for crimes against humanity is considered not to be subject to any statute of limitations. Thus, it has determined that both spheres –criminal and civil- are different but complementary spheres of integral reparation.

[69] *Cf.* Directorate of Studies of the Supreme Court, "Study of jurisprudence on civil actions for reparations related to crimes against humanity," in response to a request for information from the Director of the Human Rights Program of the Under-secretariat of Foreign Relations in the context of the present case before the Inter-American Court (evidence file, ff. 2640 et seq.); and official letter Nº 048 2018 of January 30, 2018, from the Secretary of the Supreme Court to the Human Rights Director of the Ministry of Foreign Relations (evidence file, ff. 2697 to 2702)

> the State arises immediately for the breach of an international rule, with the subsequent duty to make reparation and put an end to the consequences of the offense.
>
> Ninth: That, on the other hand, compensation for the harm caused by the crime and the action to make it effective, which is of the utmost importance when administering justice, concerns the public interest and aspects of material justice, all of which led it to accept the civil actions filed in the proceedings. The purpose of these is to obtain full reparation for the damage caused by the action of agents of the State of Chile, as required by the application in good faith of international treaties signed by our country and the interpretation of the rules of international law considered *ius cogens* by the international legal community. Said rules should be given preferential effect in our domestic legal system, pursuant to Article 5 of the Constitution of the Republic, over those provisions of national law that would make it possible to evade the responsibilities incurred by the Chilean State, through the criminally culpable actions of its officials, thus complying with the Vienna Convention on the Law of Treaties.
>
> Tenth: That, finally, it should be taken into consideration that the system of State liability also derives from Article 6 paragraph 3 of the Constitution of the Republic and Article 3 of Law Nº 18.575, Organic Constitutional Law on General Principles for the Administration of the State, which, if the thesis of the appeal is accepted, would be inapplicable. […][70]

95. In this case, the actions brought by the victims were, strictly speaking, of a civil nature and there is no evidence that they were linked or related to any criminal proceeding. Thus, in view of its acknowledgement of responsibility, the Court understands that the State's reasons for considering that civil actions for reparations for damages caused by acts that qualify - or may qualify - as crimes against humanity, are not subject to the statute of limitations, based on the jurisprudence of the Supreme Court, are also applicable to any civil action, regardless of whether it is for compensation in the context of a criminal proceeding or whether it is a claim in the civil proceeding itself. In other words, such imprescriptibility is justified by the State's obligation to make reparation due to the nature of the facts and does not depend on the type of legal action that seeks to enforce it.

96. The Court also recalls that the Commission, in its Merits Report, pointed out that during the processing of the case before it, the defense presented by the Chilean State had focused on reporting on its administrative reparations program and the benefits received by the victims; it noted that what the petitioners wanted was not to request an abstract assessment of whether the program met the requirements of the Convention; and that they did not contest the fact that the victims had received benefits within the framework of that program. The Commission considered that the avenues of administrative and judicial reparation are complementary and not exclusive.

97. In this regard, the State pointed out that, in addition to the aforementioned change in its jurisprudence, the Supreme Court has recognized the complementary nature of the financial reparations granted under the laws enacted since the return to democracy in 1990, with the compensation obtained through the courts, indicating that the provision of pensions under Law Nº 19.123 does not prevent victims from seeking compensation through a claim for moral damages, rejecting the reasoning that considered administrative reparations to be exclusive of judicial reparations. Indeed, in the abovementioned jurisprudence, the Supreme Court reasons as follows:

> […] That these same considerations prevent an acceptance of the Chilean Treasury's argument that the compensation claimed is inadmissible on the grounds that the plaintiffs obtained reparation pensions in accordance with Law N° 19.123 and its successive amendments, since this claim contradicts the provisions of the aforementioned international rules and because domestic common law is only applicable if it is not in contradiction with that precept, as it also reasoned, so that the liability of the State for this type of wrongdoing is always subject to the rules of international law, which cannot be breached based on other precepts of domestic law. The legislation invoked by the Treasury –which only establishes a system of welfare pensions – does not envisage any incompatibility with the compensation sought here, and it is not appropriate to assume that it was enacted to repair all moral damages inflicted

---

[70] *Cf.* Supreme Court of Justice of Chile. Second Chamber. Judgment of April 26, 2017. Case Record No. N 11767-2017. Available at: http://basejurisprudencial.poderjudicial.cl/

> on the victims of human rights violations, since these are different forms of reparation. Moreover, the fact that they are assumed by the State voluntarily, as is the case of the aforementioned legislation, does not imply the waiver of one of the parties or the prohibition for the justice system to declare their validity, by the means authorized by law.[71]

98. As for the suitability of domestic reparation mechanisms, in Colombia, for example, the Court has considered that, in transitional justice scenarios, in which the States must assume their duty to provide massive reparations to numbers of victims that may greatly exceed the capacities and possibilities of the domestic courts, administrative reparation programs constitute one of the legitimate ways of satisfying the right to reparation. In such contexts, these reparation measures must be understood in conjunction with other truth and justice measures, provided that they comply with a series of requirements related, *inter alia*, to their legitimacy and effective capacity for comprehensive reparation.[72] The fact of combining administrative and judicial reparations, according to each State, can be understood as different (exclusive) or complementary in nature and, in this sense, what is granted in one sphere could be taken into account in the other. However, in the Chilean case it is understood that, according to the prevailing jurisprudential criteria, both types of reparations complement each other, and whatever was granted under administrative reparations programs would not be discounted in the judicial proceedings.

