

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF MAIDANIK ET AL. V. URUGUAY

JUDGMENT OF NOVEMBER 15, 2021
(Merits and Reparations)

In the case of *Maidanik et al.*,

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

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

also present,

Pablo Saavedra Alessandri, Registrar
Romina I. Sijniensky, Deputy Registrar,

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

* Judge Ricardo Pérez Manrique, a Uruguayan national, did not take part in the deliberation and signing of this judgment, pursuant to Articles 19(2) of the Statute and 19(1) of the Rules of the Court.

TABLE OF CONTENTS

I	5
INTRODUCTION OF THE CASE AND CAUSE OF ACTION	5
II	6
PROCEEDINGS BEFORE THE COURT	6
III	7
JURISDICTION	7
IV	7
PRIOR CONSIDERATIONS	7
A. Regarding the determination of the alleged victims	7
B. Regarding the American Declaration of the Rights and Duties of Man 8	
V	8
EVIDENCE	8
A. Admissibility of the documentary evidence	8
B. Admissibility of the testimonial and expert evidence	10
VI	10
FACTS	10
A. Context	11
A.1. <i>Regarding the serious violations of human rights committed during the dictatorship and later acts that brought them to light</i>	11
A.2. <i>Regarding the Expiry Law and the later acts that tended to suppress its effects</i>	13
B. Regarding the alleged victims	16
C. Background information and facts of the case	16
C.1 <i>The facts concerning Laura Raggio, Silvia Reyes and Diana Maidanik and the investigation into the events</i>	16
C.1.1 <i>Facts</i>	17
C.1.2 <i>Investigation</i>	18
C.2 <i>Regarding the disappearance of Luis Eduardo González González and the subsequent investigation</i>	22
C.2.1 <i>Facts</i>	22
C.2.2 <i>Investigation</i>	24

C.3 Regarding the disappearance of Óscar Tassino Asteazu and the investigation into it	26
C.3.1. Facts.....	26
C.3.2. Investigation	27
D. Pecuniary reparations granted domestically by the State	30
VII	30
MERITS	30
VII.1	30
RIGHT TO RECOGNITION OF JURIDICAL PERSONALITY, TO LIFE, TO PERSONAL INTEGRITY AND TO PERSONAL LIBERTY	30
A. Arguments of the Commission and of the parties	31
B. Considerations of the Court	32
B.1 General considerations on the forced disappearance of persons	32
B.2 Examination of the facts of the case	33
VII.2	35
RIGHT TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION	35
A. Arguments of the Commission and of the parties	35
B. Considerations of the Court	38
B.1 General considerations on the duty to investigate.....	38
B.2. Examination of the actions taken in this case	39
B.2.1 Obstruction of the investigations by application of the Expiry Law	39
B.2.2 Due diligence in the actions	41
B.2.2.1 Regarding the determination of the whereabouts of the disappeared persons	41
B.2.2.2 With regard to the determination of criminal responsibilities...	42
B.2.3 Failure to observe a reasonable period.....	46
B.3 Conclusion	48
VII.3	49
RIGHT TO THE PERSONAL INTEGRITY OF THE NEXT OF KIN OF VICTIMS OF FORCED DISAPPEARANCES AND EXTRAJUDICIAL EXECUTIONS	49
A. Arguments of the Commission and of the representative	49
B. Considerations of the Court	49
VIII	51

REPARATIONS	51
A. Injured parties	52
B. Obligation to investigate the facts and identify, prosecute and, where appropriate, punish those responsible	52
<i>B.1 Investigate, prosecute and, where appropriate, punish those responsible</i>	52
<i>B.2 Determination of the whereabouts of Luis Eduardo González González and Óscar Tassino Asteazu</i>	56
C. Measures of rehabilitation	57
D. Measures of satisfaction	59
<i>D.1. Publication and dissemination of the judgment</i>	59
<i>D.2 Public act of recognition of responsibility</i>	60
E. Guarantees of non-recurrence	60
<i>E.1 Actions that would ensure the effective investigation of serious violations of human rights committed during the dictatorship</i>	60
E.1.1 Non-applicability of exclusionary factors of criminal responsibility	64
E.1.2 Strengthening the Office of the Special Prosecutor for Crimes against Humanity	66
<i>E.2 Training and sensibilization of personnel of the Armed Forces</i>	67
F. Other measures requested	67
G. Compensation	70
IX OPERATIVE PARAGRAPHS	74

I
INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* – On May 24, 2020, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of “Diana Maidanik et al.” against the Eastern Republic of Uruguay (hereinafter “the State” or “Uruguay”). According to the Commission, the case concerns the alleged failure to investigate and punish the extrajudicial executions, on April 21, 1974, of Diana Maidanik, Silvia Reyes and Laura Raggio, which was popularly known as “the case of the girls of April.” The Commission indicated that the three women were murdered while in the apartment of Laura Raggio, in Montevideo, in an operation carried out by members of the Armed Forces and the police. The case also concerns the alleged forced disappearances of Luis Eduardo González González and Óscar Tassino Asteazu, on December 13, 1974, and July 19, 1977, respectively. The Commission maintained that the failure to investigate and punish those disappearances, as well as the three extrajudicial executions, continues to the present day. It, therefore, concluded that the rights to juridical personality, to life, to personal integrity, to personal liberty, to judicial guarantees and to judicial protection had been violated. The Commission also considered that the State was responsible for the violation of Article I (a), (b) and (c) of the Inter-American Convention on Forced Disappearance of Persons (hereinafter also “IACFDP”).

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

- a) *Petition.* – On August 15, 2007, the Institute of Legal and Social Studies of Uruguay (IELSUR) lodged the initial petition.
- b) *Admissibility Report.* – On November 8, 2012, the Commission adopted Admissibility Report No. 90/12, by which it admitted the petition.
- c) *Report on the Merits.* – On November 9, 2019, the Commission adopted the Report on the Merits No. 169/19 (hereinafter also “Merits Report”), in which it reached a series of conclusions¹ and made various recommendations to the State.
- d) *Notification to the State.* – The Report on the Merits was notified to the State on February 24, 2020. The Commission granted Uruguay two months to inform on the compliance with its recommendations. The Commission indicated that, on May 14, 2020, the State requested an extension without renouncing its right to present a preliminary objection for the failure to comply with the term established in Article 51(1) of the Convention regarding the submission of a case to the Court.

3. *Submission to the Court.* – On May 24, 2020, the Commission submitted to the Court “the State acts and omissions that occurred or that continued to occur after April 19, 1985.”² It indicated that it did so “due to the necessity of obtaining justice and

¹ The Commission concluded that the State was responsible for the violation of Articles 3 (right to juridical personality), 4(1) (right to life), 5(1) (right to humane treatment), 7 (right to personal liberty), 8(1) (right to a fair trial) and 25(1) (right to judicial protection) of the American Convention, read in conjunction with Articles 1(1) and 2 thereof (obligation to respect and ensure rights). It also determined that Uruguay violated Article I(a), (b) and (c) of the Inter-American Convention on Forced Disappearance of Persons.

² The Commission specified that such actions included: (a) “the forced disappearances of Luis Eduardo González González and Óscar Tassino Asteazu”; (b) “the failure to investigate and punish those disappearances, as well as the extrajudicial executions of Diana Maidanik, Silvia Reyes and Laura Raggio Odizzio,” and (c) “the failure to adequately repair.”

reparations.”³ The Court notes, with concern, that more than 13 years had passed between the lodging of the initial petition before the Commission and the submission of the case to the Court.

4. *Requests of the Commission.* – The Commission requested that the Court conclude and declare the international responsibility of Uruguay for the violations found in the Merits Report (*supra* footnote 1) and that the Court order the State, as measures of reparation, to comply with those included in that report (*infra* Chapter VIII).

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representative of the alleged victims.* – The submission of the case was notified to the representative of the alleged victims (hereinafter “the representative”) and to the State on July 20, 2020.⁴

6. *Brief with pleadings, motions and evidence.* – On September 19, 2020, the representative presented its brief with pleadings, motions and evidence (hereinafter “brief with pleadings and motions”), pursuant to Articles 25 and 40 of the Rules, which substantially coincided with the arguments of the Commission. It requested that Uruguay be ordered to adopt diverse measures of reparations.

7. *Answering brief.* – On December 4, 2020, the State presented its answer (hereinafter “answering brief”) to the submission of the case by the Commission and to the brief with petitions and motions.

8. *Public hearing.* – By Order of April 16, 2021, the President of the Court called the parties and the Commission to a public hearing. Due to the exceptional circumstances caused by the COVID-19 pandemic, the public hearing, which was held on June 16 and 17, 2021 during the Court’s 142nd regular session, took place by means of a videoconference, in accordance with the terms of the Rules.⁵

9. *Amici Curiae.* – The Court received *amicus curiae* briefs from: (i) the Línea de Investigación de Género, Derecho y Sociedad and the Human Rights Group of the Universidad Externado of Colombia⁶ and (ii) the Legal Clinic of the Universitat Pompeu Fabra.⁷

³ The Commission appointed, as its delegates before the Court: Commissioner Julissa Mantilla Falcón and then Executive Secretary, Paulo Abrão; and as its legal advisors, Deputy Executive Secretary, Marisol Blanchard Vera, Jorge Huberto Meza Flores and Christian González Chacón, lawyers of the Secretariat of the Commission.

⁴ The Institute of Legal and Social Studies of Uruguay represented the alleged victims.

⁵ Appearing at the public hearing were: (a) for the Inter-American Commission: Julissa Mantilla Falcón, Marisol Blanchard, Jorge Meza Flores and Erick Acuña; (b) for the representative: Martín Fernández Chiossoni, Diego Camaño Viera and Lucía Giudice Graña, and (c) for the State: Carlos Mata Prates, Pilar Álvarez, Marcos Dotta, Alicia Arbelbide, Lucía Laura Fabbiani Santiñaque and Mariana Cabrera. The oral statements of an alleged victim, a witness and an expert were received at the hearing, as was the presentation of the case by the Commission and its final written observations, and the final written arguments of the parties.

⁶ The document was signed by Ariana Magdalena Gutiérrez Eraso, Juan Sebastián López Oñate, Yesika Alejandra Forero Sánchez, Claudia Helena Botina Bolaños, Astrid Lucero Chuy Colonia, Valentina Silva Bautista, María Daniela Díaz Villamil and Xiomara Lorena Romero. It concerns “the focus on gender with respect to the right to the truth of the victims.”

⁷ The document was signed by Leah Anna Spence Ferrer, Karla Ivett Alonso Robles, María Andrea Correa Pinzón, Juan Camilo Cediel Borrero and Lucía Macarena Aguerre Cazes. It concerns “the anomalies of

10. *Final written arguments and observations.* – On July 16, 2021, the Commission, the State and the representative presented their final arguments and observations. The representative annexed documentation to its presentation.⁸

11. *Deliberation of the case.* – The Court delivered this judgment, virtually, on November 15, 2021.

III JURISDICTION

12. Uruguay has been a State Party to the American Convention since April 19, 1985 and it recognized the contentious jurisdiction of the Court on the same date. Uruguay is also a party to the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), which has been in force for the State since May 2, 1996. Thus, the Court is competent to hear this case, pursuant to the terms of Article 62(3) of the American Convention and the respective provisions of the other two inter-American treaties.

