**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**PERRONE AND PRECKEL *V.* ARGENTINA**

**JUDGMENT OF OCTOBER 8, 2019**

***(Preliminary Objections, Merits, Reparations and Costs)***

In the *Case of Perrone and Preckel*,

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

Eduardo Ferrer Mac-Gregor Poisot, President;
Eduardo Vio Grossi, Vice-President;
Humberto Antonio Sierra Porto, Judge;
Elizabeth Odio Benito, Judge;
L. Patricio Pazmiño Freire, Judge, and
Ricardo Pérez Manrique, Judge,

also present,

Pablo Saavedra Alessandri, Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Rules of Court"), delivers the present Judgment, which is structured in the following order:

* Judge Eugenio Raúl Zaffaroni, from Argentina, did not participate in the deliberation of the present Judgment, pursuant to Articles 19(2) of the Statute and 19(1) of the Rules of Procedure of the Court.

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

1. *The case submitted to the Court.* - On October 19, 2017, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted the case of "Perrone and Preckel" v. the Republic of Argentina (hereinafter "the State of Argentina", "the State" or "Argentina") to the jurisdiction of the Court. According to the Commission, the case relates to the violation of the rights to due process and judicial protection in the administrative and judicial proceedings initiated by Elba Clotilde Perrone and Juan José Preckel for the purpose of requesting payment of the salaries and social benefits they had ceased to receive from the State entity where they worked, as a consequence of their alleged arbitrary deprivation of liberty by State agents during the military dictatorship. The Commission considered that the lapse of more than 12 years of administrative and judicial proceedings exceeded a period that could be considered reasonable. It also concluded that the judicial and administrative authorities violated the right to sufficient and adequate justification. In addition, the Commission considered that by violating these guarantees of due process, the administrative and judicial proceedings also entailed a violation of the right to judicial protection.

2. *Proceedings before the Commission.* - The procedure before the Commission was as follows:

a) *Petition.* - By means of communications dated December 23, 1996 and January 13, 1997, the Asamblea Permanente por los Derechos (hereinafter "the petitioners") filed the initial petition with the Commission.

b) *Admissibility Report.* - On May 4, 1999, the Commission approved Admissibility Report No. 67/99[1], in which it declared the petition admissible with respect to the alleged violation of the rights recognized in Articles 3, 8, 21, 24 and 25 of the American Convention and Article XIV of the American Declaration of the Rights and Duties of Man.[2]

c) *Friendly settlement agreement.* - On April 14, 2000, the petitioners sent a communication to the Commission indicating their willingness to reach a friendly settlement agreement. On February 8, 2001, the State submitted a communication indicating that it did not agree to enter into a friendly settlement process.

d) *Merits Report.* - On March 18, 2017, the Commission adopted Merits Report No. 21/17, in accordance with Article 50 of the Convention (hereinafter also "the Merits Report" or "Report No. 21/17"), in which it reached a number of conclusions and made several recommendations to the State.[3]

e) *Notification to the State.* - On April 19, 2017, the State was notified of Report No. 21/17, and was granted a period of two months to report on compliance with the recommendations.

f) *Reports on the Commission's recommendations.* - The State did not respond to the Commission's Merits Report.

g) *Submission to the Court.* - On October 19, 2017, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and human rights violations described in the Merits Report[4].

3. *Requests of the Inter-American Commission.* - The Commission requested this Court to conclude and declare the international responsibility of the State for the violations contained in

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[1] The report was notified to the parties on May 13, 1999.

[2] Article XIV. Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.

[3] The Commission concluded that the State was responsible for the violation of the rights established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument.

[4] The Commission appointed as its delegates before the Court, Executive Secretary Paulo Abrão, and Commissioner Francisco Eguiguren. It also appointed as legal advisors, Ms. Elizabeth Abi-Mershed, Deputy Executive Secretary, Ms. Silvia Serrano Guzmán and Mr. Christian González Chacón, attorneys of the Executive Secretariat.

the Merits Report and to order Argentina to implement the recommendations included therein as measures of reparation (*supra* para. 2.b).

## II
## PROCEEDINGS BEFORE THE COURT

4. *Notification to the representative and the State.* - The submission of the case by the Commission was notified by the Court to the representative of the alleged victims (hereinafter "the representative") on February 1, 2018 and to the State on January 29, 2018.

5. *Brief with pleadings, motions and evidence.* - On March 30, 2018, the representative submitted to the Court his brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief" or "ESAP"). In this brief he adhered to the description of facts made by the Commission. Likewise, it adhered to the allegations of the Commission regarding the preliminary objections and the merits of the case. Finally, it requested the Court to order the State to adopt various measures of reparation and the reimbursement of costs and expenses.

6. *Answering brief.* - On July 4, 2018, the State[5] filed its response to the submission and Merits Report of the Commission and to the pleadings and motions brief (hereinafter "Answering brief"). The State presented preliminary objections of *ratione temporis* and non-exhaustion of domestic remedies. Said brief was notified to the parties and to the Commission on August 6, 2018**.**

7. *Observations to the preliminary objections.* - On September 5 and 7, 2018, the Commission and the representation of the alleged victims, respectively, submitted their observations to the preliminary objections filed by the State.

8. *Public hearing* – In orders of December 7, 2018,[6] issued by the President, and of January 29, 2019, issued by the Court,[7] the parties and the Inter-American Commission were summoned to a public hearing to receive their final oral observations on the preliminary objections, and eventual merits, reparations and costs, as well as to receive the statement of an expert witness offered by the Commission. By communication of January 18, 2019, the Commission withdrew the expert opinion offered in the present case. The public hearing was held on January 30, 2019, during the 129th Regular Session of the Court, at its headquarters.[8]

9. *Final written arguments and observations.* - On March 1 and 4, 2019, the State and the representative, respectively, submitted their final written arguments, together with annexes (in the case of the representative). On March 4, 2019, the Commission submitted its final written observations.

10. *Observations on the annexes to the final arguments.* - On March 18 and 20, 2019, respectively, the State and the representative forwarded their observations on the annexes submitted together with the final written arguments brief. The Commission filed its observations on March 18, 2019.

11. *Deliberation of the present case.* - The Court began deliberating the present Judgment on

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[5] By communication of February 20, 2018, the State appointed Mr. Alberto Javier Salgado, Director of International Human Rights Litigation of the Ministry of Foreign Affairs and Worship, as Agent, and Mr. Ramiro Cristóbal Badia, Coordinator of International Human Rights Affairs of the National Secretariat for Human Rights and Cultural Pluralism, as alternate agent.

[6] *Cf. Case of Perrone and Preckel v. Argentina. Summons to Hearing.* Order of the President of the Inter-American Court of Human Rights of December 7, 2018. Available at: http://www.corteidh.or.cr/docs/asuntos/perroneypreckel_07_12_18.pdf

[7] *Cf. Case of Perrone and Preckel v. Argentina. Reconsideration of Summons to Hearing.* Order of the Inter-American Court of Human Rights of January 29, 2019. Available at: http://www.corteidh.or.cr/docs/asuntos/perroneypreckel_30_01_19.pdf

[8] The following persons appeared at this hearing: a) for the Inter-American Commission: Commissioner Francisco Eguiguren Praeli, attorneys Silvia Serrano Guzmán and Piero Vásquez Agüero; b) representing the alleged victims: Mr. Sergio Darío di Gioia and Mrs. Zulema Graciela Díaz, and c) for the State of Argentina: Mr. Javier Salgado, Director of International Litigation in Human Rights Matters of the Ministry of Relations and Worship, as Agent, and Mr. Ciro de Martini, Advisor to the Ministry of Justice and Human Rights, and Alfredo Vítolo, Advisor to the Secretariat of Human Rights and Cultural Pluralism.

September 2, 2019, during the 62nd Special Session. It continued deliberating on October 8, 2019, during its 131st Regular Session.

## III
## JURISDICTION

12. The Court has jurisdiction to hear the present case pursuant to Article 62(3) of the Convention, since Argentina has been a State Party to the Convention since September 5, 1984, and accepted the contentious jurisdiction of the Court on the same date.

## IV
## PRELIMINARY OBJECTIONS

13. The State filed two preliminary objections concerning the lack of jurisdiction *ratione temporis,* in relation to the petition for *restitutio in integrum* filed by the alleged victims, and the objection of improper exhaustion of domestic remedies. The Court will now summarize the arguments raised by the parties and analyze the objections.

### *A. Lack of jurisdiction ratione temporis in relation to the petition for restitutio in integrum of the representative*

#### *A.1. Arguments of the parties and the Commission*

14. The ***State*** argued that its acceptance of the Court's jurisdiction began on September 5, 1984, the date in which it deposited the instrument of ratification of the Convention. It indicated that the delimitation of the case made by the Commission in the Admissibility and Merits reports refer to the alleged violations that occurred during the administrative and judicial proceedings in which Mrs. Perrone and Mr. Preckel requested the payment of their salaries and other labor benefits that they had not received during their detention during the military dictatorship. Although the representative indicated that he agreed with such delimitation, he also put forward a "clearly ambiguous" position, in which he oriented the discussion to the facts of detention and exile that occurred between 1976 and 1983. It was pointed out that the contradiction occurs mainly when the claim for compensation seeks the payment of lost wages, basing such claim on the 1976 detention. Therefore, in order to consider the merits of this petition, the Court would necessarily have to establish as violations events that occurred prior to the ratification of the Convention and over which it has no jurisdiction.

15. The State alleged that the representative "changed the object of the case controversy" by claiming the payment of the salaries lost due to the events that occurred in 1976 as part of the *restitutio in integrum*. This loses sight of the procedural object of the claim, which is related to the alleged violations of the Convention that would have taken place within the framework of the judicial and administrative proceedings in the domestic sphere.

16. For its part, the ***Commission*** stated that the violations established in its Merits Report and submitted to the Court are based on facts that are autonomous and independent of the detention of the alleged victims; the case refers to the administrative and judicial proceedings initiated by Elba Clotilde Perrone and Juan José Preckel to claim payment of the salaries and social benefits they had not received as a consequence of their detention during the military dictatorship, and that these proceedings were initiated after the ratification of the Convention, a circumstance that was expressed in the Admissibility Report 67/99, the Merits Report 21/17 and in the note of submission of the case. In said report, the Commission affirmed that the facts prior to the ratification of the Convention by the State were brought to the proceedings as context, while at the same time limiting the object of the instant case to the claim "for uncollected payment of wages and benefits [...] as a consequence of their arbitrary deprivation of liberty and exile in the case of Mr. Preckel [, thus confirming that his] the detention, torture and exile themselves do not fall within the scope of the purpose of the instant case. The adequacy of the compensation received by the victims under Law No. 24.043 does not fall under the scope of the purpose either".

17. Finally, the ***representative*** reiterated the position of the Commission in its Admissibility Report, according to which the administrative and judicial decisions rejecting the applications

made by the plaintiffs were issued after the Convention had entered into force. In addition, it was argued that following this report the debate on the lack of temporal jurisdiction of the Court were closed and that they could not be opposed again in the current instance.

*A.2. Considerations of the Court*

18. For the purpose of determining its *ratione temporis* jurisdiction, pursuant to Article 62(1) of the American Convention, this Court must take into consideration the date of acceptance of jurisdiction by the State, the terms in which it was given and the principle of non-retroactivity, provided for in Article 28 of the 1969 Vienna Convention on the Law of Treaties.[9]

19. Argentina accepted the contentious jurisdiction of this Court on September 5, 1984 and in its interpretative declaration indicated that the Court would have jurisdiction over " acts that have occurred after the ratification" of the American Convention,[10] which took place on the same date. Based on the foregoing and on the principle of non-retroactivity, the Court cannot exercise its contentious jurisdiction to declare a violation of conventional norms when the alleged facts, or the conduct of the State, occurred prior to said recognition of jurisdiction.[11]

20. However, the Court has recognized in several cases[12] that even when the alleged violations arise from facts that occurred prior to accepting its competence, it may have jurisdiction to the extent that there are independent facts that occurred within its *ratione temporis* jurisdiction and that constitute autonomous and specific violations, as well as, in the case of facts of a continuous or permanent nature, while the violation of the international obligation[13] continues over time after the recognition of the State's jurisdiction.

21. Therefore, it is incumbent upon the Court to determine its jurisdiction over the delimitation of the case presented by the Commission, as well as over the requests for *restitutio in integrum* made by the representatives of the alleged victims.

22. The Court notes that, regarding the facts concerning the arrests of Mr. Preckel and Mrs. Perrone and the exile of Mr. Preckel, there is no dispute between the parties and the Commission that they occurred prior to the ratification of the Convention, and therefore they can be considered by this Tribunal only as contextual background.

23. However, the administrative and judicial proceedings initiated after the aforementioned events took place after the date of ratification of the Convention by Argentina, on September 5, 1984. In this sense, although the Court lacks jurisdiction to analyze the facts relating to the

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

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

11 *Cf. Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 16; *Case of Argüelles et al. v. Argentina.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 288, para. 24, *and Case of Xucuru Indigenous People and its members v. Brazil,* Preliminary Objections, Merits, Reparations and Costs. Judgment of February 5, 2018. Series C No. 346, para. 31.

12 *Cf. Case of Genie Lacayo v. Nicaragua. Preliminary Objections*. Judgment of January 27, 1995. Series C No. 21, paras. 21, 25 and 26*; Case of García Lucero v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2013. Series C No. 237, para. 30; *Case of the Kuna de Madungandí and Emberá de Bayano Indigenous Communities and their members v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 14, 2014. Series C No. 284, para. 39, and *Case of Herzog v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 15, 2018. Series C No. 353, para. 28.

13 *Case of Gomes Lund et al. v. Brazil.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010, para. 17, and *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 21.

detention and exile, it is competent to examine, as autonomous facts, the proceedings initiated by the alleged victims in the domestic jurisdiction to establish whether the State's obligations have been complied with in light of the rights to a fair trial and to judicial protection established in Articles 8 and 25 of the American Convention.

24. Regarding the request for reparation as *restitutio in integrum* made by the representative of the alleged victims, in which he asked the Court for the payment of the uncollected salaries and wages relating to the events that occurred between 1976 and 1984 (*infra* para. 1), the Court reiterates the criterion established in the case of *García Lucero v. Chile,* in which it held that:

> [...] the integral nature or individualization of the reparation can only be evaluated based on an examination of the facts that gave rise to the harm and their effects, and they are excluded from the Court's temporal competence.[14]

25. In this sense, the subject matter of the case submitted by the Commission before the Court is specifically related to the administrative and judicial proceedings initiated by the alleged victims (*supra* para. 1), and therefore, if a possible violation were found, due to its causal link, the reparation would only be related to the violations that have been proven. In the foregoing terms, the Court admits the objection filed by the State in relation to the lack of jurisdiction *ratione temporis* over the facts connected to the arbitrary detention of Mrs. Perrone and the detention and subsequent exile of Mr. Preckel, as well as to the possible reparation through *restitutio in integrum* requested by the representative of the alleged victims.

### ***B. Failure to exhaust domestic remedies***

#### *B.1. Arguments of the parties and the Commission*

26. The ***State*** filed a preliminary objection on the non-exhaustion of domestic remedies, pursuant to Article 46(1)(a) of the Convention. It argued that the judicial proceedings exhausted by the victims were not the appropriate ones to obtain compensation for their uncollected salaries; instead, the civil action for damages was the appropriate procedural mechanism for this purpose. It indicated that this objection was raised in its first response before the Commission, when it argued that the alleged victims "[...] should have brought a lawsuit against the National State for damages caused during their illegal detention [...]". Furthermore, it pointed out that the representative of the alleged victims did not explain why the action for damages had not been exhausted, but merely indicated that the damages caused by the detention had been claimed under Law 24.043. However, at the time the legal actions were filed, in June 1988, Law 24.043 did not exist yet.

