INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF ROMERO FERIS V. ARGENTINA

JUDGMENT OF OCTUBER 15, 2019*

(Merits, Reparations and Costs)

In the *Case of Romero Feris v. Argentina,*

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

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

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 to Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules"), delivers this judgment, which is structured as follows:

* Judge Eugenio Raúl Zaffaroni, an Argentine national, did not participate in the deliberation of this judgment, in accordance with Articles 19(2) of the Statute and 19(1) of the Rules of the Court.

CASE OF ROMERO FERIS V. ARGENTINA

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I
INTRODUCTION OF THE CASE AND THE CAUSE OF ACTION

1. *The case submitted to the Court.* – On June 20, 2018, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or the "Commission") submitted to the jurisdiction of the Court, pursuant to Articles 51 and 61 of the Convention, the case of *Raúl Rolando Romero Feris* against the Republic of Argentina (hereinafter, "the State" or "Argentina"). The controversy concerns the alleged illegal and arbitrary detention of Mr. Romero Feris (hereinafter also "the alleged victim") in 1999. The Commission concluded that, during the criminal proceedings against Mr. Romero Feris, his defense counsel presented, on multiple occasions and by diverse recourses, a number of issues on the right to be judged by an independent, impartial and competent authority. The Commission claimed that the remedies were rejected with arguments that either invoked general references to the law or claims that they were matters that could not be examined by the respective judicial bodies and, thus, concluded that the State had infringed the rights to judicial guarantees and to judicial protection.

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

a. Petition. – On August 24, 2001, the Commission received a petition lodged against Argentina signed by Mariano Cuneo Libarona, Cristian Cuneo Libarona, José María Arrieta and Jorge Eduardo Alcántara, who were subsequently replaced by Luis Alberto Feris (hereinafter "the representative" or "the defense counsel").

b. Report on Admissibility. – On January 29, 2015, the Commission adopted its Report on Admissibility N° 4/15.[1]

c. Report on the Merits. – On July 5, 2017, the Commission, pursuant to Article 50 of the Convention, issued its Report on the Merits No. 73/17 (hereinafter also "Merits Report"), in which it arrived at a series of conclusions and formulated various recommendations[2] to the State.

d. Notification to the State. – The Merits Report was notified to the State on September 20, 2017, granting it a period of two months to report on compliance of the Report's recommendations. As of the date of its adoption, the State had not presented its observations on the merits, despite having been granted three extensions of three months each.

3. *Submission to the Court.* – On June 20, 2018, the Commission submitted to the jurisdiction of the Court the totality of the facts and human rights violations described in its Merits Report "due to the necessity of obtaining justice and reparations for the victim in this case."

4. *Request of the Commission.* – The Commission requested that the Court determine and declare the international responsibility of the State for violating the rights indicated in the

[1] In its Report, the Commission admitted the petition on the case of "Raúl Rolando Romero Feris," regarding the alleged violation of the rights to personal liberty, judicial guarantees and judicial protection, set forth in Articles 7, 8, and 25 of the Convention, read in conjunction with Article 1(1) thereof.

[2] It recommended that the State: (1) Fully repair the human rights violations declared in the Report on the Merits, both materially and immaterially; (2) Take the necessary measures to ensure the non-repetition of the violations declared in the Report on the Merits; in particular, adopt administrative or other measures to ensure strict compliance with the maximum legal term for pre-trial detention, as well as provide adequate grounds for ordering it by the judicial authorities, in the light of the standards developed in the Report on the Merits, and (3) ensure the availability of adequate and effective mechanisms to enable persons subjected to criminal proceedings to challenge, in a simple and rapid manner, the competence, independence and impartiality of the judicial authorities.

conclusions of the Merits Report. It also asked that the Court order the State to grant certain measures of reparation (*infra* Chapter VII).

II
PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representative.*[3] – The submission of the case was notified to the representative and to the State on July 30, 2018.

6. *Request for Provisional Measures*. – On July 31, 2018, the representative requested provisional measures in favor of Mr. Romero Feris. The President of the Court found that the information provided by the representative and by the State was not sufficient to establish the existence of a situation of extreme gravity or urgency regarding the health problems that Mr. Romero Feris was said to be suffering.[4]

7. *Brief with pleadings, motions and evidence*. – On September 14, 2018, the representative presented a brief with pleadings, motions and evidence (hereinafter "brief with pleadings and motions"), pursuant to the terms of Articles 25 and 40 of the Rules.

8. *Answering brief.*[5] – On November 16, 2018, the State submitted its answering brief to the submission of the case and to the brief with pleadings and motions.

9. *Public hearing*. – By an order of March 18, 2019, the President of the Court called the parties and the Commission to a public hearing that was held on May 8, 2019 during the Court's 60th Special Session, which took place in Montevideo, Uruguay.[6]

10. *Final written arguments and observations*. – On June 10, 2019, the State, the representative and the Commission presented their final written arguments and final written observations, respectively.

11. *Deliberation of this case*. – The Court began deliberation of this judgment on October 15, 2019.

III
JURISDICTION

12. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention, since Argentina is a State Party thereto since September 5, 1984 and recognized the Court's contentious jurisdiction on that same date.

IV
EVIDENCE

13. The Court admits those documents presented at the proper procedural moment by the parties and by the Commission (Article 57 of the Rules), the admissibility of which in this case

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3 The representative of the alleged victim is Luis Alberto Feris.

4 *Cf. Case of Romero Feris v. Argentina*. Request for Provisional Measures. Order of the President of the Court of August 22, 2018.

5 The State named Alberto Javier Salgado as Agent and Ramiro Cristóbal Badía as Alternate Agent.

6 Appearing at the hearing were: (a) for the Commission: Erick Acuña Pereda; (b) for the alleged victim: Luis Alberto Feris, Jose María Baricco and Jose María Arrieta and (c) for the State: Alberto Javier Salgado, Ramiro Cristóbal Badía and Gonzalo Bueno. In addition, the statement of the alleged victim was received by video conference.

was neither opposed nor objected to, nor was their authenticity questioned.[7] The Court also deems it appropriate to admit the statement given in the public hearing to the extent that it meets the object defined in the order that received it.[8]

14. Note is taken that the documents that were submitted with the State's final written arguments were objected to by the representative, who "reiterated his express and categorical opposition, expressed on June 24, to the meritless and inadmissible documentary evidence that the State, in its final written arguments, proposed to be incorporated into the case." The Court also notes that some of those documents: (a) were requested by the Court during the public hearing[9] and (b) deal with matters that have been alleged by the parties and that concern the alleged violations[10] or have already been incorporated into the documentary evidence submitted by the parties and the Commission.[11]

15. The Court, therefore, admits the aforementioned documents with the clarification that the documents submitted by the State in the form of extracts will be evaluated by taking into consideration that they are incomplete.

V
FACTS

16. The Court, in this chapter, will establish the facts that have been taken as proved based on the probative evidence that has been admitted and that is in agreement with the Merit's Report's factual framework. The Court will also include facts presented by the parties that may explain, clarify or refute that factual framework.[12] The facts will be presented as follows: (a) regarding Mr. Romero Feris; (b) regarding the pre-trial detention of Mr. Romero Feris and (c) regarding the criminal proceedings against Mr. Romero Feris.

A. Regarding Mr. Romero Feris

17. It is an undisputed fact that Mr. Romero Feris held different public offices between 1985 and 1999. In 1985, he was President of the Rural Confederation of Argentina; between 1991 and 1993, he was Mayor of the capital city of the Province of Corrientes; between 1993 and 1997, he was Governor of the Province of Corrientes and, between 1997 and 1999, he was once again Mayor of the capital city of Corrientes.

18. Mr. Romero Feris and other public officials were accused of fraudulent administration, unlawful enrichment, embezzlement, abuse of authority, fraud, embezzlement of public funds, falsification of public documents, among other offenses. The alleged commission of those

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7 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140 and *Case of Rico v. Argentina. Preliminary Objection and Merits*. Judgment of September 2, 2019. Series C No. 383, para. 21.

8 This was presented by the alleged victim. The object of the statement may be found in the order of the President of the Court of March 18, 2019.

9 *Cf.* Extracts of the indictment of Mr. Romero Feris. Resolution No. 1321 of the Second Court of Instruction of Corrientes of October 7, 1999 (evidence file, fs. 345 to 348).

10 *Cf.* First Court of Instruction of Corrientes, Resolution N° 1023 of September 3, 2002 (evidence file, fs. 349 to 352), Resolution Nº 581 of the First Criminal Chamber of Corrientes of September 10, 2002 (evidence file, fs. 353 to 361), Superior Court of Corrientes, Order N°177 of December 3, 1999 (evidence file, fs. 363 to 371) and extract of an order of December 28, 1999, which refers to the pre-trial detention of Mr. Romero Feris (evidence file, f. 339).

11 *Cf.* Resolution No. 1251 of the First Court of Instruction of August 1, 2001 (evidence file, f. 190).

12 *Cf. Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs.* Judgment of February 28, 2003. Series C No. 98, para. 153 and *Case of Rico v. Argentina*, para. 25.

offenses are related to the exercise of his public offices, mainly as mayor of the city of Corrientes.

19. In 2010, more than 50 criminal investigations were opened against Mr. Romero Feris.[13] The Commission, however, presented its factual framework and analyzed the possible infringements of the Convention with regard to the criminal proceedings in four cases: (a) Case: SITRAJ-Corrientes on Complaint; (b) Case: Romero Feris, Raúl Rolando and Zidianakis, Andrés for Embezzlement; c) Case: Romero Feris, Raúl Rolando; Isetta, Jorge Eduardo; Magram, Manuel Alberto for Embezzlement; Ortega, Lucía Placida for Embezzlement and use of false document and (d) Case: Intervention Commissioner of the city of Corrientes, Juan Carlos Zubieta on Complaint. In the latter case, pre-trial detention was ordered for Mr. Romero Feris.

B. Regarding the pre-trial detention of Mr. Romero Feris

20. In 1999, the Union of Judicial Employees of Corrientes filed a complaint against Mr. Romero Feris and other public officials at the Office of the First Prosecutor of Instruction of Corrientes (hereinafter "First Prosecutor"), claiming that the alleged victim was responsible for fraudulent administration, unlawful enrichment, embezzlement, abuse of authority, fraud and embezzlement of public funds, among other offenses.[14]

21. Mr. Romero Feris was detained on August 3, 1999 in the city of Corrientes pursuant to a request of investigation by the First Prosecutor and an arrest warrant issued by the Second Examining Magistrate of Corrientes on August 2, 1999.[15] On October 7, 1999, by Resolution N° 1321, the arrest was converted into pre-trial detention.[16]

22. In July 2001, before the victim had been deprived of his liberty for two years, his defense counsel requested the Examining Magistrate to order his liberty.[17] On August 1, 2001, the First Examining Magistrate (hereinafter "First Magistrate") rejected the request and extended the pre-trial detention for eight months, beginning on August 4, 2001.[18]

23. The First Magistrate and the First Criminal Chamber of Corrientes ordered the release of the alleged victim on September 3, 2002[19] and September 10, 2002, respectively.[20] It is an undisputed fact that he was released on September 11, 2002.

C. Regarding the criminal proceedings against Mr. Romero Feris

24. The Court will now refer to the recourses that were filed in each of the four criminal cases that are included in the Commission's factual framework.

C.1. Case: SITRAJ-Corrientes on Complaint

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13 *Cf.* Report of the Judiciary of the Province of Corrientes (evidence file, fs. 201 to 235)

14 *Cf.* First Court of Instruction, Resolution N° 1251 of August 2, 2001 (evidence file, fs. 3400 to 3411)

15 *Cf.* First Court of Instruction, Resolution N° 1251 of August 2, 2001 (evidence file, fs. 3400 to 3411).

16 *Cf.* The decision to extend the pre-trial detention of the alleged victim mentions that document. *Cf.* First Court of Instruction, Resolution N° 1251 of August 1, 2001 (evidence file, f. 190). The State submitted with its final written arguments extracts of Indictment N° 1321 of Mr. Romero Feris of the Second Court of Instruction of October 7, 1999 (evidence file, fs. 345 and 346).

17 *Cf.* Petition for release presented by Mr. Romero Feris (evidence file, fs. 169 to 180).

18 *Cf.* First Magistrate, Resolution N° 1251 of August 1, 2001 (evidence file, fs. 183 to 195.

19 *Cf.* First Court of Instruction, Resolution N° 1023 of September 3, 2002 (evidence file, fs. 349 to 352).

20 *Cf*. First Criminal Chamber, Resolution Nº 581 of September 10, 2002 (evidence file, fs. 353 to 361).

25. In 1999, the Union of Judicial Employees of Corrientes filed a complaint at the Office of the First Prosecutor against Mr. Romero Feris and other public officials. During the proceedings of the case, the alleged victim filed several recourses and objections that claimed violations of the right to be judged by a competent, independent and impartial authority. Those recourses are as follows:

a) *Motion of nullity with a subsidiary appeal against all the orders and procedural acts of Magistrate M.P.*

26. On July 27, 2000, the alleged victim filed a motion of nullity with a subsidiary appeal "against all the orders and procedural acts of the First Magistrate."[21] On September 26, 2000, the First Magistrate rejected the recourse in all its parts and declared the subsidiary appeal inadmissible.[22]

b) Motion of exception of lack of jurisdiction and competence

27. On May 24, 2001, the alleged victim filed an exception of lack of jurisdiction and competence. He again criticized the lack of impartiality of the magistrate to hear the case.[23] On June 4, 2001, the Examining Magistrate rejected the exception.[24]

28. On June 7, 2001, the alleged victim filed an appeal against the order that rejected the exception.[25] On June 20, 2001, the Second Criminal Chamber of Corrientes (hereinafter ("Second Chamber" or "Chamber") denied the appeal.[26]

29. On July 18, 2001, the alleged victim filed a writ of cassation against that decision.[27] Two days later, the Second Chamber declared that remedy inadmissible.[28]

c) Request that the resolution on the composition of the Second Chamber be declared null and void

30. On February 20, 2002, the alleged victim filed a brief requesting that the resolution on the composition of the Second Chamber be declared null and void.[29] On February 22, 2002, the Chamber rejected *in limine* that request and held the remedy inadmissible.[30]

31. On March 8, 2002, the alleged victim filed a writ of cassation against the decision of the Chamber.[31] On March 14, 2002, the Chamber declared the remedy inadmissible.[32]

32. On March 19, 2002, the alleged victim filed an appeal of complaint regarding the rejection of the writ of cassation.[33] On May 7, 2002, the Superior Court of the Province of

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21 Motion of nullity with a subsidiary appeal of July 27, 2000 (evidence file, fs. 236 to 251) and certified copy of the shorthand version of the meeting to extend of November 22, 1999 of the Senate of the Province of Corrientes (evidence file, fs. 3336 to 3399).