IV PRIOR CONSIDERATIONS

A. Regarding the determination of the alleged victims

13. The **Commission** identified, in its Report on the Merits, 23 persons as victims: (a) Diana Maidanik Potasnik and her next of kin: Flora Potasnik (mother) and Mónica Raquel Wodzislowski (cousin); (b) Laura Raggio Odizzio and her next of kin: Marta Odizzio de Raggio (mother), Horacio Enrique Raggio Odizzio (brother) and Daniel Raggio Odizzio (brother); (c) Silvia Reyes de Barrios and her next of kin: Arturo Ricardo Reyes Gaetán (father), Celia Natividad Sedarri Aparicio (mother), Estela Reyes Sedarri (sister), Washington Javier Barrios Fernández (husband), Washington Barrios (father-in-law), Hilda María Fernández Rodríguez (mother-in-law) and Jaqueline Barrios Fernández (sister-in-law, daughter of Washington Barrios and Hilda María Fernández Rodríguez); (d) Luis Eduardo González González and his next of kin: Amalia González de González (mother), Elena Zaffaroni Rocco (wife), and (e) Óscar Tassino Asteazu and his next of kin: Disnarda Ema Flores Soler de Tassino (wife), Karina Teresa Tassino (daughter), Javier Tassino (brother) and Álvaro Luis Tassino (brother) (*infra* paras. 49 to 53).

14. The **representative** indicated Emiliano Galván Reyes, as a victim in the case, even though he was not identified as such by the Commission. It also indicated that Daniel Edgardo González González and Raúl González González, brothers of Luis Eduardo González González, appeared in representation of their mother, Amalia González

the law of amnesty” and “the importance of preserving respect for democracy as a fundamental value of all society.”

⁸ The final written observations of the Commission and the final written arguments of the State and of the representative, as well as the annexes to the latter were remitted to the parties and to the Commission. A deadline of July 30, 2021 was set for the parties and the Commission to send, if they so desired, observations on those annexes, as well as on the documentation presented by the State on July 16, 2021 by means of an autonomous brief (*infra* para. 21). On July 30, 2021, the representative presented its observations. On that same day, the Commission informed that it did not have any observations on the documentation provided by the State. The State did not present observations.

González, who due to her advanced age could not grant a power of representation, but that they were able to do so.

15. Article 35(1) of the Rules provides that a case shall be submitted to the Court through the presentation of the Report on the Merits, which shall “identify the alleged victims.” It is, thus, for the Commission, and not the Court, to identify, precisely and at the proper procedural moment, the alleged victims in a case before the Court. Legal certainty requires, as a general rule, that each of the alleged victims is duly identified in the Report and that newly alleged victims cannot be added, except in the exceptional circumstance set out in Article 35(2) of the Rules, which refers to massive or collective violations.

16. Article 35(2) is not applicable in this case because it does not involve massive or collective violations. The Court, therefore, will not consider as alleged victims nor, where appropriate, as beneficiaries of measures of reparation the following persons indicated by the representative, who were not identified by the Commission in its Merits Report: Emiliano Galván Reyes, Daniel Edgardo González González and Raúl González González.

B. Regarding the American Declaration of the Rights and Duties of Man

17. The **representative** argued, in its brief with pleadings and motions, that “the State had violated the [alleged] victims’ rights, recognized in the American Declaration of the Rights and Duties of Man as well as in the American Convention on Human Rights,” claiming infringements of various articles in both instruments and requesting that the Court declare the violations.

18. The Court has held that its contentious jurisdiction is not based on the American Declaration of the Rights and Duties of Man, but rather on the American Convention on Human Rights and other treaties that grant it jurisdiction.⁹ It will not, therefore, take into consideration the representative’s arguments regarding the American Declaration.

V EVIDENCE

A. Admissibility of the documentary evidence

19. The Court received diverse documents presented as evidence by the Commission and the representative, together with their main briefs (*supra* paras. 3, 6 and 7). As in other cases, the Court admits those documents that have been presented at the proper procedural moment (Article 57 of the Rules) by the parties and by the Commission, the admissibility of which was not disputed nor objected to, nor was their authenticity questioned.¹⁰

⁹ Cf. *Interpretation of the American Declaration of the Rights and Duties of Man in the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 46 and *Case of Argüelles et al. v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2014. Series C No. 288, paras. 32 to 38.

¹⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140 and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of October 6, 2021. Series C No. 440, para. 31. Documentary evidence may be presented, in general and under Article 57(2) of the Rules, together with the brief of submission of the case, the briefs with petitions and motions or the answering brief, as appropriate. Evidence presented after these procedural moments is not admissible, save for the exceptions established in Article 57(2) (that is, force

20. Moreover, in accordance with the Order of the President of the Court of April 16, 2021 (*supra* para. 8), the judicial files provided by the State at the Court's request have been incorporated into the body of evidence.¹¹

21. The **State**, on December 24, 2020, May 14 and July 16, 2021, presented documentation on "new facts," which occurred after the submission of the respondent's answer. The **representative** and the **Commission** did not question the admissibility of that documentation.¹²

22. The **Court** considers that the documentation submitted by the State deals with supervening events or with information that might be useful in deciding the case. It should be clearly noted that, while all the documents presented by the State to show "new facts" were put together after the submission of its answering brief, some contained information on events that were not dated and that could have occurred prior to the submission of the answer. Nonetheless, those documents refer to judicial cases that are important to this case and are thus useful.

23. Some of the documents presented by the State do not refer to events directly linked to the alleged victims nor to judicial proceedings involved in this case. According to the list in footnote 12, they are as follows: document (b), the purpose of which is to account for the manner in which the Uruguayan courts interpret the application of criminal statutory limitations (hereinafter also "prescription") with respect to certain crimes, as well as how they categorize crimes against humanity; documents (c) and (f), which Uruguay claimed were pertinent to prove the State's commitment to seeking the

majeure or serious impediment) or in the case of a supervening event, that is, occurring after those procedural moments.

¹¹ Pursuant to the Order of April 16, 2021, they consist of the following judicial criminal files: (i) Raggio, Reyes Maidanik. Twenty-sixth Criminal Court. IUE 91-841-1986, (ii) Twenty-seventh Criminal Court. Principal Case: IUE 97-10149/1985. Piece 1: 97-324/2017. Piece 2: 547-396/2018, (iii) Twenty-sixth Criminal Court. IUE 100-152/2012 and (iv) File of the investigation into the death of Washington Barrios. Nineteenth Criminal Court (hereinafter "files presented by the State"). These files were requested of Uruguay at the urging of the representative. The Court observes that, on September 19, 2020, the representative presented as a new fact the statement of a Senator of the Republic GMR, related to "restoring the Ley de Caducidad" (Law of Expiry). The representative claimed that these statements are significant in the "current context of human rights in Uruguay." In the Order of April 16, 2021, the President "did not note that, as evidence relevant to the facts of the case, it was necessary that Uruguay provide for these proceedings documentation on the draft law and the statements made by a Senator."

¹² Neither the representative nor the Commission presented observations on the documents presented by the State on December 24, 2020 and May 14, 2021. The Commission informed that it did not have any observations with respect to the documents presented on July 16, 2021. The representative, in referring to those documents, commented on their probative value, but not on their admissibility. It also offered its opinion on the responsibility of the State, which was not taken into consideration because it was given during a procedural act, which was not an appropriate moment to receive arguments. The documentation presented by the State on December 24, 2020 is indicated below as documents (a) and (b); that presented on May 14, 2021, as document (c). The other documents were presented on July 16, 2021. The documentation is as follows: (a) the "presentation of imprisonment pending trial" of December 17 [2020], for the homicides of Ms. Reyes, Ms. Raggio and Ms. Maidanik; (b) the "order of imprisonment pending trial" of December 14, 2020; (c) the documents on the delivery by the Executive Branch to the Court Prosecutor and to the National Institute of Human Rights of the documentation found in the Fifth Army Artillery Group; (d) the "note of the Supreme Court of July 7, 2021 and its annexes on current activities"; (e) Decision 539/2021 of June 3, 2021; (f) the Report of the Embassy of Uruguay in Italy on the judgment of July 8, 2021 of the Italian Supreme Court of Cassation regarding the proceedings of the so-called "Operation Condor," and (g) the "Third report on the search for the disappeared detainees," of June 24, 2021.

truth and for the criminal prosecution of crimes committed during the military dictatorship, which it considered important for the Court to take into account with regard to the measures of reparation claimed by the Commission and by the representative, and document (g), the importance of which, according to the State, is to show that the search for the remains of the disappeared is currently “a [...] State policy.” Given this context, for the purposes of the specific aspects that the State hopes to demonstrate in each case, the Court finds it appropriate to take into consideration such documentation.

24. The aforementioned documents, presented by the State, are therefore admitted pursuant to Articles 57(2) and 58(a) of the Rules.

25. The Court also incorporates de officio, under its authority under Article 58(a) of the Rules and because they concern provisions that, due to their nature, are of public knowledge, the texts of the following laws of Uruguay: (a) Law 17,347, of June 13, 2001, on the adoption of the Convention on the Non-Applicability of Statutory Limitations of War Crimes and Crimes against Humanity and (b) Law 18,026, of September 13, 2006, regarding Cooperation with the International Criminal Court in Matters of the Fight against Genocide, War Crimes and Crimes against Humanity.

26. On June 7, 2021, the **representative** provided a news item of the previous day that “added to the information in the documents found in the Fifth Artillery Group, submitted by the State on May 14, 2021.” The representative also provided, together with its final written arguments, a copy of the notification of July 15, 2021, which referred to a judicial measure of the previous day.¹³ The **Commission** did not pronounce on the first document and indicated that it had no observations on the second. The **State** did not present observations on the two documents. The **Court** will take into consideration the June 6 news item that refers to the aforementioned documents listed as document (c), submitted by the State (*supra* footnote 12). The document of July 15, 2021 deals with a supervening event related to judicial determinations involving events in this case. Therefore, both documents are admitted, pursuant to Article 57(2) of the Rules.

B. Admissibility of the testimonial and expert evidence

27. The Court admits the oral statements given at the public hearing by Elena Zaffaroni Rocco, by the witness Ricardo Perciballe, head of the Office of the Special Prosecutor for Crimes against Humanity (*infra* para. 47), and by the expert Pablo Simón Chargoña Pérez, as well as the notarized statements in Spanish, the working language of the case, that were presented opportunely in the terms of the object defined in the President’s Order that authorized their acceptance (*supra* para. 8).¹⁴

VI FACTS

28. The Court will now establish the facts of the case. It will do so based on the factual framework submitted by the Commission and the complementary information presented to the Court and relevant facts after the publication of the Merits Report. The State

¹³ Twenty-sixth Criminal Court. C. 391/2021. Decisions indexed Ricardo Reyes Gaetán, Marta Odizzio de Raggio and Flora Potasnik.- Dcia. Notification. July 15, 2021 (evidence file, f. 7655).

¹⁴ The Court received, within the period set by the Order of the President of April 16, 2021 (*supra* para. 8), in Spanish and notarized, the statements of Aidee Rossana Santo, Ana Guliak Potasnik, Juan Quiñones, Silvana Elizabeth Bocage and Walter Pérez Giampedraglia, each of whom had been proposed by the representative.

asserted that “it did not claim to deny the terrible events perpetrated during the civil-military dictatorship, nor the suffering of the victims and their families” and that “the facts in this case have not been refuted.” The Court will determine the facts, taking into consideration the lack of controversy on them and the particularities that are found the body of evidence.

29. There follow the established facts, in this order: (a) context; (b) regarding the alleged victims; (c) case background and facts, and (d) reparations obtained domestically.

A. Context

A.1. Regarding the serious violations of human rights committed during the dictatorship and later acts that brought them to light

30. According to the Merits Report, the events that gave rise to this case occurred during the civil-military dictatorship in Uruguay, which began on June 27, 1973, after a coup d'état, and continued until February 28, 1985. The Court has already dealt with this situation in the *Gelman v. Uruguay* case.¹⁵ The Court held in that case that there were serious violations of human rights committed by State agents. There follows an account of the Court's holding in that case plus some additional elements.