27. For the *State,* the action brought by the alleged victims was inadequate, inasmuch as it focused its claims on the public employment relationship with the General Tax Directorate -DGI- and limited the procedural object to request the payment of uncollected salaries, basing its claims on the DGI's public employment relationship regulations. The lack of suitability of the suit was established in the different court decisions, in which, applying the law in force, the judiciary found that the DGI was not responsible for compensating for unearned salaries and that, instead, they should have "[...] filed a suit for damages against the National State for their illegal detention [...]". In this sense, the appropriate action was the civil action for damages. According to Articles 33, 43, 1068, 1072, 1077, 1084 of the Argentine Civil Code, the National State is a legal person of a public nature and as such must respond for the damages it causes, which may arise from crimes, and their commission generates an obligation to repair the damages caused. The State pointed out that the validity of such action is demonstrated by the extensive history of civil lawsuits filed against the State for events that occurred during the military dictatorship.

28. Finally, the State pointed out that although the alleged victims argued that the fact of not having received their salaries since the illegal detention constitutes a violation derived from the public employment relationship, the representative never demonstrated why the damages covered

[14] *Case of García Lucero v. Chile.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2013. Series C No. 237, para. 37.

by the compensation obtained under Law No. 24.043 did not include the lost wages in the category of loss of earnings, given that "[...] not having received wages since the detention clearly constitutes a patrimonial damage whose origin lies in an illegal detention resulting from the illegitimate activity of the State [...]", actions that would have already been object of reparation under the compensation granted by Law 24.043 to which the alleged victims availed themselves.

29. The ***Commission*** held that the State's argument had already been presented and dismissed in the admissibility stage before the Commission, considering that the administrative and contentious-administrative channels had been exhausted, and that for the procedural purpose of the alleged victims, which was to request the responsibility of the State for the non-payment of salaries during their detention, the actions initiated were adequate and appropriate. Likewise, it held that the violation of the reasonable time guarantee, determined as such in its Merits Report, disproves the objection submitted by the State. If the remedies filed by the alleged victims were inadequate or unsuitable, they would have been dismissed due to their obvious inappropriateness, and on the contrary, the proceedings continued and decisions on the merits were issued in proceedings that lasted more than 12 years in total.

30. Additionally, in its concluding observations the Commission added that "[...] even accepting in the alternative the suitability of the action for damages against the Nation, it is not reasonable to demand the exhaustion of multiple possibly suitable remedies when the State already had the opportunity to resolve the matter at the domestic level". At the same time, the Commission asked that any additional arguments relating to the preliminary objection, in the terms in which it was filed, should be rejected as untimely. Finally, it reiterated that the present case focused on determining whether the administrative and judicial proceedings filed by the alleged victims respected the rights to a fair trial and to judicial protection, without considering whether the alleged victims were right regarding the claims for lost wages or the sufficiency or not of the compensation received under Law 24.043.

31. For his part, the ***representative*** pointed out that at the time of filing the lawsuit, the alleged victims were faced with an uncertain legal panorama, because although there were multiple actions to determine the State's responsibility for human rights violations occurred during the dictatorship, the results of those actions were unpredictable "since at that time, the criterion that declared the(se) claims time-barred was predominant". For all these reasons, they decided not to claim the damages suffered during their detention, but to claim the payment of wages and economic benefits foregone, as these were, in any case, two different, non-exclusive procedural avenues that could have been initiated in parallel.

32. He added that it is the alleged victims and not the State who must choose the type and nature of action they deem appropriate to enforce their constitutionally and conventionally recognized rights. In addition, he insisted that the debate on the proposed objection had concluded before the Commission. Therefore, the exception should be declared inadmissible and out of time.

*B.2. Considerations of the Court*

33. The ***Court*** has indicated that according to Article 46(1)(a) of the Convention, in order to establish the admissibility of a petition or communication submitted to the Commission, pursuant to Articles 44 or 45 of the Convention, the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law, and these principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46(2). Furthermore, when alleging the non-exhaustion of domestic remedies, it is up to the State to specify the domestic remedies that remained to be exhausted, and prove that those remedies were available and effective.[15]

34. The Court notes that the State, in a communication of October 31, 1997, requested the inadmissibility of the petition before the Commission and filed a plea arguing the failure to exhaust

[15] *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, para. 88, and *Case of Amrhein et al. v. Costa Rica,* Preliminary Objections, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, para. 39.

remedies, indicating that "[...] the petitioners could have brought legal action in the country for the responsibility of the National State for damages caused by the detentions to which they were subjected [...]"[16] . In this sense, there is no dispute that said exception was filed at the appropriate procedural time.

35. In view of the above, it is up to the Court to determine whether the remedy filed by the alleged victims could be adequate and effective for the claim at issue.

36. To resolve this issue, the Court initially recalls that its reiterated jurisprudence has indicated that adequate domestic remedies are those which are suitable to address an infringement of a legal right.[17]

37. The Court notes that the alleged victims, in the different proceedings initiated, requested the payment of uncollected salaries and other benefits during their detention, and that the basis of their claim was the internal norms that contemplated the payment of salaries to workers who had not been able to perform their work due to "force majeure". Even though they referred to their detention and exile (in the case of Mr. Preckel) as the cause of force majeure that prevented them from performing their work, such facts were not the object of the claim presented at the domestic level.

38. Regarding the reasons for which the alleged victims resorted to this route to address their claim, the representative pointed out that at the time of filing the lawsuit, the alleged victims were faced with an uncertain legal situation, since it was "generally believed" that the claim for human rights violations that occurred during the dictatorship through the action for damages and losses was time-barred. For this reason, they requested the payment of lost wages and economic benefits through administrative complaints and later judicial actions before the contentious-administrative courts. None of the judicial authorities that heard the complaints declared them manifestly inadmissible, given that all the decisions adopted were based on arguments of merits, related to the alleged inapplicability of the cause of force majeure alleged by the complainants.

39. In this regard, the Court finds that the administrative and contentious-administrative avenues exhausted by the alleged victims to claim payment of uncollected wages from the General Tax Directorate were not manifestly unreasonable, as corroborated by the 13 years and 14 days duration of Mrs. Perrone's proceeding and the 10 years and 11 months in the case of Mr. Preckel. In addition to the favorable decisions adopted both administratively and judicially in Mrs. Perrone's case, in particular by the Directorate of Technical and Legal Affairs of that entity and the second instance decision issued by Chamber IV of the Court of Appeals in September 1993, even though they were finally dismissed in court (*infra* paras. 95-101).

40. Therefore, the State's argument that the only suitable judicial remedy for the due exhaustion of domestic remedies was the action for damages is not consistent with what occurred in the instant case, in which judicial and administrative authorities heard, processed and decided the merits of the petitions, claims and appeals filed by the alleged victims over 13 years and 14 days in the case of Mrs. Perrone and 10 years and 11 months in the case of Mr. Preckel, without rejecting the actions and appeals filed due to their manifest inappropriateness.

41. In addition, the Court has indicated that when national mechanisms exist to determine forms of reparations [that satisfy] criteria of objectivity, reasonableness and effectiveness to adequately redress violations of rights recognized in the Convention, these procedures and results can be assessed.[18] Thus, the civil actions for reparation of damages filed by the victims at the domestic level can be relevant both in the qualification and definition of certain aspects or scope of State

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[16] Communication from the State of October 31, 1997 in the proceedings before the Commission (evidence file, folio 120).

[17] *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 64, and *Cf. Case of Caballero Delgado and Santana v. Colombia. Preliminary Objections.* Judgment of January 21, 1994. Series C No. 17, para. 63.

[18] *Cf. Case of Cepeda Vargas v. Colombia*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 246, and *Case of García Ibarra et al. v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306, para. 186.

responsibility, as well as in the satisfaction of certain claims within the framework of a comprehensive reparation. Therefore, the decisions taken at the domestic level in that jurisdiction may be taken into account when assessing the requests for reparation in a case before the inter-American system.[19] However, this analysis and assessment will be conducted taking into account the circumstances of each specific case, according to the nature of the right that is alleged to have been violated and the claims of the individual. This analysis may correspond to the merits of the matter or, if appropriate, to the reparations stage.[20] Therefore, in this case, it is not appropriate to assess the suitability and effectiveness of the aforementioned civil suit for damages to establish State responsibility for the facts of this case, since it was not absolutely necessary for the alleged victims to exhaust it,[21] especially since the State did not prove the appropriateness of this remedy in this type of cases.[22]

42. In view of the foregoing, the Court dismisses the preliminary objection raised by the State.

## V
## EVIDENCE

### *A. Admissibility of documentary evidence*

43. In the present case, as in others, this Tribunal accepts the evidentiary value of the documents submitted by the parties and by the Commission at the appropriate time, whose admissibility was not contested or objected to, nor whose authenticity was questioned.

44. With respect to the documentary evidence, the ***representative*** offered as "[...] [d]ocumentary [e]vidence in the possession of the [Argentine State], the case file processed by the Ministry of Foreign Affairs and Worship, on the occasion of the proceedings advanced for the purpose of reaching a [friendly settlement] in the present case"; he also asked that the State be required to "duly and legally settle the victims' claims, corresponding to the salaries accrued, fallen and not received by them, from the time of their illegal detention until the time of their reinstatement". Said request was objected by the ***State***, indicating that, with respect to the payment of complaints, the burden of proof falls on the representatives and therefore it is not the State's duty to provide them. Likewise, and with respect to the request for the administrative files, the State pointed out that the confidential nature of the meetings held in the context of the friendly settlement procedure extends to the documents prepared as a result thereof.

45. In this regard, in the Order of Reconsideration of Summons to Hearing of January 29, 2019,[23] the Court indicated in paragraph 12 that:

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[19] *Case of the Mapiripán Massacre v. Colombia. Merits.* Judgment of September 15, 2005. Series C No. 134*, and Case of García Ibarra et al. v. Ecuador,* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306, para. 186. See also: *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 251, and *Case of Rodríguez Vera et al (Disappeared from the Palace of Justice) v. Colombia.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, paras. 548 and 549.

[20] *Case of the Santo Domingo Massacre v. Colombia*, Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, paras. 37 and 38, and *Case of García Ibarra et al. v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306, para. 186.

[21] *Mutatis mutandi Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 64, and *Case of Chinchilla Sandoval et al. v. Guatemala.* Preliminary Objection, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, para. 25.

[22] The only case of which this Court is aware is the one referred to by the State in its answer brief to this Court, *i.e.* case file. No. 21000111/2011 titled " Presa María José Teresa c/ Estado Nacional Argentino s/ Demanda Ordinaria" in which the statute of limitations for liability actions was not applied because it was considered contrary to the Convention. In its Report No. 1/93 on friendly settlement in the *Case of Birt et al. v. Argentina* of March 3, 1993, the IACHR stated that the petitioners, who had been arbitrarily detained during the military dictatorship "(...) sued the Argentine State for pecuniary and moral damages that were caused to them as a consequence of their detention. The lawsuits were filed three months after the fall of the military government. In many cases the petitioners obtained favorable rulings in the first instance, but the Federal Chamber of Córdoba and the Supreme Court of Justice of the Nation declared that the actions were time-barred". Available at: http://www.cidh.oas.org/annualrep/92span/Argentina10.288.htm.

[23] *Case of Perrone and Preckel v. Argentina. Reconsideration of Summons to Hearing.* Order of the Inter-American Court of Human Rights of January 29, 2019, paragraph 12.

> [...] [T]he issues of referral of files to the Court do not necessarily have to be solved through the Order of Summons to Hearing [...] In this sense, in the event that it deems it pertinent, the Court may request it as evidence that is helpful and necessary at the appropriate procedural moment, in accordance with Article 58 of the Rules of Procedure of the Court.

46. In its brief of final arguments, the representative submitted as evidence in the proceedings: i) the draft friendly settlement agreement discussed before the Commission, and ii) the draft Presidential Decree, which was part of the administrative file requested to the State as evidence in the ESAP (*supra* para. *), and tables of parametric approximations to determine the amount of the full reparation requested, by means of salary calculations.

47. In its observations on the documents submitted in the final arguments of the representative, the ***State*** recalled its position on the inadmissibility of the documents submitted because they were not submitted at the appropriate procedural time. Thus, it requested that they be rejected *in limine*. [**Merits, 369]** The ***Commission***, for its part, indicated that the documentation provided by the representative was important for the determination of the measures of reparation. Likewise, with respect to the opinion of the Ministry of Justice and Human Rights, it stated "[...] that the merits report [referred to it], [and therefore it was] timely assessed by the Commission [...]".

48. In view of the foregoing, the ***Court*** recalls that the filing of final written arguments of the parties and observations of the Commission does not allow the presentation of new evidence, the exception to this being the provisions of Articles 57 and 58 of the Rules of Procedure of the Court, applicable to cases of *force majeure* or serious impediment, if this evidence refers to an event that occurred after the appropriate procedural moments or if it was requested as evidence for a better resolution by this Tribunal. In this regard, the Court notes that the representative did not submit such evidence at the appropriate procedural time, and therefore such submission does not fall within the aforementioned statutory grounds.

49. Consequently, the Court rejects the exhibits submitted as annexes to the closing arguments of the representative.

### *B. Admissibility of testimonial and expert evidence*

50. The Court notes that no testimonial or expert evidence was received during the processing of this case.[24]

## VI
## FACTS

51. This chapter will establish the facts of the case, which were not disputed by the parties based on the factual framework submitted to the Court by the Commission, taking into consideration the body of evidence before the Court, the allegations of the representative and the State. Therefore, they will be presented according to the following sections: a) About Elba Clotilde Perrone and Juan José Preckel; b) Contextual background (out of competence): the arrests of Elba Clotilde Perrone and Juan José Preckel in 1976; c) Labor relationship between the State and the alleged victims; d) Administrative proceedings; e) Judicial proceedings; f) Compensation received by the alleged victims under Law 24.043 (Compensation for Former Detainees), and g) Other internal acts.

### *A. About Elba Clotilde Perrone and Juan José Preckel*

52. Elba Clotilde Perrone Olague was born on May 21, 1946,[25] in Bahía Blanca, Argentina.

53. Juan José Preckel Russo was born on August 6, 1953,[26] in Ayacucho, Province of Buenos Aires, Argentina.

54. The alleged victims worked as civil servants in the General Tax Directorate (hereinafter

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[24] The Commission withdrew its expert opinion offered days before the hearing of the case.

[25] *Cf.* Certification of the Penitentiary Service of the Ministry of Government of the Province of Buenos Aires (evidence file, f. 1121).

[26] *Cf.* Certification of the Penitentiary Service of the Ministry of Government of the Province of Buenos Aires (evidence file, f. 93).

"DGI"), Elba Clotilde Perrone belonged to Group 11, function 2[27] and Juan José Preckel to Group 41, function 1.[28] The DGI is a body that belongs to the Federal Administration of Public Revenues (AFIP)[29] and its functions are the application, receipt, collection and control of State taxes. At the beginning of July 1976, this agency belonged to the Ministry of Finance.