99. Specifically regarding Chile's administrative reparations program, this Court has previously stated that it "views positively the reparations policy for human rights violations implemented by the State."[73] Subsequently, in the case of *García Lucero et al. v. Chile*, the Court considered that:

> […] the existence of administrative programs of reparation must be compatible with the State's obligations under the American Convention and other international norms and, therefore, it cannot lead to a breach of the State's duty to ensure the "free and full exercise" of the rights to judicial guarantees and protection, in keeping with Articles 1(1), 25(1) and 8(1) of the Convention, respectively. In other words, administrative reparation programs and other measures or actions of a legal or other nature that co-exist with such programs, cannot result in an impediment that prevents victims from filing claims for reparations, in exercise of their rights to judicial guarantees and protection. In view of this relationship between administrative reparation programs and the possibility of filing actions to claim reparations […] according to treaty-based rights, the establishment of domestic administrative or collective reparation programs does not prevent the victims from filing actions to claim measures of reparation."[74]

100. The Court considers that the prevailing jurisprudential criterion at the domestic level, regarding the complementary and non-exclusive nature of reparations granted through administrative and judicial channels, is reasonable in relation to the right of victims of serious human rights violations to have access to justice and to request a judicial declaration of State responsibility, either for an individual determination of damages or, if applicable, to challenge the sufficiency or effectiveness of the reparations received previously.

101. In conclusion, the jurisprudence of Chile's Supreme Court of Justice in recent years has certainly changed significantly towards a reasonable and consistent interpretation of its duty to exercise an effective control of conventionality. The Inter-American Court positively welcomes this jurisprudential change.

102. Consequently, this Court declares that the State is responsible for the violation of the right of access to justice, in relation to the rights to judicial guarantees and judicial protection, recognized

---

[71] *Cf.* Supreme Court of Justice of Chile. Second Chamber. Judgment of June 20, 2016. Case Record No. N 173-2016. Available at: http://basejurisprudencial.poderjudicial.cl/

[72] *Cf. Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Génesis) v. Colombia.* Preliminary objections, merits, reparations and costs. Judgment of November 20, 2013. Series C No. 270, para. 470.

[73] *Cf. Case of Almonacid Arellano et al. v. Chile*, para. 161.

[74] *Cf. Case of García Lucero et al. v. Chile. Preliminary objection, merits and reparations*. Judgment of August 28, 2013. Series C No. 267, paras. 190 and 192.

in Articles 8(1) and 25(1) of the American Convention, in conjunction with Articles 1(1) and 2 thereof, to the detriment of María Laura Órdenes Guerra, Ariel Luis Antonio Alcayaga Órdenes, Marta Elizabeth Alcayaga Órdenes, Augusto Oscar Amador Alcayaga Órdenes, Gloria Laura Astris Alcayaga Órdenes and María Laura Elena Alcayaga Órdenes; of Lucía Morales Compagnon, Jorge Roberto Osorio Morales, Carolina Andrea Osorio Morales, Lucía Odette Osorio Morales and María Teresa Osorio Morales; of Alina María Barraza Codoceo, Eduardo Patricio Cortés Barraza, Marcia Alejandra Cortés Barraza, Patricia Auristela Cortés Barraza, Nora Isabel Cortés Barraza and Hernán Alejandro Cortés Barraza; of Mario Melo Acuña, Ilia María Prádenas Pérez and Carlos Gustavo Melo Prádenas; of Pamela Adriana Vivanco Medina; of Elena Alejandrina Gómez Vargas and Katia Ximena Espejo Gómez; and of Magdalena Mercedes Navarrete Faraldo, Jorge Alberto Reyes Navarrete, Patricio Hernán Reyes Navarrete and Víctor Eduardo Reyes Navarrete.

## VII
## REPARATIONS
## (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION[75])

103. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[76]

104. Reparations must have a causal nexus with the facts of the case, the violations declared, the damage proven, and the measures requested to redress the respective harm. Consequently, the Court must analyze the concurrence of these factors in order to rule appropriately and according to the law.[77]

105. Furthermore, reparation for the harm caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the situation prior to the violation. If this is not feasible, as occurs in the majority of cases of human rights violations, the Court may order measures to protect the rights that have been violated and repair the harm caused.[78]

106. Considering the violations declared in the preceding chapter, together with the State's acknowledgement of its obligation to fully redress the victims in this case, the Court will proceed to order the appropriate reparation measures, taking into account the claims of the Commission and the representative and the observations and arguments of the State, based on the criteria established in its case law in relation to the nature and scope of the obligation to make reparation.