31. The Court stated that the events occurred “in the context of the systematic practice of arbitrary detention, torture, executions and enforced disappearances perpetrated by the intelligence and security forces of the Uruguayan dictatorship, in the setting of the national security doctrine and of Operation Condor.”¹⁶ The Commission pointed out in its 1978 Report on Uruguay that beginning in 1973 it had received information “charging the Uruguayan authorities with the responsibility for the violent death, as a result from physical abuse, of a considerable number of men and women who were being held under detention.”¹⁷ The Court also established the implementation under the dictatorship of “daily forms of surveillance and control of society” and, more specifically, “forms of repression against leftist political organizations.” During that period, there were also numerous cases of abductions of children, forced disappearances, torture and extrajudicial executions.¹⁸

32. On April 9, 1985, the Chamber of Representatives unanimously voted to establish a Parliamentary Investigative Commission¹⁹ to clarify the situation of disappeared persons and on the facts that motivated that situation.²⁰ That Commission first identified

¹⁵ *Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, paras. 44 to 63.

¹⁶ *Case of Gelman v. Uruguay. Merits and Reparations*, para. 44.

¹⁷ Report on the Situation of Human Rights in Uruguay. OEA/Ser.L/V/11.43 doc.19 corr.1, January 31, 1978, para. 3.

¹⁸ *Case of Gelman v. Uruguay, Merits and Reparations*, paras. 58, 59 and 60.

¹⁹ Article 120 of the Constitution of Uruguay states that “The Chambers may appoint parliamentary investigative commissions or to provide information for the purposes of legislation.”

²⁰ Minutes of Sessions of the Chamber of Representatives. XLII^a Legislature. First regular session. 13th meeting. Number 1805, Book 617, p. 63. *Cf.* Minutes of Sessions of the Chamber of Representatives. XLII^a Legislature. First regular session. 2nd meeting. Number 1794, Book 616. February 20, 1985, p. 80 (evidence file, annex XXXVII to the answering brief, fs. 4074 to 5198).

the persons who were disappeared whose names were provided by their family members, among which were those of Mr. González González and Mr. Tassinio Asteazu.

33. The Investigative Commission determined that disappearances often occurred "after the intervention of members of the Joint Forces, who [...] detained and took [the victims] from their homes," many of whom were last seen detained in military establishments.²¹

34. Presidential Order 858/000,²² of August 9, 2000, created a Peace Commission with a diverse membership and the commitment to "receive, analyze, classify and compile information on the forced disappearances that occurred during the de facto regime."

35. The Peace Commission presented a Final Report, dated April 10, 2003, in which it indicated that "it is firmly convinced that serious violations of human rights were perpetrated during the de facto regime." It asserted that "State agents, in exercising their public function, acted outside the law and employed unlawful repressive measures, such as torture, unlawful detention in clandestine centers and even more serious cases of forced disappearance."²³ The Report expressed that "the remains of the disappeared persons who died beginning in 1973 [...] were exhumed towards the end of 1984, incinerated or cremated using informal ovens or calderas [...] and finally thrown into the Río de la Plata in a zone near the Barrio Paso de la Arena, which has been precisely identified."²⁴ In its Merits Report, the Inter-American Commission stated that by Decree of April 10, "the President of the Republic fully accepted 'the conclusions of the Final Report of the Peace Commission and assumed that they constituted the official version on the situation of the persons disappeared during the de facto regime.'"

36. Similarly, the Report of the Investigative Commission [of the National Army] on the Ultimate Fate of 33 Citizens Detained between June 27, 1973 and March 1, 1985 (hereinafter "Report on the Ultimate Fate of 33 Citizens"), of August 8, 2005, which was established by express order of the President of the Republic, stated with respect to the persons detained that:

When a detained person died before, during or after being interrogated, the system of justice was not involved and, in some cases, there was information that the person had fled, which resulted in a communiqué seeking his arrest, but the citizen had already died. In some cases, there was simply a communiqué requesting his indictment in order to conceal his death.²⁵

²¹ Final Report of the Parliamentary Investigative Commission of the Chamber of Representatives on the Situation of Disappeared Persons and the Facts that Motivated that Situation (evidence file, annex XXXVII, fs. 4074 to 5198).

²² Presidential Order 858/000, of August 9, 2000 (evidence file, annex XLIV to the answering brief, fs. 5337 to 5517).

²³ Final Report of the Peace Commission, April 10, 2003, paras. 42 ff. (evidence file, annex XXXVI to the answering brief, fs. 3989 to 4070).

²⁴ Final Report of the Peace Commission, April 10, 2003, para. 52.

²⁵ Report of the Investigative Commission on the Ultimate Fate of 33 Citizens (evidence file, annex 4 to the Report on the Merits, fs. 1118 to 1135).

37. On September 18, 2019, Law 19,822 was promulgated, Article 1 of which charged the National Institute of Human Rights and the Office of the Ombudsman (hereinafter "INDDHH") with "searching for the persons who were detained and who disappeared during the unlawful conduct of the State between June 13, 1968 and June 26, 1973, as well as during the State terrorism that unfolded between June 27, 1973 and February 28, 1985."²⁶

38. The INDDHH has published two reports on the search for the disappeared detainees, the first on May 18, 2020 and the second on October 7, 2020, and has also issued "Strategic guidelines to comply with the mandate of Law 19,822."

39. Reports on the search for the mortal remains of the disappeared detainees demonstrate that there are three scenes of active excavations: the First Communications Brigade; the former Thirteenth Battalion (now the Army Transportation Service), and the Fourteenth Battalion of Infantry Paratroopers. According to reports submitted to the Court, the excavations that were conducted between 2005 and 2020 have uncovered and identified the remains of at least nine persons.²⁷

A.2. Regarding the Expiry Law and the later acts that tended to suppress its effects

40. On December 22, 1986, Law 15,848, or the Law of the Expiry of Punitive Claims of the State²⁸ (hereinafter "Expiry Law"), was enacted and established the following:

Article 1.- Let it be acknowledged that, consistent with the rationale underlying the situation derived from the agreement reached by the political parties and the Armed Forces in April 1984 and with a view to completing the transition to full implementation of the constitutional order, exercise of the punitive claims of the State with respect to crimes committed up to March 1, 1985 by military and police personnel, purportedly for political reasons or in the course of duty or on orders from commanders operating during the de facto regime, has expired.

Article 3. - For the purposes contemplated in the foregoing articles, the judge hearing the corresponding charges shall demand that the Executive report within no more than 30 days of receipt

²⁶ Law 19.822 (evidence file, annex XLIV to the answering brief, fs. 5384 to 5389).

²⁷ According to the Second Report on the Search for the Disappeared, Law 19.822 of October 7, 2020, the Final Report of the Truth and Justice Working Group of October 14, 2019 and the Report on the activities of the Anthropological Investigations on the detained disappeared persons in the final civil-military dictatorship 2013-2014, the remains of: (i) E.B. were found on August 27, 2019 in the so-called "Zone 4 2017" of the former Thirteenth Battalion; (ii) J.C., found in 2011 in the Fourteenth Battalion; (iii) R.B. found in 2012 in the Fourteenth Battalion; (iv) two victims of Plan Condor, detainees disappeared; (v) J.C.P., found in the battalion in Zone III; (vi) R.B.V., in the battalion in Zone III; (vii) F.M., in the former Thirteenth Battalion, and (viii) a person in the Thirteenth Battalion (evidence file, annexes XV, XIX, XXII and XXIII, fs. 2682, 2683, 2992, 3120, 3175 and 3373). The Court's judgment uses initials to indicate persons other than those who have appeared before the Court in this case or those who have been identified as alleged victims or beneficiaries of measures of reparation by the parties or the Inter-American Commission.

²⁸ Note is taken that Law 15,737 had been enacted in 1985. Article 5 of the law, known as the "Amnesty law for pursued politicians and trade unionists" or also, as indicated by the representative, as the "Law of National Pacification," excludes from the amnesty "crimes committed by police or military personnel, in uniform or not, who were the perpetrators, accomplices or abettors of inhumane, cruel or degrading treatment or the detention of persons who were disappeared and for those who covered up any of those conducts." This provision added that "this exclusion also extends to all those crimes committed for political reasons by persons who acted under cover of the authority of the State in any form or as government officials." (cf. Law 15,737 (evidence file, annex XLIV to the answering brief, fs. 5478 to 5485)).

of the communication whether it considers that the facts under investigation are or are not within the scope of Article 1 of the present law. If the Executive so notifies, the Judge shall order the case files to be closed and archived. If, on the other hand, the Executive does not report or states that they are not included, inquiries shall continue. [...].²⁹

41. In a 2009 case, the Supreme Court of Justice of Uruguay (hereinafter “the Supreme Court”) accepted a motion of unconstitutionality against Articles 1, 3 and 4 of the Law of Expiry and declared

the expiration of criminal prosecutions, in any case, exceeds the powers of the legislators and invades the forum of a function constitutionally assigned to judges, so that, for whatever reason, the legislature could not arrogate to itself the power of deciding that the period had expired regarding prosecution for certain crimes. [...]

To summarize, the unlawfulness of an amnesty law enacted for the benefit of military and police officials who committed [serious violations of human rights], who enjoy impunity during de facto regimes, has been declared by courts, of both the international community and the States that went through similar processes experienced by Uruguay during the same period in time. Such rulings, given the similarity with the issue under analysis and the relevance that they have had, could not be ignored in the examination of the constitutionality of Law [No.] 15,848 and have been taken into account by the Corporation to issue the present ruling.³⁰

42. In its judgment of February 24, 2011 in the *Gelman* case, the Court held that “the provisions of the Expiry Law that impede the investigation and punishment of serious violations of human rights lack effectiveness and, therefore cannot continue to obstruct the investigation of the facts of this case and the identification and punishment of those responsible, nor can they have the same or similar impact on other cases of serious violations of human rights recognized in the American Convention that may have occurred in Uruguay.”³¹

43. On November 1, 2011, Uruguay enacted Law 18,831, which amended Law 15,848. Law 18,831 states:

Article 1. Full exercise of the punitive claims of the State are restored for crimes committed in the implementation of State terrorism up to March 1, 1985, and included in Article 1 of Law No. 15,848 of December 22, 1985.

Article 2. No time limits of any kind shall be set -procedural, prescriptive, or expiry-related- in the period between December 1986 and the entry into force of this law, for the crimes referred to in Article 1 of this law.

Article 3. Let it hereby be declared that the crimes referred to in the foregoing articles are crimes against humanity in accordance with international treaties to which the Republic is party.³²

²⁹ Law 15,848 of December 22, 1986 (evidence file, annex XLIV to the answering brief, fs. 5337 to 5517).

³⁰ Supreme Court. Judgment No. 365. Sabalsagaray Curutchet. Blanca Stela. Complaint. Objection of Unconstitutionality Arts. 1, 3 and 4 of Law 15,848, File card 97-397 /2004 (evidence file, annex I to the answering brief, fs. 2258 to 2313). Cf. *Case of Gelman v. Uruguay. Merits and Reparations*, para. 219.

³¹ *Case of Gelman v. Uruguay, Merits and Reparations*, para. 232.

³² Law 18,831, of November 1, 2011, enacted by the Republic of Uruguay (evidence file, annex XLIV to the answering brief, folios 5337 to 5517).

44. Furthermore, on June 30, 2011, the Executive Branch had issued Decree 323/2011 that repealed “for reasons of legitimacy, the administrative acts and messages issued by the Executive Branch, in application of Article 3 [of the Expiry Law], considering that the facts denounced were covered by the provisions of Article 1 of the above-mentioned law [...]”³³

45. Then, on February 22, 2013, the Supreme Court declared Articles 2 and 3 of Law 18,831 of 2011 unconstitutional in a specific case.³⁴

46. According to the Report on the Merits, the Supreme Court, in 2017 and 2018, declared unconstitutional the statutory limitations of crimes against humanity committed during the dictatorship with a similar rationale to that in its decision in 2013.³⁵

47. Law 19,550, enacted October 25, 2017, authorized the Office of the Prosecutor General to change the National Office of the Prosecutor into that of the Office of the Special Prosecutor for Crimes against Humanity (hereinafter “Office of the Special Prosecutor” or, with reference to the person, “Special Prosecutor”).³⁶ The representative informed that the Office was established on February 22, 2018.