22 *Cf.* First Court of Instruction, Resolution of September 26, 2000 (evidence file, fs. 252 to 256).

23 *Cf.* Recourse of exception of May 24, 2001 (evidence file, fs. 257 to 291).

24 *Cf.* First Court of Instruction, Resolution of June 4, 2001 (evidence file, f. 297).

25 *Cf.* Recourse of Appeal of June 7, 2001 (evidence file, fs. 299 to 303).

26 *Cf.* Second Criminal Chamber, Resolution N° 276 of June 20, 2001 (evidence file, fs. 304 to 308).

27 *Cf.* Writ of Cassation of July 18, 2001 (evidence file, fs. 309 to 332).

28 *Cf*. Second Criminal Chamber, Resolution N° 314 of July 20, 2001 (evidence file, fs. 333 to 335).

29 *Cf.* Motion of absolute nullity of February 20, 2002 (evidence file, fs. 336 to 346).

30 *Cf.* Second Criminal Chamber, Resolution N° 22 of February 22, 2002 (evidence file, fs. 347 to 351).

31 *Cf.* Writ of Cassation of March 8, 2002 (evidence file, fs. 354 to 369).

32 *Cf.* Second Criminal Chamber, Resolution N° 134 of March 14, 2002 (evidence file, fs. 370 to 371).

33 *Cf.* Appeal of Complaint of March 19, 2002 (evidence file, fs. 3573 to 391).

Corrientes (hereinafter also "Superior Court" or "STJC") accepted "the remedy of complaint for the denied writ of cassation, but only to return it" and "remitted the file "*a-quo*" to continue the process according to the law."[34]

d) Request of recusal for prejudgment and suspicion of partiality of the members of the Second Chamber

33. On April 25, 2002, the alleged victim recused A.R.P., L.C.J.S. and F.C. on the grounds of prejudgment and suspicion of impartiality and sought to remove them from the case and from all other cases in which he was a party. He based the request on the rejection of evidence that he had offered. His defense counsel argued that the statements of the judges in refusing part of the evidence demonstrated a preconceived notion on the guilt of his client.[35]

34. On April 26, 2002, the Second Chamber declared the request inadmissible, holding that the justification was not among those that the law specifically admits for recusal.[36]

e) Appeal of Judgment N° 8 of the Second Chamber

35. On June 10, 2002, the alleged victim filed a writ of cassation against the Second Chamber's Judgment N° 8 of May 17 that convicted him of conjoint offenses of misfeasance to the detriment of the public administration; sentenced him to a term of seven years' imprisonment and to special perpetual disqualification from holding public office. It also upheld the civil suit that obligated him to pay the Municipality of Corrientes the sum of eight million, seven hundred ninety thousand nine hundred pesos (ARS 8,790,900).[37] On June 13, 2002, the Chamber granted the motion.[38]

f) Motion that the composition of the STJC be declared null and void

36. On February 18, 2003, the alleged victim petitioned that the composition of the STJC be declared null and void.[39] On April 14, 2003, he filed an appeal of clarification against the decision of April 10, 2003 that, due to the recusal of Judge L.C.J.S., called a hearing to hold a drawing to replace him.[40] On May 7, 2003, the President of the STJC rejected the motion on the grounds that it was without merit.[41]

37. On May 14, the alleged victim filed a request of reconsideration and nullity against the decision of May 7. He claimed that the request of clarification should not have been resolved by the President alone, but rather that it required a ruling by the permanent members of the Court, not by temporary judges.[42]

38. On June 2, 2003, the Attorney General of Corrientes submitted the report requested by the STJC, in which he considered that it is the permanent members who should resolve the the request of clarification and nullity because the President had exceeded his authority under domestic law.[43] On June 11, 2003, the STJC decided to: "(1) reject the request for clarification

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34 *Cf*. STJC, Resolution N° 32 of May 7, 2002 (evidence file, fs. 392 to 395).

35 *Cf.* Recusal with cause of April 25, 2002 (evidence file, fs, 396 to 412).

36 *Cf.* Second Criminal Chamber, Order N° 346 of April 26, 2002 (evidence file, fs. 413 to 416).

37 *Cf.* Writ of cassation of June10, 2002 (evidence file, fs. 417 to 497).

38 *Cf.* Second Criminal Chamber, Order N° 493 of June 13, 2002 (evidence file, fs. 498 to 500).

39 *Cf*. Motion of absolute nullity of February 18, 2003 (evidence file, fs. 501 to 507).

40 *Cf.* Appeal of clarification of April 14, 2003 (evidence file, fs. 508 to 512).

41 *Cf.* STJC, Resolution N° 3550 of May 7, 2003 (evidence file, fs. 513 to 516).

42 *Cf.* Appeal of revocation of May 14, 2003 (evidence file, fs. 517 to 520).

43 *Cf.* Report of the Attorney General of Corrientes to the STJC of June 2, 2003 (evidence file, fs. 521 to 525).

[…] (2) reject the motion of nullity […] (3) remove the […] Deputy Attorney General from this case and all consolidated cases."[44]

39. On June 26, 2003, the alleged victim filed a Special Federal Recourse (hereinafter also "REF") because he claimed that the STJC decision of June 11 was arbitrary.[45]

40. On August 7, 2003, the alleged victim requested that the STJC be reconstituted. He stated that two of the persons who had been appointed as temporary judges by the Executive Branch had not been ratified by the Provincial Senate and that, therefore, they were unable to perform their functions and, thus, it was necessary to form a new court to resolve the pending issues.[46] On April 7, 2004, the STJC declared the issue regarding the composition of the STJC to be moot and rejected the remedies.[47]

41. On April 26, 2004, the alleged victim filed an REF against the STJC decision.[48] On September 15, 2004, the STJC granted the REF.[49]

42. On February 13, 2007, the Supreme Court of Argentina (hereinafter "CSJN"), after receiving the opinion of the Attorney General, declared the REF inadmissible.[50]

C.2. Case: Romero Feris, Raúl Rolando and Zidianakis, Andrés for Embezzlement

a) *Motion of nullity with a subsidiary appeal against all the orders and procedural acts of Magistrate M.P.*

43. As in the first case, the alleged victim filed a motion of nullity with a subsidiary appeal against all the orders and procedural acts of the First Magistrate.[51]

44. On September 26, 2000, the First Magistrate rejected the recourse. The Court notes that the arguments on which the alleged victim based the remedy and those employed by the magistrate in rejecting it are similar to those in the previous case.

b) Motion of exception of lack of jurisdiction and competence

45. On September 7, 2001, the alleged victim raised, as in the previous case, the exception of lack of jurisdiction and competence.[52] On March 18, 2004, the surrogate Examining Magistrate of the Sixth Court of Instruction declared the request inadmissible.[53]

46. On March 24, 2004, the alleged victim appealed that decision.[54] On April 12, 2004, the surrogate Magistrate rejected the alleged victim's opposition to remittance to a higher court and forwarded the matter to the Second Chamber.[55]

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44 Cf. STJC, Resolution N° 33 of June 11, 2003 (evidence file, fs. 526 to 534).

45 *Cf.* Special Federal Recourse of June 26, 2003 (evidence file, fs. 535 to 580).

46 *Cf.* Motion of absolute nullity of August 7, 2003 (evidence file, fs. 581 to 584).

47 *Cf.* STJC, Sentence N° 23 of April 7, 2004 (evidence file, fs. 585 to 613).

48 *Cf.* Special Federal Recourse of April 26, 2004 (evidence file, fs. 614 to 695).

49 *Cf.* STJC, Order N° 142 of September 15, 2004 (evidence file, fs. 696 to 710).

50 *Cf.* CSJN, Sentence of February 13, 2007 (evidence file, fs. 724 to 725).

51 *Cf.* Motion of nullity with subsidiary appeal of July 27, 2000 (evidence file, fs. 726 to 740).

52 *Cf.* Motion of exception of September 7, 2001 (evidence file, fs. 746 to 775).

53 *Cf.* Sixth Court of Instruction, Order N° 182 of March 18, 2004 (evidence file, fs. 776 to 780).

54 *Cf.* Recourse of appeal of March 24, 2004 (evidence file, fs. 781 to 784).

55 *Cf*. Second Court of Instruction, Order N° 226 of April 12, 2004 (evidence file, fs. 785 to 797).

47. On April 16, 2004, the alleged victim filed a motion of nullity with a subsidiary appeal against the order of April 12.[56] On June 28, 2004, the surrogate Magistrate rejected the motion of nullity in all its parts and declared the subsidiary appeal inadmissible.[57] On February 14, 2005, the Second Chamber rejected an appeal of complaint filed by the alleged victim and confirmed the order of June 28.[58]

c) Motion for recusal on grounds of prejudgment of three members of the Second Chamber

48. On August 4, 2005, the alleged victim recused the members of the Second Chamber.[59] On August 10, 2005, the Chamber rejected the motion *in limine*.[60]

d) *Appeal of Judgment N° 139 of the Second Chamber of December 20, 2005*

49. On December 20, 2005, the Second Chamber sentenced Mr. Romero Feris to a term of five years' imprisonment and to perpetual disqualification from public office as co-perpetrator of the crime of embezzlement. It also found with merit the complaint and the civil suit in favor of the Municipality of Corrientes in the amount of four hundred thousand pesos (ARS 400,000).

50. On February 20, 2006, the alleged victim filed a writ of cassation against the decision of the Second Chamber.[61] On October 19, 2006, the STJC found the remedy without merit and confirmed the sentence.[62]

51. On November 3, 2006, the alleged victim filed an REF before the STJC against the decision of October 19.[63] On February 20, 2007, the STJC decided not to grant the REF.[64]

52. On March 5, 2007, the alleged victim filed an appeal of complaint before the CSJN against the decision that denied the appeal that requested that the STJC review the sentence imposed on him.[65]

53. On December 18, 2007, having consulted the Attorney General who advised that the recourse be rejected,[66] the CSJN denied the complaint.[67]

C.3. Case: Romero Feris, Raúl Rolando; Isetta, Jorge Eduardo; Magram, Manuel Alberto for Embezzlement; Ortega, Lucía Placida for Embezzlement and use of a false document

a) Motion of exception of lack of jurisdiction and competence

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56 *Cf.* Motion of nullity and a subsidiary appeal of April 16, 2004 (evidence file, fs. 798 to 801).

57 *Cf.* First Court of Instruction, Order N° 414 of June 28, 2004 (evidence file, fs. 802 to 808).

58 *Cf.* Second Criminal Chamber, Resolution of February 14, 2005 (evidence file, fs. 809 to 813).

59 *Cf.* Recusal with cause of August 4, 2005 (evidence file, fs. 814 to 825).

60 *Cf.* Second Criminal Chamber, Sentence N° 382 of August 10, 2005 (evidence file, fs. 826 to 827).

61 *Cf.* Writ of cassation of February 20, 2006 (evidence file, fs. 828 to 887).

62 *Cf.* STJC, Sentence N° 106 of October 19, 2006 (evidence file, fs. 889 to 919).

63 *Cf.* Special Federal Recourse of November 3, 2006 (evidence file, fs. 920 to 951).

64 *Cf.* STJC, Sentence N° 9 of February 20, 2007 (evidence file, fs. 952 to 959).

65 *Cf*. Appeal of complaint of March 5, 2007 (evidence file, fs. 962 to 997).

66 *Cf.* Report of the Attorney General of Argentina of September 28, 2007 (evidence file, fs. 998 to 1007).

67 *Cf.* CSJN, Sentence of December 18, 2007 (evidence file, fs. 1008 to 1009).

54. On March 9, 2001, the alleged victim challenged the authority of the First Magistrate to intervene in the case. He claimed that his appointment infringed the guarantee of a natural judge, as established in the Constitution of Argentina.[68] The record does not indicate how this issue was resolved.

b) Motion of recusal on grounds of prejudgment and suspicion of partiality of the members of the Second Chamber

55. On August 6, 2001, the alleged victim recused the members of the Second Chamber because of their participation as an appeals court in decisions adopted during the phase of instruction.[69] On August 17, 2001, the Second Chamber held the request inadmissible since the grounds offered are not a cause for recusal under the law.[70]

c) *Appeal of Judgment N° 116 of the Second Chamber of October 31, 2001*

56. On October 31, 2001, the Second Chamber sentenced Mr. Romero Feris to a term of three years and six months imprisonment and seven years of special disqualification from holding public office as the perpetrator of the offense of abuse of authority.[71] The alleged victim filed a writ of cassation against that sentence.[72] The available documentation does not contain the decision on the action.

57. On September 9, 2004, the alleged victim filed a REF requesting that the case be referred to the CSJN.[73] The STJC declared the remedy inadmissible on May 31, 2005 because the defense counsel was unable to show an unequivocal departure from the law or an absolute lack of substantiation in the decision.[74]

58. On June 14, 2005, the alleged victim appealed the denial of the REF before the CSJN.[75] The following day, he filed a new REF challenging part of the decision of the STJC of May 31, 2005 and requesting the recusal of the members.[76]

59. On September 14, 2005, the STJC rejected the REF *in limine* on the grounds that the proceedings had terminated and that the request of recusal of the members presented after the delivery of an adverse sentence is inadmissible.[77]

60. On September 23, 2005, the defense counsel filed an appeal of complaint before the CSJN.[78] On March 20, 2007, after receiving the opinion of the Attorney General,[79] the CSJN declared the REF inadmissible.[80]

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68 *Cf.* Motion of exception of March 9, 2001 (evidence file, fs. 1010 to 1033).

69 *Cf.* Recusal with cause of August 6, 2001 (evidence file, fs. 1034 to 1062).