### *A. Injured party*

107. Pursuant to Article 63(1) of the Convention, the Court considers as "injured party" the victims declared in the instant case (*supra* para. 102).

---

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

[76] Regarding the obligation to make reparation and its scope, see *Case of Velásquez Rodríguez v. Hondur*as. *Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 25 to 27; and *Case of López Soto et al. v. Venezuela,* para. 268.

[77] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of López Soto et al. v. Venezuela,* para. 270.

[78] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs,* para. 26, and *Case of López Soto et al. v. Venezuela,* para. 269.

### *B. Compensation*

108. The ***Commission*** considered that the State must "make reparation to the victims" and, "as part of this reparation, the State must adopt the necessary measures to provide an effective judicial remedy so that the victims can present their claims and obtain a decision on reparations," which must be "separate from the administrative program."

109. The ***representative***, for his part, proposed that the State define "a quick and effective remedy - legal, administrative or of any nature- that provides for the corresponding compensation." The amount of such compensation should be based on international criteria and on the standards currently applied by the Chilean judiciary.

110. As indicated in its answering brief (*supra* para. 19), the ***State*** considered that the decisions handed down in the legal cases brought by the victims have the force of *res judicata*, which makes it legally impossible to reinstate the proceedings to issue new judgments; therefore, the appropriate reparation would be some form of monetary compensation.

111. Nevertheless, in its final arguments the State asked the Court to reject the reparation measures proposed by the Commission, to deny the merits of financial compensation and to grant, in favor of the victims, the appropriate non-pecuniary reparation measures. In this regard, it argued that this Court is not authorized to rule on damages caused by crimes against humanity that gave rise to the aforementioned civil actions, nor on acts related to the criminal investigation of those crimes, since those facts were excluded from the subject matter of the litigation by the representative and by the Commission and, furthermore, because the Court does not have jurisdiction *ratione temporis* to rule on measures to redress violations of rights committed during the military dictatorship. It argued that this is confirmed in jurisprudence on previous cases against Chile related to the denial of justice in crimes against humanity.[79] The State is of the opinion that the Court should apply the same criteria used to resolve the case of *Almonacid Arellano et al. v. Chile* and requested that it not consider the payment of damages as a relevant measure of reparation for the victims. It emphasized that this request does not represent a veiled way of evading its own responsibilities towards the victims of human rights violations that occurred during the military dictatorship, but rather should be seen in the light of the efforts made by the State since 1990 to provide them with adequate reparations.

112. In its final observations, the ***Commission*** noted that restitution must be granted whenever possible and that this component is central to this case; however, the State's approach makes it illusory, despite the fact that it is feasible due to the nature of the case. Thus, since the obligated State cannot invoke provisions or difficulties in its domestic law to avoid complying with its obligations, the Commission reiterated that the victims, if they so wish, must have a judicial remedy to claim redress; therefore, the Court should not admit the State's argument that it is legally

---

[79] The State pointed out that, although a possible alternative is the payment of compensation, there must be a causal link between the act attributable (the violation of a Convention right) and the damage that is sought to be repaired. Thus, assuming that the Court can define the State's obligation to compensate the victims, it would be a fundamental requirement for the Commission or the petitioners to have accredited precisely which damages are related to the violations declared by this Court, in addition to their amount. However, the Commission did not request that the State be ordered to pay compensation for possible pecuniary and non-pecuniary damages for the denial of justice by the State, nor did the representative request specific measures of pecuniary reparation; that is, they did not provide evidence to prove the extent of the damage suffered. Given the lack of evidence, it is not possible for the Court to assess the specific amounts of such damages in this case, nor to establish their relationship with the facts and the violations of rights that generated the international responsibility of the State, for which reason it is extremely complex to order the State to pay compensation. The State pointed out that this was the decision of the Court in the case of *Almonacid Arerellano v. Chile*, in which, in addition to not awarding compensation due to the absence of evidence, with respect to non-pecuniary damage, it established that -by virtue of the State's reparation policies- the victims had received various pecuniary amounts and that, therefore, it was not necessary to order payment of compensation for this item. The reparation policies mentioned by the Court in that case are the same as those indicated by the State in the present case, by virtue of which most of the victims (except for four) have received and, in some cases, continue to receive financial benefits since the beginning of the 1990s. Thus, the judgment will in any event constitute a form of reparation.

impossible to carry out or reopen the judicial proceedings to issue new judgments. However, the Commission also pointed out that, taking into account the time elapsed and the time it would take to reinstate the judicial remedy, the Court could order the State to establish a more expedited mechanism that would guarantee the victims the same reparations that they could have accessed through the judicial process, without prejudice to the possibility that the parties could agree on compensation equivalent to that which they could eventually receive in the judicial process.