### B. *Contextual background: arrests of Elba Clotilde Perrone and Juan José Preckel in 1976*

55. The contextual background of the present case took place during the military dictatorship that ruled Argentina since 1976, during which state agents committed a series of human rights violations against the population. The dictatorship came to an end in December 1983, when Raúl Alfonsín assumed power, becoming President of the Argentine Republic.

56. On July 6, 1976, a group of people dressed as civilians entered the homes of the alleged victims, in the city of Mar del Plata, Province of Buenos Aires, accusing them, according to their statements, of being "subversives" and of "threatening national security". The alleged victims were detained in different police and military facilities.

57. However, it was not until March 18, 1977, that the alleged victims were informed that their detention had been ordered by means of National Executive Decree No. 484[30] of February 23, 1977.

58. Mrs. Perrone subsequently stated that she remained deprived of liberty in different detention centers, such as Unit 8 of Olmos in the City of La Plata, Province of Buenos Aires, and Unit 2 of Villa Devoto;[31] remaining at the disposal of the National Executive Power (hereinafter "PEN")[32] until October 16, 1982,[33] when she was notified by the Head of the Judicial Division about the modification of her status. She was placed under probation with the obligation to report every three days to the military or police authorities, as well as to refrain from participating in public or private meetings of any nature, among others. This situation continued until July 25, 1983, when Decree No. 1859 stopped PEN from placing her at their disposal.[34] The alleged victim stated that she tried to make use of her right to leave the country on several occasions, but that her request was denied each time.

59. According to Mrs. Perrone's statements, during the time of her detention she suffered "[...] psychological torture consisting[,] among others[,] of mock executions, [physical torture with] the electric prod placed on her genitals, mouth and breasts. [Given the harsh weather in Azul, as well as the precarious condition of the prison, she began to suffer from severe bronchitis and asthma attacks. [The] psychological torture [was] conducted by the Federal Penitentiary Service

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27 *Cf.* Complaint of Elba Clotilde Perrone before the Federal Judge of June 24, 1988 (merits file, Annex 4.a of the Merits Report, f. 211).

28 *Cf.* Complaint of Juan José Preckel before a Federal Judge on June 24, 1988 (evidence file, f. 1460).

29 Taxes Customs Social Security, available at: http://www.afip.gob.ar/sitio/externos/institucional/impositiva/

30 General Jorge Rafael Videla, then President of the Argentina, issued "Secret Decree" [Decree "S"] No. 484, which in its operative part ordered, among other points, the following: "[...] CONSIDERING: That it constitutes a primary responsibility of the Government to consolidate domestic peace, ensure public tranquillity and order and preserve the permanent interests of the Republic; That in the opinion of the National Executive Branch -the only one empowered to assess this background- the activity of the persons included in this decree goes against the values indicated in the preceding recital and is directly and closely related to the causes that led to the declaration of the state of siege. Therefore, and by virtue of the powers expressly granted to him by Section 23 of the National Constitution, THE PRESIDENT OF THE ARGENTINE NATION DECREES: Article 1 - The aforementioned persons [...] Juan José PRECKEL (MI 10.506.404) [...] Elba Clotilde PERRONE (LC 5.255.882) [...] Article 2 - The aforementioned persons [...] shall remain at the place of detention to be determined for that purpose". *Cf. Secret and Reserved Decrees,* Official Gazette of the Argentine Republic, Year CXXI, Number 32.623, April 22, 2013, p. 19. Available for download (p. 102) at: https://bcn.gob.ar/uploads/DOSSIER-87-DECRETOS-SECRETOS-y-RESERVADOS-PUB2013.pdf

31 Statement of Elba Clotilde Perrone, undated (evidence file, f. 1116).

32 *Cf.* Complaint of Elba Clotilde Perrone before the Federal Judge of June 24, 1988 (evidence file, Annex 4.a of the Merits Report, f. 209).

33 *Cf.* Record of the Chief of the Judicial Division of the Institute of Detention of the Federal Capital, October 15, 1982, addressed to Elba Clotilde Perrone Olague (evidence file, f. 1119). In the Merits Report, the IACHR specified that the notification of said record took place on October 16, 1982.

34 *Cf.* Decree No. 1859 of July 25, 1983, issued by the National Executive Branch (evidence file, f. 1408).

[...]", concluding that once she was released, she underwent several gynecological studies and examinations that "[...] showed a diagnosis of marked deterioration of the womb and uterine polyfibromatosis [...] thus losing the possibility of procreating".[35]

60. On August 7, 1979, Mr. Preckel was transferred to the Department of Foreign Affairs of the Federal Police in order to arrange his departure from the country, pursuant to Decree No. 2664.[36] After several demarches before the German Embassy and with the support from Amnesty International, on September 7, 1979, Mr. Preckel traveled to Germany as an exile, a situation in which he remained until December 1984, when he returned to Argentina.

61. According to Mr. Preckel's statements, during his detention he was subjected to "physical and psychological torture (electric prod on the back, genitals and mouth, torture with a dental drill on his teeth and gums and mock firing squad), he lost about eight teeth due to their deterioration from the torture sessions and [to his] physical weakness due to lack of adequate food".[37]

### *C. Employment relationship between the State and the alleged victims*

62. At the time of the alleged victims' arrests on July 6, 1976, both worked for the General Tax Directorate (DGI).

63. On August 26, 1976, the DGI ordered an administrative proceeding to be initiated,[38] as contemplated in Article 36 of the Civil Service Investigations Regulations - Decree No. 1798/80,[39] due to the alleged victims' absence from work. On July 27, 1976, the DGI sent a communication to the Air Defense Artillery Group, indicating that Mrs. Perrone and Mr. Preckel had been absent from work for some time and that according to information provided by their relatives, they had been detained. The DGI maintained that due to the lack of proof of the arrests, their absence should be qualified as unjustified, resulting in the loss of their jobs. That same day, the Colonel of the Air Defense Artillery Group reported that the alleged victims were indeed at the disposal of the military authorities.

64. On August 10, 1976, the DGI decided to preventively suspend Mr. Preckel[40] and Mrs. Perrone,[41] taking into consideration that both persons were detained and that the suspension was "without prejudice to the processing of the pertinent administrative investigation".

65. On August 26, 1976, the DGI initiated administrative investigation 49/76[42] in order to determine the status of the alleged victims, considering "that such agents were absent from work without just cause".

66. Subsequently, on October 21, 1976, the Colonel of the Air Defense Artillery Group sent a communication to the DGI indicating that the alleged victims had been detained "on suspicion of belonging to a paramilitary organization".[43]

67. On April 10, 1979, the Board of Directors of the DGI issued an opinion in which it shared the opinion of the General Directorate of Legal Affairs of the Secretariat of State of Finance, regarding the suspension of administrative investigation No. 49/76, concluding that "there were no elements of judgment that would make it possible [...] to advise the disciplinary sanction to be applied to the persons being investigated, against whom, moreover, there were no judicial or military

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35 Statement of Elba Clotilde Perrone, undated (evidence file, ff. 1114 and 1115).

36 *Cf.* Certification of the Penitentiary Service of the Ministry of Government of the Province of Buenos Aires (evidence file, f. 93).

37 Statement of Juan José Preckel (evidence file, Annex 2 of the Merits Report, ff. 134 and 135).

38 *Cf.* Order of the Head of the DGI Mar del Plata Region of August 26, 1976 (merits file, Annex 3.a of the Merits Report, f. 142).

39 When the agent is deprived of liberty, he/she shall be preventively suspended, and the pertinent summary proceedings shall be carried out, and he/she shall return to duty within two days of regaining his/her liberty.

40 *Cf.* Order of the Chief of the DGI Mar del Plata Region of August 10, 1976 (evidence file, f. 1225).

41 *Cf.* Order of the Chief of the DGI Mar del Plata Region of August 10, 1976 (evidence file, f. 1227).

42 Communication from the Chief of the DGI Mar del Plata Region of August 26, 1976 (merits file, Annex 3.a of the Merits Report, f. 142).

43 Communication from the Colonel of the Air Defense Artillery Group of October 21, 1976, addressed to the DGI Lead Investigator (evidence file, f. 1250).

proceedings".[44] As a result, the Directorate of Technical and Legal Affairs decided that the proceedings should remain suspended until the persons involved could provide statements.

68. **Elba Clotilde Perrone** was released on October 19, 1982 under the supervised liberty regime[45] and returned to work at the DGI on October 20 of that same year. Subsequently, on April 27, 1983, she submitted a letter addressed to the DGI in which she stated that she had not been notified of the administrative investigation No. 49/76.[46] By order of the Lead Investigator, the DGI took Mrs. Perrone's statement on August 23, 1983[47] in which she ratified what she had said in her previous statement.

69. Regarding **Juan José Preckel**, from his exile in Hidenheim, Germany, he sent a letter to the DGI, which was received on February 20, 1984,[48] in which he requested his reinstatement into his job.[49] On September 7 of the same year, the Head of the Human Resources Department of the DGI responded to his request, informing him that his reinstatement was appropriate because "[...] no charges had arisen from the summary proceedings initiated [against him]".[50]

70. On October 16, 1984, the Director General of the DGI issued the resolution of administrative investigation 49/76, by means of which Elba Clotilde Perrone and Juan José Preckel were declared exempt from liability and, consequently, the proceedings against both of them were closed.[51]

71. On February 4, 1985, Mr. Preckel returned to work as an employee of the DGI.[52]

### *D. Administrative procedures*

#### *D.1. Elba Clotilde Perrone's administrative proceedings*

72. On April 27, 1983, Mrs. Perrone submitted a letter to the DGI requesting the initiation of the corresponding proceedings for the payment of the wages lost during her detention until the time she returned to work, arguing that the reason for her absence "was not due to [her] will but because she was prevented from working [due to her detention]".[53]

73. On May 26, 1984, the Directorate of Technical and Legal Affairs (hereinafter "DATJ") of the DGI issued a resolution deeming it viable the payment of lost wages during Mrs. Perrone's detention,[54] arguing the following:

> It is a fair solution that if the Justice [sic] ultimately establishes that the agent has been unconnected to the crime, the Administration pays her wages lost during the time of the preventive suspension.

74. In said resolution, the DATJ of the DGI concluded that the obligation of the Administration should be acknowledged, and therefore it was appropriate to pay the lost wages, including her participation in the "Stimulus Fund"; the computation of the suspension period for the purposes of retirement benefits and ordinary annual leave, with the exception of her hierarchical position. Notwithstanding the above, said resolution stated that in counsel's opinion, the case could entail a "precedent of general interest to the whole Administration", so it referred the case to the Office of the Chief Legal Counsel of the Nation (hereinafter "PTN"), for consultation.

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[44] *Cf.* Opinion of the Board of Directors of the DGI of April 10, 1979 (merits file, Annex 3.c of the Merits Report, f. 147).

[45] *Cf.* Complaint of Elba Clotilde Perrone before a federal judge on June 24, 1988 (*supra*, f. 2198).

[46] *Cf.* Letter of Elba Clotilde Perrone addressed to the DGI on April 27, 1983 (evidence file, ff. 149 and 150).

[47] *Cf.* Statement of Elba Clotilde Perrone before the DGI of August 23, 1983 (merits file, Annex 3.e, f. 153).

[48] Juan José Preckel's letter addressed to the Head of the DGI Mar del Plata Region, received by the DGI on February 20, 1984 (merits file, Annex 3.f of the Merits Report, f. 155 and 156).

[49] Juan José Preckel's letter to the DGI dated February 20, 1984 (evidence file, ff. 155 and 156).

[50] *Cf.* unnumbered letter from the Head of the Human Resources Department of the DGI dated September 7, 1984 (evidence file, f. 158).

[51] *Cf.* Communication 244/84 of the Director General of the DGI of October 16, 1984 (evidence file, Annex 3.h of the Merits Report, f. 160).

[52] *Cf.* Initial Petition (evidence file, Annex 1.a of the Merits Report, f. 12 and 13).

[53] *Cf.* Brief of Elba Clotilde Perrone addressed to the DGI (*supra,* ff. 149 and 150).

[54] *Cf.* unnumbered Resolution issued by the Directorate of Technical and Legal Affairs of the DGI, dated May 1984 (evidence file, ff. 165 to 171).

75. On May 28, 1985, the DATJ of the DGI[55] once again issued an opinion in which it reiterated that the payment of back earnings claimed by Mrs. Perrone was justified under the following arguments:

> Using the premise that agent Perrone endured a punishment to the extent our highest court is empowered, which becomes unfair inasmuch as she was not subjected to any proceeding whatsoever [...] it is not out of line to recognize the claimant's wages for the time she was detained as well as the amounts corresponding to vacations [...] leave not taken [...and ] seniority for non-pension purposes.

76. However, in its last resolution the DATJ referred the matter for consultation to the PTN, given the lack of precedents.

77. On July 24, 1985, the General Directorate of Legal Affairs of the Ministry of Economy, under the Secretariat of Economy, issued an opinion in which, like the DATJ of the DGI, it considered it viable to reimburse the salaries lost during the time of Mrs. Perrone's detention. In that decision it stated that "[...] while Circular No. 5/77 of the General Secretariat of the Office of the President of the Nation establishes that wages should not be paid for services not provided [...] it is obvious that in this instance, the appellant was precluded from showing up [for work] by virtue of acts of authority [...]", and that both the doctrine and the jurisprudence of the Argentine courts admitted in principle "[...] that acts of authority or of the sovereign [...] constitute force majeure when they create difficulties impossible to overcome for the performance of obligations [...]". It also stated that: "[i]n view of the nature of the issue at hand, the economic interest involved and in order to establish administrative jurisprudence [...] it is considered appropriate to request the intervention of the [PTN to issue its opinion in the resolution of the case]"[56] .

78. On September 19, 1986, the PTN issued its "opinion" regarding the issues submitted for its consideration by the two aforementioned instances, and stated that the claims should be denied, alleging the following:

> [...] it is not appropriate to recognize to the aforementioned agent [Elba Clotilde Perrone], her salary for the aforementioned period [of her detention].
>
> Indeed, although during the term of C.C.T. [Collective Bargaining Agreement] No. 46/75 [...] it would have been viable to recognize it in the absence of any express rule to the contrary [...], the circumstance that Circular No. 5/77 of the General Secretariat of the Presidency of the Nation has determined a restrictive criterion on the subject of recognition of earnings without services rendered, imposes limiting it to the instances in which there exists an express provision of law.[57]

79. It should be noted that Circular No. 5/77 of March 3, 1977 was issued by the General Secretariat of the Presidency of the Argentine Nation,[58] referring to the limitation of services and salaries, which stated that the payment of salaries was the obligatory consequence for services effectively rendered and that the only instance in which it could be paid during a period of inactivity was if a legal provision declared it to be subsisting.

80. On March 19, 1987, the Director General of the DGI issued Resolution No. 75/87, whereby he resolved that, in accordance with everything that had been done and the PTN's ruling, "[...] [Mrs. Perrone's] claims [should] be denied, with the exception of those related to the recognition of seniority for pension purposes, for which purpose [she] should initiate the respective proceedings before the Union of Employee Benefits [...]".[59]

*D.2. Juan José Preckel's administrative proceedings*

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55 *Cf.* Resolution of the Director of Technical and Legal Affairs of May 28, 1985 (evidence file, ff. 1436 to 1438).

56 *Cf.* Communication No. 74/85 of the Director General of Legal Affairs of the Ministry of Economy of July 24, 1985 (merits file, Annex 3.k of the Merits Report, f.174).