70 *Cf.* Second Criminal Chamber, Order N° 356 of August 17, 2002 (evidence file, fs. 1065 to 1066).

71 *Cf.* Second Criminal Chamber, Sentence N° 116 of October 31, 2001 (evidence file, fs. 1067 to 1103).

72 *Cf.* Appeal of cassation of November 27, 2001 (evidence file, fs. 1104 to 1202).

73 *Cf.* Special Federal Recourse of September 9, 2004 (evidence file, fs. 1267 to 1319).

74 *Cf.* STJC, Order N° 64 of May 31, 2005 (evidence file, fs. 1320 to 1327).

75 *Cf.* Appeal of complaint of July 14, 2005 (evidence file, fs. 1328 to 1376).

76 *Cf.* Special Federal Recourse of July 15, 2005 (evidence file, fs. 1377 to 1404).

77 *Cf.* STJC, Order N° 131 of September 14, 2005 (evidence file, fs. 1405 to 1407).

78 *Cf.* Appeal of complaint of September 23, 2005 (evidence file, fs. 1408 to 1445).

79 *Cf.* Opinion of the Attorney General of Argentina of November 30, 2006 (evidence file, fs. 1446 to 1458).

80 *Cf.* CSJN, Sentence of March 20, 2007 (evidence file, fs. 1459 to 1461).

d) Request that all the instructional acts and procedural measures of Magistrate M.P. be declared null and void

61. On February 6, 2002, the alleged victim requested that all the acts of Examining Magistrate M.P. in the case before the STJC be declared null and void. He claimed that the judge's appointment violated the constitutional guarantee of a natural judge and, therefore, due process.[81]

62. On February 12, 2002, the Deputy Attorney General of the Province of Corrientes considered that, before ruling, he should set up another file on the motion of nullity.[82]

e) *Motion that the composition of the STJC be declared null and void*

63. On February 20, 2013, the alleged victim filed an appeal of absolute nullity against the decision of February 12 regarding the composition of the STJC. He claimed that three judges were not appointed under the procedure established by the Constitution of the Province.[83]

64. On April 10, 2003, due to the recusal of Judge C.J.S., the President of the STJC ordered a "drawing for the composition of the [STJC]," to which the alleged victim filed an appeal of clarification requesting that "[…] the drawing, to be held April 14, 2003, should also deal with the request for the recusal […of] Judges [E.R.M. and C.M…]."[84]

65. On June 18, 2003, having consulted the Attorney General of Corrientes who recommended revoking the appealed decree and excluding the judges who were temporarily named by the Executive Branch from the drawing,[85] the STJC rejected the appeals of nullity and clarification.[86]

66. On July 3, 2003, the alleged victim filed an REF against that decision.[87] On March 16, 2004, the STJC declared the question of the configuration of the STJC moot, as the new composition made it unnecessary to further consider the matter.[88]

C.4. Case: Intervention Commissioner of the City of Corrientes, Juan Carlos Zubieta by Complaint

Motion of nullity with a subsidiary appeal against all the orders and procedural acts of Magistrate M.P.

67. On July 24, 2000, the alleged victim filed a motion of nullity with a subsidiary appeal against all the orders and procedural acts of the First Magistrate.[89] On April 5, 2001, after consulting the First Attorney General, who considered that the remedy should be rejected,[90] the First Magistrate denied the remedy and declared the subsidiary appeal inadmissible.[91]

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81 *Cf.* Motion of absolute nullity of February 6, 2002 (evidence file, fs. 1203 to 1210).

82 *Cf.* Report of the Attorney General of Corrientes to the STJC of February 12, 2002 (evidence file, fs. 1211 to 1213).

83 *Cf.* Motion of absolute nullity of February 20, 2003 (evidence file, fs. 1214 to 1221).

84 *Cf*. Appeal of clarification of April 14, 2003 (evidence file, fs. 1222 to 1224).

85 *Cf.* Report of the Attorney General of Corrientes of April 28, 2003 (evidence file, fs. 1225 to 1227).

86 *Cf.* STJC, Order N° 35 of June 18, 2003 (evidence file, fs. 1228 to 1233).

87 *Cf.* Special Federal Recourse of July 3, 2003 (evidence file, fs. 1234 to 1263).

88 *Cf.* STJC, Order N° 29 of March 16, 2004 (evidence file, fs. 1264 to 1266).

89 *Cf.* Motion of nullity and a subsidiary appeal of July 24, 2000 (evidence file, fs. 1462 to 1477).

90 *Cf.* Report of the First Prosecutor of Instruction of August 18, 2000 (evidence file, fs. 1478 to 1483).

91 *Cf.* First Court of Instruction, Order of April 5, 2001 (evidence file, fs. 1484 to 1489).

68. The alleged victim appealed the decision of the First Magistrate.[92] On May 31, 2001, the Second Chamber denied the appeal and confirmed the decision of the First Magistrate.[93] On June 14, 2001, the alleged victim filed a writ of cassation against the decision of the Second Chamber with the purpose of appealing to the STJC.[94] The next day, the Chamber declared the remedy inadmissible.[95]

69. The alleged victim filed a remedy of complaint before the STJC on the denied writ of cassation.[96] According to what was claimed by the Commission and was not refuted by the State, on August 14, 2001 the STJC rejected the complaint for lack of a federal issue.

C.5. Other facts related to the cases against the alleged victim

70. The alleged victim was detained on May 10, 2016 in compliance of a decision of the Second Criminal Oral Court of Corrientes, which consolidated three cases against him and which sentenced him to a term of 12 years' imprisonment, of which he must serve at least seven years and seven months.[97] The State did not dispute this information, but did challenge an analysis by the Court of the conjoint sentence and its computation for being beyond the factual framework established by the Commission. By Order N° 220 of June 16, 2016, the alleged victim was provisionally granted the benefit of serving the sentence under house arrest because he had a cardiac ailment and needed weekly medical controls.[98] Later, "by Order N° 435 of November 3, 2016, the alleged victim was permitted to continue serving the sentence under house arrest […], under the care and responsibility of [Mrs.] Rocío Romero Feris and under the Social Forensic Corps' supervision of the detention. In addition, the weekly medical controls were lifted."[99]

71. The Court recalls that the above-mentioned facts and those that followed do not have any relation to the violations alleged by the Commission in its Merits Report and, therefore, will not be analyzed.

VI
MERITS

72. The Court will now analyze the international responsibility of the State for allegedly violating several rights established in the Convention that are related to the alleged unlawful and arbitrary deprivation of liberty of Mr. Romero Feris, as well as the alleged violations to his right to judicial protection that occurred in the context of the four criminal charges against him. The Court will now consider and resolve the merits of the controversy. To do so, it will analyze: (a) his right to personal liberty and (b) his right to judicial protection.

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92 *Cf.* Recourse of appeal (evidence file, fs. 1490 to 1495).

93 *Cf.* Second Criminal Chamber, Order N° 125 of May 31, 2001 (evidence file, fs. 1497 to 1499).

94 *Cf.* Writ of cassation of June 14, 2001 (evidence file, fs. 1500 to 1526).

95 *Cf.* Second Criminal Chamber, Order N° 242 of June 15, 2001 (evidence file, fs. 1527 to 1529).

96 *Cf.* Appeal of complaint of June 21, 2001 (evidence file, fs. 1530 to 1543).

97 *Cf.* Press clipping "Corrientes: exGovernor detained" published in Clarín on May 10, 2016 (evidence file, fs. 196 to 200).

98 *Cf. Case of Romero Feris v. Argentina. Request for Provisional Measures*. Order of the President of the Court of August 22, 2018

99 *Cf. Case of Romero Feris v. Argentina* (evidence file, f. 77).

VI.1
RIGHT TO PERSONAL LIBERTY AND TO THE PRESUMPTION OF INNOCENCE OF MR. ROMERO FERIS

73. In this chapter, the Court will refer to the arguments regarding the alleged victim's right to personal liberty and his right to the presumption of innocence. The Court will also refer to the lawfulness of the deprivation of liberty (Article 7(2) of the Convention), to the abitrariness of the pre-trial detention and to the presumption of innocence (Articles 7(3), 7(5) and 8(2)) of the alleged victim and, finally, to an effective judicial remedy related to the unlawfulness of the arrest or pre-trial detention (Article 7(6)).

A. Lawfulness of the pre-trial detention of Mr. Romero Feris

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

74. The *Commission* claimed that the duration of the alleged victim's pre-trial detention did not respect the provisions of the applicable legislation, which is a violation of Article 7(2) of the Convention. It made this assertion because the alleged victim was deprived of his liberty for one month and eight days more than the legal maximum of two years, which may be extended for one year, and five months more than the period of extension of pre-trial detention. The *representative* coincided with this position.

75. The *State* pointed out that, with respect to the duration of the pre-trial detention of the alleged victim and its conformity with the applicable legislation, the domestic court had applied the benefit known as "2x1" that was available under Law 24,390 and that consisted in counting two days of prison for each day of pre-trial detention, which would have exceeded the two years. It indicated that any harm caused by the alleged excess of pre-trial detention had been remedied by including that period when calculating the full term of the sentence.

A.2. Considerations of the Court

76. The Court has held that the essence of Article 7 of the Convention is the protection of the liberty of the individual from all arbitrary or unlawful interference by the State.[100] It has explained that this article has two distinct types of regulations: one general and the other specific. The general is found in the first clause: "[e]very person has the right to personal liberty and security"; while the specific is comprised of a series of guarantees that protect the right not to be unlawfully (Article 7(2)) or arbitrarily (Article 7(3)) deprived of liberty; to be informed of the reasons for the detention and of the charges brought against the person detained (Article 7(4)); to the judicial control of deprivation of liberty (Article 7(5)) and to contest the lawfulness of the detention (Article 7(6)).[101] Thus, any violation of the clauses 2 through 7 of Article 7 of the Convention necessarily results in a violation of Article 7(1).

77. Article 7(2) establishes that "[n]o one may be deprived of his physical liberty except for reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto." This provision recognizes the principal guarantee to the right to physical liberty: the legal exception, according to which the

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100 *Cf. Case of the "Juvenile Reeducation Instituter" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2004. Series C No. 112, para. 223 and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 1, 2016. Series C No. 316, para. 131.

101 *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. 51 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. 351.

the right to personal liberty can only be affected by a law.[102] This legal exception must be accompanied by the principle of the legal classification (*tipicidad*) of the law, which obliges the State to establish, as specifically as possible and "beforehand," the "justifications" and "conditions" for the deprivation of physical liberty. It also requires that its application be strictly subjected to the procedures objectively defined by law.[103] Thus, Article 7 automatically remits to the domestic norms. Any requirement in the domestic law that is not complied with when depriving a person of his or her liberty will result in that deprivation being unlawful and contrary to the Convention.[104]

78. The Commission and the representative assert that the pre-trial detention of Mr. Romero Feris extended beyond the period fixed both by domestic law and by the judicial decisions that ordered it. Reference, therefore, should first be made to the norms existing at the time of the facts. Article 1 of Law N° 24,390, the norm that the First Magistrate employed to assess the need to prolong the precautionary measures, establishes that "pre-trial detention shall not exceed two years. However, when the number of offenses attributed to the accused or the apparent complexity of the case prevents the issuance of a decision within the time limit indicated, this may be extended for one additional year, by a reasoned decision, which shall immediately be notified to the relevant appeals court for appropriate control."

79. Mr. Romero Feris was detained on August 3, 1999 and his defense counsel requested, in mid-2001, the First Magistrate to order his release. This request was rejected on August 1, 2001 and, pursuant to the aforementioned Article 1, the detention was extended for eight months, from August 4 of the same year. The alleged victim was finally released on September 11, 2002 (*supra* paras. 21 to 23).

80. As to the arguments of the Commission and of the representative on the lawfulness of the pre-trial detention, the Court notes that the eight months extension is in accordance with the periods established by the domestic legislation, which allows extensions for up to one year. Although the alleged victim should have been released on April 4, 2002, his release did not occur until September 11 of that year. Thus, the deprivation of liberty exceeded by five months and eight days that which was ordered by the Examining Magistrate, which the Court deems contrary to Article 7(2) of the Convention.

81. It should be recalled that the domestic judges arrived at similar conclusions with respect to the duration of the precautionary measure. The First Magistrate indicated in his resolution of September 3, 2002 that "in effect, abiding by the standards established in that law, I opportunely resolved to extend by eight months the pre-trial detention of [Mr. Romero Feris], which has now elapsed […]. Since [he] was detained on 02/08/99, the three (3) years alluded to have ended, and, therefore, his release must be ordered."[105] Similarly, on September 10, 2002, the First Criminal Chamber stated that "in accordance with what has been stated and calculating the extension […] from August 4, 2001, as of today the maximum period of detention would have ended with an excess of time and, therefore, Raúl Rolando Romero Feris must be released."[106]

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[102] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 55 and *Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2010. Series C No. 218, footnote 178.

[103] *Cf. Case of Pollo Rivera et al. v. Peru. Merits, Reparations and Costs*. Judgment of October 21, 2016. Series C No. 319, para. 98 and *Case of Gangaram Panday v. Suriname. Merits, Reparations and Costs*. Judgment of January 21, 1994. Series C No. 16, para. 47.

[104] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 57 and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 27, 2014. Series C No. 281, para. 158.

[105] First Judge of Instruction, Resolution Nº 1023 of September 3, 2002 (evidence file, f. 351).

[106] First Criminal Chamber, Resolution Nº 581 of September 10, 2002 (evidence file, f. 356).

82. The Court considers that the State's argument that the period in excess of the lawful maximum for pre-trial detention was computed taking into account the so-called "2x1" benefit under Law N° 24,390, which consisted in counting two days of imprisonment for each day of pre-trial detention, would have exceeded the two years is not sufficient to justify the failure to comply with the provisions of the law and with the judicial decisions since, although it favors the alleged victim who was eventually convicted, in light of the principle of legal reserve and the principle of the presumption of innocence it does not make lawful a measure that has not complied with the domestic laws. Moreover, that argument ignores the precautionary nature of pre-trial detention by justifying it as a punishment, as a sanction, despite its initial purpose that is closely related to the development of the process, which would also be contrary to the principle of the presumption of innocence.