113. The ***Court*** notes that the civil actions brought by the victims have resulted in decisions that are now *res judicata*. In this sense, it is clear that the principle of *res judicata* is a safeguarding principle that must be respected in a State governed by the rule of law.[80] At the same time, there is no doubt that the facts that gave rise to the aforementioned civil actions constitute serious human rights violations, particularly the forced disappearances and extrajudicial executions of the victims' family members, which are classified as crimes against humanity. In certain cases where the violation of the Convention has been caused by domestic judicial decisions, the Court has ordered, among other measures of reparation, that the State "annul" such decisions.[81] However, it should be noted that in this case it has not been alleged that the domestic proceedings, which have reached final or *res judicata* decisions, are the product of appearance, deception or a desire to perpetuate a situation of impunity, assumptions that would allow the Court to consider the appropriateness of exceptionally ordering a State to reopen such proceedings.[82]

114. As noted previously, based on a change in the jurisprudence of its highest judicial authority, the nature of such acts has led the State to recognize before this Court that the statute of limitations is not applicable to civil actions seeking reparations for moral damages in these types of cases. Consistent with this doctrine, in such cases the principle of *res judicata* should not prevent the victims in the present case –or persons in similar situations– from finally obtaining the reparations to which they may be entitled through the courts.

115. Thus, despite its initial proposal that the appropriate reparation in this case would be for the Court to establish monetary compensation (*supra* para. 19), in its final arguments, the State changed the position it had held throughout the proceedings, and argued that the Court should not decide on the compensation since this would imply assessing the moral damages claimed by the victims. The Court recalls that the final written arguments are not the appropriate procedural moment to contradict or limit the effect of the acknowledgement of responsibility.[83] At the same time, it is true that the representative and the Commission did not submit to the Court claims for compensation or pecuniary damages with specific amounts for moral or non-pecuniary damages that the victims would deem appropriate.

116. In the instant case, the denial of justice arose from a judicial interpretation contrary to the Convention and the consequence of this legal situation is that, to date, the victims have not been able to enforce their right to claim, and eventually receive, compensation for alleged moral damage through a judicial ruling. Thus, the restitution measure consistent with such damage could be to order the State to guarantee the victims' access to a new, prompt and effective judicial remedy to remedy this situation or, failing that, some alternative mechanism that meets this need.

---

80 *Cf. Case of Acosta et al. v. Nicaragua*. *Preliminary objections, merits, reparations and costs.* Judgment of March 25, 2017. Series C No. 334, para. 216.

81 *Cf., Mutatis mutandi, Case of Herrera Ulloa v. Costa Rica, Case of Palamara Iribarne v. Chile, Case of Kimel v. Argentina, Case of Tristán Donoso v. Panama, Case of Fontevecchia and D'Amico v. Argentina, **Case** of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, Case of Cantoral Benavides v. Peru and Case of Dominicans and Haitians.* See also, *mutatis mutandi, Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica.*

82 *Cf., Mutatis mutandi, Case of Acosta et al. v. Nicaragua*, para. 216.

83 *Cf. Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 25; and *Case of Ruano Torres et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 303, para. 24.

117. However, in the final analysis the harm caused by this lack of access to justice is that the victims have not yet received the compensation to which they would be entitled and, if the State's argument is accepted, the necessary consequence is that they would be left without the possibility of obtaining redress, both at the domestic and the international levels. All the relatives of the victims in this case are persons who disappeared or were executed, and in some cases tortured, in acts classified as crimes against humanity, acts that have been acknowledged by the State through the Rettig Commission and before this Court.

118. The Court has reiterated the principle of subsidiarity that permeates the inter-American system of human rights, which is, as stated in the Preamble of the American Convention, "reinforcing or complementing the protection provided by the domestic law of the American States."[84] Thus, the system of protection established by the Convention does not replace the domestic jurisdiction, but rather complements it.[85]

119. Therefore, taking into account the State's acknowledgement of responsibility, the time elapsed and the additional time that could be required for a judicial remedy or the initiation of new proceedings, and in order for the victims to receive prompt reparation,[86] the Court considers it appropriate to order the State, in application of the principle of subsidiarity, to directly grant compensation to each of the victims in this case.

120. In this regard, the Court does not make a statement or an assessment of the facts and the harm that occurred at the time when the victim's next of kin were executed or disappeared, but rather refers to the criteria of the relevant national case law.

121. In this context, during the processing of the case before the Commission and the Court, both the State and the representative referred to several cases in which the Second and Third (Constitutional) Chambers of Chile's Supreme Court of Justice had accepted civil claims for reparations related to crimes against humanity and had set compensation for moral damage. The representative also cited judgments issued between 2014 and 2016, with compensation amounts ranging from 100,000,000.00 (one hundred million) to 130,000,000.00 (one hundred and thirty million) Chilean pesos for each of the family members. Furthermore, according to information provided in the case law study submitted by the State, it is clear that in a series of cases heard by the Second Chamber of Chile's Supreme Court between 2007 and 2017, the convicted persons and/or the Chilean Treasury were ordered to pay compensation for moral damage ranging from 30,000,000.00 (thirty million) to 150,000,000.00 (one hundred and fifty million) Chilean pesos to the next of kin of disappeared or executed persons. The study also emphasizes that, in general or in numerous cases, national jurisprudence grants the same amounts of compensation to each of the relatives, regardless of their kinship with the disappeared or executed victim.[87]

122. In addition, according to the Supreme Court's own jurisprudence provided by the State, in cases in which the Chilean Treasury has questioned the accreditation of the moral damages claimed, the criterion for establishing these in cases of crimes against humanity are the "ties of kinship and the personal circumstances in which each of the affected parties [i.e. their family members,]

---

84 *Cf. Case of Las Palmeras v. Colombia. Merits.* Judgment of December 6, 2001. Series C No. 90, para. 33, *and Case of Andrade Salmón v. Bolivia. Merits, reparations and costs.* Judgment of December 1, 2016. Series C No. 330, para. 92.