48. On May 30, 2019, the Supreme Court dismissed an appeal in cassation with respect to an “especially aggravated murder [...] committed during the civil-military dictatorship” because it was not proper to calculate the time of prescription from the time of the de facto regime to the enactment of the Expiry Law. It was not that the Supreme Court considered that the statutory limitations did not apply to the crime, but rather that it understood that that period should not be taken into account with respect to prescription because during that time it was not possible to take the respective legal actions.³⁷ As the Inter-American Court stated in November 2020, “with few exceptions” that occurred between 2014 and 2017 “the Supreme Court has maintained the interpretation found in its decision of February 2013 regarding the unconstitutionality of Articles 2 and 3 of Law 18,831, which refers to the non-applicability of statutory limitations and the nature of crimes against humanity of the violations that occurred during the dictatorship.”³⁸

³³ Cf. *Case of Gelman v. Uruguay. Monitoring compliance of judgment*. Order of the Inter-American Court of March 20, 2013, considering paragraphs 28 and 43.

³⁴ Cf. *Case of Gelman v. Uruguay. Monitoring compliance of judgment*. Order of the Inter-American Court of March 20, 2013, considering paragraph 47.

³⁵ The Inter-American Commission, in its Merits Report, cited the following: “Ladiaria.com.uy, New judgment of the SCJ declared unconstitutional the imprescriptibility of crimes against humanity in the disappearance of Eduardo Pérez, February 9, 2018; Cf. Supreme Court. Judgment 680/2017 of September 25, 2017.” The Inter-American Court issued similar statements (*infra* para. 48).

³⁶ Cf. Draft and explanation of the rationale of Law 19,550 (evidence file, annex XXV to the answering brief, fs. 3775 to 3793).

³⁷ The Commission took note in a press release that, on May 30, 2019 the Supreme Court unanimously rejected an appeal in cassation filed by the defense in a case of “homicide in the first degree.” The Supreme Court based its decision on the fact that “the period of the de facto regime cannot be counted in calculating the period of prescription of a criminal action, since during that time it was not possible to conduct the relevant investigations” (Press release of July 24, 2019, *IACHR takes note of the judicial decision in Uruguay that limits the application of prescription in crimes committed during the civil-military dictatorship*).

³⁸ Cf. *Case of Gelman v. Uruguay. Monitoring compliance of judgment*. Order of the Inter-American Court of November 19, 2020, considering paragraph 30.

B. Regarding the alleged victims

49. Diana Maidanik Potasnik was 21 when the incident occurred and was studying child psychology. Her next of kin are her mother, Flora Potasnik, and her cousin, Mónica Raquel Wodzislowski.³⁹

50. Laura Raggio Odizzio was 19 when the incident occurred and was a student. Her next of kin are her mother, Marta Odizzio de Raggio, and her brothers, Horado Enrique Raggio Odizzio and Daniel Raggio Odizzio.⁴⁰

51. Silvia Reyes de Barrios was 21 when the incident occurred and was more than six months pregnant. Her next of kin are her parents, Arturo Ricardo Reyes Gaetán and Celia Natividad Sedarri Aparicio, and her sister, Estela Reyes. Silvia Reyes was married to Washington Javier Barrios Fernández and was close to her husband's parents, Washington Barrios and Hilda María Fernández Rodríguez, as well as to her sister-in-law, Jaqueline Barrios.⁴¹

52. Luis Eduardo González González was 22 when the event occurred and was a married medical student, a laborer and a member of the Communist and Revolutionary Party of Uruguay. His next of kin are his mother, Amalia González de González, and his wife, Elena Zaffaroni Rocco, who was pregnant at the time of the event. Their son was born in April 1975.⁴²

53. Óscar Tassino Asteazu was 40 when the event occurred and was a union leader of the Group of the Administration of State Factories and Telephones (AUTE) and an active militant of the Communist Party of Uruguay. His next of kin are his wife, Disnarda Ema Flores Soler de Tassino, his daughter, Karina Teresa Tassino and his brothers, Javier Tassino and Álvaro Luis Tassino.⁴³

C. Background information and facts of the case

C.1 The facts concerning Laura Raggio, Silvia Reyes and Diana Maidanik and the investigation into the events

54. The Court notes that the events prior to April 19, 1985, date of Uruguay's acceptance of the Court's contentious jurisdiction, relating to Ms. Maidanik, Ms. Reyes and Ms. Raggio will be considered as factual background to the case submitted to the

³⁹ Complaint of October 15, 1986, regarding the "homicides" of Ms. Raggio, Ms. Reyes and Ms. Maidanik (evidence file, annex 2(1) to the Merits Report, fs. 269 to 274).

⁴⁰ Complaint of October 15, 1986, regarding the "homicides" of Ms. Raggio, Ms. Reyes and Ms. Maidanik.

⁴¹ Complaint of October 15, 1986, regarding the "homicides" of Ms. Raggio, Ms. Reyes and Ms. Maidanik. The representative pointed out that Washington Javier Barrios Fernández is disappeared. The facts surrounding his disappearance were not submitted to the Court.

⁴² Complaint presented by Amalia González de González, regarding the disappearance of her son, Luis Eduardo González, to the Tenth Criminal Court (evidence file, annex 1(1) to the Merits Report, fs. 7 to 20).

⁴³ Complaint of Disnarda Flores, regarding the disappearance of Óscar Tassino Asteazu (evidence file, annex 1(1) to the Merits Report, fs. 970 to 982).

Court, which, in view of date of the acceptance of its jurisdiction with respect to those three persons, will evaluate the circumstances after April 19, 1985.

C.1.1 Facts

55. According to the criminal complaint for the violent deaths of Ms. Maidanik, Ms. Reyes and Ms. Raggio, at 2:45 a.m. on April 21, 1974 members of the Joint Forces, which included the Armed Forces and the police, knocked on the door of the home of Washington Barrios, where they found him with his wife, María, and his daughter, Jaqueline, who was 10, and asked for their son, Washington Javier Barrios. When they realized that he was the father, they left "shouting like hell and firing their machine guns" and went to the apartment in front (No. 3), where Washington Javier Barrios lived.⁴⁴ Members of the Joint Forces broke down the door opening to the patio opposite the apartment. From there, they fired directly at the closed door of the apartment where the three women were staying.⁴⁵

56. A neighbor of Silvia Reyes informed that: "the gunshots continued for around 5 or 7 minutes, or 10, until they stopped shooting and then the soldiers started shouting, and the girls screaming that they mustn't shoot, mustn't kill them, after which there was a burst of machine gun fire that made my walls shake, and then the shooting stopped completely."⁴⁶

57. According to the criminal complaint, after the gunshots at Apartment N° 3, members of the Joint Forces approached the mother of Washington Javier Barrios and asked her "where is your son as I am personally going to kill him."⁴⁷ The complaint mentioned that, on that same day, several Army trucks with soldiers arrived at the apartment and made off with all the furniture.⁴⁸

58. The sister-in-law of Ms. Reyes indicated that, when she entered the apartment, she found more than 200 cartridges and bullets stuck in the wall with pieces of scalp. She also recalled that the gunshots were two bursts of numerous weapons firing

⁴⁴ Complaint of October 15, 1986, regarding the "homicides" of Ms. Raggio, Ms. Reyes and Ms. Maidanik.

⁴⁵ Complaint of October 15, 1986, regarding the "homicides" of Ms. Raggio, Ms. Reyes and Ms. Maidanik.

⁴⁶ Testimony of H.C., neighbor of Silvia Reyes, on the facts relating to the deaths of Ms. Reyes, Ms. Raggio and Ms. Maidanik (evidence file, annex 2(21) to the Merits Report, fs. 941 to 946). There is also the statement of Hilda María Fernández Rodríguez, mother-in-law of Ms. Reyes, who was in the residence in front of the apartment where the three girls died (cf. Statement of Hilda María Fernández Rodríguez of October 22, 1986 (evidence file, annex 2(4) to the Merits Report, fs. 294 to 302)). Mrs. Fernández Rodríguez mentioned, among other remarks, that her daughter-in-law was pregnant. There is also the statement of Jaqueline Barrios Fernández, who stated that, for the amount of blood that she saw there after the event, the three women were murdered "on the other side of the door" of the apartment since there was blood only in one place and it was, in her opinion, the only place where they "could take refuge" (cf. Statement of Ms. Barrios Fernández of October 22, 1986 (evidence file, annex 2(3) to the Merits Report, fs. 286 to 292)).

⁴⁷ Complaint of October 15, 1986, regarding the "homicides" of Ms. Raggio, Ms. Reyes and Ms. Maidanik.

⁴⁸ Complaint of October 15, 1986, regarding the "homicides" of Ms. Raggio, Ms. Reyes and Ms. Maidanik.

simultaneously.⁴⁹ Hilda María Fernández Rodríguez, mother-in-law of Silvia Reyes, declared that the body of her daughter-in-law was naked with many wounds.⁵⁰

59. The file contains the version of the Joint Forces, according to which the deaths of the three women were the result of a confrontation. According to a communiqué issued by the Joint Forces Press Office, at 2:50 a.m. on April 21, 1974 the Joint Forces went to search the apartment and were met, from the interior, with gunfire and grenades, in light of which the members of the Joint Forces decided to use "full force to quell them."⁵¹

60. According to the Special Prosecutor, in a document provided as evidence by the State, according to the evidence gathered during the investigations, "it has been possible to disprove the official version of the confrontation" and "the deaths of the [three] girls [...] was the result of an illegal act of the State that greatly exceeded what was permitted in order to detain them."⁵²

C.1.2 Investigation

61. On October 15, 1986, the next of kin of Ms. Maidanik, Ms. Reyes and Ms. Raggio presented a criminal complaint regarding the violent deaths.⁵³

62. As previously indicated (*supra* para. 40), the Expiry Law was promulgated on December 22, 1986. On March 24, 1987, Arturo Reyes, Flora Potasnik and Marta Odizzio De Raggio filed an objection of unconstitutionality against Articles 1, 2, 3 and 4 of that law.⁵⁴ On August 10, 1988, the Supreme Court dismissed the petition.⁵⁵ On December 21st of that year, the Supreme Court informed the criminal court hearing the case that the proceedings brought for the deaths of the three women had been included within the terms of the Expiry Law by decision of the Executive Branch.⁵⁶ The proceedings were then halted.

⁴⁹ Complaint of October 15, 1985, regarding the "homicides" of Ms. Raggio, Ms. Reyes and Ms. Maidanik; testimony of Jacqueline Barrios Fernández, sister-in-law of Ms. Reyes, concerning the events related to the deaths of the three women (evidence file, annex 2(3) to the Merits Report, fs. 287 to 292); Second testimony of Ms. Barrios Fernández, concerning the events related to the deaths of the three women (evidence file, annex 2(17) to the Merits Report, fs. 894 to 912).

⁵⁰ Testimony of Hilda María Fernández Rodríguez, mother-in-law of Ms. Reyes, concerning the events related to the deaths of the three women (evidence file, annex 2(4) to the Merits Report, fs. 293 to 302).

⁵¹ Communiqué N° 1090 of the Press Office of the Joint Forces that provides a version of the events surrounding the deaths of the three women (evidence file, annex 2(11) to the Merits Report, fs. 375 to 377).

⁵² Cf. Undated Report of the Special Prosecutor (evidence file, annex XXVIII to the answering brief, fs. 3837 to 3848).

⁵³ Complaint of October 15, 1986, regarding the "homicides" of Ms. Raggio, Ms. Reyes and Ms. Maidanik. It is important to note that the representative affirmed that the first criminal complaint regarding the violent deaths of the three women was presented on May 20, 1985.

⁵⁴ Objection of unconstitutionality filed before the Eighth Criminal Court by Arturo R. Reyes, Flora Potasnik and Marta O. de Raggio (evidence file, annex 2(5) to the Merits Report, fs. 303 to 316).