83. The Court, thus, finds that the State infringed Article 7(1) and 7(2) of the Convention to the detriment of Mr. Romero Feris by maintaining him in pre-trial detention for a period greater than that ordered by the Examining Magistrate and for more than the maximum period of the extension, which was a year, as established in Law N° 24,390.

B. The alleged arbitrariness of the deprivation of liberty and the presumption of innocence of Mr. Romero Feris

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

84. The *Commission* claimed that the August 1, 2001 decision of the First Magistrate, which indicated that the pre-trial detention should be maintained and extended, violated the right to personal liberty and to the presumption of innocence established in Articles 7(3), 7(5) and 8(2) of the Convention. Specifically, the Commission stressed that the magistrate took into account the fact that the sentence that the alleged victim could have received was a maximum of 25 years, which could have increased the risk that he would not appear for trial. The Commission also recalled that pre-trial detention can only be based on procedural reasons, such as risk of flight or obstruction of the process, and that the organs of the inter-American system have indicated that an eventual sentence cannot be used as an element to determine the risk of flight. With respect to the other considerations of the Magistrate in granting the extension to the detention that related to: (a) the imminence of a trial and (b) the statements of the alleged victim on the lack of independence and impartiality of the judicial authorities, the Commission claimed that the holding of public hearings or trials, which are stages of all proceedings, cannot be used to maintain pre-trial detention since, in practice, such a precautionary measure would be the rule and not the exception. It also argued that the filing of recourses in the context of a criminal trial cannot be used to prejudice the accused, nor can it be a justification to maintain pre-trial detention.

85. The *representative* coincided with the arguments of the Commission and added that the decision of August 2, 1999 of the Second Examining Magistrate that ordered the initial detention of the alleged victim infringed the right not to be arbitrarily deprived of liberty because it was not substantiated.

86. The *State* asserted that the magistrate made an exhaustive assessment of the reasonability, necessity and proportionality of the measure. The magistrate stated that he had considered the possible sanction, the number and complexity of the crimes attributed to the alleged victim and, especially, his conduct during the relevant judicial proceedings where he made evasive and contradictory statements when being questioned. The State also argued that it was not for the Inter-American Court to evaluate whether the risks noted by the Examining Magistrate are justified by the elements that he had available, since the Court does not act as an appellate court of domestic decisions.

B.2. Considerations of the Court

87. The Commission and the representative referred to the alleged arbitrariness of the decision of August 1, 2001 (*supra* para. 22), which extended the pre-trial detention of the alleged victim. The Commission did not present arguments on the initial order of the precautionary measure. The representative argued that the decision of August 2, 1999, which ordered the detention of the alleged victim, was not substantiated (*supra* para. 21).

88. The Court first notes that the decision of August 2 is not that which ordered the pre-trial detention of the alleged victim. In effect, the Second Examining Magistrate, in that decision, ordered his detention pursuant to the provisions of Article 284 of the Code of Criminal Procedure of the Province of Corrientes (hereinafter "the CPP"). This provision refers to the citation of an accused person to appear before a judge and indicates that in cases that have a sanction of deprivation of liberty or the possibility of a conditional sentence, such citation should be given effect by detaining the accused.[107]

89. However, Articles 308 *et seq*. of the CPP refer to pre-trial detention and specifically state that the "judge shall order the pre-trial detention of the accused when deciding that the accused be prosecuted." Such was done in this case by Resolution N° 1321 of October 7, 1999 (*supra* para. 21).[108] Therefore, the arguments of the representative do not refer to the order of pre-trial detention, but rather to the order to appear before a judge. The Court only has extracts of the order of pre-trial detention, which was submitted together with the State's final written arguments (*supra* para. 10). In addition, the representative stated on various opportunities that he opposed the incorporation of these documents into the record of the case (*supra* para. 14).

90. The Court will now analyze the arguments of the representative and of the Commission on the alleged arbitrariness of the decision to extend the pre-trial detention and will not rule on the initial decision since the arguments presented by the representative do not refer to that point and the documentary evidence that was submitted to the Court is not complete (*supra* para. 14).

a) Regarding the pre-trial detention and the presumption of innocence

91. With respect to arbitrariness, referred to in Article 7(3) of the Convention, the Court has established that "no person may be subjected to detention or imprisonment for reasons or by methods that, although classified as legal, could be deemed as incompatible with respect for the fundamental rights of the individual because, among others, they are unreasonable, unforeseeable or lacking in proportionality."[109] The Court has held that the domestic law, the appropriate procedure and the relevant express or implicit general principles, in themselves, must be compatible with the Convention. Thus, the concept of "arbitrariness" is not to be

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[107] Code of Criminal Procedure of the Province of Corrientes, Article 284: Citation – Whenever there is a justification to receive the statement of the accused, his appearance shall be ordered by a simple citation – except in cases of *en flagrante*- as long as the offense attributed to him does not call for pre-trial detention or a conditional sentence seems appropriate. The detention of the accused shall, however, be ordered whenever there is any reason to presume that he will not comply with the order or will attempt to destroy evidence of the event or will collude with his accomplices or will induce false statements. The same procedure may be used when investigating an offense that would allow the release of the accused. If the person cited does not appear within the set time limit without justifying a legitimate cause, his detention shall be ordered.

[108] The decision to extend the pre-trial detention of Mr. Romero Feris is mentioned at the beginning of that document. *Cf.* First Examining Magistrate, Resolution N° 1251 of August 1, 2001 (evidence file, f. 190). The State submitted with its final written arguments extracts of the indictment of Mr. Romero Feris. *Cf.* Resolution No. 1321 of the Second Court of Instruction of October 7, 1999 (evidence file, fs. 345 and 346).

[109] *Cf. Case of Gangaram Panday v. Suriname. Merits, Reparations and Costs.* Judgment of January 21, 1994. Series C No. 16, para. 47 and *Case of Amrhein et al. v. Costa Rica*, para. 355.

equated with "against the law," but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability.[110]

92. The Court has stated that in order that a precautionary measure that restricts liberty not be arbitrary, it is necessary that: (i) there are material presumptions of the existence of an unlawful act and of the involvement of the detainee in the act; (ii) the measure meets the four elements of the "test of proportionality"; in other words, the stated purpose of the measure must be legitimate (compatible with the Convention),[111] appropriate to comply with the purpose sought, necessary and strictly proportionate[112] and (iii) the decision that imposes it is "based on sufficient justification, permitting an evaluation on whether it is in keeping with the conditions indicated."[113]

i. Material presumptions of the existence of an unlawful act and of the involvement of the detainee in the act

93. Regarding the first point, the Court has indicated that in order to meet the requisites to restrict the right to personal liberty by means of a precautionary measure such as pre-trial detention, there must be sufficient elements to be able to reasonably presume that an unlawful act had occurred and that the person subjected to the process had participated in that act.[114]

94. It must be stressed that this presumption is not a legitimate justification, per se, to order a precautionary measure that restricts liberty nor is it an element that is susceptible of undermining the principle of the presumption of innocence set forth in Article 8(2) of the Convention. On the contrary, as found in the comparative law of various countries of the

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110 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 92 and *Case of Amrhein et al. v. Costa Rica*, para. 355. See also: United Nations, Human Rights Committee. Report N° 458/1991, *Case of A. W. Mukong v. Cameron*, August 10, 1994, CCPR/C/51/D/458/1991, para. 9.8 and Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, December 24, 2012, A/HRC/22/44, para. 61.

111 *Cf. Case of Servellón García et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 21, 2006. Series C No. 152, para. 89 and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 371, para. 251.

112 *Cf. Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135, para. 197 and *Case of Women Victims of Sexual Torture in Atenco v. Mexico.* para. 251.

113 *Cf. Case of García Asto and Ramírez Rojas v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 25, 2005. Series C No. 137, para. 128 and *Case of Women Victims of Sexual Torture in Atenco v. Mexico.* para. 251. Similarly, the European Court has held that detention will be "arbitrary" when "there has been an element of bad faith or deception on the part of the authorities"; […] "both the order to detain and the execution of the detention do not genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5(1); […] there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention; […and] there is no relationship of proportionality between the ground of detention relied upon and the detention in question. ECHR. *Case of James, Wells and Lee v. United Kingdom*. Judgment of September 18, 2012, Application N° 25119/09, 57715/09 and 57877/09, paras. 191 to 195 and *Case of Saadi v. United Kingdom*, Judgment of January 29, 2008, Application N° 13229/03, paras. 68 to 74.

114 *Cf. Case of Servellón García et al. v. Honduras*, para. 90 and *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, paras. 101 and 103.

region,[115] and of Argentina,[116] as well as the practice of international courts,[117] it is an additional presumption to the other requirements of a legitimate purpose, appropriateness, necessity and proportionality and operates as a supplementary guarantee when ordering a precautionary measure that restricts liberty.

95. The foregoing should be understood by considering that, in principle and in general terms, this decision should not have any effect on the person who decides the responsibility the accused, since it is usually made by a judge or by a judicial authority other than that which decides on the merits.[118]

96. Moreover, the Court has held that a suspicion or sufficient evidence that permits a reasonable presumption that the person subjected to trial has participated in the unlawful act under investigation must be substantiated and expressed on specific acts; in other words, not on mere conjectures or abstract intuitions. Thus, the State "must not arrest someone in order to then investigate him; rather, it is only authorized to deprive a person of his liberty when there is sufficient information to be able to bring him to trial."[119] In the same regard, the European Court has held that the term "suspicion or reasonable indicia" presupposes the existence of "some facts or information which would satisfy an objective observer that the person concerned may have committed the offence in question."[120]

ii. Test of proportionality

97. Regarding the second point, the Court has held that the judicial authority must consider proportionality when ordering a measure that deprives liberty. The Court has held pre-trial detention to be a precautionary and not a punitive measure[121] that should be applied

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115 For example: Article 233 of the New Code of Criminal Procedure of Bolivia; Article 312 of the Code of Criminal Procedure of Brazil; Article 140 of the Code of Criminal Procedure of Chile; Article 308 of the Code of Criminal Procedure of Colombia; Article 291 of the Code of Criminal Procedure of Costa Rica; Article 534 of the Code of Criminal Procedure of Ecuador; Articles 329 and 330 of the Code of Criminal Procedure of El Salvador; Article 154 of the National Code of Criminal Procedure of Mexico; Article 259 of the Code of Criminal Procedure of Guatemala; Article 227 of the Code of Criminal Procedure of the Dominican Republic; Articles 168 and 173 of the Code of Criminal Procedure of Nicaragua; Article 222 of the Code of Criminal Procedure of Panama; Article 242 of the Code of Criminal Procedure of Paraguay; Article 268 of the Code of Criminal Procedure of Peru; Article 224(1) of the Code of Criminal Procedure of Uruguay and Article 236 of the Organic Code of Venezuela .

116 For example: Article 220 of the Federal Code of Criminal Procedure of the Republic of Argentina; Article 157 of the Code of Criminal Procedure of the Province of Buenos Aires; Article 292 of the Code of Criminal Procedure of the Province of Catamarca; Article 280 of the Code of Criminal Procedure of the Province of Chaco; Article 220 of the Code of Criminal Procedure of the Province of Chubut; Article 281 of the Code of Criminal Procedure of the Province of Córdoba; Articles 318 and 319 of the Code of Criminal Procedure of the Province of Jujuy; Articles 250, 252 and 253 of the Code of Criminal Procedure of the Province of La Pampa; Article 293 of the Code of Criminal Procedure of the Province of Mendoza, Article 300 of the Code of Criminal Procedure of the Province of Salta; Article 220 of the Code of Criminal Procedure of the Province of Santa Fe; Articles 178 and 194 of the Code of Criminal Procedure of the Province of Santiago del Estero and Article 284 of the Code of Criminal Procedure of the Province of Tucumán.

117 For example: Article 58(1) of the Statute of the International Criminal Court; Rule 40 Bis of the Rules of Procedure and Evidence of the Special Court for Sierra Leona; Rule 63 (b) (iii) of the Rules of Procedure and Evidence of the Special Court for Lebanon; Rule 40 Bis of the Rules of Procedure and Evidence of the International Criminal Court for the Former Yugoslavia; Rule 40 Bis of the Rules of Procedure and Evidence of the International Criminal Court for Ruanda and Rule 63 of the Internal Rules of the Extraordinary Chambers in the Courts of Cambodia.

118 *Mutatis mutandis, Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 174.

119 *Cf*. *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations and Costs*. Judgment of May 29, 2014. Series C No. 279, para. 311 and *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 103.

120 *Cf*. ECHR. *Case of S., V. and A. v. Denmark*, Judgment of October 22, 2018, Application N° 35553/12, 36678/12 y 36711/12, para. 91 and *Case of Petkov and Profirov* v. Bulgaria, Judgment of June 24, 2014, Application N° 50027/08 and 50781/09, paras. 43 and 46.

121 *Cf. Case of Pollo Rivera et al. v. Peru*, para. 122 and *Case of López Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141, para. 69.

exceptionally since it is the most severe punishment that can be placed on the accused for an offense for which he or she is entitled to the presumption of innocence.[122] The Court has indicated in other cases that the deprivation of liberty of someone who has been accused or indicted for an offense cannot be based on general preventive or special preventive purposes that could be attributed to the punishment.[123] Therefore, it has indicated that the rule should be that such a person should be at liberty while his or her criminal responsibility is being resolved.[124]

98. In view of the above, the judicial authority can only impose measures of this nature when it is shown that: "(a) the purpose of the measures that deprive or restrict liberty is compatible with the Convention; (b) that the measures adopted are appropriate to meet the purpose sought; (c) that they are necessary, in the sense that they are absolutely essential to achieve the purpose sought, and that, among all possible measures, there is no less burdensome one in relation to the right involved that would be as suitable to achieve the proposed objective, and (d) that they are strictly proportionate, so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained by such restriction and the achievement of the purpose sought."[125]

99. With respect to the first point, the Court has indicated that the measure should only be imposed when it is necessary to satisfy a legitimate purpose; in other words, that the accused cannot obstruct the proceedings nor evade the action of justice.[126] The Court has also stressed that the procedural danger cannot be presumed, but rather there must be a verification based on the objective and factual circumstances of the danger in each case.[127] These requirements are drawn from Articles 7(3), 7(5) and 8(2) of the Convention.