85 *Cf. Case of Duque v. Colombia,* para. 128.

86 *Cf., Mutatis mutandi, Case of San Miguel Sosa et al. v. Venezuela*, para. 237.

87 For example, see judgments delivered between 2007 and 2017 (Case Record Nos. 4723 – 2007, 4691 – 2007, 695 – 2008, 5847 – 2008, 5233 – 2008, 6 – 2009, 6601 – 2011, 737 – 2011, 3573 – 2012, 3841 – 2012, 2918 – 2013, 1424 – 2013, 4300 – 2014, 4240 – 2014, 22645 – 2014, 1665 – 2015, 3133 – 2015, 24290 – 2016, 34057 – 2016, 11767 – 2017, 16768 – 2017). *Cf.* Judgments cited in Annex 3 to the State's answering brief, official letter Nº 048 2018 of January 30, 2018, from the Secretary of the Supreme Court to the Director of Human Rights of the Ministry of Foreign Relations (evidence file, ff. 2697 to 2702). Also, see other judgments (Case Record Nos. 2080-2008, 62032-2016, 28641-2016 and 28637-2016) cited by the representative of the victims in the processing of the case before the Commission (evidence file, ff. 2031 to 2034)

suffered the attacks, humiliation and torture to which they were subjected […] with the serious injuries and consequences […].” This case law indicates that, when determining the existence and scope of the moral damage claimed, given its purely subjective nature arising from “the very affective nature of the human being,” the same rules used for the determination of pecuniary damage (which is subject to proof and direct determination) cannot be applied. Thus, the determination of moral damage “is entirely left to the prudent regulation of the judges, taking into consideration aspects such as the circumstances in which it occurred and all those factors that influenced the intensity of the pain and suffering experienced […] and it could not be otherwise because materially it is difficult, if not impossible, to accurately measure the intensity of the suffering caused by the death or attempted murder of a family member in such abhorrent circumstances.”[88] In other words, the national jurisprudence itself recognizes the evidentiary difficulties involved in determining and quantifying the moral damage in this type of case.

123. With regard to the reparations or compensation that the victims have already received - or are currently receiving - under Law Nº 19.123 or other provisions, the criterion of the Chilean Supreme Court, in recognizing the subsidiary and non-exclusive nature of administrative reparations *vis à vis* those established by the courts (*supra* para. 97), is that the granting of the former does not prevent the victims from obtaining compensation through the judicial process.

124. Therefore, considering the specific circumstances of this case, and in application of the principle of subsidiarity, without this implying a jurisprudential precedent necessarily applicable to other cases, the Court deems it pertinent to establish the amounts of compensation in accordance with the reasonable and prudent criteria adopted by the Chilean Supreme Court in recent years in this type of case. Accordingly, the Court considers it appropriate to set the total amount of US$ 180,000.00 (one hundred and eighty thousand United States dollars) as compensation in favor of each of the victims. The amounts awarded to each of these persons must be paid directly to them, within the term established for this purpose (*infra* para. 141).

### *C. **Measure of satisfaction** (publication and dissemination of the judgment)*

125. As it has done in other cases,[89] the Court orders the State to publish, within six months from notification of this judgment, in a legible and appropriate font size: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette; b) the official summary of this judgment prepared by the Court, once, in a national newspaper with wide circulation; and c) this judgment in its entirety, available for at least one year, on an official website of the State, in a manner accessible to the public and from the home page of the website. The State shall immediately inform this Court once it has issued each of these publications, regardless of the one-year term to submit its first report as indicated in the operative part of this judgment.

### *D. Other measures requested*

126. The ***Commission*** recommended that the State adopt, as measures of non-repetition, legislative, administrative and any other type of measures to adapt Chilean legislation and judicial practices with respect to the prohibition of applying the statute of limitations to civil actions for reparations in cases such as the present one.

---

[88] For example, see the replacement judgment issued by the Second Chamber of the Supreme Court of Justice of Chile. Case Record No. 1568-2017 dated November 16, 2017. Judgment cited in Annex 2 to the answering brief of the State. *Cf.* Directorate of Studies of the Supreme Court, “Study of jurisprudence on civil actions for reparations related to crimes against humanity”, in response to a request for information from the Director of the Human Rights Program of the Office of the Undersecretary of Foreign Relations in the context of the present case before the Inter-American Court (evidence file, ff. 2671 and 2672).