⁵⁵ Judgment of the Supreme Court of August 10, 1988, filed under "Arturo Ricardo Reyes Gaetán, Marta Odizzio de Raggio, Flora Potasnik – Complaint. Unconstitutionality" (evidence file, annex 2(7) to the Merits Report, fs. 343 to 348).

⁵⁶ Communication of the Registrar of the Supreme Court to the Eighth Criminal Court (evidence file, annex 2(8) to the Merits Report, fs. 350 to 353).

63. On October 28, 2005, the next of kin of the three women presented a request to reopen the criminal investigations, which were reopened in the Eighth Criminal Court in 2006.⁵⁷

64. On March 13 and 17, 2006, statements were taken from soldiers who presumably were involved in the incident or in the immediate aftermath.⁵⁸ Testimony was received on March 28, 29, 30 and 31.⁵⁹ Between May and December of 2006, diverse actions were taken, such as processing a request that files on the incident that were being examined by military justice⁶⁰ be sent to the court hearing the case as well as "photoplanimetric" documentation of where the incident occurred.⁶¹

65. On February 16, 2007, after the Fourth National Criminal Prosecutor decided that the case could not be continued due to the Expiry Law, the judge ordered that it be filed.⁶²

66. On June 30, 2011, the Executive Branch ordered the revocation "for reasons of legitimacy" of "all administrative acts and communications issued by the Executive Branch in application of Article 3 of Law 15,848."⁶³ Thus, on October 24, 2011, the Prosecutor requested the reopening of the investigations and the processing of the evidence.⁶⁴ On October 26, 2011, the court, acceding to the request of the Prosecutor, ordered that the evidence be produced and that A.M. be summoned to declare.⁶⁵

⁵⁷ Request to reopen the criminal proceedings regarding the deaths of Ms. Reyes, Ms. Raggio and Ms. Maidanik (evidence file, annex 2(9) to the Merits Report, fs. 354 to 370). After the request of the family members, the Eighth Criminal Court consulted the President of the Republic on the applicability of the Law of Expiry. On December 12, 2005, the President indicated that he did not have "sufficient elements" to declare that the case fell within that law and that he was not authorized to "impede the search for the truth" (Response of the President of the Republic to the Eighth Criminal Court of December 9, 2005 (evidence file, annex 2(10) to the Merits Report, fs. 372 to 374)).

⁵⁸ Cf., Statements on March 13 and 17, 2006 of J.R and J.S., on the first date, and of J.G., on the second (evidence file, files remitted by the State, fs. 5674 to 5679, 5705 to 5709 and 5710 to 5716, respectively).

⁵⁹ Cf. Statements on March 28, 29, 30 and 31, 2006 of Jaqueline Barrios Fernández, on the first date, Hilda María Fernández Rodríguez, on the second, R.K. and S.Q., on the third, and H.C., on the fourth (evidence file, files remitted by the State, fs. 5719 to 5734, 5735 to 5748, 5749 to 5752, 5753 to 5756 to 5757 to 5761, respectively).

⁶⁰ Cf. Communication 108 of May 8, 2006, sent by the Eighth Criminal Court to the Judge of the Tenth Criminal Court (evidence file, files remitted by the State, folio. 5765).

⁶¹ Cf. Record of the photoplanimetric documentation, remitted by the National Headquarters of the Technical Police on December 4, 2006 (evidence file, files remitted by the State, fs. 5782 to 5789).

⁶² Cf. Brief of the Fourth National Criminal Prosecutor to the intervening judge of February 15, 2007 and his order of the following day (evidence file, files remitted by the State, fs. 5791 to 5793).

⁶³ Cf. Order of the President of the Republic of June 30, 2011 (evidence file, files remitted by the State, fs. 5835 to 5839).

⁶⁴ Cf. Brief of the Fourth National Criminal Prosecutor of October 24, 2011, sent to the Eighth Criminal Court (evidence file, files remitted by the State, fs. 5808 to 5812).

⁶⁵ Cf. Decree 1702/2011 of the Eighth Criminal Court of October 26, 2011 (evidence file, files remitted by the State, fs. 5814). On October 31, 2011, family members of Ms. Maidanik, Ms. Reyes and Ms. Raggio also requested the reopening of the investigations (cf. Communication of Flora Potasnik, Daniel Raggio Odizzio, Horacio Enrique Raggio Odizzio, and Stella Reyes of October 31, 2011, addressed to the Eighth Criminal Court (evidence file, files remitted by the State, fs. 5815 to 5817)).

67. Actions from that time until 2015 included: (a) the statement of December 21, 2011 of A.M., who denied having participated in the incident;⁶⁶ (b) the Office of Judicial Archives of the Military Justice (APROJUMI) and the Ministry of Defense, on September 23 and October 10, 2013, respectively, responded to the requests for information regarding the file on the incident being examined by the Sixth Military Court and on those who participated in the operation of April 21, 1974;⁶⁷ (c) testimony was taken on October 30 and November 28, 2014;⁶⁸ (d) on July 28, 2015, autopsies were performed on the bodies of Ms. Reyes and Ms. Raggio after their exhumation on May 27 and June 8, 2015,⁶⁹ and (e) on December 9, 2015, at the request of the acting judge, the Ministry of Defense presented information on two soldiers.⁷⁰

68. One of the two soldiers, E.K., was summoned to declare on April 7, 2016.⁷¹ However, he appealed by invoking the prescription of the criminal act and the unconstitutionality of Laws 18,831 and 19,550. These remedies were resolved during that year, the following year and 2018 (*infra* paras. 161 to 163).

69. On July 17, 2018, the Office of the Special Prosecutor decided to intervene and, on August 2, requested different measures of evidence that were ordered the following day, among them, that E.K. be summoned to declare, which was scheduled for

⁶⁶ Cf. Statement of A.M. on December 21, 2011, given before the Eighth Criminal Court (evidence file, files remitted by the State, fs. 5840 to 5843).

⁶⁷ Cf. Requests of documentation of September 2, 2013, Communications 619/2013 and 621/2013 of the Eighth Criminal Court remitted, respectively, to APROJUMI and to the Ministry of National Defense and the responses of those bodies of September 23 (Communication OFJ-7095000025/2013) and October 10, 2013 (Communication 686/SecMtro/13), respectively (evidence file, files remitted by the State, fs. 5989 and 5991 to 5993). The Ministry of Defense, in its response, stated that it had no information on the persons who participated in the operation and suggested that information be sought at the General Archives of the Nation, which after being requested responded that it had no information, but did send "a photocopy regarding Arturo Ricardo Reyes Gaetán from information in the files of OCOA" (*cf.* Request for documentation of October 23, 2013, Communication No. 732/2013, sent by the Eighth Criminal Court to the National Archives and the response of the latter of November 4, 2013 (evidence file, files remitted by the State, fs. 5997 to 5998, respectively)).

⁶⁸ Cf. Statements of G.N. before the Eighth Criminal Court on October 30 and November 28, 2014 and of C.V. on the latter date (evidence file, files remitted by the State, fs. 6069 to 6072, and 6079 to 6083 and 6084 to 6087, respectively).

⁶⁹ Cf. Communications 326/P and 605, of May 26 and June 3, 2017, of the Chief of Police of Canelones and of the Fourth Court of Maldonado; minutes of the exhumations of May 27 and June 8, 2015 and reports on the autopsies by the Technical Forensic Institute of the Judiciary of July 28, 2015 (evidence file, files remitted by the State, fs. 6139, 6156, 6140, 6157 to 6159 and 6180 to 6224, respectively).

⁷⁰ Cf. Office of the Prosecutor General. Opinion outside the hearing No. 1773/15/FP4T of November 5, 2015; Decree 2315/2015 of the same date, issued by the acting judge favorably receiving the request made in the prior document, and communication No. 131/SG/15 of the Armed Forces Retirement and Pension Service of November 30, 2015, addressed to the Sub-Director General of the Secretariat of the Ministry of National Defense, received on December 9, 2015 by the court hearing the case (evidence file, files remitted by the State, fs. 6320 to 6321, 6322 and 6333 to 6334, respectively). The judge had requested information on three persons: J.R., E.K. and M.M. in order to interrogate them "on the denounced facts." The Ministry of Defense indicated that it lacked information regarding the third person.

⁷¹ Cf. Summons issued on February 24, 2016 (evidence file, files remitted by the State, f. 6339).

November 21, 2018.⁷² However, E.K. presented new appeals that month and during the following year (*infra* paras. 163 and 164). He finally testified on November 16, 2020.⁷³

70. On March 11, 2020, the Special Prosecutor presented a brief to the judge informing that “additional evidence remains to be gathered.”⁷⁴ The following day, the court ordered everything that had been requested by the Special Prosecutor, sending the necessary communications and taking different measures.⁷⁵ On September 8, 2020, the Special Prosecutor requested additional actions.⁷⁶

71. On December 17, 2020, the Special Prosecutor requested an order of “imprisonment pending trial” for E.K., J.R. and J.G.⁷⁷ He then summoned them to testify in a hearing.⁷⁸ J.R and J.G requested that the cases be closed invoking prescription (*infra* para. 165).

72. On June 26, 2021, J.G. died.⁷⁹ On July 14, 2021, the court became aware of the death of E.K. and stated that:

⁷² Cf. Oral order 893/2018 of July 17, 2018, of the court hearing the case; communication IUE 91-841/1986 No. 101, of August 2, 2018, of the Office of the Special Prosecutor and communication 1100/2018 of September 26, 2018 (evidence file, files remitted by the State, fs. 6636, 6638 to 6641 and 6657, respectively).

⁷³ Cf. Statement of E.K. of November 16, 2020 (evidence file, files remitted by the State, fs. 7324 to 7329). Prior to this statement, on September 27 and October 9, 2019 the Office of the Special Prosecutor requested multiple measures of evidence (*cf.* Communications of the Office of the Special Prosecutor of September 27, 2019 (No. 286) and of October 8, 2019, the latter received by the court on the following day (evidence file, files remitted by the State, fs. 7070, 7071 and 7076)). In September 2019, the case was assigned to the Twenty-fifth Criminal Court (*cf.* Record of October 3, 2019 (evidence file, files remitted by the State, f. 7072)). On November 5 and 6, 2019, statements were received (*cf.* Statements of L.R. and M.G., on November 5 and 6, 2019, respectively (evidence file, files remitted by the State, fs. 7106 to 7113 and 7123 to 7130, respectively)).

⁷⁴ Cf. Communication 45 of the Office of the Special Prosecutor, of March 11, 2020 (evidence file, files remitted by the State, fs. 7184 and 7185).

⁷⁵ Cf. Communication OFJ-0545-000062 /2020 of the Twenty-fifth Criminal Court on May 28, 2020 (evidence file, files remitted by the State, f. 7189). The document transcribes the text of Decree 353/2020 of March 12, 2020. Between March 14 and May 15, 2020, the proceedings were suspended due to the “sanitary holiday” ordered because of the pandemic (*cf.* Record of May 28, 2020 (evidence file, files submitted by the State, f. 7187)). On May 28, 2020, there were different actions, such as the remittance to the Twenty-fifth Criminal Court of copies of several statements or the appointment of a medical team to make the required reports (*cf.* Decree 441/2020 of June 3, 2020, signed by the “Capital Judge” and the documentation that follows and communication of June 4, 2020, sent by the Department of Legal and Forensic Sciences of the Medical School of the University of the Republic to the Twenty-fifth Criminal Court (evidence file, files remitted by the State, fs. 7193 to 7238 and 7240, respectively)).

⁷⁶ Cf. Communication 190 of the Office of the Special Prosecutor, of September 8, 2020 (evidence file, files remitted by the State, f. 7275).

⁷⁷ Cf. Communication 292 of the Office of the Special Prosecutor, of December 17, 2020 (evidence file, files remitted by the State, fs. 7353 to 7372).