57 *Cf.* Resolution of the Chief Legal Counsel of the Nation of September 19, 1986 (merits file, Annex 3.m of the Merits Report, ff. 183 and 184).

58 *Cf.* Opinion of the General Directorate of Legal Affairs of the Ministry of Economy of July 24, 1985 (merits file, Annex 3.k of the Merits Report, f. 174).

59 *Cf.* Resolution No. 75/87 issued by the Director General of the DGI on March 19, 1987 (merits file, Annex 3.n of the Merits Report, f. 187).

81. On July 2, 1985, Mr. Preckel filed an administrative claim before the DGI,[60] requesting the recognition of his labor and social security rights during the period from July 6, 1976 to February 4, 1985 (the day he returned to work at his workplace).

82. On December 17, 1987, the Ministry of Economy rejected the request made by Mr. Preckel, through Resolution No. 1217, stating that "[...] although the General Directorate of Legal Affairs [of the same] Ministry stated that from a formal point of view the claim [was] admissible [...] as far as the merits were concerned, [...] the Chief Counsel of the Nation [had] issued [an] opinion in an analogous case [...] to this one to which [it] should refer. This criterion was of mandatory compliance [...]".[61]

### *E. Legal Proceedings*

83. On June 24, 1988 the alleged victims filed separate complaints before a federal judge against the National State - DGI. Both claims were based on articles 14.c of the Rules on Leaves of Absence, Justifications and Exemptions of the National Public Administration (hereinafter "the Rules")[62] and 192 of the Collective Labor Convention N°46/75E.[63]

84. The purpose of Mrs. Perrone's lawsuit was to claim the payment of unearned salaries from July 6, 1976 to October 19, 1982, the amounts for supplementary annual salary, the recognition of the relocation and the corresponding periods of ordinary leave accrued and not taken during the aforementioned period.[64]

85. On the other hand, Mr. Preckel's lawsuit was aimed at claiming the payment of unearned wages between July 6, 1976 and February 4, 1985, the participation in the Stimulus Fund, the leave that was not taken and the recognition of seniority for social security and work purposes.[65]

86. In both lawsuits, it was argued that such provision justified the payment of salary credits when the absence from the DGI agents was justified in "duly proven cases of force majeure", which was the hypothesis in which their case was included. In this sense, they stated that the validity and application of Circular No. 5/77, by means of which the administrative authorities had denied their requests, was not applicable, since said circular stated that the payment of salaries lost due to non-attendance was not appropriate, unless there was a legal provision expressing the contrary, such as the aforementioned Article 14.c of the Public Administration Rules on Leaves of Absence, Justifications and Exemptions (hereinafter "the Rules"), which allowed such exception under the concept of force majeure.

87. The alleged victims stated in their briefs that there was a causal relationship between the act that ordered the deprivation of their liberty and the material damage suffered due to the State's refusal to pay the remuneration and benefits they were requesting.

88. On February 6[66] and 12[67] , 1992, a Federal Judge denied the claims of Mr. Preckel and Mrs. Perrone, respectively. The orders, concluded as follows:

> [...] it must be admitted that it was not the D.G.I. that ordered the arrest, subsequently found to be unjustified, and that it was the P.E.N. itself through the Ministry of the Interior, who carried out and

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60 *Cf.* Resolution of the Federal Judge of the Judiciary of the Nation of February 6, 1992 (evidence file, f. 1484).

61 *Cf.* Resolution of the Ministry of Economy of December 17, 1987 (evidence file, Annex 3 of the Merits Report, ff. 190 and 191).

62 Article 14. Employees shall be entitled to the justification of their absences for the following causes and with the limitations established in each case:

c) Special reasons: absences due to meteorological phenomena and duly proven cases of force majeure [...].

63 Article 192 of the Collective Labor Convention literally adopts the provisions of Article 14 of the Rules on Leaves of Absence, Justifications and Exemptions of the National Public Administration (*Cf.* Undated appeal filed by Juan José Preckel before the Court of Appeals (merits file, Annex 4.c of the Merits Report, ff. 228 to 229)).

64 *Cf.* Complaint of Elba Clotilde Perrone before a federal judge on June 24, 1988 (*supra*, f. 212).

65 *Cf.* Complaint of Juan José Preckel before a federal judge on June 24, 1988 (evidence file, f. 1443).

66 *Cf.* Resolution of the Federal Judge of February 6, 1992 to the claim of Juan José Preckel (evidence file, ff.1484 to 1488).

67 *Cf.* Resolution of the Federal Judge of February 12, 1992 to the claim of Elba Clotilde Perrone (evidence file, Annex 4.b of the Merits Report, ff. 217 to 222).

brought about the state of affairs, which harmed the plaintiff [...].

[…] Circular 5/77 and the Regulations on Administrative Investigations (art. 39, sub. a), established that the non-provision of work must be matched by the non-payment of such work. It is not [...] a penalty, it occurs because the person who did not receive benefits does not have to pay them.

It is the doctrine of the Supreme Court that, barring an express and specific provision for the particular instance, payment of wages for unperformed duties is not proper [...].

[...] it is evident that the investigation conducted at the administrative agency in no way had any bearing on bringing about harm to the plaintiff and it is also clear that the provisions of circular 5/77 and Article 39 subsection A of the aforementioned Regulation [...] precluded recovery or payment of lost wages; these precepts were not contested by the plaintiff who, furthermore, did not ask for compensation for the losses suffered based on [their] unjustified detention [and exile, in the case of Mr. Preckel].

Moreover, it is difficult to accept, even though the D.G.I. belongs to the National State, that the claim, which could have been pursued based on the principle of "iura novit curia," as an action for damages, which would be supported by some reference contained in the complaint, included "in integrum" the National State in its governing function; that is to say, it would be like admitting that the D.G.I. would have to be accountable for eminently political acts of the Executive Power itself [...].[68]

*E.1. Appeals filed by Juan José Preckel*

89. Mr. Preckel filed an appeal (undated) before the National Court of Appeals for Federal Administrative Matters (hereinafter "Court of Appeals"). He argued that, apart from the provisions of Circular 5/77, there were "very specific grounds that would enable payment for services not performed", as would be detention by State's agents without opening investigation proceedings against him. Furthermore, he added that the Rules provide for the payment of wages for reasons of force majeure, such as the arbitrary detention to which he was subjected. He also indicated that, contrary to what was stated by the Federal Judge, "[...] it is not a question of imputing to [the DGI] the patrimonial consequences that the unlawful action [...] of [the] National State, "in integrum" [but] to demand that the entity created by the State, which has been sued [...] in relation to the unpaid salaries and benefits [...] recognize [...] the payment of the unpaid salaries [...]".[69]

90. On November 24, 1992, Chamber III of the Federal Court of Appeals for Contentious Administrative Matters issued its decision in which it upheld the first instance ruling, stating that "the payment of wages for services not provided is not proper" and that the provisions of law cited by the claimant would belong to the Rules, which include circumstances obviously different from the ones on the record in the case proceedings. It held that "[...] although the principle of *iura novit curia* empowers judges to apply the law *ex officio*, it does not allow them to deviate from the terms and scope of the claim articulated in the complaint and its answer [...] given that the unilateral alteration of the terms of the *dispute* is detrimental to the right of defense. Therefore, taking into account the moral person and the object of the complaint (the plaintiff having expressly clarified that he does not impute to the defendant agency the patrimonial consequences of the legal and detrimental actions of the National State), it is not appropriate that the DGI [...] bear the burden of the redress for damages stemming from the potential unlawful conduct of the National Executive Branch [...]".[70]

91. In view of this result, on December 24, 1992, Mr. Preckel decided to file an extraordinary appeal, through which he argued that his claims were justified since, according to Articles 14.c of the Rules and 192.a of the Collective Labor Convention No. 46/75E, it was determined that "agents would be justified to be paid for absences incurred in cases of force majeure, without any time

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[68] *Cf.* Judgment of February 6 and 12, 1992 issued by the Federal Judge (merits file, Annex 4.b of the Merits Report, f. 219 to 222).

[69] Undated appeal filed by Juan José Preckel before the Court of Appeals (merits file, annex 4.c of the Merits Report, ff. 228 to 229).

[70] *Cf.* Judgment of Chamber III of the National Court of Appeals for Federal Administrative Matters of November 24, 1992 (merits file, annex 4.d of the Merits Report, ff. 243 to 246).

limit whatsoever". Furthermore, he argued that the provisions cited constituted an exception to Circular 5/77.[71]

92. On March 4, 1993, the Chamber of the Court of Appeal denied the appeal filed by Mr. Preckel. It held that the claimant merely "disagreed with the assessment of the appealed decision, without realizing that it was sufficient *prima facie* to disqualify the appealed ruling as a jurisdictional act because of the seriousness of the mistakes that are attributed to it".[72]

93. Mr. Preckel filed a petition in error because of the denial of the extraordinary appeal before the Supreme Court of Justice of the Nation.[73] On May 21, 1996, a majority of said Court denied the appeal as inadmissible, invoking Article 280[74] of the National Civil and Commercial Code (CCCN).[75]

94. It is worth mentioning that this decision was the subject of a dissenting vote by the Vice-President of the Supreme Court,[76] who pointed out that "the judgment should have referred to events that took place during a period of extremely serious disruption of the legal order [...] of complete elimination of all traces of job stability [...] This required [...] granting the applicable legal norms a scope that would safeguard and protect the victims of events such as those examined with respect to inconceivable circumstances, making their understanding more flexible in order to adapt them to situations [...] that could not have been contemplated by the legislature".[77]

*E.2. Appeals filed by Elba Clotilde Perrone*

95. On May 6, 1992, Mrs. Perrone filed the appeal[78] against the judgment issued by the federal judge on February 12, 1992. She argued that, in keeping with legislation in force at the time, it was viable to claim salaries in the event that the absences had been caused by "force majeure".

96. On September 21, 1993, Chamber IV of the Court of Appeals reversed the first instance ruling, granting the claim in substance, stating the following:

> [...] an equitable solution [...] can be reached in keeping with the provisions of law which allowed justification of absences with payment of wages by agents in cases of duly proven *force majeure.* Examples of the aforementioned are D.G.I. Collective 46/75 (Article 192.a) in force at the time of the plaintiff's detention, and decree 3.413/79 (Article 14c) in effect as of the date of her reinstatement

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71 Juan José Preckel's extraordinary appeal to the Supreme Court on December 24, 1992 (evidence file, ff. 248 to 265).

72 *Cf.* Judgment of the Contentious Administrative Chamber on the appeal filed by Juan José Preckel on March 4, 1993 (evidence file, annex 4.f of the Merits Report, f. 268).

73 Petition in error of denial of extraordinary appeal filed by Juan José Preckel, undated (evidence file, annex 4.g of the Merits Report, ff. 270 to 291).

74 *Cf.* CPCCN, Article 280.- Appeal. Dismissal of the extraordinary appeal. Briefs in the ordinary appeal. When the Supreme Court reviews a motion for leave of appeal to it, accepting the cause shall entail the case file being transferred to it. The Court, at its reasoned discretion, and merely by citing this provision, shall deny the motion, for lack of sufficient federal offense or when the issues raised are unsubstantial or lacking great significance. In the case of the ordinary appeal under Article 254, the file shall be placed in the secretariat, and the order shall be notified personally or by letter. The appellant shall file a brief within a period of TEN (10) days, of which the other party shall be notified for the same period. Failure to file the brief or its insufficiency shall result in the dismissal of the appeal. Once the brief has been answered or the term to do so has elapsed, the case shall be called for hearing. In no case shall the opening of evidence or the allegation of new facts be admitted.

75 *Cf.* Judgment of the Supreme Court of May 21, 1996 (evidence file, Annex 4.h of the Merits Report, f. 293).

76 Dissenting vote of Eduardo Moline O'Connor, Vice President of the Supreme Court of Justice of the Nation (merits file, Annex 4.h of the Merits Report, f. 294 to 302).

77 At the same time, in paragraphs 14 and 15, it stated that "[...] the rejection of the claim by means of a decision lacking adequate grounds which, at the same time, has omitted to deal with arguments with sufficient aptitude to modify the result of the lawsuit and has given merit to a defense that was not the object of a timely allegation, has entailed a curtailment of the right of defense in trial that authorizes its disqualification as a jurisdictional act" [...] [...]. In view of the foregoing, it must be concluded that the decision is directly and immediately related to the constitutional guarantees that are alleged to have been violated (art. 15 of Law 48)". Therefore, it concluded that the complaint filed by Juan José Preckel should be upheld and the extraordinary appeal filed should be declared admissible.

78 Undated appeal filed by Elba Clotilde Perrone before the Court of Appeals (merits file, Annex 4.i of the Merits Report, ff. 305 to 319).

[...].[79]

97. The Court of Appeals concluded with the argument that does not seem unreasonable to think that the aforementioned detention of the plaintiff, and the unlawful protraction thereof [...] without being subjected to any trial proceeding, and without there being any proof of any disciplinary liability, constitutes a case of *force majeure* that justifies her failure to provide services and the payment of unearned income; [...] and those circumstances [...] lead to consider [...] the situation of exception set forth in Circular No. 5/77 and in the doctrine of the Supreme Court of Justice invoked in the appealed judgment. [...] The proposed solution is consistent with constitutional principles and protections [...] considering that a strict and objective application of the provisions of the law would lead to inequitable results [...]".[80]

98. Consequently, the Court of Appeals recognized Mrs. Perrone's right to the payment of her unearned salaries. However, it declared that her relocation in the hierarchy of the DGI or the benefits for periods of regular leave not taken were not applicable.

99. In response to the judgment of the Court of Appeals, on October 15, 1993, the DGI filed an extraordinary appeal[81] before the same body to be dealt with by the Supreme Court, alleging that the force majeure criterion should not be applied to Mrs. Perrone's case, since "the plaintiff did not show up to work because she was arrested at the disposal of the National Executive Branch, a circumstance totally unconnected to the agency".

100. The Court of Appeals rejected the admissibility of the appeal and the DGI filed a complaint appeal directly before the Supreme Court of Justice of the Nation. On May 21, 1996, the SCJN declared the DGI's complaint admissible based on the following grounds:

> "[...] the controversy has arisen in terms that involve a typical federal issue because the scope of application and understanding of federal rules -such as section 14, subsection c, of Decree 3413/79; Decree-Law 666/57; Decree 1798/80- are at stake, and the decision has been contrary to the claim supported by the appellant (section 14, subsection 3, Law 48)".

101. As a consequence of the foregoing, the Supreme Court proceeded to the analysis of the merits and revoked the judgment of the Court of Appeals, based on the following arguments:

> [...] the plaintiff did not show up for work for reasons unconnected to her will for almost six years; during that period of time, the employer did not order the termination of the relationship of public employment, which remained in effect without payment of wages.
>
> It is not possible then, to formulate analogies based on the rules of exemptions and leaves of absence, but rather by applying the provisions pertaining to the disciplinary procedure or, as the case may be, by filling in the gaps with its principles.
>
> [...] there has not been an express provision that allows for an exception to the essential principle on the subject of wages, which is, that it is not proper to pay wages for unrendered services. It does not mean a denial of the consequences of the unlawful act of the de facto government from the perspective of responsibility of the National State, an issue that, procedurally and substantively, were not raised in the record of the case proceedings.[82]

### *F. Regarding compensation received by the alleged victims under Law 24.043 (Compensation for Former Detainees)*

102. As a consequence of the serious human rights violations committed by the dictatorship in

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79 *Cf.* Judgment of the Court of Appeals of September 21, 1993 (merits file, Annex 4.j of the Merits Report, f. 326).