100. Article 7(5) establishes that "[a]ny person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial." Thus, the measures that restrict liberty in the context of criminal proceedings are subject to the Convention; they have a precautionary purpose in that they are a means to neutralize procedural risks, and the norm refers especially to appearance for trial.

101. For its part, Article 8(2) sets forth the principle of the presumption of innocence, according to which a person is innocent until he or she is found guilty. This guarantee ensures that the elements that show the existence of a legitimate purpose are not based on a presumption, but rather the judge must decide on the objective and factual circumstances of the specific case,[128] which is the responsibility of the prosecutor and not the accused,[129] who must be afforded the possibility of the right to an adversarial procedure and to be duly aided

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122 *Cf. Case of Tibi v. Ecuador, Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 7, 2004. Series C No. 114, para. 106 and *Case of Amrhein et al. v. Costa Rica*, para. 353.

123 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 103.

124 *Cf. Case of López Álvarez v. Honduras*, para. 67 and *Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs*. Judgment of November 17, 2009. Series C No. 206, para. 121.

125 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 92 and *Case of Amrhein et al. v. Costa Rica*, para. 356.

126 *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 77 and *Case of Amrhein et al. v. Costa Rica*, para. 356.

127 *Cf. Case of Amrhein et al. v. Costa Rica*, para. 357 and *Case of Barreto Leiva v. Venezuela*, para. 115.

128 *Cf. Case of Amrhein et al. v. Costa Rica*, para. 357.

129 *Cf.* ECHR. *Case of Ilijkov v. Bulgaria*, Judgment of July 26, 2001, Application N° 33977/96, para. 85.

by a lawyer. The Court has also held that the gravity of the offense that the person is charged with is not, per se, sufficient grounds for pre-trial detention.[130]

102. The Court considers that the only legitimate purposes of pre-trial detention should be those that are directly involved in the adequate development of the proceedings; in other words, danger of flight, specifically mentioned in Article 7(5), and avoidance that the accused obstruct the development of the proceedings.

103. It should be noted that, prior to the order of Mr. Romero Feris' pre-trial detention, the CSJN jurisprudence developed this standard in a decision of December 22, 1998, when it stated "that the legislative authority, with broad latitude to order, consolidate, distinguish and classify the purpose of the law […] and to thus establish regimes other than imprisonment, can only be justified when pre-trial detention is ordered on a procedural issue- thus preserving its purpose of avoiding that justice is frustrated […] in other words, that the accused evades or obstructs the investigations."[131]

104. The CSJN, in a decision of October 3, 1997, also held that "a mere reference to the punishment available for the crime for which the person has been accused and to a prior conviction, without indicating the specific circumstances of the case, that would fundamentally allow the presumption that the accused will attempt to frustrate the action of justice, is not a valid justification for a judge's decision that expresses the will to deny the requested benefit."[132]

105. Finally, the Court is aware of developments in the European Court regarding the manner in which the elements of the legitimate purpose are substantiated. That Court has stated that "the risk of flight cannot solely be measured taking into consideration only the gravity of the offence." It must be evaluated with reference to a series of other relevant factors that can confirm the existence of a risk of flight,[133] as for example those related to a fixed residence, job, belongings, family and all types of ties to the country in which he or she is being tried.[134] The European Court has also held that the danger that the accused obstruct the adequate development of the proceedings cannot be abstractly inferred, but rather it must be supported by objective evidence, for example the risk of tampering witnesses[135] or of belonging to a criminal organization or a gang.[136]

106. With respect to necessity, the Inter-American Court considers that, since the deprivation of liberty is a measure that implies a restriction to the individual's sphere of action, the judicial authority can only impose such a measure when it finds that the other legal mechanisms that offer a lower grade of interference on individual rights are not sufficient to satisfy the procedural purpose.[137]

107. In the European system, this position has had a special importance. The Council of Europe assumes as a general principle the exceptional nature of pre-trial detention. It

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130 *Cf. Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 30, 2008. Series C No. 187, para. 74 and *Case of Pollo Rivera et al. v. Peru*, para. 122.

131 *Cf.* CSJN. *Case of Nápoli, Érika Elizabeth et al.*, Judgment of December 22, 1998, Merits 7.

132 *Cf*. CSJN. *Case of Estévez, José Luis,* Judgment of October 3, 1997, Considerations 6.

133 *Cf*. ECHR. *Case of Idalov v. Russia*, Judgment of May 22, 2012, Application N° 5826/03, para.145 and *Case of Panchenko v. Russia*, Judgment of June 11, 2005, Application N° 11496/05, paras. 102 and 106.

134 *Cf.* ECHR. *Case of Becciev v. Moldava*, Judgment of October 4, 2005, Application N° 9190/03, para. 58 and *Case of Sulaoja v. Estonia*, Judgment of February 15, 2005, Application N° 55939/00, para. 64.

135 *Cf*. ECHR. *Case of Jarzyński v. Poland*, Judgment of January 4, 2006, Application N° 15479/02, para. 43.

136 *Cf.* ECHR. *Case of Štvrtecký v. Slovakia*, Judgment of September 5, 2018, Application N° 55844/12, para. 61 and *Case of Podeschi v. San Marino*, Judgment of September 18, 2017, Application N° 66357/14, para. 149.

137 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 93 and *Case of Amrhein et al. v. Costa Rica*, para. 356.

specifically states that alternative measures should be available and that restrictive measures of liberty may only be imposed when it is not possible to use alternative measures.[138] Similarly, the European Court has held that the authorities must consider alternative measures to guarantee appearance for trial, specifically measures such as bail, pursuant the terms of Article 5(3) of the European Convention.[139]

108. In the Universal System of the Protection of Human Rights, the UN Standard Minimum Rules for Non-Custodial Measures refer to pre-trial detention as a last resort and clarify that "pre-trial detention shall be used as a means of last resort in criminal proceedings with due regard for the investigation of the alleged offence and for the protection of society and the victim." The Rules add that the alternative measures to pre-trial detention "shall be employed at as early a stage as possible."[140]

109. Moreover, the Inter-American Court has held that, in the cases of deprivation of liberty, Article 7(5) imposes limits to its duration and, therefore, when the period of pre-trial detention exceeds a reasonable time, the liberty of the accused must be restricted by other less harmful measures that would assure appearance at trial.[141] The standards that should be borne in mind to determine the reasonableness of the period must be closely related the specific circumstances of the case. In view of the above and in accordance with the provisions of Articles 7(3), 7(5) and 8(2) (principle of the presumption of innocence), the Court considers that the domestic authorities must tend toward the imposition of alternative methods of pre-trial detention, so as not to distort its exceptional nature.

iii. Duty to substantiate the measures that deprive liberty

110. Finally, with respect to the third point, the Court has held that any restriction to liberty that does not have a sufficient justification (Article 8(1)) that would allow evaluating whether it adjusts to the aforementioned conditions would be arbitrary and, therefore, would violate Article 7(3). In order to respect the presumption of innocence (Article 8(2)) when ordering precautionary measures that restrict liberty, the State must clearly substantiate and accredit, with a justification depending on the specific case, the existence of the requisites established by the Convention.[142] To proceed otherwise would be to anticipate the punishment, which would contravene widely recognized general principles of law, among them, the principle of the presumption of innocence.[143]

111. Similarly, the Court has found that pre-trial detention must be subjected to a periodic review in order that it is not prolonged when the reasons that justified its adoption no longer exist.[144] It has stated that the judge does not have to wait for an acquittal for a detainee to recover his or her liberty, but rather the judge must periodically evaluate whether the rationale, necessity and proportionality of the measure still exist and whether the period of the deprivation of liberty has gone beyond the limits imposed by the law and reason. His or

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138 *Cf.* Council of Europe, Committee of Ministers, Recommendation CM/Rec (2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, September 27, 2006, para. 3.

139 *Cf*. ECHR. *Case of Idalov v. Russia*, para. 140 and *Case of Aleksandr Makarov v. Russia*, Judgment of September 14, 2009, Application N° 15217/07, para. 139.

140 United Nations, General Assembly, UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), Resolution 45/110, December 14, 1990, Rules 6(1) and 6(2).

141 *Cf*. *Case of Bayarri v. Argentina*, para. 70 and *Case of Amrhein et al. v. Costa Rica*, para. 361.

142 *Cf*. *Caso Argüelles et al. v. Argentina,* para. 120 and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, para. 251.

143 *Cf. Case of Suárez Rosero v. Ecuador. Merits,* para. 77 and *Case of Argüelles et al. v. Argentina*, para. 133.

144 *Cf*. *Case of Bayarri v. Argentina*, para. 74 and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, para. 255.

her release must be decreed whenever it appears that the pre-trial detention does not satisfy those conditions, even though the respective proceedings continue. Moreover, it should be recalled that it is the national authorities who are charged with evaluating whether it is appropriate to maintain the precautionary measures that are issued under their legal norms. In so doing, the national authorities must offer sufficient reasons for maintaining the restriction that, so that it not become an arbitrary deprivation of liberty under Article 7(3), must be based on the need to ensure that the detainee will not obstruct the adequate development of the investigations nor evade the action of justice. Similarly, before every request for the release of the detainee, the judge must at least minimally substantiate (Article 8(1)) the reasons for maintaining the pre-trial detention. Notwithstanding the above, even when there are reasons to maintain a person in pre-trial detention, the period of the deprivation of liberty must not exceed a reasonable time, as established in Article 7(5) of the Convention.[145]

b) Analysis of the pre-trial detention in this case

112. In evaluating the circumstances of this case, it must be determined whether the arguments of the judge, in extending the pre-trial detention, to justify the risk of flight as a reason for the pre-trial detention violated Articles 7(3), 7(5) and 8(2) of the Convention.

113. In his decision of August 1, 2001, the Examining Magistrate considered the following elements:

> […] it may be cautiously inferred that the eventual sentence to be applied, under the rules for conjoint offenses, would be more than five years, which would be the minimum sentence with a possible maximum sentence of 25 years, which results in the following conclusion: that such a forecast of his sentence is exclusively taken into account as one aspect of the requirements relating to the reasonableness of the pre-trial detention, which is an evaluation of flight risk […], and although not solely sufficient to assume that it will occur, it is enough when other circumstances concur, such as the imminence of a trial and the utterances of the accused himself in the sense of not subjecting himself to the judicial authorities charged with adjudging his situation, utterances of June 27 of this year, when giving his statement before this court […]. Those categorical utterances of the accused and the possible severity of the sentence lead to the presumption that, if released, he will not appear for trial, frustrating the action of justice and obstructing, therefore, the crystallization of the substantive law.[146]

114. The Court observes that one of the reasons for the extension of the measure was, in general terms, the risk of flight. This is a reason, as has been stated, that is permitted by the Convention. The Court, however, pays special attention to the criteria used to justify the existence of objective elements that would permit a reasonable inference that a flight might occur. Although the Court, as the State pointed out in its briefs, does not exercise functions of a fourth instance of judicial review nor does it examine the assessment of the evidence by the national judges, it does have the authority, under exceptional circumstances, to decide on the content of judicial decisions that contravene, in a manifestly arbitrary manner, the

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[145] *Cf*. *Case of Argüelles et al. v. Argentina*, paras. 121 and 122.

[146] Mr. Romero Feris in his statement at the preliminary investigation declared "[...] that he was not going to appear to make such a statement and that he refuses to make the statement of the accused before [M.P.] since he considered that the latter was not a natural judge to intervene in this case nor in any case in which he was accused [...] therefore, he considers it legitimate not to make such a statement in the case until it can be made before an impartial and natural judge. The same situation occurs in the Second Chamber, which acts as an appeals court in this case and the others in which he is accused." Mr. Romero Feris stated on another occasion that "he signed only to confirm that [M.P.] is not a natural judge, who is not a judge according to the Constitution and who permanently showed, as did the Prosecutor, a repeated animosity and a fallacious attitude. He ratified that he would not recognize it in any way nor under any circumstances and that he would no longer give any statement for any reason, nor to the Second Chamber, which has also fallen into the same errors and for which he has the same opinion." *Cf.* First Examining Magistrate, Resolution N° 1251 of August 1, 2001 (evidence file, f. 187.

American Convention. The Court notes that the arguments of the judge to substantiate the risk of flight were the *quantum* of the punishment, the imminence of a trial and the recourses that questioned the judicial independence and impartiality.

115. Regarding the first argument, the Court reiterates that an eventual sentence of 25 years imprisonment, or any other, is not a sufficient standard to justify the risk of flight. The Court, as the European Court, considers that this standard and that of the gravity of the offense cannot justify the imposition of a measure that deprives liberty, since if that were the case it would invert the burden of proof and the detainee would have to show that he or she did not intend to escape justice in order to be tried while in liberty (*supra* paras. 101 and 105).

116. As to the second, the Court shares the opinion of the Commission when it affirms that it is not possible that the imminence of a trial is an argument to substantiate the risk of flight. The Court considers it settled that the objective of pre-trial detention is to ensure the adequate advance of the proceedings. In this regard, the development of the procedural phases cannot be, per se, a justification to deprive liberty since it would then be a consequence of the entire process and not as an exceptional precautionary measure.

117. Regarding the third argument, the Court considers that, although the Commission claimed that the filing of recourses during criminal proceedings cannot be held against the person being charged nor can it be a justification to maintain pre-trial detention, it was not the remedies themselves that the judge took into account, but rather, as the State claimed, the attitude of the accused towards the judicial authority. The judge specifically considered "the accused's own statements, in the express sense of not submitting to the judicial authorities charged with resolving his situation, statements made on June 27 […], when giving his statement before this court" (*supra* para. 113). In view of the above, the Court observes that, although it was not the filing of remedies that was the basis of the measure, which undoubtedly would have been arbitrary, the statements of the accused that indicated that "he was not going to make a statement at the preliminary investigation and he refused to make a statement before [M.P.] because he considered that the latter was not a natural judge to intervene in this case nor in any case in which he was accused" are not specific facts that would indicate the possibility of evading trial and that would justify using this measure over others that are less grave.

118. Similarly, the Court finds that the arguments used to justify the risk of flight are not based on specific facts, objective criteria and adequate arguments. On the contrary, they rest on mere conjectures based on criteria that are not relevant to the particularities of the case and consist more in abstract claims, which would be a manifest and notorious divergence from the standards established by the relevant case law.