⁷⁸ Cf. Decree 1397/2020 of the “Capital Judge” of December 18, 2020 (evidence file, files remitted by the State, f. 7374).

⁷⁹ Report of the Twenty-sixth Criminal Court of July 6, 2021 (evidence file, fs. 7473 a 7477).

Due to the objection of unconstitutionality filed by the accused [J. R.], the present proceedings are suspended and remitted to the Supreme Court of Justice. [...] With respect to the objection of prescription filed by [J. R.], since an objection of unconstitutionality is pending, the substance of the case is also suspended until the issue is resolved by the Supreme Court of Justice.⁸⁰

C.2 Regarding the disappearance of Luis Eduardo González González and the subsequent investigation

C.2.1 Facts

73. Amalia González, mother of Luis Eduardo González González, denounced that, at 2 a.m. on December 13, 1974, two persons "dressed in civilian clothes" came to her home and asked for "el chiqui," the family nickname of her son. She stated that, when she did not allow them in, they identified themselves as members of the Joint Forces and a group of soldiers armed with machine guns barged into her home. She stated that they remained there for several hours until they located the whereabouts of Mr. González González.⁸¹ They immediately went there and, in the early morning, detained him and his wife, Elena Zaffaroni Rocco, who was pregnant.⁸² Both were then taken to the Sixth Cavalry Regiment of the First Army Division.⁸³

74. According to the Commission and the evidence, three persons, who were detained with Mr. González González, described his deteriorated physical and mental state at that time, as well as "the mistreatment and tortures" to which they had been subjected.⁸⁴ The Special Prosecutor also affirmed that Mr. González González was "tortured,"⁸⁵ which agrees with the oral statement given before the Court by his wife, Mrs. Zaffaroni, as well as her other previous remarks, as will be shown.

75. Mrs. Zaffaroni declared that she was detained together with her husband and that they were kept blindfolded most of the time in the detention center, but on the day after they were apprehended she could identify her husband and was then able to exchange words with him. On the third day, she could hear him being tortured. She indicated that "on approximately December 18, [1974]" they removed the blindfold and made her watch her husband having convulsions. She stated that, after this episode, she did not

⁸⁰ 26th Criminal Court. Notification C. N° 391/2021. This document transcribes Decree 445/2021 of July 14, 2021.

⁸¹ Complaint presented by Amalia González de González on July 24, 1985, regarding the disappearance of her son, Luis Eduardo González, to the 10th Criminal Court.

⁸² Statement given, on August 13, 1985, by Elena Zaffaroni Rocco (evidence file, annex 1(3) to the Merits Report, fs. 27 to 33). The information provided by Mrs. Zaffaroni Rocco agreed with that of her oral statement before the Inter-American Court, specifying that she and her husband were detained at 3 a.m.

⁸³ Complaint presented by Amalia González de González, on July 24, 1985, regarding the disappearance of her son, Luis Eduardo González, to the 10th Criminal Court and the statement given on August 13, 1985 by Elena Zaffaroni Rocco regarding the disappearance of Luis Eduardo González. The Special Prosecutor affirmed that "it has been determined that González González [...] was detained, together with his partner and taken to the Sixth Motorized Cavalry Regiment (cf. Undated Report of the Special Prosecutor).

⁸⁴ Cf. Statements of J.G.M., J.M.G. and J.P. of September 27, 1985 (evidence file, annexes 1(5), 17 and 18 to the Merits Report, fs. 39 to 43, 48 to 51 and 52 to 55, respectively). The Commission referred to the statements of four other persons, but it is not demonstrated that they had direct knowledge of Mr. González González. The mention of "mistreatment and tortures" was made by the Commission as a fact, which was not refuted.

⁸⁵ Cf. Undated Report of the Special Prosecutor.

see her husband until December 24, 1974. She relayed what happened then in the following words:

They take me to a van where he is, after first telling me that I was going to have an interview with my husband and that they were going to propose my release if he collaborated. They asked me what I thought and I said I wanted to see him. They placed us opposite one another in the van with my husband, me with the blindfold [...] on and he in a hood. We were surrounded by people, with my husband and I holding hands, sitting opposite one another, and my husband said to them that they had said he would not be wearing a hood, so that they started shouting that he had to wear one. One of the interrogators said that it was up to us both to decide whether they would let me go, provided that he collaborated and they told him that they were not going to do anything else to me and my child could be born out of captivity. The officer added that they had brought us together so that we could decide because Luis had not wanted to take that decision on his own, because if he collaborated I would not want to see him again. My husband was having trouble breathing. His pants were torn as far as I could see. He was barefoot, with his feet swollen and bruised. I began crying, saying that it was his life and they should do nothing for me, and he told me I should think about it and that they had promised him 24 hours for me to think it over and I said no. Then, in the middle of the conversation he told me that they were asking about Argentina, of ties with it of people in our group, with people from other political organizations. There he insisted that I should take my time and I realized that he would not withstand another torture session. There, when he spoke about the ties with Argentina, the interrogators began shouting "don't talk, this is about something else." My husband and I embraced, they separated us at the gate and took me to the barrack hut and I never saw him again.⁸⁶

76. The wife of Mr. González González stated that she was released in 1978.⁸⁷ His mother stated that some days after the disappearance of her son, she had gone to the First Army Division where a Major informed her that her son had been taken to a place that they needed to reconnoiter and that there he had escaped through a window and that "they didn't want to shoot him; so that by now he had probably crossed the pond."⁸⁸ She said that, on March 6, 1975, she requested information of the First Army Division regarding her son and once again she had been told that he had fled from the detention center.⁸⁹ She stated the following:

When he was ordered to appear, I went to the Female Military Police to inquire and an official there told me that, if he had escaped she would know about it, and that she had made the "wanted" poster for my son a few days before and would try to find out about him. She crossed a large patio and came back in about an hour, looking as if she had been

⁸⁶ Statement given on August 13, 1985 by Elena Zaffaroni Rocco. In her oral statement before the Court, she indicated that December 25, 1974 was the last day that she saw her husband. She stated that, as can be appreciated, the reasons that the captors permitted her on different occasions to see her husband was that they wanted to "pressure him more."

⁸⁷ Statement given August 13, 1985 by Elena Zaffaroni Rocco. On that occasion, she indicated that in "the month of February [1975], she was transferred to the Fifth Artillery." She expressed that she was then taken to a jail on a date that she did not provide. She manifested that in both places she attempted to obtain information from the military officials on her husband but received no responses because "it was something that could not be known." She also explained that "after she gave birth [...] she was returned to jail."

⁸⁸ The expression "cross the pond" refers to going from Uruguay to Argentina.

⁸⁹ Complaint presented by Amalia González de González on July 24, 1985 regarding the disappearance of her son, Luis Eduardo González, to the Tenth Criminal Court (evidence file, annex 1(1) to the Merits Report, fs. 7 to 20).

crying. Changing her tone, because before she had been kind to me, she told me that my son had fled and when he appeared she would let me know.⁹⁰

77. She indicated that on January 11, 1976, her son had appeared as “wanted” in the press and that the photo also showed another person “looking as if he had been horribly mistreated.”⁹¹

C.2.2 Investigation

78. On July 24, 1985, Amalia González denounced before the Tenth Criminal Court, the disappearance of her son, Luis Eduardo González González.⁹² According to the available information, his mother-in-law filed an application of habeas corpus and that they “took multiple steps to learn the whereabouts of their children,” without success.⁹³

79. On September 24, 1985, a conflict arose between the ordinary and the military jurisdictions.⁹⁴ On February 16, 1987, the Supreme Court ordered the sending of the file of the case to the Eleventh Criminal Court.⁹⁵

80. As previously indicated (*supra* paras. 40 and 62), on December 22, 1986, the Expiry Law was promulgated. On April 9, 1987, Mrs. González filed an action of unconstitutionality against Articles 1, 2, 3 and 4 of the law, arguing that they violated the principle of the separation of powers, judicial independence, due process and the right to equality.⁹⁶ On July 29, 1988, the Supreme Court dismissed the action.⁹⁷

81. While the action of unconstitutionality was being considered, Mrs. González presented before the judge of the Tenth Criminal Court a request of personal notification of the administrative act of the Executive Branch regarding the inclusion or not of the

⁹⁰ Statement of Amalia González de González on July 29, 1985 (evidence file, annex 1(2) to the Merits Report, fs. 21 to 26).

⁹¹ Statement of Amalia González de González on July 29, 1985.

⁹² Complaint presented by Amalia González de González regarding the disappearance of her son, Luis Eduardo González, to the Tenth Criminal Court.

⁹³ Complaint presented by Amalia González de González regarding the disappearance of her son, Luis Eduardo González, to the Tenth Criminal Court.

⁹⁴ Conflict arising from the request to decline jurisdiction made by the Third Military Court of Investigation to the judge of the Ninth Criminal Court indicating that the report of the “Investigative Commission on the Situation of the Disappeared Persons and on the Facts that Motivated that Situation” included activities of the Armed Forces that could affect legal rights protected by the Regular Military Code and by its Criminal Code, thus creating, in the opinion of the Court of Investigation, a jurisdictional conflict between the two bodies (*cf.* Request to decline jurisdiction from the Third Military Court to the Tenth Criminal Court with respect to the complaint presented by Mrs. González de González (evidence file, annex 1(12) to the Merits Report, fs. 66 to 74)).

⁹⁵ Order of the Supreme Court to remit the files to the Tenth Criminal Court (evidence file, annex 1(23) to the Merits Report, fs. 196 to 198).

⁹⁶ Action of unconstitutionality of Articles 1, 2, 3 and 4 of Law 15,848 of 1986, presented by Mrs. González de González (evidence file, annex 1(24) to the Merits Report, fs. 199 to 205).

⁹⁷ Judgment of the Supreme Court of July 29, 1988 on the action of unconstitutionality of Articles 1, 2, 3 and 4 of Law 15,848 of 1986, filed by Mrs. González de González (evidence file, annex 1(26) to the Merits Report, fs. 225 to 232).

case of the disappearance of her son, under Law 15,848.⁹⁸ On May 26, 1989, the judge was informed, by the Executive Branch, of the inclusion of the case of her son under the terms of the Expiry Law.⁹⁹

82. In November 1985, the Parliamentary Investigative Commission released its "Final Report on the Situation of Disappeared Persons and the Facts that Motivated that Situation" (*supra* paras. 32 and 33), which includes a list of the persons disappeared by State agents between 1975 and 1978, among them Luis Eduardo González.¹⁰⁰

83. On August 8, 2005, the Report on the Ultimate Fate of 33 Citizens (*supra*, para. 36) mentioned Mr. González González, in the following terms:

Luis Eduardo González González (*)

He was arrested in his home [...] on December 13, 1974.

He was then taken to Regiment C Mec No 6 where he died at the end of December 1974.

In addition, this commission was unable to ascertain, based on the information received, whether his remains were buried inside the grounds pertaining to Battalion I Mec No. 13 or Battalion I Parach No. 4, although there is no doubt that his remains were exhumed and cremated and his ashes and remains scattered in the vicinity. (Grounds of Battalion I. Parach No 14).

An attempt was made to cover up his death with a press release reporting that he had escaped.¹⁰¹

84. On September 8, 2006, Amalia González filed a new request of investigation with the Eleventh Criminal Court.¹⁰² On December 19, 2006, that court held that, since the case had been closed under Article 3 of Law 15,848, the request was inadmissible.¹⁰³ On February 14, 2007, Mrs. González requested that the court reopen the case and asked to examine the files on the proceedings that led to its being archived.¹⁰⁴

⁹⁸ Request of personal notification presented by Amalia González to the judge of the Tenth Criminal Court on May 12, 1987 (evidence file, annex 1(27) to the Merits Report, fs. 233 a 235).