80 *Cf.* Judgment of the Court of Appeals of September 21, 1993 on Case No. 28.414 (evidence file, Annex 4.j of the Merits Report, ff. 321 to 331).

81 Leave to appeal before the Supreme Court of October 15, 1993 filed by the DGI before the Supreme Court (merits file, Annex 4.k of the Merits Report, f. 338).

82 *Cf.* Judgment of the Supreme Court of May 21, 1996 (evidence file, Annex 4.h of the Merits Report, f. 293).

Argentina from 1976 to 1983,[83] on January 2, 1992, Law 24.043[84] was published in the Official Gazette, through which "benefits were granted to persons who had been placed at the disposal of the National Executive Power (P.E.N.) during the state of siege or who, being civilians, had been detained by virtue of acts emanating from military courts", provided that they had not received any compensation by virtue of a judicial sentence, "due to the facts contemplated herein".[85]

103. As pertinent, said Law established that:

> Article 1° - Any persons who were placed at the disposal of the National Executive Branch, while the state of siege was in force, under a decision of this branch or, in their status as civilians have endured detention by virtue of acts emanating from the military tribunals, regardless of whether or not they have brought a suit for damages, are eligible to benefit from this law, provided that they have not received any indemnification under a judgment of a court of law, based on the events covered in the instant law.
>
> Article 2 - In order to benefit from this law, the persons mentioned in the previous article must fulfill one of the following requirements:
>
> > a) Having been placed at the disposal of the National Executive Branch prior to December 10, 1983.
> >
> > b) As civilians, having been deprived of their liberty for acts emanating from military tribunals, regardless of whether or not there was a conviction in this jurisdiction.
>
> Article 3 - The requirement of the benefit shall be made to the Ministry of the Interior, which shall summarily verify the compliance with the requirements of the preceding articles and the duration of the validity of the measure mentioned in Article 2, paragraphs a) and b).
>
> The resolution that totally or partially denies the benefit may be appealed within ten (10) days of its notification before the National Chamber of Appeals in the Federal Contentious Administrative Matters of the Federal Capital. The appeal shall be filed with grounds and the Ministry of the Interior shall submit it to the Chamber with its opinion within five (5) days. The Chamber shall decide without further proceedings within twenty (20) days of receipt of the proceedings.
>
> Article 4 - The benefit established herein shall be equal to one-thirtieth of the monthly remuneration assigned to the highest category of the scale for civilian personnel of the national public administration (approved by Decree No. 1428 of February 22, 1973, or the one replacing it), for each day the order referred to in Article 2(a) and (b) lasted, with respect to each beneficiary. For this purpose, the monthly remuneration shall be considered as the totality of the items comprising the salary of the agent subject to retirement contributions, excluding the particular additional items (seniority, title, etc.), and the remuneration corresponding to the month in which the benefit is granted shall be taken.
>
> To calculate the period of time referred to in the preceding paragraph, the following should be considered: the Executive act ordering the measure, or an arrest not directed by order of a competent judicial authority; and the order that overturned it specifically or as a result of the end of the *estado de sitio*.
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> [...]
>
> The benefit corresponding to persons who, in the same circumstances, would have suffered very serious injuries, according to the classification made by the Penal Code, shall be

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[83] *Cf.* Judgment No. 8/10 "IRIART, Fabio Carlos - GREPPI, Néstor Omar - CONSTANTINO, Roberto Esteban - FIORUCCI, Roberto Oscar - AGUILERA, Omar - CENIZO, Néstor Bonifacio - REINHART, Carlos Alberto - YORIO, Oscar - RETA, Athos - MARENCHINO, Hugo Roberto s/Inf.art.144 bis, inc.1º and last paragraph, Law 14616, in fción. Art. 142, inc. 1º -Law 20642- of the CP in...", November 16, 2010, Federal Oral Court of La Pampa, "SECOND QUESTION, I) Brief examination of the context in which the episodes brought to trial took place. Nature of the facts", among many other possible references.

[84] Law 24.043 validated Decree 70/91 of January 10, 1991, resulting from the friendly settlement before the IACHR in the *Case of Birt et al. v. Argentina*, which compensated the petitioners who were victims detained by order of the Executive Branch during the military government.

[85] Article 1° of Law 24.043.

increased, for that fact alone, in an amount equivalent to that provided for in the preceding paragraph, reduced by thirty percent (30%).[86]

104. The State argued that through Resolution No. 2294 issued by the Undersecretariat for Human and Social Rights of the Ministry of the Interior dated July 15, 1994, Mr. Preckel received the amount of $172,956.00[87] (one hundred and seventy-two thousand nine hundred and fifty-six Argentine pesos, same amount equivalent in USD), a benefit corresponding to 2.647 days comprising the period between July 30, 1976 and October 28, 1983.[88]

105. Regarding Mrs. Perrone, she was compensated through Resolution No. 203, issued by the Undersecretariat of Human and Social Rights of the Ministry of the Interior dated July 25, 1995, in the amount of $144,875.00[89] (one hundred and forty-four thousand eight hundred and seventy-five Argentine pesos, same equivalent amount in USD), which was paid "on the date of the decree that ordered her to cease at the disposal of the National Executive Power [sic]".[90]

### *G. Other internal acts*

106. The representative informed that on January 24, 2005, by means of note SDH-AJI No. 32/05 and at the request of the Human Rights Directorate of the Argentine Foreign Ministry, the National Secretariat for Human Rights concluded that articles 1, 2, 8, 21 and 24 of the Convention and articles XIV, XVII, XVIII and XXIII of the American Declaration had been violated, and subsequently, the Secretariat ratified the same opinion on April 3, 2005 by means of note SDH/DAI No. 56/05 signed by the Undersecretary for the Protection of Human Rights of the Secretariat of the Nation and addressed to the Directorate of Human Rights of the Ministry of Foreign Affairs, International Trade and Worship, concluding that they found it pertinent to initiate a friendly settlement process in the case of Mr. Perrone and Mr. Preckel.[91] On April 3, 2009, through note SDH/DAJ No. 91/09, again signed by the Undersecretary for the Protection of Human Rights, the two previous opinions were ratified. Notwithstanding the foregoing, this process was not concluded internally or before the friendly settlement process before the Commission.

## VII
## MERITS

107. This case relates to the right to access to an adequate and effective remedy with due process guarantees, particularly by means of the duties to provide justification and reasonable delay, in favor of Mrs. Perrone and Mr. Preckel, who filed various administrative and judicial remedies to claim the payment of unearned wages and social benefits, lost as a result of their alleged arbitrary deprivation of liberty during the military dictatorship in Argentina. In view of the temporal limitation of the Court to evaluate facts prior to the acceptance of its jurisdiction by Argentina

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[86] Law on compensation for political prisoners. Available at: http://desaparecidos.org/nuncamas/web/document/nacional/ley24043.htm

[87] On July 15, 1994, the exchange rate of the Argentine peso was 0.9990000 US dollars, according to the Central Bank of the Republic of Argentina's website: http://www.bcra.gov.ar/PublicacionesEstadisticas/Cotizaciones_por_fecha_2.asp.

[88] Law 24.043 did not specify the items that made up the amount of the indemnity, it only established the formula to calculate it through Article 4: "the benefit [...] shall be equal to one-thirtieth of the monthly remuneration assigned to the highest category of the scale for civilian personnel of the national public administration [...] for each day the order lasted [...] with respect to each beneficiary. For this purpose, the monthly remuneration shall be considered as the totality of the items comprising the salary of the agent subject to retirement contributions, excluding the particular additional items (seniority, title, etc.), and the remuneration corresponding to the month in which the benefit is granted shall be taken.
To calculate the period of time [...] the following should be considered: the Executive act ordering the measure, or an arrest not directed by order of a competent judicial authority; and the order that overturned it specifically or as a result of the end of the *estado de sitio*. House arrest or probation shall not be considered as cessation of the measure [...]".

[89] On July 25, 1995, the exchange rate of the Argentine peso was equal to 1.0000000 US dollars, according to the Central Bank of the Republic of Argentina's website: http://www.bcra.gov.ar/PublicacionesEstadisticas/Cotizaciones_por_fecha_2.asp.

[90] *Cf.* Communication from the State of October 31, 1997 (evidence file, f. 118).

[91] *Cf.* Human Rights Secretariat Note No. 32/05 of January 24, 2005 (evidence file, f. 1789 to 1793).

(1984), it is incumbent upon the Court to rule on subsequent autonomous facts, in light of the scope of the rights recognized in Articles 8 and 25 of the American Convention for the purposes of the present case.

## VII.1
## RIGHTS TO A FAIR TRIAL AND TO JUDICIAL PROTECTION (ACCESS TO JUSTICE, ARTICLES 8 AND 25)

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

108. The ***Commission*** held that States Parties to the Convention are obliged to provide judicial remedies to victims of human rights violations, which must be conducted in accordance with the rules of due process. The Commission indicated that it has already ruled in several cases on the fact that "the adoption of an administrative reparations program ought not to preclude other judicial avenues to access comprehensive reparations".[92] The Commission focused on analyzing whether or not the remedies pursued in domestic courts were effective to settle the claims of the alleged victims, as provided for under Article 25 of the Convention. It thus analyzed whether the State's response complied with the guarantees of due process and offered effective mechanisms to address such claims, without examining whether the alleged victims were justified in their claims regarding the salaries and social benefits lost during the deprivation of liberty, and exile in the case of Mr. Preckel.

109. Regarding the guarantee of a reasonable period of time, the Commission considered that in light of the particulars of the matter and the State's failure to provide justification, the length of time of more than 12 years for the administrative and judicial proceedings to be completed surpasses any period of time that could be deemed as reasonable. Therefore, it concluded that the State is responsible for violating Article 8(1) of the American Convention. Regarding the duty of sufficient justification of decisions as a guarantee of due process, the Commission held that the administrative decisions of the DGI and of the Ministry of Economy merely declared the alleged victims' salary claims to be groundless. It noted that this lack of justification continued in subsequent court rulings. In particular, it noted that these decisions did not address the central aspect of the debate, *i.e.* how did the situation of arbitrary detention of the alleged victims did not constitute force majeure. The Commission noted that in the justification of the judicial and administrative decisions, the context of serious and systematic human rights violations that resulted in the victims' inability to attend to their place of work was almost entirely absent. The Commission concluded that, since this guarantee of due process was violated in the decisions adopted by the domestic remedies, this also implied a violation of the right to judicial protection, established in Article 25(1) of the Convention, in relation to Article 1(1) of the same instrument.

110. Regarding the duty of sufficient justification of decisions, the ***representative*** agreed with the arguments put forward by the Commission. He added that the State, in its contradictory decisions on the victims' claim, ignored the serious circumstances that prevented the disappeared and detained State agents from attending to their workplace and did not invoke the cause of force majeure to enable and justify the payment of lost salaries and benefits by the victims. Regarding the guarantee of reasonable time, he adhered to the position of the Commission in its Merits report. He also pointed out that the length of the proceeding was not limited to the 12 years of domestic proceedings, but include the process before the Commission, which was delayed by the State. In addition, he pointed out that the characterization of the facts that occurred and were denounced in the instant case as violating Articles 8(1) and 25(1) of the Convention, cannot but encompass and imply the violation of other rights identified by them in their initial complaint and included by the Commission in its Admissibility Report, corresponding to the rights to recognition of their legal personality (Art. 3), to private property in a broad sense (art. 21), and to equality before the law (art. 24), as well as their correlative right to just remuneration to which they were entitled and which was illegitimately denied to them (art. XIV of the American Declaration). In his

[92] *Case of García Lucero v. Chile*. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267, para. 190. http://www.corteidh.or.cr/docs/casos/articulos/seriec_267_esp.pdf

final arguments, he pointed out that the context of serious human rights violations mentioned above is fundamental to understand the primacy of force majeure at the origin of the alleged victims' labor claim.

111. The ***State*** argued in its response that there is no doubt that the alleged damages were compensated under Law 24.043, through an administrative reparation measure. Argentina underlined the confused attitude of the representative of the alleged victims who claims that he does not allege, in the present case, the human rights violations caused by the arbitrary detention, torture and exile in the case of Mr. Preckel and at the same time insists on pointing out "the causal relationship between a) the unlawful detention, b) the non-compliance with obligations in the framework of the employment relationship, and c) the non-payment of salaries". The state added that the alleged victims benefited from the law and did not explain why the reparation granted through that law was not sufficient. In their closing arguments, the State's agents pointed out that the permanent oscillation between these contradictory perspectives was the primary reason that prompted the petitioners to exhaust a series of remedies that were not appropriate as part of their quest for reparation. The State reiterated that the appropriate remedy for such a claim was the action for damages.

112. With respect to the guarantee of a reasonable period of time, the State argued that at the time the claims were processed, there was no norm in place establishing a reasonable period of time. In addition, in order to examine the complexity of the case, it should be considered that there was no precedent or express legislation on the matter in question and that the proceedings were brought at a time of transition to a regime of full democracy that was taking its first steps. It also noted that the actions of the public officials were carried out without undue delay. Finally, it argued that the same violations that the Commission accuses the State of committing would be directly applicable to its own actions, since the Commission received the initial petitions from the alleged victims more than 20 years ago. Regarding the duty of sufficient justification of decisions, the State argued that the Commission's argument lacks grounds, since it only disagrees with the reasons provided by the domestic judges. Although the domestic courts considered the context of serious human rights violations, they limited themselves to pointing out that this issue was beyond the scope of the proceeding according to the parameters within which it had been raised by the petitioners.

### *B. Court Considerations*

#### *B.1. Duty of sufficient justification and the right to judicial protection*

113. The Court considers that given the temporal limitations of jurisdiction to hear the substantive aspects relating to the alleged detention, torture and exile in the instant case, the controversy in this section consists of determining whether the alleged victims had access to justice to seek individual reparation through a remedy with due process guarantees. The foregoing, in a complementary manner to the administrative reparation received under Law 24.043. In this sense, it is not for the Court to rule on the totality and/or appropriateness of the reparation sought at the domestic level (*supra* para. 25).[93]

114. In this regard, the Court recalls that it has already established the concurrence that may exist between collective measures of administrative reparation and access to remedies for individual reparation. In particular, in the case of *García Lucero v. Chile*, this Court stated that:

> [...] administrative reparation programs and other measures or actions of a legal or other nature that co-exist with such programs, cannot result in an obstruction of the possibility of the victims, pursuant to the rights to judicial guarantees and protection, filing actions to claim reparations.

[93] *García Lucero case, supra,* para. 190. "The Court is unable to analyze whether these reparations are "sufficient, effective and complete," because an analysis of this kind should be based on the examination of the harm caused by the acts that began to be implemented at the time of Mr. García Lucero's detention on September 16, 1973, and, in any case, before March 11, 1990. Nevertheless, it should be noted 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 view of this relationship between administrative reparation programs and the possibility of filing actions to claim reparations, it is pertinent for the Court to examine the representatives' arguments in this regard, and also those of the State.[94]

115. Likewise, in the case of *Órdenes Guerra vs. Chile*, the Court reiterated this standard when it considered 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 [...]".[95]

116. This Court has recognized, on the one hand, that if national reparation mechanisms exist, these procedures and [their] results should be evaluated,[96] since they constitute an effort on the part of the State toward a collective process of reparation and social peace. It also highlights various international documents that expressly recognize the right of victims of human rights violations to access remedies and obtain individual reparations; such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[97] the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,[98] and 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[99] (hereinafter, "Basic Principles"). In a similar sense to that established by this Court, the European Court of Human Rights has recognized the compatibility between collective and individual measures.[100]

117. In the present case, the Court notes that the alleged victims initiated their administrative and judicial remedies years before the adoption of Law 24.043,[101] which entered into force on January 2, 1992, specifically through administrative complaints in 1983 and 1985, and judicial appeals in 1988. Subsequently, Mrs. Perrone and Mr. Preckel received compensation under Law 24.043 in 1995 and 1994,[102] respectively. Said Law expressly established that citizens could avail

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94 *Case of García Lucero v. Chile, supra,* para. 190.