119. Moreover, the Court cannot fail to mention that, according to the decision of the Examining Magistrate (*supra* paras. 22 and 113), neither necessity nor strict proportionality were evaluated since there is no analysis of alternative measures that could have been imposed to guarantee the alleged victim's appearance to stand trial, such as bail or a restriction to leave the country.

120. In view of the above, the Court holds that the extension of the deprivation of liberty was arbitrary, since the criteria on which the legitimate purpose of the "risk of flight" was founded were abstract and, therefore, contrary to Articles 7(3), 7(5) and 8(2) of the Convention to the detriment of Mr. Romero Feris.

C. Effective judicial remedy

121. The *Commission* asserted that the decision of August 1, 2001 that denied the request of liberty of the alleged victim and extended the measure, being based on precepts

incompatible with the Convention, does not constitute an effective recourse to question the deprivation of liberty under the terms of Article 7(6). For its part, the *State* claimed that the alleged victim could have obtained a judicial review of the precautionary measure and that the decision of the Examining Magistrate considered all the defense's arguments as well as the issues and the vicissitudes of the personal situation of the alleged victim.

122. Article 7(6) protects the right of anyone deprived of his or her liberty "to recourse to a competent court, in order that the court may decide, without delay, on the lawfulness of the detention or arrest and order [the] release if the arrest or detention is unlawful." The Court has held that an objective of this right is to allow judicial control over deprivations of liberty.[147]

123. The Court considers that the issues regarding the motives of the judge and the justification of the extension of pre-trial detention, which were analyzed above and were found arbitrary, had as a consequence that the remedies presented by the alleged victim were not effective. The Court, therefore, holds that the State is also responsible for violating Article 7(6) of the Convention.

VI.2
RIGHT TO THE JUDICIAL PROTECTION OF MR. ROMERO FERIS

A. Arguments of the parties and of the Commission

124. The *Commission* observed that, in the four criminal cases described in the proven facts, the alleged victim filed a series of recourses that questioned diverse aspects of the competence, independence and impartiality of different judicial authorities who heard the criminal proceedings against him. In his recourses, he ascribed those violations to a political context due to the irregular appointment of the authorities who heard his cases and, specifically, with the object of criminally persecuting him. The Commission claimed that there were not sufficient elements to request that the Court declare a violation of Article 8(1). However, with specific reference to the remedies presented by the alleged victim, it argued that the decisions of the different judicial authorities who rejected or did not admit the recourses were contrary to Article 25(1), as will be explained.

125. The *representative* asked that the Court declare and establish that the State is responsible for violating the human rights of Mr. Romero Feris, in accordance with the conclusions of the Commission's Merits Report.

A.1. Regarding the remedies on the appointment of the First Examining Magistrate

126. The *Commission* noted that the alleged victim filed various recourses that disputed the competence of the First Magistrate because he had been appointed despite having finished ninth in a competition on the merits for the position. It claimed that the responses to these recourses were not effective since they did not offer a substantive answer to the petitions; did not indicate the reasons why that person was chosen despite the result of the merits competition; there was no indication of the options by which the defense counsel could challenge the situation nor did the responses clarify the alleged political context. The *representative* referred to what was expressed by the Commission in its Merits Report.

[147] *Cf. Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory* Opinion OC-8/87 of January 30, 1987, para. 33; *Case of Vélez Loor v. Panama*, para. 124 and *Case of Amrhein et al. v. Costa Rica*, para. 370.

127. The *State* asserted the lack of a legal obligation to appoint the first person on the list of the competition. It also indicated that the arguments to reject or not to admit the remedies were within the legal and constitutional competences of those who made the decision.

A.2. Regarding the remedies on the appointment of temporary judges of the Second Chamber and of the STJC

128. The *Commission* observed that the alleged victim challenged the competence of the temporary judges of the Second Chamber and of the STJC because they had been appointed by the Executive Branch when the Senate was not in recess, contrary to Article 142 of the Provincial Constitution. It claimed that the responses to those remedies were not effective because the STJC abstained from ruling on whether the legal and constitutional requisites were followed in the appointment of the judicial authorities with the argument that it was an act of another branch of the State that is not subject to judicial control. The *representative* referred to what was expressed by the Commission in its Merits Report.

129. The *State* claimed that the arguments of the Commission were not precise, which prevented the Court from considering the harm. It also referred to the arguments that were used to reject or not to admit the remedies and emphasized that these decisions were in accord with the legal and constitutional competences of the national judges.

A.3. Regarding the remedy to question the impartiality of the judges who were related by blood acting in connected cases

130. The *Commission* noted that the alleged victim filed a remedy that questioned the impartiality of a judge of the Second Chamber who had a family member who had participated in cases relating to the alleged victim. It claimed that the remedy was not effective since the Chamber denied the request based on the argument that there is nothing in the law against it; specifically, that recusal requires that the members of the Chamber who are related by blood must have issued contradictory or contrary opinions against the alleged victim. In the opinion of the Commission, this lack of effectiveness was also demonstrated in the response to the filing of the REF when the SCJN declared it inadmissible because the interpretation of the norm was not a federal matter. The *representative* referred to what was expressed by the Commission in its Merits Report.

131. The *State* asserted that a mere reading of the applicable norm would show that the cause for recusal only proceeds if the two judges intervene in the context of the same case, a situation that, in its opinion, does not occur in this case since it concerns related cases. With respect to the REF, the State noted that it was rejected in accordance with the opinion of the Attorney General.

A.4. Regarding the remedies filed to question the actions of the members of the Second Chamber who had intervened in the investigative phase in the same cases

132. The *Commission* noted that the alleged victim presented various remedies impugning the impartiality of some members of the Second Chamber. It claimed that those remedies were not effective since they were rejected because such a situation is not a cause for recusal in the domestic legislation, without analyzing the merits. The *representative* referred to what was expressed by the Commission in its Merits Report.

133. The *State* argued that there is nothing to indicate in any way that the intervention of the judges who had acted as a higher court for the procedural motions would have been partial, prejudiced or submitted to undue restriction in the exercise of their functions.

B. Considerations of the Court

134. The Court has held that Article 25(1) of the Convention obligates the States Parties to guarantee to all persons under their jurisdiction protection against acts that violate their fundamental rights.[148] The Court has pointed out that, under the terms of Article 25, the State has two specific obligations. The first, to embody in their legislation and to ensure the due application of effective recourses before the competent authorities that protect all persons within its jurisdiction against acts that violate their fundamental rights or that lead to the determination of their rights and obligations. The second, to guarantee effective mechanisms to enforce the definitive decisions and judgments issued by those competent authorities so that the declared or recognized rights are effectively protected.[149] The right established in Article 25 is closely related to the general obligation contained in Article 1(1) of the Convention in that it assigns functions of protection to the States Parties through their domestic law. The State, therefore, has the responsibility not only to design and enact into law effective recourses, but also to ensure the due application of such recourses by the judicial authorities.[150]

135. With specific reference to the effectiveness of the recourse, the Court has stated that the protection granted by the article is the real possibility of access to a judicial remedy so that the competent authority, with authority to issue a binding decision, determines whether there has been a violation of a right claimed by the person filing the action. In the event that a violation has been found, the remedy must be able to restore to the person the enjoyment of his or her right and to redress it.[151] This does not imply that the effectiveness of the recourse should be evaluated on whether it produces a result favorable to the complainant.[152] Those recourses that, because of the general conditions in the country or even due to the particular circumstances of a given case, are illusory cannot be considered effective.[153] This may occur, for example, when their lack of effectiveness has been demonstrated in practice due to a lack of means to implement decisions or for any other situation that results in the denial of justice. Thus, the process should lead to the materialization of the protection of the right recognized in the judicial ruling through the proper application of that ruling.[154]

136. As to the requirements for the appropriateness of a judicial complaint, the Court has stated that for reasons of legal security, for the proper and functional administration of justice and the effective protection of the rights of the individual, States may and should establish

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148 *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, para. 91 and *Case of Rico v. Argentina*, para. 88.

149 *Cf. Case of Baena Ricardo et al. v. Panama*. *Competence.* Judgment of November 28, 2003. Series C No. 104, para. 79 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, para. 123.

150 *Cf. Case of Castillo Páez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34, para. 83, Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 237 and *Case of Favela Nova Brasilia v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333, para. 234.

151 *Cf. Case of Rico v. Argentina. Preliminary Objection and Merits*. Judgment of September 2, 2019. Series C No. 383, para. 88, *Advisory Opinion OC-9/87*, 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.

152 *Cf. Case of Velásquez Rodríguez v. Honduras*, para. 67 and *Case of Rico v. Argentina*, para. 88.

153 *Cf. Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 7, para. 137 and *Case of Álvarez Ramos v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2019. Series C No. 380, para. 184.

154 *Cf. Case of Las Palmeras v. Colombia. Reparations and Costs*. Judgment of November 26, 2002. Series C No. 96, para. 58; *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 73 and *Case of Colindres Schonenberg v. El Salvador. Merits, Reparations and Costs*. Judgment of February 4, 2019. Series C No. 373, para. 101.

admissibility principles and criteria for domestic remedies of a judicial or any other nature. Thus, although domestic recourses must be available to the interested parties and must result in an effective and substantiated decision on the issue raised, as well as potentially providing adequate reparation, domestic bodies and courts need not decide on the merits of the matter presented to them in every case without first verifying the formal procedural criteria relating to the admissibbility and legitimacy of the specific recourse.[155]

137. The Commission considered in this case that the State is responsible for violating Article 25(1) of the Convention. To substantiate its reasoning, it took into account that, since 1999, four criminal proceedings had been brought against the alleged victim, which were presented before the First Magistrate and to the Second Chamber. They were subsequently heard by the STJC and the CSJN because of the remedies filed before those two bodies.

138. In those cases, the alleged victim filed a series of recourses that questioned the competence, independence and impartiality of the judicial authorities; specifically, the appointment of the Examining Magistrate; the order that appointed temporary judges of the Chamber and of the Superior Court; the impartiality of judges of the Chamber who were related by blood and who had heard connected cases, and the actions of members of the Chamber who had heard the procedural matters. The compatibility of these recourses with the factual circumstances will now be analyzed.

B.1. Regarding the remedies filed on the appointment of the First Magistrate

139. The alleged victim challenged the appointment of Magistrate M.P. with two types of remedies in the different cases included in the factual framework: the remedy of nullity with a subsidiary appeal against all the orders and procedural acts of that magistrate and the filing of the exception of lack of jurisdiction and competence.[156]

140. The Court notes that, although each filing had a distinct procedural development, the arguments and the rationales offered by the alleged victim and by the judges in each of the cases are similar.

141. In one of the cases included in the factual framework, the alleged victim filed a remedy of nullity with a subsidiary appeal before the First Magistrate. He argued that the judge was appointed irregularly because he placed ninth in the competition for the post. The alleged victim added that the magistrate was assigned, ignoring the rules of connectivity and rotation, to all the cases against lodged him.[157]

142. The First Magistrate rejected those arguments, stating that:

> "[…] the authority to decide any one of the three aforementioned questions would appear to be beyond the Powers that the law confers on an Examining Magistrate. In the first place, with respect to the appointment of a judge, it is a matter of acts outside the process that are not "procedural acts." In the second place, the appointment of judges is the exclusive competence of the Political Authorities, whose regular exercise is overseen by means of other instruments, such as those dealing with constitutional procedural law; for example, the autonomous action of

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155 *Cf. Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 126 and *Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2017. Series C No. 344, para. 153.

156 *Cf.* Regarding the motions of nullity: motion of nullity with a subsidiary appeal of July 27, 2000 (evidence file, fs. 236 to 251); motion of nullity with a subsidiary appeal of July 27, 2000 (evidence file, fs. 726 to 740); motion of absolute nullity of February 6, 2002 (evidence file, fs. 1203 to 1210) and motion of nullity with a subsidiary appeal of July 24, 2000 (evidence file, fs. 1462 to 1477). Regarding the exceptions: motion of exception of May 24, 2001 (evidence file, fs. 257 to 291); motion of exception of September 7, 2001 (evidence file, fs. 746 to 775) and motion of exception of March 9, 2001 (evidence file, fs. 1010 to 1033).

157 *Cf*. Motion of nullity of June 27, 2000 (evidence file, fs. 236 to 251).

> unconstitutionality. Finally, we should state that any decision of the [STJC] on competence assigned to this court should be material for a recourse before a higher jurisdiction, which is the Federal Court. […] I do not see how an Examining Magistrate, such as I, can reexamine a decision of the Superior Court that, to make matters worse, concerns the magistrate himself, if the ruling on competence was not the purpose of the recourse before the Federal Court based on the guarantee of a Natural Judge […]."[158]

143. With respect to the second recourse, on May 24, 2001 the alleged victim filed an exception of lack of jurisdiction and competence. He sought to challenge the "universal jurisdiction" assigned to the judge in his cases by a STJC decision and the manner in which the judge was appointed by the Senate of the Province. This was rejected as judge held, with respect to the jurisdictional norms, that it "is beyond the competence of the undersigned to reexamine a decision of the Superior Court" and with respect to his legitimacy as a judge, he does not possess the authority as an Examining Magistrate to rule on such a matter.[159]

144. On June 7, 2001, the defense counsel filed a remedy of appeal on the decision that contained the same arguments. The Second Chamber rejected the recourse and confirmed the resolution of the magistrate. It analyzed each of the six issues presented by the defense counsel and agreed that the magistrate had acted within the context ordered by the STJC, in exercise of its functions of oversight that are exclusively inherent to it under Articles 24(2) and 31 of Decree Law N° 26/00.[160]

145. Finally, on July 18, 2001, the defense counsel filed a writ of cassation before the Second Chamber, which declared it inadmissible because "the appealed decision does not specifically deal with the purpose of the filed recourse."[161]

146. After a review of the procedural actions that led to the declaration of nullity, the Court notes that the strategy of the alleged victim with respect to those recourses consisted mainly in alleging the nullity of the acts of the Examining Magistrate because of the manner in which he was appointed and because of the administrative decision to consolidate the cases. There is no record of a filing of recusal or any recourse of unconstitutionality regarding the lack of impartiality of that magistrate, recourses that would normally be used to present challenges related to this issue. Regarding those arguments, note is taken that the domestic courts rejected those recourses holding that, among other reasons, they lacked competence to rule on them. Nor did the representative present arguments or evidence that could be used to determine the appropriateness of the recourses to challenge the impartiality or the manner of appointing the Examining Magistrate. Therefore, in view of the evidence available to the Court, it is not clear whether the alleged victim filed the appropriate recourses to challenge the manner of appointing the Examining Magistrate.