[89] *Cf. Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212*,* para. 244; and *Case of López Soto et al. v. Venezuela*, para. 299.

127. The ***State*** reiterated that the jurisprudence of the country's highest court has systematically recognized the admissibility of civil actions seeking compensation for the harm caused in similar cases. It argued that this interpretative criterion constitutes a guarantee of non-repetition, both for the victims and for society as a whole, and that it currently has a robust and consolidated position which understands that the obligation to make reparation must take precedence.

128. The ***Court*** notes that, in its Merits Report, the Commission did not identify or specify the measures that the State should adopt in order to adapt its legal system and prohibit the application of the statute of limitations to civil actions for compensation, such as those filed in this case. However, in its final observations, the Commission considered that the State has not adopted a comprehensive and lasting solution to comply with the measures of non-repetition recommended, since the State itself recognized that the case law of the Supreme Court has fluctuated between declaring the statute of limitations and affirming the imprescriptibility of such actions. Although the latter is the current trend, this criterion depends on the distribution of claims for reparation by the Second Chamber of the Supreme Court, so that a different distribution or composition in the future could mean a change in the criterion. Furthermore, the Commission pointed out that the State acknowledged that in Chile, judicial decisions, including those of the Second Chamber, have effects only between the parties (*inter partes*) and did not explain why the State defense institutions continue to raise the objection of the statute of limitations in this type of action. Thus, it considered that the information presented by the State does not prove, in terms of legal certainty, that the imprescriptibility of these actions is currently a mandatory criterion for the judicial authorities. Indeed, it has learned of a recent decision by the Court of Appeals of Santiago in which the civil statute of limitations was applied in a similar matter. Accordingly, the Commission considered it necessary for the Court to order a legislative reform that expressly establishes the non-applicability of the statute of limitations in the context of civil actions for crimes against humanity and to call on the Chilean judicial authorities to carry out a control of conventionality to ensure that, while the legislative reform is being completed, this principle is not applied.

129. In its final arguments the ***State*** rejected the request to amend its domestic legislation, arguing that this would introduce serious problems into its legal system and also because such an amendment is clearly unnecessary. It considered that the adoption of a legislative measure seeking the reopening of civil cases that have been closed with the authority of *res judicata* would create serious areas of uncertainty within the Chilean legal system, which is not admissible from the perspective of the rule of law. It noted that when this Court has ordered the reopening of judicial cases closed with the authority of *res judicata*, it has done so as an exceptional and not a common reparation measure, in cases related to criminal matters in order to effectively punish the perpetrators of crimes against humanity, which are not subject to the statute of limitations, thereby depriving fraudulently declared amnesties of their legal effects. However, in this case the situation is completely different, since what is at issue here is not the personal responsibility of the participants in these crimes, but rather the financial and abstract responsibility of the State, and the Commission seeks to invalidate the application of an ordinary statute of limitations, of general scope, issued without any direct or indirect intention of infringing human rights. In addition, the State argued that said proposal for reparation is clearly unnecessary, given that the highest Chilean courts of justice since 2015 have ruled in a sustained and consistent manner on the imprescriptibility of such civil actions, with the last decision of the Supreme Court in this regard being issued on March 19, 2018. This, together with the administrative changes made by the same court, constitutes a real guarantee of non-repetition.

130. In this regard, the ***Court*** agrees with the State that "the problem that arose in the instant case is not due to the absence of regulations, but rather to the lack of an interpretation in accordance with the international human rights principles governing this matter." As the State acknowledged, the wrongful act that generated its international responsibility resulted from the application by the domestic courts of the statute of limitations, which implied that they did not analyze the merits of the cases. In other words, as the State emphasized, "the violation of human

rights in this case does not originate in specific provisions of Chilean domestic law, but rather in the interpretation of that law by the courts."

131. As stated previously (*supra* para. 101), the jurisprudence of Chile's Supreme Court in recent years has shifted markedly toward a consistent and proper interpretation of its duty to exercise an effective control of conventionality.

132. According to the State, in Chile, court rulings have *inter partes* and not *erga omnes* effects, since they are not subject to a "*stare decisis*" type system where a judicial decision constitutes a formal and general source of law. For its part, the representative has reported that first instance or appellate courts continue to uphold interpretations that are inconsistent with the above criterion and that the State Defense Council continues to file objections citing the statute of limitations (*supra* para. 22). Furthermore, as noted by the Commission, the uniformity of the Supreme Court's criterion may depend on its administrative decision to concentrate the hearing of claims for reparation in its Second Chamber. In this regard, the Court is aware that the jurisprudence may change in the future.

133. At the same time, if the acknowledged international wrongful act originated in incorrect judicial interpretations of the civil statute of limitations and not in the statute itself, a substantial change in the jurisprudence of the highest judicial authority of the State - which ultimately controls the constitutionality and conventionality of the norms and interpretations of the other judicial bodies - provides sufficient legal certainty with respect to legal situations such as those that have arisen in this case and constitutes, effectively, a guarantee of non-repetition.[90] The State has recognized before this international Court that a different interpretation of the statute of limitations in civil actions for reparations in cases of crimes against humanity constitutes a violation of rights recognized in the Convention. The necessary consequence of the State's position is that current or future judicial interpretations inconsistent with this criterion would be contrary to the Convention and, therefore, would entail the State's responsibility.