95 *Cf. Case of Órdenes Guerra v. Chile, supra* note 9, para. 100.

96 *Cf. Case of Gomes Lund et al ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010, and *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010.

97 Adopted by the United Nations General Assembly on November 29, 1985, by resolution 40/34. Principle 4 states that "victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered".

98 Adopted by the United Nations Commission on Human Rights on February 8, 2005. Principle 31 states: " Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator."

99 Adopted by the United Nations General Assembly on December 16, 2005, by resolution 60/147. Principles 12, 13 and 14 establish the right of access to a judicial remedy for alleged victims. Principle 18 of this document establishes the right of victims to "full and effective" reparation. *Cf.* https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx

100 ECtHR, *Case Broniowski v. Poland*, No. 31443/96. Judgment of 22 July 2004, para. 36. This case establishes what constitutes the first pilot case regarding state's obligations to take both general measures that allow for the correction of structural problems that affect a significant number of persons and individual measures of reparation. It established in its jurisprudence the need to make both types of measures compatible, para. 154.

101 IACHR Report No. 1/93 on the friendly settlement agreement in the *Case of Birt et al. v. Argentina* of March 3, 1993. Available at: http://www.cidh.oas.org/annualrep/92span/Argentina10.288.htm. For example, in the case of Argentina, the IACHR recognized the State's efforts in terms of reparations measures carried out in the framework of the friendly settlement reached before the Commission in the case of Birt v. Argentina, which manifested itself with the issuance of Law 24.043. In that case, the Commission "express[ed] its appreciation to the Argentine Government for its manifest support for the Inter-American Convention and for having complied with the payment of compensation to the petitioners, and for the petitioners' acceptance of the terms of Decree 70/91, supplemented by Law No. 24.043 of December 23, 1991, as part of the friendly settlement process agreed between the parties."

102 They received compensation in the amount of 144,875.00 Argentine pesos for Mrs. Perrone and 172,956.00 Argentine pesos for Mr. Preckel (one Argentine peso was at that time equivalent to one dollar). *Cf.* https://elpais.com/diario/1992/01/02/economia/694306801_850215.html *Cf.* Section 4 of Law 24.043: "The benefit

themselves of the benefits of the Law, as long as they had not received any compensation by virtue of a judicial sentence, due to the facts contemplated herein (*supra* para. 103).[103] It should be noted that this aspect of the law was not the subject of debate in the instant case, in light of Article 2 of the Convention, and therefore it is not appropriate to make a general pronouncement on the matter.

118. In particular, this Court notes that in the facts of this case, the specific benefit received by the petitioners under Law 24.043 did not bar the authorities from continuing with the judicial proceedings that they had undertaken and were in process.

119. Having elucidated the foregoing, the Court must analyze the violations of the rights to an adequate and effective remedy and of due process, particularly the duty of sufficient justification of its decisions, argued by the Commission and by the representative of the alleged victims.

120. This Court has held that the duty of sufficient justification is one of the due process guarantees included in Article 8(1) to safeguard the right to due process. It is a guarantee linked to the proper administration of justice that protects the right of citizens to be tried under reasons provided by law, and lends credibility to legal decisions in the framework of a democratic society. Decisions adopted by national bodies that could affect human rights must be duly justified, because, otherwise, they would arbitrary decisions.[104] In this sense, the reasoning behind a ruling and certain administrative acts must make it possible to know what facts, grounds and laws or regulations the official used as the basis for making the decision, and thus be able to rule out any indicia of arbitrariness.[105] Therefore, the duty of sufficient justification is one of the "guarantees" protected in Article 8.1 to safeguard the rights to due process and access to justice, in relation to Article 25 of the Convention.[106]

121. In accordance with the above, the Court reiterates that States have the duty to guarantee, to all persons under their jurisdiction, an effective judicial remedy against acts that violate their fundamental rights. This implies that the judicial remedy must be suitable to combat the violation, so that the competent authority must examine the reasons invoked by the plaintiff and rule on them.[107] In this sense, this Court has established that the analysis carried out by the competent authority in a judicial appeal cannot be reduced to a mere formality and omit arguments submitted by the parties, because it must examine their reasons and rule on them pursuant to the standards established by the American Convention.[108]

122. With specific reference to the effectiveness of the remedy, this Court has established that the meaning of the protection granted by Article 25 of the Convention is the real possibility of access to a judicial remedy so that the competent authority, with jurisdiction to issue a binding decision, determines whether there has been a violation of a right claimed by the person filing the action, and that the remedy is useful to restitute to the interested party the enjoyment of his/her

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established herein shall be equal to one-thirtieth of the monthly remuneration assigned to the highest category of the scale for civilian personnel of the national public administration (approved by Decree No. 1428 of February 22, 1973, or the one replacing it), for each day the order referred to in Article 2(a) and (b) lasted, with respect to each beneficiary. For this purpose, the monthly remuneration shall be considered as the totality of the items comprising the salary of the agent subject to retirement contributions, excluding the particular additional items (seniority, title, etc.), and the remuneration corresponding to the month in which the benefit is granted shall be taken."

103 Article 1, Law 24.043.

104 *Cf. Case of Zegarra Marín v. Peru.* Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 331, para. 146, para. 146.

105 *Cf. Case of Maldonado Ordoñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 3, 2016. Series C No. 311, para. 87. *Case of Zegarra Marín v. Peru*, para. 146.

106 *Cf., mutatis mutandi*, *Case of García Ibarra et al. v. Ecuador*, *supra*, para. 133; and *Case of San Miguel Sosa et al. v. Venezuela*, para. 189.

107 *Cf. Case of Dismissed Workers of Petroperú et al. v. Peru.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2017. Series C No. 344, para. 177.

108 *Cf. Case of Lagos del Campo v. Peru.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, para. 184, and *Case of Dismissed Workers of Petroperú et al. v. Peru.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2017. Series C No. 344, para. 177.

right and to repair it, if a violation is found.[109] This does not imply that the effectiveness of a remedy is assessed based on a possible decision in favor of the victim's interests.[110]

123. The Court reiterates that in the instant case the alleged victims went through two stages of proceedings: administrative and judicial. In the case of Mr. Preckel, who filed his claim after Mrs. Perrone's petition had been denied in the administrative sphere, his complaint was deemed inadmissible in a single ruling issued by the Ministry of Economy. In the judicial sphere, three authorities ruled: a) a Federal Judge, who rejected the claim; b) Chamber III of the Federal Chamber of Appeals for Contentious Administrative Matters, which rejected the claim and subsequently dismissed the complaint filed (*supra* para. 90), and c) the Supreme Court, which rejected the appeal (*supra* para. 93).

124. The Court notes that in these proceedings various regulatory provisions were applied and discussed; among them, Circular No. 5/77 of 1977;[111] the Administrative Investigations Regulations (Decree No. 1798/80) of 1980;[112] the Rules on Leaves of Absence, Justifications and Exemptions (Decree No. 3413, repealing Decrees No. 1429/73 and 1531/74) of 1979,[113] and the Collective Labor Convention No. 46/75E of 1975.[114]

125. It should be recalled that in both cases the dispute was brought by the alleged victims against the DGI for the non-payment of salaries and other labor benefits foregone due to their detention and exile (in the case of Mr. Preckel), while the DGI argued that it was not appropriate to pay such labor benefits because the plaintiffs had not rendered their services and that there was no exception to the rule established by the jurisprudence of the Supreme Court of Justice and by the regulations in force, according to which payment for services not rendered was not

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109 *Cf.* Advisory Opinion OC-9/87, op. cit., para. 24; *Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 6, 2008. Series C No. 184, para. 100, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations*. Judgment of June 27, 2012. Series C No. 245, para. 261.

110 *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 67, and *Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations and Costs*. Judgment of October 13, 2011. Series C No. 234, para. 201.

111 That, in section III, it states the following: *"(...) no remuneration is due for tasks not performed, since the salary is the obligatory consequence for services effectively rendered (...) since the salary has been defined as the consequence of work, and must be paid during a period of inactivity only when a legal provision declares it subsisting (...).",* unless *"(...) a) there is no express provision that contemplates this situation (...)"* (section IV).

112 In its pertinent part, Article 36 provides: *"Article 36.- When the agent is deprived of liberty, he/she shall be preventively suspended, and the pertinent summary proceedings shall be carried out, and he/she shall return to duty within two days of regaining his/her liberty.*" Article 39 paragraph a) states that: "*Art. 39.-The payment of salary during the period of suspension shall comply with the following requirements: a) When it originates in events unrelated to the service, the agent shall not be entitled to any payment of salary* (...)". *Available at:* http://servicios.infoleg.gob.ar/infolegInternet/anexos/30000-34999/32614/norma.htm.

113 Article 14.c, in relation to the justification of absences, states the following: "*Art. 14.- Agents are entitled to justification of absences with payment of wages when it is for the following reasons, and with the limitations established in each instance: (...) c) Special reasons: Absences caused by meteorological phenomena and cases of duly proven force majeure". Cf. Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/19213/norma.htm.*

114 Article 48, subsection dm paragraph 1, and subsection f, paragraph a, establishes the following: "*Article 48, subsection (d): "When the Agent is deprived of his liberty or when a final order of preventive detention has been issued against him in a case of non-culpable crime, for acts unrelated or not related to the service, he shall be preventively suspended from his administrative position, subject to the following rules: (1) The suspension shall last, in the first case, until the officer recovers his liberty, and he must return to his duties without delay, at the end of his detention, presenting to his immediate superior a certificate regarding his detention. [Subparagraph (f). The payment of salary during the period of suspension shall comply with the following requirements: a) In the case of proceedings for events unrelated to the service, the agent shall not be entitled to any payment of salary, regardless of the outcome of the judicial decision". Note:* Both Decree-Law No. 6666/57 (Article 39, regarding the suspension of agents) and Decree No. 3583/63 (Section II, subsection a.- and Section IV, subsection a.-), regulating Article 39 of Decree-Law 6666/57, contain terms identical to the aforementioned article of the Collective Labor Convention No. 46/7E, and are therefore reproduced.
On the other hand, Article 192 of the Collective Labor Convention No. 46/75E provided as follows: *"Art. 192.- Apart from the cases of leave expressly contemplated in this Agreement, absences of personnel due to justifiable reasons or force majeure may be justified exceptionally and with payment of salary. They shall not exceed two (2) per month or ten (10) days per calendar year.*
*The following shall also be considered with pay and shall not be computed for the purposes of the limitations of monthly and annual days established by this article: a) Absences due to special meteorological phenomena or duly proven cases of force majeure; (...)".*

appropriate.

126. In the case of Mr. Preckel, the first instance ruling held that the DGI had not caused the situation that harmed him and prevented him from performing his duties, which is why it applied the Supreme Court doctrine according to which, unless otherwise provided, payment for services not rendered is not viable and, therefore, rejected the claim.[115]

127. In the appeal filed, Mr. Preckel argued that the first instance judgment took an incomplete approach to the issue to be resolved, since in the face of the general principle contained in the rules related to the case, it omitted to consider the existence of provisions invoked in the claim which, by configuring the exception recognized in the law, authorized the payment of the claimed amount. In this sense, it pointed out that all the laws in the framework of which the DGI had an employment relationship with its agents during the period of their detention and subsequent exile, contained leave, justifications and exemptions in which it was established, coincidentally, that the agents would have the right to justify their absence in duly proven special cases of force majeure, with the correlative right to receive their salaries without any time limitation whatsoever.

128. Chamber III of the Federal Court of Appeals for Contentious Administrative Matters examined the arguments raised by Mr. Preckel, and rejected the appeal after considering that once his exile ceased, the DGI filed the administrative proceeding against him and reinstated him into his job, under the following arguments:

> Under these conditions, the DGI cannot be held liable with respect to the public employment relationship, and therefore it is correct to apply the Supreme Court's doctrine which establishes that unless there is an express and specific rule for the case, payment for services not rendered is not applicable (CSJ //291:406; 297:427; 300:488; 302:786 and 1544; 303:1824; 307:1215; 1220 and 2084; 308:681, 698; 732 and 1795). It should be clarified that the rules cited by the plaintiff to justify his claim refer to the Rules on Leaves of Absence, Justifications and Exemptions, which are evidently different from the present case.
>
> Likewise, in the hypothesis of applying by analogy Decree 1798/80 (Regulation on Administrative Investigations), the payment sought does not correspond either. Although it is true that Article 37 contemplates an exception to the general principle of payment of salary during the period of preventive suspension, it should be borne in mind that it only authorizes payment for the time during which the agent has remained at liberty and his reinstatement has not been authorized. Thus, the payment for the time that the plaintiff was in Germany (if this period of freedom could be assimilated) is not viable since he could not return to the country and render services. Once he returned, the DGI proceeded to immediately reinstate him into his job.[116]

129. The Court notes that Chamber III replied to the arguments put forward by the appellant since, on the one hand, it stated the general rule governing the subject matter of the litigation (unless there is an express and specific rule for the case, payment for services not rendered is not applicable) and then determined that the exceptions provided for in the Rules on Leaves of Absence, Justifications and Exemptions alleged by the appellant were not applicable since they referred to a different situation from what happened to Mr. Preckel. Nor was the other alleged exception contemplated in Article 37 of the Regulation on Administrative Investigations applicable, since it did not correspond to the facts invoked by the appellant.

130. Mr. Preckel filed subsequent appeals against this decision, which were dismissed. In effect, on March 4, 1993, the Contentious Administrative Chamber declared the extraordinary appeal inadmissible on the grounds that the claimant merely "disagreed with the assessment of the appealed decision, without demonstrating that it was sufficient, prima facie, to disqualify the appealed ruling as a jurisdictional act because of the seriousness of the mistakes that are attributed to it."[117] In addition, the Supreme Court of Justice rejected the appeal as inadmissible

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[115] *Cf.* Judgment of the Federal Judge of February 6, 1992 to the claim of Juan José Preckel (evidence file, ff.1484 to 1488).

[116] *Cf.* Judgment of Chamber III of the National Court of Appeals for Federal Administrative Matters of November 24, 1992 (merits file, annex 4.d of the Merits Report, ff. 243 to 246).

[117] *Cf.* Decision of Chamber III of the Federal Court of Appeals for Contentious Administrative Matters on the appeal filed by Juan José Preckel on March 4, 1993 (evidence file, annex 4.f of the Merits Report, f. 268).

by a majority vote, invoking article 280[118] of the Civil and Commercial Code of the Nation (CCCN).[119]

131. In the case of Mrs. Perrone, during the administrative proceedings, three authorities heard her case: a) the Directorate of Technical and Legal Affairs of the DGI, which issued three decisions, two recognizing that the payment of salary credits was viable and one rejecting the request; b) the General Directorate of Legal Affairs of the Ministry of Economy, which issued an opinion on one occasion considering the claim viable, and c) the PTN, which issued an opinion dismissing the viability of the administrative request of the alleged victim. In the judicial proceedings, three authorities ruled: a) a Federal Judge, who rejected the claim; b) Chamber IV of the Court of Appeals, which considered the claim viable, and c) the Supreme Court, which reversed the previous decision and rejected the claim.