147. The Court also observes, in view of the obligations established in Article 25 of the Convention, that the decisions of the judge and of the Chamber on the recourses, as well as in the other cases where they were reiterated, responded to each of the questions raised by the defense counsel and were rejected with reasoned opinions and were based on the domestic norms. It should be repeated that the effectiveness of a recourse is not dependent on a response favorable to those who filed it, but rather to the adequacy of the judicial decision that resolved it to remedy and redress the alleged situation in the event that a violation is proven (*supra* para. 135).

148. With respect to the Commission's arguments that the decisions do not indicate the recourse or recourses that the defense counsel should have presented to question the

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158 *Cf.* First Court of Instruction, Order N° 1267 of September 26, 2000 (evidence file, fs. 254 to 255).

159 *Cf.* First Court of Instruction, Order N° 989 of June 4, 2001 (evidence file, f. 297).

160 *Cf.* Second Criminal Chamber, Resolution N° 276 of June 20, 2001 (evidence file, f. 306).

161 *Cf.* Second Criminal Chamber, Resolution N° 314 of July 20, 2001 (evidence file, f. 334).

appointment of the judge nor do they clarify why the cases were assigned to the First Magistrate, the Court considers that it is not for the Court establish rules in light of the Convention that define the content of a judicial decision, but rather, as indicated in its case law, that it be a reasoned decision and that it respond to the arguments of the petitioner.[162] Notwithstanding the above, it should be stressed that the magistrate of the first instance mentioned, with regard to the recourse, that "the appointment of judges is the exclusive competence of the Political Authorities, whose regular exercise is overseen by other instruments, such as those that belong to constitutional procedural law; for example, the autonomous action of unconstitutionality […]."[163] In this regard, the Court does not accept the reasoning of the Commission, since its arguments were correctly answered by the domestic judge.

149. With respect to decisions on the inadmissibility of the writs of cassation, the Court finds the existence of the requirements of admissibility to be reasonable as a mechanism to safeguard legal security and that it is a decision that is within the area of competence of the States, especially since those requisites did not make it impossible for the alleged victim to have his arguments considered and reviewed by a judicial authority (Examining Magistrate and Criminal Chamber) and that they had already been ruled on.

150. The Court, thus, considers that the alleged victim had effective recourses to question the appointment of the First Examining Magistrate and, therefore, the State is not responsible for violating Article 25 of the Convention.

B.2. Regarding the recourses on the appointment of temporary judges of the Second Chamber and of the STJC

151. The Court observes, regarding the issue of the appointment of temporary judges, that the defense counsel presented two procedural appeals in the cases included in the factual framework. They are: "motion for the absolute nullity against the composition of the [Second Criminal Chamber]" and "motion for the absolute nullity of the composition of the [STJC]."

152. Like the previously analyzed appeals, the Court considers that the arguments and substantiations of the technical defense of the victim and of the judges in their decisions are similar.

153. The main argument of the defense counsel underlying the appeals was that the terms of Article 142 of the Constitution of the Province were ignored,[164] since that norm authorizes the temporary appointment of judges by the Executive Branch for a limited period, but only when the Senate is in recess, which to his knowledge was not the case.

154. With reference to the first matter, the defense counsel filed a motion of nullity before the Second Chamber, which held it without merit because the motion of nullity on the composition of the Chamber was not the appropriate channel.[165] A writ of cassation was filed against that decision, which was rejected by the same body because the decision was not

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[162] *Cf. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2018. Series C No. 359, para. 169 and *Case of López Álvarez v. Honduras*, para. 96

[163] *Cf.* First Court of Instruction, Order of June 4, 2001 (evidence file, f. 297). Also mentioned in: First Court of Instruction, Order of September 26, 2000 (evidence file, fs. 252 to 256) and First Court of Instruction, Order 615 of April 5, 2001 (evidence file, fs. 1484 to 1489).

[164] *Cf.* Constitution of the Province of Corrientes. Article 142.- "The members of the Superior Court, Judge of the Chamber, Judges of First Instance and staff of the Public Ministry are appointed by the Executive Branch with the consent of the Senate. […] When a vacancy occurs during a recess of the Senate, the Executive Branch may fill it with temporary staff that terminates sixty days after the installation of the next Legislature, by sending the respective proposal within the thirty days following the installation and the Senate to decide within the same period as of the remittance of the proposal."

[165] *Cf.* Second Criminal Chamber, Order N° 22 of February 22, 2002 (evidence file, fs 349 to 350).

definitive.[166] The defense counsel then filed a remedy of complaint, which was granted by the Superior Court and which indicated to the Chamber that the petitioner had complied with his procedural duty by explaining the reasons that would invalidate the decision and that it was not a mere subjective discrepancy.[167] In view of the above, the file was remitted to the Chamber to continue the legal process.

155. Mr. Romero Feris was subsequently convicted and the defense counsel filed a writ of cassation alleging, as one of the grounds, the lack of competence of the temporary member of the Chamber.[168] This recourse was granted.[169] However, before being resolved by the STJC, the defense counsel presented a motion of nullity questioning the legality of the temporary appointment of judges to the Chamber, again arguing that it was contrary to Article 142. Nonetheless, the STJC held a hearing for a drawing to choose the judges who would comprise the Chamber and the defense counsel filed an appeal of clarification against that decision, which was rejected on the grounds that there was no material error or omission.[170]

156. The alleged victim requested the revocation of that decision, disputing not only the temporary appointment, but also the action of the STJC President, who signed the decision. The STJC rejected the motion of nullity and that of revocation with the arguments that the President had acted within his legal authority to issue procedural orders and to resolve related issues and that the temporary appointment was a decision of the Executive Branch, which could not be challenged judicially. The STJC explained that it was constitutional since the special sessions that the defense counsel mentioned were not held in opposition to the law. Lastly, it pointed out that the petition had become moot since the STJC was now comprised of its permanent members.[171]

157. The defense counsel filed an REF against that decision.[172] He also presented two motions of nullity, on different dates, requesting a new composition of the court.[173] The STJC rejected the appeals of cassation, of nullity and the REF. Specifically, it decided: (a) to declare moot the issue on the integration of the STJC since the court is now comprised of permanent members; (b) to reject the writs of cassation filed against the decision of the Criminal Chamber on the alleged errors in classifying the offense and in denying of certain elements of evidence and (c) to reject the issues regarding the temporary judges and the appointment of the Examining Magistrate, justifying its legality and pointing out that those issues had already been the object of another three decisions of the same court.[174]

158. The defense counsel filed an REF against that decision,[175] which was granted by the STJC[176] and which the CSJN declared inadmissible.[177]

159. The Court, thus, considers that the courts admitted and processed at least eight of the ten recourses filed by the alleged victim. In those decisions, the authorities responded to each of the matters in question and resolved them with substantiations and an analysis of the claims in accord with the applicable norms. The fact that the appeals were not resolved, in

166 *Cf.* Second Criminal Chamber, Order N° 134 of March 14, 2002 (evidence file, f. 370).

167 *Cf.* STJC, Resolution N° 32 of May 7, 2002 (evidence file, fs. 394 to 395).

168 *Cf.* Writ of cassation of June 10, 2002 (evidence file, fs. 419 to 497).

169 *Cf.* Second Criminal Chamber, Order N° 493 of July 13, 2002 (evidence file, f. 499).

170 *Cf.* STJC, Resolution N° 3550 of May 7, 2003 (evidence file, f. 515).

171 *Cf.* STJC, Resolution N° 33 of July 31, 2003 (evidence file, fs. 527 to 533).

172 *Cf.* Special Federal Recourse of June 26, 2003 (evidence file, fs. 535 to 580).

173 *Cf.* Motion of absolute nullity of August 7, 2003 (evidence file, fs. 581 to 584).

174 *Cf.* STJC, Judgment N° 23 of April 7, 2004 (evidence file, fs. 585 to 613).

175 *Cf.* Special Federal Recourse of April 28, 2004 (evidence file, fs. 614 to 695).

176 *Cf.* STJC, Resolution N° 142 of September 15, 2004 (evidence fil, fs. 697 to 710).

177 *Cf.* CSJN, Judgment of February 13, 2007 (evidence file, f. 725).

general, in favor of the alleged victim does not imply that he did not have an effective recourse to protect his rights (*supra* para. 135).

160. Given the Commission's arguments that the STJC abstained from ruling on whether, in appointing judicial authorities, the legal and constitutional requirements were met with the argument that it was an act of another branch of the State that is not subject to judicial control, the Court considers that, in spite of the STJC maintaining that it was an act of the Executive Branch that it did not have competence to question, it did mention the elements that substantiated the lawfulness of the act to dispel doubts on the lawfulness about which the alleged victim complained (*supra* para. 135). Likewise, some domestic rulings referred to the need to use other channels, such as the autonomous action of constitutionality.[178]

161. The Court, thus, holds that there was no violation of Article 25 with respect to the recourses filed by the alleged victim to question the appointment of the temporary judges of the Second Criminal Chamber of the STJC.

B.3. Regarding the recourses to question the impartiality of judges related by blood acting in connected cases

162. The Court notes that, in the "Romero Feris, Raúl Rolando and Zidianakis, Andrés for Embezzlement" case, the Second Chamber convicted the alleged victim on December 20, 2005. The defense counsel challenged this decision by filing a writ of cassation questioning, among other issues, the impartiality of one of the members of the Chamber, on the basis of Article 53 of the CPP,[179] since he was a blood relative of a judge who had participated in connected cases against the alleged victim.[180]

163. The STJC rejected the writ of cassation and stated, among other arguments, that the law requires that a judge who has a family connection has had to have intervened in favor or against any of the parties; that those requesting the recusal did not show that there were concurring votes that were contrary or contradictory to the accused, and that in any case the challenged judge had not participated in matters in which her father had issued a resolution where there was a hypothetical provision.[181]

164. To appeal this decision, the alleged victim filed an REF that the STJC did not grant with the argument that "the criticisms do not respond to the standards specified by the [STJC] to establish that this is a case of an arbitrary sentence that would enable a federal path […]."[182]

165. The defense counsel then filed a remedy of complaint before the CSJN, which was held inadmissible under the terms of Article 280 of the Code of Civil and Commercial Procedure.[183]

166. The Court observes that, as it indicated with respect to the first two arguments, in light of the obligations established in Article 25 of the Convention the decisions of the STJC responded to each of the issues presented by the alleged victim and that they were rejected with a reasoned decision that was based on domestic legal norms. The fact that the appeals were not, in general, resolved in favor of the alleged victim does not imply that he did not have an effective recourse to protect his rights (*supra* para. 135).

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178 *Cf.* First Court of Instruction, Order of September 26, 2000 (evidence file, fs. 252 to 256) or First Court of Instruction, Order of June 4, 2001 (evidence file, fs. 294 to 297).

179 *Cf*. Article 52(11), Code of Criminal Procedure of the Province of Corrientes: "*When as Judge in a case a relative in the second degree of consanguinity had intervened or intervenes.*"

180 *Cf.* Writ of cassation of February 20, 2006 (evidence file, fs. 829 to 887).

181 *Cf.* STJC, Judgment of October 19, 2006 (evidence file, fs. 901 to 919).

182 *Cf*. STJC, Resolution of February 20, 2007 (evidence file, fs. 954 to 959).

183 *Cf.* CSJN, Order of December 18, 2007 (evidence file, f. 1009).

167. With respect to the Commission's argument that at the provincial level the alleged victim was informed that his recourse was rejected by invoking a requisite not contemplated in the law, while at the federal level he was informed that the interpretation of that norm was not a federal matter, the Inter-American Court considers it necessary to clarify the nature of the recourses: the remedy of cassation on the participation of judges who had a close relative hearing connected cases was denied on the basis of the STJC's interpretation of Article 52 that set out the sole reasons for recusal. This particular manner of applying the law does not infringe Article 25 of the Convention, neither for its content, taking into account the standard of the Court, nor for being different than the rationale for denying the REF. The requirements of admissibility of the REF have as a purpose that the REF concerns a matter that is of federal relevance to be heard by the SCJN, which did not occur in this case. Thus, the arguments could validly be seen as dissimilar since the decision on cassation referred to the decision on the merits of the matter and the decision on the REF referred only on the merits of admitting a recourse, the effect of which would be to hear the case on the federal level.

168. It should be reiterated that, with respect to the REF that was denied because it did not comply with the requisites of admissibility, the decision of the STJC was not contrary to the Convention since it did not find sufficient elements to demonstrate the existence of a federal issue in this specific case, taking into account the particular federal organization of the State and especially since it had already exercised judicial control on various opportunities.

169. The Court, thus, considers that there has not been an infringement of Article 25 of the Convention with respect to the recourses filed by the alleged victim to question the partiality of the judges who had a close family member hearing related cases.

B.4. Regarding the recourses to question the actions of the members of the Second Chamber who had intervened in the investigative phase in the same cases

170. The Court notes that the alleged victim argued for recusal on the grounds of prejudgment of the members of the Second Chamber in various cases included in the factual framework.[184] The claims and substantiations presented by the technical defense and the arguments of the judges in these remedies are similar, as is the procedural path that the recourses followed.

171. The Court noted that in the framework of one of the cases, "Romero Feris, Raúl Rolando; Isetta, Jorge Eduardo; Magram, Manuel Alberto for Embezzlement; Ortega, Lucía Placida for Embezzlement and use of a false document," the alleged victim recused the members of the Second Chamber for having intervened, as an appeals court, in all the elements of the investigative stage and, particularly, in confirming the indictment and the bringing to trial.[185]

172. The Chamber held that "the request of recusal must be declared inadmissible. Article 59 of the CPP, which governs the manner in which the recourse of recusal must be presented, establishes that the party who files a request for recusal must state, among others, the grounds on which it is based [Art. 52 of the Code]. The remedy filed by those who requested the recusal [...] is inadmissible because it does not comply with this norm. To invoke a justification that is not found as a cause of recusal in our procedural order is to fail to observe that procedural norm […]."[186]

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184 *Cf.* Recusal with cause of April 25, 2002 (evidence file, fs. 396 to 412); Recusal with cause of August 4, 2005 (evidence file, fs. 814 to 825) and Recusal with cause of August 6, 2001 (evidence file. fs. 1034 to 1062).