⁹⁹ Notification to the judge of the Tenth Criminal Court regarding the inclusion of the case of Luis Eduardo González under the terms of Law 15,848 de 1986 (evidence file, annex 1(28) to the Merits Report, f. 239).

¹⁰⁰ Cf. Final Report on the Situation of Disappeared Persons and the Facts that Motivated that Situation of the Parliamentary Investigative Commission of the Chamber of Representatives.

¹⁰¹ Report of the Investigative Commission on the Ultimate Fate of 33 Citizens (evidence file, annex 4 to the Merits Report, fs.1117 to 1135). The asterisk beside the name in the Report refers to the presumption that "the events were conducted within the context of intelligence operations and, therefore, all acts and omissions are considered the absolute responsibility of those in charge."

¹⁰² Request for an investigation presented by Amalia González de González to the Eleventh Criminal Court (evidence file, annex 1(29) to the Merits Report, fs. 242 to 258).

¹⁰³ Order of the Eleventh Criminal Court of November 19, 2006 (evidence file annex 1(30) to the Merits Report, fs. 260 to 261).

¹⁰⁴ Request of Amalia González de González to the Eleventh Criminal Court to reopen the investigation and to examine the files (evidence file, annex 1(31) to the Merits Report, fs. 263 a 268).

85. According to the representative, and as can be seen from what follows, the judicial proceedings were reopened and the case continued. It should be recalled that, as indicated (*supra* para. 44), in 2011 the Executive Branch revoked the administrative acts and the communications issued in application of Article 3 of the Expiry Law (*supra* para. 40).

86. According to the Special Prosecutor's Report of December 4, 2020, when the document was being prepared "the investigation regarding the case was very advanced." It stated that "the place and the circumstances in which the victim was detained, transferred and then disappeared have been verified." It also indicated that "the officers who were part of S2 (intelligence) unit of the military, as well as those belonging to the [Coordinating Body of Anti-subversive Operations] at that time had been identified" and that "some of them have died." The Special Prosecutor averred that "the Office of the Prosecutor still had not been able to make a decision because appeals of unconstitutionality and prescription filed by indicted persons were pending."¹⁰⁵ In his oral statement before the Court on June 16, 2021 (*supra* paras. 8 and 27), the Special Prosecutor stated that the situation had not changed.

87. This coincides with a judicial report of July 6, 2021, which states that "at a lower court," the Public Ministry requested the appearance of 10 soldiers "who were being investigated,"¹⁰⁶ and that another two individuals, M.C. and H.L., were also "involved." Argentina had been requested to extradite M.C., but at the time of the report that country had not resolved the issue. Seven of the first 10 soldiers presented objections of prescription, as did H.L., but those appeals had not been resolved at the time of the document.¹⁰⁷

C.3 Regarding the disappearance of Óscar Tassino Asteazu and the investigation into it

C.3.1. Facts

88. Disnarda Flores denounced that, at 10 p.m. on July 19, 1977, three individuals dressed as civilians arrived at 6632 Máximo Tajes St. and identified themselves as members of the Joint Forces. She stated that they demanded that the persons present remain until her husband, Óscar Tassino Asteazu, arrived. She indicated that when he appeared an hour later, he was violently pushed into the house, deprived of his possessions and taken into one of the bedrooms where he was beaten. She also manifested that at 9:30 the next morning he was taken from there with his face covered and while being beaten. She subsequently added that Mr. Tassino Asteazu had been seen in a clandestine center of detention by people who stated that he was subjected to "horrific forms of torture."¹⁰⁸ Judicial authorities were aware of the same information.¹⁰⁹

¹⁰⁵ Undated Report of the Special Prosecutor. The document was annexed to the answering brief of the State, which was presented to the Inter-American Court on December 4, 2020 (*supra* para. 7).

¹⁰⁶ It concerns the following persons: W.B., P.F., V.V., R.E., G.C., J.S., E.R., M.A., J.P.A. and A.O.

¹⁰⁷ Report of the Twenty-sixth Criminal Court of July 6, 2021 (evidence file, fs. 7473 to 7477).

¹⁰⁸ Complaint of Disnarda Flores de Tassino regarding the disappearance of Mr. Tassino Asteazu (evidence file, annex 3(1) to the Merits Report, fs. 970 to 982).

¹⁰⁹ Cf. Proceedings 614/2021, of June 23, 2021 (evidence file, fs. 7486 to 7523).

89. Mrs. Flores de Tassino stated that, when she denounced those acts before the Joint Chiefs of Staff, she was informed that her husband had not been detained by military authorities, but had been summoned to appear since May 1, 1977 and should have reported to the Directorate of National Information and Intelligence of the Office of the Chief of Police of Montevideo. She indicated that there she received information only on another event, a prior detention of her husband that occurred in 1974.¹¹⁰

C.3.2. Investigation

90. On May 20, 1985, or in June of that year, Disnarda Flores filed a complaint alleging the disappearance and torture of her husband.¹¹¹ The complaint asked that evidence be collected, testimony be received and that the Ministry of Defense be requested to provide the names of the officers and non-commissioned officers who were in charge of the operation of July 19, 1977.¹¹² There is no record that those actions were undertaken.

91. On September 24, 1985, a conflict arose between the military and the ordinary jurisdictions.¹¹³ On February 16, 1987, the Supreme Court referred the case to the Tenth Criminal Court (with the clarification that it was the Ninth Criminal Court).¹¹⁴

92. On April 10, 1987, Disnarda Flores filed an action of unconstitutionality against Articles 1, 2, 3 and 4 of the Expiry Law, arguing that they violated the principles of the separation of powers, judicial independence, due process and the right to equality.¹¹⁵ On August 10, 1988, the Supreme Court dismissed the action.¹¹⁶

93. On August 18, 1987, Ms. Flores requested the Tenth Criminal Court that it personally notify her of the administrative act of the Executive Branch on whether the complaint of the alleged disappearance and torture of Mr. Tassino Asteazu was included under the Expiry Law.¹¹⁷ On October 20, 1988, the judge of the Tenth Criminal Court

¹¹⁰ Complaint of Disnarda Flores de Tassino regarding the disappearance of her husband (evidence file, annex 3(1) to the Merits Report fs. 970 to 982).

¹¹¹ Complaint of Disnarda Flores de Tassino regarding the disappearance of her husband (evidence file, annex 3(1) to the Merits Report, fs. 970 to 982). According to the document, it was "received" on May 20, 1985 and was ordered sent "to the office" of the judicial authority on June 26. Despite this information, the Commission and the representative stated that the complaint was presented in June 1985.

¹¹² Complaint of Disnarda Flores de Tassino regarding the disappearance of her husband (evidence file, annex 3(1) to the Merits Report, fs. 970 a 982).

¹¹³ The conflict arose because of the request to decline jurisdiction by the Third Military Court of Investigation to the Judge of the Ninth Criminal Court (*cf.* request to decline jurisdiction by the Third Military Court to the judge of the Ninth Criminal Court, of September 24, 1985 (evidence file, annex 3.2 to the Merits Report, fs. 983 to 989)).

¹¹⁴ Remittance by the Supreme Court to the Tenth Criminal Court regarding the case of the alleged disappearance and torture of Mr. Tassino Asteazu (evidence file, annex 3(8) to the Merits Report, fs. 1029 to 1033).

¹¹⁵ Action of unconstitutionality regarding Articles 1, 2, 3 and 4 of Law 15,848 filed by Disnarda Flores de Tassino (evidence file, annex 3(8) to the Merits Report, fs. 1034 to 1047).

¹¹⁶ Judgment of the Supreme Court of August 10, 1988 on the action of unconstitutionality filed by Disnarda Flores de Tassino (evidence file, annex 3(11) to the Merits Report, fs. 1074 to 1079).

¹¹⁷ Request of Disnarda Flores de Tassino to the Ninth Criminal Court of August 18, 1988 (evidence file, annex 3(12) to the Merits Report, fs. 1080 to 1083).

was informed, by the Executive Branch, that the case of her husband was included under Article 1 of the Expiry Law.¹¹⁸

94. In November 1985, the Parliamentary Investigative Commission released its "Final Report on the Situation of Disappeared Persons and the Facts that Motivated that Situation" (*supra* paras. 32 and 82), which provided a list of persons disappeared by State agents between 1975 and 1978, among them Óscar Tassino Asteazu.¹¹⁹

95. On April 10, 2003, the Peace Commission included Mr. Tassino Asteazu as a victim of disappearance and indicated that he had died on July 21, 1977. It pointed out that his remains, as those of other "disappeared persons who died beginning in 1974 within the Department of Montevideo" had been buried in Armed Forces facilities and later exhumed around 1984 and incinerated or cremated using informal ovens or calderas and thrown into the Río de la Plata in a zone near the Barrio Paso de la Arena. The Report clarified that this information is included "in general terms," but that the Peace Commission considered that it could not and should not confirm it.¹²⁰

96. Similarly, on August 8, 2005, the Investigative Commission's Report (*supra* paras. 36 and 83) referred to the detention of Mr. Tassino Asteazu, as follows:

Oscar Tassino Asteazu (*)

He was detained by the Coordinating Body for Counterinsurgency Operations at a property located at 6632 Máximo Tajes St. on July 19, 1977 and taken to the "La Tablada" detention center.

He died on or around July 24, 1977.

According to the information obtained, and contrary to the statements made by the Peace Commission in its report, his death was the result of suicide, committed as he was going to the bathroom without his guard, whereby it was not possible to determine how he killed himself, because no autopsy was performed.

His remains were buried on the grounds of Battalion 1 Mec No. 13 and not in Battalion I Parach No 14, subsequently exhumed, taken to grounds pertaining to Battalion No 14, and cremated, His ashes and remains were scattered in the vicinity.¹²¹

97. On November 20, 2006, the next of kin of Mr. Tassino again requested the judge of the Tenth Criminal Court to investigate the disappearance, claiming that the facts had not been clarified in the Report of the Peace Commission nor in the Report on the

¹¹⁸ Notification to the judge of the Tenth Criminal Court on the inclusion of the case of Mr. Tassino Asteazu under the terms of Law 15,848 of 1986 (evidence file, annex 3(13) to the Merits Report, fs. 1084 to 1088).

¹¹⁹ Cf. Final Report on the Situation of the Disappeared Persons and the Facts that Motivated that Situation of the Parliamentary Investigative Commission of the Chamber of Representatives.

¹²⁰ Cf. Report of the Peace Commission of April 10, 2003 (evidence file, annex XXXVI to the answering brief, fs. 3988 to 4073).

¹²¹ Cf. Report of the Investigative Commission on the Ultimate Fate of 33 Citizens Detained between June 27, 1973 and March 1, 1985. The asterisk besides the name in the Report, as already explained (*supra* footnote 101), refers to the presumption that "the events were conducted within the context of intelligence operations and, therefore, all acts and omissions are considered the absolute responsibility of those in charge."

Ultimate Fate of 33 Citizens since they are contradictory and also contradict the information provided by the Government on the fate of Mr. Tassino at the moment of his disappearance.¹²² On March 21, 2007, that court dismissed the request for an investigation.¹²³ On July 21, 2007, the same court received a request to reopen the case and to take testimony of all the actions undertaken.¹²⁴

98. The representative pointed out that the case was “reopened” (desarchivado) without giving a date. The Office of the Prosecutor indicated that the investigation was continued after June 30, 2011, when the Executive Branch revoked its orders issued under Article 3 of the Expiry Law (*supra* paras. 40 and 44).¹²⁵

99. The representative indicated that “the principal suspect,” E.F., fled before giving testimony in the case. It pointed out that there was an international order for his arrest and that, on September 7, 2017, he was detained in Spain. However, he was granted an alternative measure of deprivation of liberty, and he fled before a decision was taken on his extradition.