132. The Court notes that in the administrative proceedings Mrs. Perrone had two decisions in favor of her claim, the last one issued by the General Directorate of Legal Affairs of the Ministry of Economy, which stated that "[...] while Circular No. 5/77 of the General Secretariat of the Office of the President of the Nation establishes that wages should not be paid for services not provided [...] it is obvious that in this instance, the appellant was precluded from showing up [for work] by virtue of acts of authority [...]", and that both the doctrine and the case law of the Argentine courts admitted in principle "[...] that acts of authority or of the sovereign [...] constitute force majeure when they create [were] difficulties impossible to overcome for the performance of obligations".[120]

133. The Fourth Chamber of the Court of Appeals, on the other hand, also accepted this interpretation when it reversed the first instance ruling against Mrs. Perrone's claim, arguing that "it does not seem unreasonable to think that the aforementioned detention of the plaintiff, and the unlawful protraction thereof [...] without being subjected to any trial proceeding, and without there being any proof of any disciplinary liability, constitutes a case of *force majeure* that justifies her failure to provide services and the payment of unearned income [to her]; [...] and those circumstances [...] lead to consider as fulfilled [...] the exceptional situation set forth in Circular 5/77 and in the doctrine of the Supreme Court of Justice invoked in the appealed judgment. [...] [...] The proposed solution is consistent with constitutional principles and protections [...] taking into account that a strict and objective application of the provisions of the law would lead to inequitable results".[121]

134. However, the second instance judgment was reversed by the Supreme Court of Justice in May 1996, with the following arguments:

> [...] The particularities of the case make it impossible to equate the situation –suspension of the agent without collecting wages for reasons of deprivation of liberty caused by events out of the control of the public administration- with the rules of breach of relationship of public employment for justifiable absences. Both the legal framework provided by collective agreement 46/75E, as well as that which replaced it - law decree 6.666/57 and law 22.140 - clearly distinguish the investigation procedure to determine disciplinary responsibility, from the rules on leaves of absence and from the [procedure] for absences, without prejudice to a violation of the latter two triggering the first one.

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118 *Cf.* CPCCN, Article 280.- Appeal. Dismissal of the extraordinary appeal. Briefs in the ordinary appeal. When the Supreme Court reviews a motion for leave of appeal to it, accepting the cause shall entail the case file being transferred to it. The Court, at its reasoned discretion, and merely by citing this provision, shall deny the motion, for lack of sufficient federal offense or when the issues raised are unsubstantial or lacking great significance. In the case of the ordinary appeal under Article 254, the file shall be placed in the secretariat, and the order shall be notified personally or by letter. The appellant shall file a brief within a period of TEN (10) days, of which the other party shall be notified for the same period. Failure to file the brief or its insufficiency shall result in the dismissal of the appeal. Once the brief has been answered or the term to do so has elapsed, the case shall be called for hearing. In no case shall the opening of evidence or the allegation of new facts be admitted.

119 *Cf.* Judgment of the Supreme Court of May 21, 1996 (evidence file, Annex 4.h of the Merits Report, f. 293).

120 *Cf.* Letter No. 74/85 of the Director General of Legal Affairs of the Ministry of Economy of July 24, 1985 (merits file, Annex 3.k of the Merits Report, f.174).

121 *Cf.* Judgment of the National Court of Appeals of September 21, 1993 on Case No. 28.414 (evidence file, Annex 4.j of the Merits Report, ff. 321 to 331).

What is characteristic of the sub lite is not the absence that led to the opening of the summary proceeding - a situation that was established in administrative proceedings, by which the investigation rejected that any disciplinary liability of Perrone derived from her absences - but the suspension without the right to receive wages that lasted during the long period in which the author was deprived of her liberty.

[…] It is not possible then, to formulate analogies based on the rules of exemptions and leaves of absence, but rather by applying the provisions pertaining to the disciplinary procedure or, as the case may be, by filling in the gaps with its principles. In this respect, the preliminary investigation and the suspension measure were ordered under the regime of collective bargaining 46/75 E, article 48, literal d, paragraph a, of which did not allow maintaining the right to receive salary. On the other hand, Article 39 of Decree 6.666/57 - as amended by Decree 3583/63 - which was in force until the approval of Law 22.140, contemplated the case of preventive suspension due to deprivation of liberty and, as far as this litigation is concerned, reiterated the previous regulation: "(paragraph IV(a)) in the case of proceedings for events outside the service, the agent shall not be entitled to any payment of salary regardless of the result of the judicial decision". This is not the same factual situation regulated in law since, in the case of the plaintiff, it is not unknown that there were no legal proceedings whatsoever. However, given that the liability of the State for its unlawful conduct is not at issue in the proceedings, but rather the obligation of the employer -an autarchic entity of the national State outside the act of the public power that gave rise to the suspension measure-, it is the rule that regulates the case with the greatest analogical proximity.

[...] That the regulation on administrative investigations corresponding to the regime approved by law 22.140 (Official Gazette of September 8, 1980), (...) contains the following provision: "section 39, The payment of wages for the period of the suspension shall conform to the following rules: a) When it [the suspension] arises from events unrelated to service, the agent shall not be entitled to payment of any lost wages, except under Article 37, in the event that he is acquitted or the case is dismissed with prejudice in the criminal court and only for the period of time that he has remained free and his reinstatement has not been authorized". It should be noted that in the sub lite the General Tax Directorate reinstated Elba Perrone on four days after the notification of Decree 878/82, which ceased the arrest and ordered the probation regime (folio 145 of the administrative proceedings).

[…] That under such conditions and in the context of the plaintiff's claims -f. 1646 vts., fourth paragraph- there has not been an express provision that allows for an exception to the essential principle on the subject of wages, which is, that it is not proper to pay wages for unrendered services (Judgments: 297:427; 307:1199 and many others). It does not mean a denial of the consequences of the unlawful act of the de facto government from the perspective of responsibility of the National State, an issue that, procedurally and substantively, were not raised in the record of the case proceedings.

135. From the above transcription it is clear that the Supreme Court of Justice of the Nation set forth in detail and at length the reasons that led it to uphold the appeal filed by the DGI and to revoke the judgment in the second instance. After a study of the legislation in force, it considers that the Rules on Leaves of Absence, and Justifications for public agents are not analogically applicable to Mrs. Perrone's case, but instead the provisions of the disciplinary regime apply, "or, as the case may be, to integrate the gaps with its principles". Then, the Court stated that under this regime there was only a right to the payment of labor benefits for events unrelated to the service for the term in which the agent had remained at liberty and his reinstatement had not been authorized, which was not the case of Mrs. Perrone, who was reinstated almost immediately after the cessation of her detention. In the absence of a normative assumption establishing an exception, the court concludes that the general principle that payment of salaries for functions not performed is not applicable. This argument is finalized by explaining that in this case what was at issue was the liability of the DGI, as an employer, for the non-payment of the unearned wages and not the liability of the State for Mrs. Perrone's arbitrary detention.

136. This Court notes that in both Mr. Preckel and Mrs. Perrone's cases, the final judicial decisions dismissed the claims filed by the alleged victims based on the application of domestic law which indicated that there was no legal basis to the payment of salaries for services not rendered. However, throughout the judicial proceedings, Mr. Preckel and Mrs. Perrone repeatedly argued that the internal regulations authorized the payment of salaries and wages not received in cases

of force majeure, and argued that their arbitrary detention (and subsequent exile in the case of Mr. Preckel) would constitute such cause of force majeure, and therefore the payment of the unearned wages was justified despite the fact that they had not worked.

137. Without determining which was the correct thesis in light of domestic law, this Court notes that the judicial decisions that definitively decided the claims filed by Mr. Preckel and Mrs. Perrone sufficiently explained why the exceptions they alleged were not applicable to the principle established by law and in its jurisprudence that payment of salary for functions not performed was not applicable. They also explained that these situations involved the liability of the DGI as employer and not the liability of the State for the illegitimate acts of the de facto government of which the plaintiffs had been victims.

138. Therefore, the Court considers that both the Court of Appeals and the Supreme Court of Justice examined the facts, allegations and arguments presented by the parties before them. Consequently, the judgments that became final did not incur in the alleged lack of sufficient justification.

139. In the same vein, this Court concludes that the alleged victims had access to an effective judicial remedy as the competent authorities examined the grounds invoked by the plaintiffs and ruled on them.[122]

140. Consequently, the Court concludes that the State is not responsible for the violation of Articles 8(1) and 25 of the American Convention, in relation to the obligations set forth in Article 1(1) of the same instrument, with respect to Mrs. Elba Clotilde Perrone and Mr. Juan José Preckel.

*B.2. The guarantee of a reasonable time*

141. The Court has held that a reasonable period of time should be determined in relation to the duration of the entire procedure, from the first action until the final judgment is handed down, including any appeals that may be filed.[123] Pursuant to Article 8(1) of the Convention and as part of the right to justice, proceedings must be conducted within a reasonable time,[124] accordingly, owing to the need to ensure the rights of victims, a prolonged delay may, in itself, constitute a violation of judicial guarantees.[125]

142. The Court recalls that it has taken four factors into account to determine whether the time is reasonable: (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the effects on the legal situation of the person involved in the proceedings.[126]

143. In the instant case, in order to study the alleged violation of the guarantee of reasonable time, the Court considers it pertinent to examine the duration of the administrative procedure and the judicial process jointly, since the processing of the administrative claim was a necessary prerequisite to resort to the judicial proceeding, as the victims stated when they filed the corresponding claims before the federal judge. In view of the above, the administrative and judicial proceedings lasted 13 years and 14 days in the case of Mrs. Perrone (of which more than 11 years elapsed since the ratification of the American Convention and the acceptance of the contentious jurisdiction of the Court by Argentina) and approximately 10 years and 11 months in the case of

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122 *Cf. Case of Dismissed Workers of Petroperú et al. v. Peru.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2017. Series C No. 344, para. 177.

123 *Cf. Case of Suárez Rosero v. Ecuador.* Merits. Judgment of November 12, 1997. Series C No. 35, para. 71 and *Case of Argüelles et al. v. Argentina.* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 288, para. 188.

124 *Case of Bulacio v. Argentina.* Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Alvarado Espinoza v. Mexico.* Judgment of November 28, 2018. Series C No. 370, para. 250.

125 *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. *Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 145; *Cf. Case of Anzualdo Castro, supra*, para. 124, and *Cf. Case of Gonzalez Medina and family members v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 257.

126 *Cf. Case of Valle Jaramillo et al. v. Colombia.* Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155, and Cf. *Case of Alvarado Espinoza v. Mexico, supra*, para. 250.

Mr. Preckel.

144. Regarding the complexity of the matter, this Court has taken into account various criteria such as the complexity of the evidence, the number of procedural subjects or the number of victims, the time elapsed since the violation, the characteristics of the remedies enshrined in the domestic legislation, and the context in which the violation occurred.[127] In this sense, the present case did not have a plurality of victims, it lacked evidentiary difficulties, and it did not require multiple administrative or judicial proceedings, which could configure a complex case in its own right. However, as pointed out by the administrative authorities, the case did not have precedents due to its collective implication, which required the consultation of domestic entities (*supra* para. 74), a situation that could have made the decision of the case complex at first before the administrative authorities. Notwithstanding the foregoing, when the cases reached the judicial authorities, the issue was mainly about the interpretation of internal norms.

145. With regard to the procedural activity of the parties, the Court finds that the alleged victims followed up and gave impetus to their proceedings, and therefore it does not follow that their activity constituted any form of obstruction or undue delay. In fact, in the administrative proceedings, Mrs. Perrone presented her first written request to the DGI on April 27, 1983, before the ratification of the American Convention and the acceptance of the jurisdiction of the Court by Argentina, then on December 2, 1985 she requested the prompt resolution of her request and in March 1987 she filed the corresponding hierarchical appeal against the decision of the DGI denying the claim. She filed a lawsuit on June 24, 1988, and then filed an appeal against the second instance decision issued by the federal judge on February 12, 1992. Mr. Preckel filed an administrative appeal before the DGI on July 2, 1985, then on December 27 of the same year he requested the prompt processing of his claim and later on October 15, 1987 he filed a writ of amparo for the purpose of having his petition resolved by the DGI. In relation to the judicial proceeding, Mr. Preckel filed a lawsuit before a federal judge on June 24, 1988, and then filed an appeal against the first instance decision, which was ruled unfavorably. He then filed an extraordinary appeal on December 24, 1992, which was declared unfounded. Finally, he filed an petition in error before the Supreme Court of Justice of the Nation.

146. Regarding the conduct of the judicial and administrative authorities, the Court notes in both cases the long period of time that elapsed from the initial filing of the claims before the DGI until their final decision in court, without any information emerging from the file to justify it, beyond the absence of precedents in the matter, as will be explained below.

147. At the administrative level, the various proceedings carried out in connection with Elba Clotilde Perrone's application lasted 3 years and 11 months, during which time the various authorities issued five pronouncements: (i) on May 26, 1984 by the DATJ, (ii) a second pronouncement by the DATJ on May 28, 1985, (iii) on July 24, 1985 by the General Directorate of Legal Affairs of the Ministry of Economy, (iv) on September 19, 1986 by the PTN and, finally, (v) on March 19, 1987 the Director General of the DGI issued Resolution No. 75/87, by which her claim was finally dismissed. The Court notes that the first response was received by Mrs. Perrone more than a year after she filed her initial request, and that it then took more than a year for the competent authorities to issue each of the following three rulings. The only lapse of less than a year between one opinion and the next was between the PTN's pronouncement and the final opinion of the DGI Director General. However, even in this case there is an unjustified delay since the Director General required six months to issue a final decision in which he simply accepted the criteria set forth by the PTN. Furthermore, in view of the delay in the administrative authorities' decision, on December 2, 1985, Mrs. Perrone requested the prompt resolution of her claim. Finally, the hierarchical appeal she filed against the final decision of the Director General of the DGI was never resolved.

148. As regards Mr. Preckel, it should be recalled that he was forced to file an *amparo* due to the

[127] *Cf. Case of Furlan and Family Members v. Argentina.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246

DGI's delay in deciding. The *amparo* judge held that "[...] under such conditions, the non-existence of delay invoked by the defendant, based on the complexity of the claim, and on the fact that the agencies that have intervened outside the scope of the Directorate, forced to extend the corresponding proceedings [...] does not constitute an effective argument to reach to disprove the passage of the legal term, without a decision having been issued, as the defendant itself acknowledges". For this reason, it ruled against the DGI and ordered it to respond to the claim within 10 days. In this case, the duration of the administrative procedure took 2 years and 5 months, and in that period the administrative authorities only issued one decision, in compliance with a court order, which denotes an unjustified delay on the part of the administration.