185 *Cf.* Recusal with cause of August 6, 2001 (evidence file, fs. 1034 to 1062).

186 *Cf*. Second Criminal Chamber, Resolution N° 356 of August 17, 2001 (evidence file, fs. 1063 to 1066).

173. The Chamber then convicted the alleged victim.[187] His defense counsel presented a writ of cassation, but it did not contain any arguments on the participation of the judges in the investigative stage and at the trial.

174. As has been stated, the Court recognizes that standards for admissibility are recognized by the Convention,[188] as long as those norms do not make the right to appeal futile.[189] The Court did not find elements that would allow it to hold that a requirement of admissibility that indicates the sole grounds of recusal in Article 52 of the CPP is unreasonable. The Court notes that, contrary to the position of the defense counsel on the other issues contained in the appeal, no recourse was presented against the decision that denied the recusal.

175. The Court, thus, finds that the State is not responsible for violating Article 25(1) of the American Convention regarding the recourses presented by the alleged victim to question the actions of the members of the Criminal Chamber who had intervened in the investigation of the same cases.

VII
REPARATIONS

176. On the basis of Article 63(1) of the Convention, 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.[190]

177. Reparation for the harm caused by the infringement of an international obligation requires, to the extent possible, full restitution (*restitutio in integrum*), which consists in the restoration of the prior situation. If this is not possible, as occurs in most cases of human rights violations, the Court will determine measures to guarantee the infringed rights and to redress the consequences of the violation.[191] The Court, therefore, has found it necessary to grant diverse measures of reparation to fully redress the harm; thus, in addition to pecuniary compensation, other measures such as restitution, rehabilitation, satisfaction and guarantees of non-repetition have a special relevance for the harm caused.[192]

178. The Court has established that the reparations must have a causal link with the facts of the case, the violations declared, the proven harm, as well as the measures requested to redress the resulting harm. The Court, therefore, must observe this concurrence in order to rule appropriately and in keeping with the law.[193]

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187 *Cf.* Second Criminal Chamber, Judgment N° 116 of October 31, 2001 (evidence file, fs. 1067 to 1103)

188 *Cf. Case of Castañeda Gutman v. Mexico*, para. 94 and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*, para. 126.

189 *Cf*. *Case of Cantos v. Argentina. Merits, Reparations and Costs*. Judgment of November 28, 2002. Series C No. 97, paras. 52 and 53. Likewise, *mutatis mutandi, Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs*. Judgment of December 1, 2016. Series C No. 330, para. 120.

190 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 26 and *Case of Girón et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 15, 2019. Series C No. 390, para. 124.

191 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Sentence of July 21, 1989. Series C No. 7, para. 26 and *Case of Girón et al. v.* Guatemala, para. 125.

192 *Cf. Case of the "Las Dos Erres" Massacre v. Guatemala, Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 226 and *Case of Girón et al. v.* Guatemala, para. 125.

193 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110 and *Case of Girón et al. v.* Guatemala, para. 126.

179. In view of the violations declared in the preceding chapter, the Court will analyze the claims presented by the Commission and by the representative, as well as the arguments of the State, in light of the criteria established in its case law on the nature and scope of the obligation to repair in order to establish measures to redress the harm caused to the victim.[194]

180. International case law and, particularly, that of the Court have repeatedly established that this judgment is, per se, a form of reparation.[195]. Nevertheless, in view of the circumstances of this case and the harm that the violations caused to the victim, the Court finds it pertinent to decree other measures.

A. Injured party

181. The Court reiterates that, pursuant to Article 63(1) of the Convention, it considers an injured party to be anyone who has been declared a victim of a violation of a right recognized in the Convention. As the victim of the violations declared in Chapter VI.1, the Court considers Raúl Rolando Romero Feris to be an "injured party" and, therefore, the beneficiary of the following orders of the Court.

B. Measures of satisfaction and compensation

182. The *Commission* requested that the State fully redress the human rights violations against Mr. Romero Feris declared in its Report on the Merits, "both materially and immaterially, including fair compensation." The *representative* asked that the State be ordered to implement and specify effective public measures that would fully redress the human rights violations of which Mr. Romero Feris was a victim, both in pecuniary and non-pecuniary terms.

183. The State claimed that, under the provisions of Article 63 of the Convention, Mr. Romero Feris did not have the right to reparation since his rights were not violated.

B.1. Measures of satisfaction. Publication of the judgment

184. The parties and the Commission did not refer to this measure of reparation.

185. Nonetheless, the Court considers it relevant to order, as it has done in other cases,[196] that the State publish, within six months of notification of this judgment: (a) the Court's official summary of this judgment, once, in the Official Gazette in a legible and adequate font; (b) the Court's official summary of this judgment, once, in a newspaper of broad national circulation and another of broad circulation in the Province of Corrientes, in a legible and adequate font and (c) the complete judgment, available for at least one year, on an official Web site that is available to the public.

186. The State must immediately inform the Court once it has published each of the above.

B.2. Compensation

187. The *representative* requested that the State be obligated to indemnify Raúl Rolando Romero Feris in the amount of USD 18,000,000.00 (eighteen million United States dollars) for personal, patrimonial, labor, commercial and business damages suffered in addition to the

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194 *Cf. Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs*. Judgment of December 1, 2016. Series C No. 330, para. 189 and *Case of Girón et al. v.* Guatemala, para. 127.

195 *Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 56 and *Case of Girón et al. v.* Guatemala, para. 127.

196 *Cf. Case of Cantoral Benavides v. Peru,* para. 79 and *Case of Girón et al. v.* Guatemala, para. 132.

restriction to dispose of, the unavailability of and harm to all his personal and business goods for the past eighteen years as a consequence of the violation of his rights protected by the Convention. He indicated that the "amount […] is arrived at from an equitable and reasonable assessment of consequential damages and lost wages." He also asked that the State be obligated to pay Mr. Romero Feris as compensation for the consequences of the non-pecuniary and moral damages suffered during almost two decades of institutional persecution and human rights violations the amount of USD 4,500,000.00 (four million five hundred thousand United States dollars), considering the personal, family, business, social and political qualities of the alleged victim.

188. The *State* pointed out that the representative of the alleged victim had included claims that are not proportionate to a viable legal compensation under the applicable norms. It also indicated that the representative did not substantiate the claims in such a way that the amounts could be viewed as applicable to the case.

189. With respect to pecuniary damages, the Court's case law has held that it presupposes the loss or a detriment to the income of the victims, the expenses resulting from the events and the pecuniary consequences that have a causal nexus with the facts of the case.[197] The Court, thus determines it appropriate to order, in equity, the payment of USD 10,000.00 (ten thousand United States dollars) to Mr. Romero Feris as pecuniary damages.

190. With respect to non-pecuniary damages, the Court's case law has established that they may include the suffering and distress caused by the violation as well as the impairment of values that are highly significant to the victims as well as non-monetary alterations to their living conditions. Since it is not possible to assign a precise monetary equivalent to non-pecuniary damages, the victims, to be integrally redressed, can only be compensated by a monetary payment or by the assignment of goods or services that can be assessed monetarily, as prudently determined by the Court, applying judicial discretion and the principle of equity.[198] In this case, the Court held that the rights of Mr. Romero Feris to personal liberty and to the presumption of innocence were violated (*supra* Chapter VI.1). Therefore, considering the circumstances of this case and the non-pecuniary consequences that he suffered, the Court deems it appropriate to fix, in equity, as non-pecuniary damages, the sum equivalent to USD 10,000.00 (ten thousand United States dollars).

B.3. Other measures of reparation requested

191. The *Commission* requested that the State "[t]ake the necessary measures to ensure the non-repetition of the violations declared in [its Report on the Merits}." It specifically asked that "the State adopt administrative or other measures to ensure strict compliance with the maximum legal term for pre-trial detention, as well as providing adequate grounds for ordering it" by the justice operators, in accordance with the standards set out in the Report. It also asked the Court to order the State to ensure "the availability of adequate and effective mechanisms to enable persons subjected to criminal proceedings to challenge, in a simple and rapid manner, the competence, independence and impartiality of the judicial authorities."

192. The *representative* requested: (a) a declaration of the absolute nullity of the processes that comprise the factual framework; (b) the restitution and reestablishment of the rights of Mr. Romero Feris, such as the right to his personal liberty, or the redress and reparation of the unjust and arbitrary harm inflicted on his honor, honorability, good name, personal,

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197 *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43 and *Case of Girón et al. v.* Guatemala, paras. 125 and 144.

198 *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.

professional, business, family, social and political prestige and (c) the restoration of his electoral and political rights together with his eligibility by the State to hold public office.

193. The *State* indicated that these measures of reparation, such as the request to restore the electoral and political rights of the alleged victim, do not relate to the facts in this case. It also noted that the inter-American system cannot be used as an instance of review of national decisions delivered in accordance with national and conventional standards.

194. As to these requests, the Court notes that they lack a causal nexus with the violations declared in this judgment and, therefore, the Court considers that the delivery of this judgment and the reparations ordered in this chapter are sufficient and adequate to redress the violations suffered by the victim and does not find it necessary to order additional measures.

C. Costs and expenses

195. The *representative* requested that the Court set and order that the State pay the costs of this process, which includes the professional activities in monitoring and defending Case Nº 12.984 before the Inter-American Commission and the activities before the Court. The *State* did not specifically refer to this measure of reparation.

196. The Court reiterates that, in accordance with its case law, costs and expenses form part of the concept of reparation as long as the activities deployed by the victims to obtain justice, at both the national and international planes, entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment. Regarding reimbursement of costs and expenses, the Court must prudently assess their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction, as well as those incurred during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction of the protection of human rights. This assessment may be made based on the principle of equity and in consideration of the expenses indicated by the parties, provided their *quantum* is reasonable.[199]

197. The Court has held that "the claims of the victims or their representatives in relation to costs and expenses, and the evidence supporting them, must be presented to the Court at the first procedural opportunity granted them; namely, in the brief containing motions and pleadings, without prejudice to those claims being updated subsequently, to include new costs and expenses incurred as a result of the proceedings before [the] Court." The Court also reiterates that "it is not sufficient to remit probative documents; rather the parties must develop the reasoning that relates the evidence to the fact under consideration and, in the case of alleged financial disbursements, the items and their justifications must be described clearly."[200]

198. There is no precise probative evidence in the record of this case on the costs and expenses that Mr. Romero Feris or his representative incurred in the proceedings before the Court. The Court, however, considers that such proceedings necessarily imply monetary disbursements and, therefore, it determines that the State must deliver to the representative the sum of USD 10,000.00 (ten thousand United States dollars) for costs and expenses. This amount is to be paid directly to the representative. During the stage of monitoring compliance

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[199] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, paras. 79 and 82 and *Case of Ruiz Fuentes et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 10, 2019. Series C No. 385, para. 251.

[200] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, paras. 275 and 277 and *Case of Ruiz Fuentes et al. v. Guatemala*, para. 251.

of this judgment, the Court may determine that the State reimburse the victim or his representative the reasonable expenses that they incur during that procedural stage.[201]

D. Method of compliance of the payments ordered

199. The State must make the payment of compensation for the pecuniary and non-pecuniary damages and the reimbursement of costs and expenses ordered in this judgment directly to the person indicated therein, within one year of notification of this judgment.

200. If the beneficiary has died or dies before he receives the respective amount, this shall be delivered directly to his heirs, in accordance with the applicable domestic law.

201. The State must comply with the monetary obligations by payment in United States dollars, or its equivalent in the national currency, using the exchange rate of the New York Stock Exchange, the day before the payment.

202. If, for causes that can be attributed to the beneficiary of the compensation or to his heirs, it is not possible to pay the amounts established within the indicated time frame, the State must deposit said amounts in his favor in a bank account or a certificate of deposit in a solvent Argentine financial institution, in United States dollars, and in the most favorable conditions permitted by banking laws and practice. If the corresponding amount is not claimed after ten years, the amounts shall be returned to the State with the interest accrued.

203. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damages shall be delivered in full to the person indicated, as established in this judgment, without any deductions arising from possible taxes or charges.

204. If the State should fall in arrears, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in Argentina.

VIII
OPERATING PARAGRAPHS

205. Therefore,

THE COURT

DECLARES,

unanimously, that:

1. The State is responsible for violating the right to personal liberty established in Article 7(1), 7(2), 7(3), 7(5) and 7(6) of the American Convention on Human Rights and the right to the presumption of innocence established in Article 8(2) of the same instrument, in relation to the obligation to guarantee rights established in Article 1(1) of the Convention, to the detriment of Raúl Rolando Romero Feris, in the terms of paragraphs 76 to 83 and 87 to 123 of this judgment.

2. The State is not responsible for violating the right to judicial protection established in

[201] *Cf. Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Interpretation of the Judgment on the Merits, Reparations and Costs*. Judgment of August 19, 2013. Series C No. 262, para. 62 and *Case of Ruiz Fuentes et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 10, 2019. Series C No. 385, para. 252.

Article 25 of the American Convention on Human Rights, to the detriment of Raúl Rolando Romero Feris, in the terms of paragraphs 134 to 175 of this judgment.

AND ESTABLISHES,

unanimously, that:

3. This judgment is, per se, a form of reparation.

4. The State shall issue the publications ordered in paragraphs 185 and 186 of this judgment.

5. The State shall pay the amounts fixed in paragraphs 189, 190 and 198 of this judgment, as reparations for pecuniary and non-pecuniary damages and for costs and expenses.

6. The State shall, within one year of notification of this judgment, present the Court with a report on the measures adopted to comply with this judgment.

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

Done in the Spanish language at San José, Costa Rica on October 15, 2019.

Case of Romero Feris v. Argentina

I/A Court H.R. *Case of Romero Feris v. Argentina. Merits, Reparations and Costs.* Judgment of October 15, 2019.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Humberto A. 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