134. Therefore, this Court assumes that, in view of the good faith shown by the State in fulfilling its obligations, the aforementioned line of jurisprudence will be maintained in subsequent actions to be decided by the Supreme Court, in order to guarantee that the circumstances of the present case will not be repeated. This consideration does not prevent this Court from ruling in the future if another contentious case is submitted to it regarding similar facts .[91]

135. Without prejudice to the foregoing, it is also necessary to recall that the obligation to exercise "conventionality control" between domestic norms or State acts and the American Convention is incumbent upon all judges and bodies involved in the administration of justice, at all levels, and must be carried out *ex officio* within the framework of their respective competencies and the corresponding procedural regulations.[92] Consequently, it is undoubtedly also incumbent upon all judicial authorities, at all levels - and not only the Supreme Court- to maintain consistency of criteria with respect to an issue which, in view of the aforementioned change in jurisprudence, the acknowledgement of responsibility made by the State and the evolution of Chilean public policies on justice, truth and reparations for victims of serious human rights violations, has now been resolved.

---

90 *Cf.*, See also, *Case of Maldonado Vargas et al. v. Chile. Merits, reparations and costs.* Order of August 30, 2007, monitoring compliance with judgment, Merits, reparations and costs issued by the Court on September 2, 2015, para. 41. Available at: http://www.corteidh.or.cr/docs/supervisiones/maldonado_30_08_17.pdf

91 *Cf.*, Also see, *Case of Maldonado Vargas et al. v. Chile. Merits, reparations and costs.* Order of August 30, 2007, monitoring compliance with judgment, Merits, reparations and costs issued by the Court on September 2, 2015, paras. 41 and 42. Available at: http://www.corteidh.or.cr/docs/supervisiones/maldonado_30_08_17.pdf

92 *Cf. Case of Almonacid Arellano et al. v. Chile*. *Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124; and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 158, para. 128. See also *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 193; and *Case of San Miguel Sosa et al. v. Venezuela*, para. 191.

136. Thus, although the enactment of a law that expressly determines the inapplicability of the statute of limitations in this type of civil action could be a useful mechanism to put an end to future interpretations contrary to the Convention, the Court considers that there are not sufficient reasons to consider that this is an absolutely indispensable measure to ensure non-repetition of the facts, and therefore it is not appropriate to order it. It will be up to the State's legislative authorities to determine the feasibility and relevance of this within the framework of their competencies. Nevertheless, it is the current and future function of all State organs involved in the administration of justice, at all levels, to exercise an adequate control of conventionality in situations similar to those that have arisen in this case.

137. In this regard, the Court has been informed about other persons who are in situations similar to those of the victims in this case, either at the domestic level or as petitioners before the Commission. In other words, relatives of victims of serious human rights violations who were also unable to gain material access to justice because the domestic courts considered that the civil statute of limitations was applicable in their cases, or whose cases were closed by decisions with the authority of *res judicata*. Although the Court has found it unnecessary to order the requested measures, it is likely that such cases will face difficulties similar to those encountered in the present case. Therefore, the Court urges the State to find a prompt solution for those other persons, so that they may have access to the compensation to which they are entitled.

138. Finally, with regard to "administrative measures" to bring Chilean judicial practices into line with international standards, it should be noted that the Commission did not specify what those measures would be and that the State, for its part, requested recognition that it has already adopted them.[93] In the absence of the specification of other relevant administrative measures, the Court considers that it is not appropriate to order the State to adopt additional administrative measures, or indeed measures "of any other nature," which were not specifically indicated by the Commission.

### *E. Costs and expenses*

139. The Court reiterates that, according to its case law, costs and expenses form part of the concept of reparation established in Article 63(1) of the Convention, because the activities carried out by the victims in order to obtain justice, both at the national and international levels, imply expenditures that must be compensated when the State's international responsibility is declared in a judgment.[94] Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, based on the principle of equity and taking into account the claims of the victims or their representatives. These claims must be submitted to the Court at the first procedural opportunity granted to them, that is, in the pleadings and motions brief, without prejudice to such claims being updated subsequently, in keeping with the new costs and expenses incurred during the proceedings before this Court.[95]

---

93 The State indicated that Resolutions 233-2014 and 107-2017, which contain the orders dated September 26, 2014, and July 28, 2017, established the new distribution of matters heard by the specialized chambers of the Supreme Court, a measure that had a direct impact on the change in jurisprudential criteria explained above.

94 Regarding reimbursement of costs and expenses, it is for the Court to prudently assess their scope, including the expenses generated before the authorities of the domestic jurisdiction and those incurred during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, Judgment of August 27, 1998. Series C No. 39. para. 82, and *Case of López Soto et al. v. Venezuela*, para. 381.