149. The judicial remedies took 7 years and 11 months in both cases, with 4 decisions in the case of Mr. Preckel and 3 decisions in the case of Mrs. Perrone. The first instance lasted from June 1988 to February 1992 in both cases, i.e., approximately three years and eight months, despite the fact that the case dealt exclusively with the interpretation of domestic labor regulations. Although the second instance proceedings were brief in both cases (with a judgment of October 15, 1993 in the case of Mrs. Perrone and November 24, 1992 in the case of Mr. Preckel), the subsequent appeals took more than two years in the case of Mrs. Perrone and more than three years in the case of Mr. Preckel, despite the fact that there were no particular factual or substantive complexities that would justify the delay in the resolution of the appeals filed. From the above, it is clear that the judicial process was extended in an unjustified manner, in the face of controversies in which there was only one plaintiff in each of the proceedings, there was no evidentiary complexity and only questions of an interpretative nature were being debated.[128]

150. In relation to the effect generated by the duration of the proceedings on the legal situation of the persons involved,[129] the Court does not have sufficient elements to carry out a due analysis since no evidence was provided to prove this aspect.

151. In view of the foregoing, taking into account the particular characteristics of the case, this Court considers that the duration of the administrative and judicial proceedings as a whole, for 10 years and 11 months in the case of Mr. Preckel and more than 11 years after the ratification of the American Convention and the acceptance of the contentious jurisdiction of the Court by Argentina in the case of Mrs. Perrone, exceeded the reasonable time limit in an unjustified manner, in violation of Article 8(1) of the American Convention.

### *B.3. General Conclusion*

152. The Court concludes that the alleged victims had access to remedies to deal with their requests for reparation for loss of wages as a consequence of the arbitrary detention suffered by Mrs. Perrone and the arbitrary detention and subsequent exile of Mr. Preckel. Besides, the absence of sufficient justification in the State's decisions was not proven. In view of the foregoing, the international responsibility of the Argentine State for violations of Articles 8 and 25 of the American Convention was not established.

153. On the other hand, the duration of 10 years and 11 months in the case of Mr. Preckel and of more than 11 years, from the acceptance of the Court's contentious jurisdiction in the case of Mrs. Perrone, of the administrative and judicial proceedings as a whole, unjustifiably exceeded the reasonable time limit, in violation of Article 8(1) of the American Convention.

154. With respect to other arguments presented by the representative, the Court notes that insufficient elements were provided for their consideration within the scope of the dispute subject to its jurisdiction.

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[128] *Mutatis mutandi*: *Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2013. Series C No. 270, para. 403; *Case of Carvajal Carvajal et al. v. Colombia*. *Merits, Reparations and Costs*. Judgment of March 13, 2018. Series C No. 352, para. 165; *Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs*. Judgment of December 1, 2016. Series C No. 330, paras. 165, 170, 177, 179.

[129] *Case of Vereda la Esperanza v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 341, para. 203.

## VIII
## REPARATIONS
## APPLICATION OF ARTICLE 63.1 OF THE AMERICAN CONVENTION

155. Based on the provisions of Article 63(1) of the American Convention,[130] the Court has indicated that any violation of an international obligation that has caused harm entails the duty 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.

156. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (restitutio in integrum), which consists in the re-establishment of the previous situation.[131] If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the violated rights and to redress the consequences of such violations.[132] Therefore, the Court has considered the need to grant diverse measures of reparation in order to redress the harm integrally; thus, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction together with guarantees of non-repetition have special relevance for the harm caused.[133]

157. This Court has established that the reparations must have a causal nexus to the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Therefore, the Court must observe the concurrence of these elements to rule appropriately and pursuant to law.[134]

158. Taking into account the violations declared in the previous chapter, this Court will proceed to examine the claims presented by the Commission and the representative, together with the corresponding arguments of the State, in light of the criteria established in the jurisprudence of the Court in relation to the nature and scope of the obligation to make reparations, with the purpose of ordering the measures aimed at redressing the damage caused to the victims.[135]

### *A. Injured party*

159. This Court reiterates that, pursuant to Article 63(1) of the Convention, those who have been declared victims of the violation of any right recognized in this instrument are the injured party. Therefore, this Court considers that Mrs. Elba Clotilde Perrone and Mr. Juan José Preckel are the "injured parties", and, as victims of the violations declared in Chapter VII, shall be entitled to whatever the Court orders hereinafter.

### *B. Restitution and satisfaction measures*

#### *B.1. Restitution measures*

160. The ***Commission*** requested that the necessary measures be taken to ensure that Elba Clotilde Perrone and Juan José Preckel have access to an effective judicial remedy to establish, in compliance with the guarantees of the right to a fair trial and within reasonable period of time, whether or not their claims for payment of the salaries and social benefits they have not received are admissible. The ***representative*** asked that the necessary measures be taken for the integral reparation of the victims for the violations of the Convention suffered, so that the State compensates them by paying them a sum equivalent to the wages lost during the period of their

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130 *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, y nota para edición: agregar último caso.
131 *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, y nota para edición: agregar último caso.
132 *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, y nota para edición: agregar último caso.
133 *Case of the Massacre of Las Dos Erres v. Guatemala, Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, y nota para edición: agregar último caso.
134 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, y nota para edición: agregar último caso.
135 *Cf. Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs*. Judgment of December 1, 2016. Series C No. 330, para. 189, y nota para edición: agregar último caso.

illegal detention in the case of Mrs. Perrone and of the illegal detention and forced exile in the case of Mr. Preckel.

161. The ***State*** argued that the full reparation claimed by the victims, consisting of the payment of unearned wages and other lost benefits, could not be accepted because it had not been demonstrated that this claim was appropriate. It also held that the Commission, in its Merits Report, clarified that the matter submitted to the Court's jurisdiction was not about unpaid salaries and benefits, but that was limited to the violation of the duty of sufficient justification in the decision and the guarantee of reasonable time by the administrative and judicial authorities that heard the claims of Elba Clotilde Perrone and Juan José Preckel. In its final arguments, it stated that "[...] in the unlikely event that the [...] Court does not reject the claim against the Argentine Republic, it should be reiterated here that it considers that, in the absence of State responsibility, it is not appropriate to establish any reparation whatsoever. But in the alternative, and in the event that State responsibility is determined, the reparations ordered must be consistent with the jurisprudence of the Court and, in no way, can they amount to the "restitutio in integrum" sought by the alleged victims, since this would mean that the State actions that occurred during the 1970s have been considered illegitimate, a fact outside the jurisdiction of the Court and which, in the words of the Commission itself in its Merits Report (paragraphs 75 and 76), is outside the scope of the *litis* [...]".

162. The Court considers that the *restitutio in integrum* claimed by the victims, consisting of the payment of a sum equivalent to the lost wages and benefits forfeited during the period of their illegal detention in the case of Mrs. Perrone, and of the illegal detention and forced exile in the case of Mr. Preckel, is linked to facts about which the Court did not rule, since they were beyond its temporal competence. Furthermore, they do not have a causal link with the violations declared in this judgment. Therefore, the Court considers it inappropriate to order this reparation measure.

*B.2. Measures of satisfaction*

163. The ***representative*** requested the publication of the judgment. The ***State*** did not refer to this measure of reparation.

164. The ***Court*** deems it pertinent to order, as it has done in other cases,[136] that the State must publish, within six months of notification of this Judgment: a) the official summary of the Judgment prepared by the Court, once, in the Official Gazette, in a newspaper of wide national circulation, in a legible and appropriate font, and b) this judgment in its entirety, available for at least one year, on the Judicial Information Center's website, in a manner accessible to the public.

165. The State shall immediately inform this Court once it proceeds to carry out each of the ordered publications, regardless of the one-year term to submit its first report established in the operative part of this judgment.

### *C. Compensation*

166. The ***Commission*** requested that in the event that the victims did not wish to access the judicial remedy due to the passage of time, the State adopt the necessary measures to provide them with full reparation.

167. The ***representative*** requested that the necessary measures be taken for the integral reparation of the victims for the violations of the Convention suffered, so that the State compensate them by paying them a sum equivalent to the lost wages during the period of their illegal detention in the case of Mrs. Perrone and of the illegal detention and forced exile in the

[136] *Cf., inter alia*, *Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79; *Case of Mémoli v. Argentina.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 265, para. 207; *Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs.* Judgment of December 1, 2016. Series C No. 330, para. 197; *Case of Favela Nova Brasília v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333, para. 300; *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of September 26, 2018. Series C No. 362, para. 299 and *Case of Martínez Coronado v. Guatemala. Merits, Reparations and Costs.* Judgment of May 10, 2019. Series C No. 376, para. 98.

case of Mr. Preckel.

168. The ***State*** opposed the representative's claim, indicating that it cannot be accepted by the Court, since it has not been proven that the claim for unpaid wages was justified. In addition, it emphasized that the conflict raised was not about the unpaid salaries, but rather the lack of sufficient justification and the reasonable period of time for a decision on the part of the administrative and judicial authorities.

169. With respect to pecuniary damage, this Court has developed in its jurisprudence that it entails the loss of or detriment to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus to the facts of the case.[137]

170. On the other hand, with respect to non-pecuniary damage, the Court has established in its jurisprudence that non-pecuniary damage may include both the suffering and affliction caused by the violations, and also the impairment of values of great significance to the individual, and any alteration of a non-pecuniary nature in the living conditions of the victims. Moreover, as it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated, for the purposes of full reparation to the victim, by the payment of a sum of money or the delivery of goods or services of a monetary value, that the Court determines in reasonable application of sound judicial discretion and based on equity.[138]

171. In the instant case, the Court has declared the violation of the guarantee of reasonable time, since it has been proven that the State incurred in an excessive delay in processing their claims. Consequently, the Court deems it pertinent to order the total amount of USD$15,000.00 (fifteen thousand United States dollars) in favor of each of the victims, as compensation. The amounts ordered in favor of each of these persons must be paid directly to them, within the term established for such purpose (*infra* para. 178).

### *D. Costs and expenses*

172. The ***representative*** requested the reimbursement of expenses incurred in the processing of this case before the IACHR and until the conclusion of the contentious proceeding. They requested reimbursement of air travel from Argentina to the United States, lodging and per diem expenses for the trips and hearings held in Washington, "and without prejudice to the settlement that may be made in due course, in addition to those generated by possible air travel and lodging and per diem expenses required by their presence before [the] Court" **(ESAP., ff. 111 to 112).** In his final arguments, he added that the amount to be considered as expenses for the three presentations (two before the IACHR in Washington and one before the Court in San José, Costa Rica) should not be less than USD$10,000 (ten thousand US dollars), including airfare, lodging, transportation and meals for at least three days each.

173. **The *State*** rejected the representative's request regarding expenses and costs. It pointed out that the alleged victims did not attach a single receipt to prove the amount "disbursed", and therefore the request should be declared inadmissible. It alleged that the representative also did not attach the "settlement form" with the claimed salaries, limiting themselves to asking that said form be presented as evidence by the State.

174. The Court reiterates that, pursuant to its case law,[139] costs and expenses form part of the concept of reparation because the actions undertaken by the victims in order to obtain justice, at

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137 *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Martínez Coronado v. Guatemala. Merits, Reparations and Costs*. Judgment of May 10, 2019. Series C No. 376, para. 92.

138 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Martínez Coronado v. Guatemala. Merits, Reparations and Costs.* Judgment of May 10, 2019. Series C No. 376, para. 114.

139 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Cuscul Pivaral et al. v. Guatemala.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 242.

both the national and the international level, entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment. Regarding the reimbursement of costs and expenses, the Court must make a prudent assessment of their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction and also those incurred during the proceedings before the inter-American system, taking into account the specific circumstances of the case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.[140]

175. This Court has indicated that "the claims of the victims or their representatives for costs and expenses, and the evidence that supports them must be submitted to the Court at the first procedural moment granted to them, that is, in the pleadings and motions brief, without prejudice to these claims being updated subsequently, in accordance with the new costs and expenses incurred owing to the proceedings before this Court".[141] The Court also reiterates that it is not sufficient merely to forward probative documents; rather the parties are required to include arguments that relate the evidence to the fact that it is considered to represent and that, in the case of alleged financial disbursements, the items and their justification is clearly established.[142]

176. In the instant case, the Court finds that the representative did not submit documentation to support his request, and therefore the amounts asked were not justified. In view of the foregoing, the Court establishes the payment of a reasonable amount of USD$10,000 (ten thousand United States dollars) for costs and expenses in the litigation of the present case and considering the scope of the violation declared. This amount shall be paid directly to the representative.

177. As it has done in other cases,[143] at the stage of monitoring compliance with judgment, the Court may establish that the State reimburse the victims or their representatives any reasonable and duly proven subsequent expenses.

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

178. The State shall make the payments of the compensation for non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons indicated herein, within one year of notification of this judgment,.

179. If either of the beneficiaries is deceased or dies before they receive the respective amount, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

180. The State shall comply with the pecuniary obligations by payment in United States dollars or the equivalent in national currency using the exchange rate published or calculated by the New York Stock Exchange, United States of America, on the day prior to payment.

181. 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 established time frame, the State shall deposit the said amounts in their favor in a deposit account or certificate in a solvent Argentinean financial institution, in United States dollars, and in the most favorable financial conditions 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 interest accrued.

182. The sums allocated in this judgment as compensation for non-pecuniary damage and to reimburse costs and expenses must be delivered to the persons indicated in full, as established in this judgment, without any deductions derived from possible taxes or charges.

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[140] *Cf. Case of Garrido and Baigorria v. Argentina, supra*, para. 82, and *Case of López Soto et al. v. Venezuela, supra*, para. 381.

[141] *Cf. Case of Garrido and Baigorria v. Argentina*, *supra*, para. 79, and *Case of Munárriz Escobar et al. v. Peru*, *supra*, para. 151.

[142] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of Terrones Silva et al. v. Peru, supra,* para. 282.

[143] *Cf. Case of Apitz Barbera et al. v. Venezuela.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 260, and *Case of López Soto et al. v. Venezuela, supra,* para. 385.

183. If the State should incur in arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Argentina.

## VIII
## OPERATIVE PARAGRAHPS

184. Therefore,

**THE COURT**

**DECIDES,**

Unanimously:

1. To admit the first preliminary objection filed by the State, pursuant to paragraphs 18 to 25 of this Judgment.

2. To reject the second preliminary objection filed by the State, pursuant to paragraphs 33 to 42 of this Judgment.

**DECLARES,**

Unanimously, that:

3. The State is not internationally responsible for the violation of the rights established in Articles 8 and 25 of the American Convention, pursuant to paragraphs 113 to 140 of this Judgment.

4. The State is responsible for the violation of the guarantee of reasonable time provided in Article 8(1) of the Convention, pursuant to paragraphs 141 to 154 of this judgment.

**AND ESTABLISHES,**

Unanimously, that:

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

6. The State shall pay the amounts established in paragraphs 171 and 176 of the present Judgment, as compensation for non-pecuniary damage and costs and expenses.

7. The State shall make the publications indicated in paragraph 164 of this Judgment, pursuant to the terms of the same paragraph.

8. The State, within one year of notification of this Judgment, shall provide the Court with a report on the measures adopted to comply with it.

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

Done, at San José, Costa Rica, on October 8, 2019, in the Spanish language.

Judgment of the Inter-American Court of Human Rights. *Case of Perrone and Preckel v. Argentina. Preliminary Objections, Merits, Reparations and Costs.*

I/A Court H.R., *Case of Perrone and Preckel v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 8, 2019.

Eduardo Ferrer Mac-Gregor Poisot

President

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Elizabeth Odio Benito

L. Patricio Pazmiño Freire

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri

Registrar

So ordered,

Eduardo Ferrer Mac-Gregor Poisot

President

Pablo Saavedra Alessandri

Registrar