95 This appreciation may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable. Moreover, it is not sufficient merely to forward evidentiary documents; rather, the parties are required to include arguments that relate the evidence to the facts that they represent and, in the case of alleged financial disbursements, clearly specify the items and their justification. *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations,* para. 42, and *Case of López Soto et al. v. Venezuela*, para. 382.

140. In this case, the Court recalls that the representative did not submit a pleadings and motions brief and, therefore, did not request costs and expenses; nor did he submit such a request in his final arguments. Nevertheless, it is reasonable to presume that the representative incurred expenses since he filed petitions before the Commission, for which reason the Court deems it appropriate to reimburse him for reasonable litigation expenses.[96] Therefore, the Court establishes, in equity, the amount of USD $10,000.00 (ten thousand United States dollars). This sum shall be delivered directly to the representative within the period defined for that purpose (*infra* para. 141). At the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representative for any reasonable and duly proven expenses incurred at that procedural stage.

### *F. Method of compliance with the payments ordered*

141. The State shall make the payments for compensation ordered in this judgment, and for reimbursement of costs and expenses, directly to the persons indicated herein, within one year of notification of this judgment, or it may bring forward full payment within a shorter period of time.

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

143. In relation to the foregoing, and without prejudice to it, the Court has already been informed about two beneficiaries who have died, namely, María Laura Órdenes Guerra and Mario Melo Acuña. Therefore, the Court orders that the compensation to which they are entitled be paid directly to their next of kin, who are the victims in the instant case. In other words, the amount ordered in favor of Mrs. Órdenes Guerra shall be distributed in equal parts among her children and, in the case of Mr. Melo Acuña, the amount awarded in his favor shall be distributed in equal parts between Ilia María Prádenas Pérez and Carlos Gustavo Melo Prádenas.

144. The State shall comply with its monetary obligations through payment in United States dollars, or the equivalent in national currency, using for the respective calculation the exchange rate in effect in the New York Stock Exchange, United States of America, on the day prior to payment.

145. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the period indicated, the State shall deposit said amounts in their favor, in an account or certificate of deposit in a solvent Chilean financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

146. The amounts awarded in this judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses shall be paid in full directly to the persons indicated, without any deductions arising from possible taxes or charges.

147. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in Chile.

---

96 *Cf.* See also, *Case of San Miguel Sosa et al. v. Venezuela*, para. 250.

## VIII
## OPERATIVE PARAGRAPHS

148. Therefore,

**THE COURT**

**DECIDES,**

Unanimously:

1. To accept the acknowledgement of international responsibility made by the State, pursuant to paragraphs 23 to 31 of this judgment.

**DECLARES,**

Unanimously, that:

2. The State is responsible for the violation of the right of access to justice, in terms of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the following persons: María Laura Órdenes Guerra, Ariel Luis Antonio Alcayaga Órdenes, Marta Elizabeth Alcayaga Órdenes, Augusto Oscar Amador Alcayaga Órdenes, Gloria Laura Astris Alcayaga Órdenes and María Laura Elena Alcayaga Órdenes; Lucía Morales Compagnon, Jorge Roberto Osorio Morales, Carolina Andrea Osorio Morales, Lucía Odette Osorio Morales and María Teresa Osorio Morales; Alina María Barraza Codoceo, Eduardo Patricio Cortés Barraza, Marcia Alejandra Cortés Barraza, Patricia Auristela Cortés Barraza, Nora Isabel Cortés Barraza and Hernán Alejandro Cortés Barraza; Mario Melo Acuña, Ilia María Prádenas Pérez and Carlos Gustavo Melo Prádenas; Pamela Adriana Vivanco Medina; Elena Alejandrina Gómez Vargas and Katia Ximena Espejo Gómez; and Magdalena Mercedes Navarrete Faraldo, Jorge Alberto Reyes Navarrete, Patricio Hernán Reyes Navarrete and Víctor Eduardo Reyes Navarrete, pursuant to paragraphs 76 to 102 of this judgment.

**AND ESTABLISHES,**

Unanimously, that:

3. This judgment constitutes, *per se*, a form of reparation.

4. The State shall pay the amounts specified in paragraphs 124 and 140 of this judgment as compensation and to reimburse costs and expenses, pursuant to the aforementioned paragraphs and paragraphs 141 to 147 of this judgment.

5. The State shall issue the publications indicated in paragraph 125 of this judgment, in the terms specified therein.

6. The State, within one year from notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it. In addition, it shall submit a report, within six months from notification of this judgment, indicating– for each of the reparation measures ordered– which State bodies, institutions or authorities are in charge or responsible for their execution, including a work schedule for their full implementation.

7. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will close this case once the State has complied fully with all its provisions.

Judge Humberto Antonio Sierra Porto advised the Court of his concurring opinion, which accompanies this judgment.

DONE, at San José, Costa Rica, on November 29, 2018, in the Spanish language

IA/Court/HR. *Case of Órdenes Guerra et al. v. Chile*, Merits, Reparations and Costs.

Eduardo Ferrer Mac-Gregor Poisot
President

Humberto A. Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Registrar

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Registrar