100. The representative also informed that “in 2017 it submitted, on behalf of the complainants, information on a spot near the last known place of Mr. Tassino [Asteazu] (‘La Tablada’), where his remains might be buried.” It affirmed that, despite various requests for information, no effective action had been taken to exhume the remains. The Special Prosecutor, however, pointed out that, by judicial order of November 17, 2020, “work was begun on the excavation” in La Tablada.¹²⁶

101. By communication of October 22, 2020, the Office of the Prosecutor requested of the judicial authority the “imprisonment pending trial” of J.S., a military official who was Captain of the Coordinating Body of Anti-Subversive Operations at the time of the events, as well as a request that INTERPOL inform on the measures taken to locate E.F. At the same time, a medical group was asked to determine whether another of the “involved” could testify.¹²⁷

102. According to information provided by the State, a decree was issued on April 29, 2021 for the “imprisonment pending trial” of E.F.¹²⁸ Later, a “request for recusal” against the judge hearing the case and “appeals of revocation and of prosecution” were presented. The former was denied. With respect to the appeals, the “appeal to a higher court” was complied with on June 28, 2021.¹²⁹ On June 23, 2021, the “imprisonment

¹²² *Cf.* Request of November 20, 2006 of the next of kin of Mr. Tassino to the Tenth Criminal Court (evidence file, annex 3(14) to the Merits Report, fs. 1089 to 1106).

¹²³ *Cf.* Decree 213 of March 21, 2007 of the Tenth Criminal Court (evidence file, annex 3(15) to the Merits Report, fs. 1107 to 1113).

¹²⁴ Request of the next of kin of Mr. Tassino to reopen and to examine the files, of July 21, 2007 (evidence file, annex 3(16) to the Merits Report, fs. 1114 to 1116).

¹²⁵ *Cf.* Office of the Prosecutor General, request to prosecute of October 22, 2020 (evidence file, annex XXVII to the answering brief, fs. 3824 to 3835).

¹²⁶ *Cf.* Undated Report of the Special Prosecutor.

¹²⁷ *Cf.* Prosecutor General of the Nation, request to prosecute of October 22, 2020.

¹²⁸ *Cf.* Proceedings 461/2021 of April 29, 2021 (evidence file, f. 7486), substantiated the next day (*cf.* Judgment 463/2021 of April 30, 2021 (evidence file, fs. 7691 to 7739)).

¹²⁹ Judicial report of July 2, 2021, sent to the Supreme Court (evidence file, fs. 7479 to 7481).

pending trial” of J. S. and E. R. was ordered.¹³⁰ On June 30th, the appeal of “revocation and further appeal” filed by the defense was referred to the Public Ministry.¹³¹

D. Pecuniary reparations granted domestically by the State

103. Certain members of the families of Ms. Maidanik, Ms. Reyes, Ms. Raggio Odizzio, Mr. González González and Mr. Tassino Asteazu received financial compensation as reparations for harm suffered due to the above-mentioned events, the details of which will follow (*infra* paras. 272 and 273).

VII MERITS

104. The instant case concerns the alleged State responsibility for the violations of human rights arising from the forced disappearances of Óscar Tassino Asteazú and Luis Eduardo González González and the lack of an adequate investigation to determine what occurred and, where appropriate, to punish those responsible, as well as to learn the whereabouts of both persons. It also concerns the allegation of the lack of an investigation into the violent deaths of Diana Maidanik, Silvia Reyes and Laura Raggio. Finally, the case involves the harm that the circumstances of the case inflicted on the next of kin of the alleged victims.

105. Before evaluating the arguments, it is important to note that the violations have not been denied by Uruguay, although the State did not expressly recognize its international responsibility. The State indicated the measures that it had adopted and claimed that “it has adapted its conduct and actions to the American Convention on Human Rights and to the standards derived from it.” The actions that Uruguay informed that it has taken and those that support its manifestations have been, where appropriate, considered as part of the facts of the case and, moreover, will be assessed in relation to the examination of the appropriateness of the measures of reparation (*infra* Chapter VIII).

106. The Court will examine the alleged violations in the following order: (a) the rights to juridical personality, to life, to personal integrity and to personal liberty with respect to the alleged forced disappearances of Mr. González González and Mr. Tassino Asteazu; (b) the rights to judicial guarantees and to judicial protection with respect to the alleged shortcomings in the investigations into the aforementioned events and with respect to the deaths of Ms. Maidanik, Ms. Reyes and Ms. Raggio, and (c) the right to personal integrity with respect to the next of kin of the five alleged victims.

VII.1 RIGHT TO RECOGNITION OF JURIDICAL PERSONALITY, TO LIFE, TO PERSONAL INTEGRITY AND TO PERSONAL LIBERTY¹³²

¹³⁰ Cf. Proceedings 614/2021 (evidence file, fs. 7488 to 7523).

¹³¹ Report of July 2, 2021, sent to the Supreme Court.

¹³² Articles 3, 4, 5 and 7 of the American Convention, respectively. This chapter will also examine State responsibility under Articles I(a) and XI of the Inter-American Convention on Forced Disappearance. The infringement of Article XI was not alleged. It will, however, be examined on the basis of the principle of *iura novit curia*, which permits the Court “to analyze the possible violation of provisions of the Convention that have not been alleged, in the understanding that the parties have been able to express their respective positions in relation to the facts that support this” (*Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v.*

A. Arguments of the Commission and of the parties

107. The **Commission** argued that there is no controversy on whether Mr. González González was detained in December 1974. It claimed that the intervention of State officials can be implied since they did not deny the detention, but rather implicitly recognized it when they stated that Mr. González González had fled from prison, and from other indications.¹³³ It added that “when his mother, Amalia González, went to look for him at the [military facility], she was told that he had escaped.” The Commission found that the authorities’ version of his escape and the lack of investigation into the events were means to cover up the fate or whereabouts of Mr. González González. It underscored that his disappearance had not ceased, since his whereabouts were still not known.

108. The Commission also indicated that there is no controversy about whether Mr. Tassino Asteazu was detained on July 19, 1977. It concluded that different indications existed that proved that State agents deprived him of his liberty.¹³⁴ It added that State agents denied to his wife, Disnarda Flores, that he was detained and that his whereabouts continue to be unknown. It stated that, although the Report on the Ultimate Fate of 33 Citizens indicated that Mr. Tassino committed suicide, that was not certain and it was not determined by the proper criminal proceedings, in addition to the doubts on the location of his remains. The Commission claimed that the disappearance of Mr. Tassino Asteazu has not concluded and will continue until his whereabouts are known.

109. Therefore, the Commission concluded that Mr. González González and Mr. Tassino Asteazu are victims of acts of forced disappearance that continue to be committed because in both cases there exist the following elements: (a) the deprivation of liberty; (b) the intervention of State agents, and (c) the refusal to recognize their detention or to reveal their whereabouts. It, therefore, concluded that Uruguay is responsible, to the detriment of those two persons, for violating Articles 3, 4(1), 5(1), 5(2) and 7 of the American Convention, read in conjunction with Article 1(1) thereof, as well as with Article I(a) of the IACFDP.

110. The **representative** alleged that Mr. González González and Mr. Tassino Asteazu are victims of forced disappearance. It claimed that, pursuant to the provisions of the instruments and the decisions of international bodies, including the Court’s case law, the following rights of those two persons were violated: personal liberty, life, recognition of juridical personality and personal integrity. The representative requested that the Court

Argentina. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400, para. 200 and *Case of González et al. v. Venezuela. Merits and Reparations.* Judgment of September 20, 2021. Series C No. 436, (footnote 149). The principle of *iura novit curia* has been applied on several occasions by the Court: *cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 163 and *Case of Cuya Lavy et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 28, 2021. Series C No. 438, para. 149.

¹³³ The Commission indicated: (a) the context in which the events occurred, where there “existed a systematic practice of forced disappearances”; (b) the statements of the mother and others, as well as that of Elena Zaffaroni Rocco, the wife of Mr. González González, who was detained with him; (c) the “Report of the Investigative Commission on the Ultimate Fate of 33 Citizens, and (d) the mention of his case in the “Final Report on the Situation of Disappeared Persons and the Facts that Motivated that Situation.”

¹³⁴ The Commission indicated: (a) the context in which the events occurred; (b) the statement of the wife of Mr. Tassino that he was detained by “three individuals dressed as civilians [...] (who) identified themselves as members of the Joint Forces”; (c) the Report of the Peace Commission, which identified him as a victim of forced disappearance,” and (d) the mention of his name in the “Final Report on the Situation of Disappeared Persons and the Facts that Motivated that Situation.”

declare that the State violated Articles 3, 4(1), 5(1), 5(2) and 7 of the American Convention, read in conjunction with Article (1) thereof, as well as Article I(a) of the IACFDP.

111. The **State** admitted that “coinciding and relevant evidence confirms the complaint regarding the forced disappearances” of Mr. González González and Mr. Tassino Asteazú.¹³⁵

B. Considerations of the Court

B.1 General considerations on the forced disappearance of persons

112. The Court’s consistent case law holds that the forced disappearance of persons is a serious violation of human rights¹³⁶ that is comprised of three concurring elements: (a) the deprivation of liberty; (b) the direct intervention of State agents or their acquiescence, and (c) the refusal to acknowledge the detention and to reveal the fate or whereabouts of the affected person.¹³⁷

113. The Court, in the examination of a prior case involving Uruguay, stated that forced disappearances are a continuing or permanent act that extends until the whereabouts of the victims are known or until their remains have been found and while their identity has not been clearly ascertained.¹³⁸

114. The Court has also pointed out the manifold nature of forced disappearance with respect to the rights recognized in the American Convention.¹³⁹ It is a complex and

¹³⁵ The State explained that such confirmations were given by the Secretariat of Human Rights for the Recent Past from the investigations by the Peace Commission. It indicated that, with respect to both victims, “on August 2, 20006, it issued a certificate of absence for forced disappearance, pursuant to Law 17,894 of September 14, 2005.”

¹³⁶ Cf. *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153, para. 84; *Case of Gelman v. Uruguay. Merits and Reparations*, para. 64 and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 370, paras. 173, 176 and 178.

¹³⁷ Cf. *Case of Gómez Palomino v. Peru. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136, para. 97; *Case of Tenorio Roca et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2016. Series C No. 314, para. 141 and *Case of Garzón Guzmán et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of September 1, 2021. Series C No. 434, para. 62. Articles II and III of the Inter-American Convention on Forced Disappearance of Persons define forced disappearance as follows:

Depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or group of persons acting with the authorization, support or acquiescence of the state, followed by the absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

[...]

This offense shall be considered continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

¹³⁸ Cf., *Case of Gelman v. Uruguay. Merits and Reparations*, paras. 66 to 73. See also, among others: *Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 155 to 157; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 59 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 62.

¹³⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 155 to 157 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 62.

multiple violation because of its many strands merging toward one objective that jointly and continuously infringe, while they exist, various legal rights protected by the American Convention, especially those safeguarded by the rights to juridical personality, to life, to personal integrity and to personal liberty, set out in Articles 3, 4, 5 and 7 of the Convention, respectively.¹⁴⁰

115. A forced disappearance places the victim in a state of complete defenselessness.¹⁴¹ A fundamental safeguard against this phenomenon would be that the deprivations of liberty take place in legally recognized centers where there are registries of those detained. Furthermore, the use of clandestine centers of detention are directly in violation of the rights to life, to personal integrity, and to personal liberty.¹⁴²

116. Forced disappearance is particularly grave when it forms part of a systematic pattern or is a practice applied or tolerated by the State.¹⁴³ The practice of forced disappearance implies, as the Court has already stated, "a crass abandonment of the values that emanate" from the Inter-American System of Human Rights¹⁴⁴ and its prohibition has attained the status of *jus cogens*.¹⁴⁵

117. In view of the above, consideration of the forced disappearances alleged in this case must take into account a series of factors and the context in which they occurred, since only then will the legal analysis be consistent with the complex and continuous nature of this phenomenon.¹⁴⁶

B.2 Examination of the facts of the case

118. The facts indicate that during the early morning on December 13, 1974, military personnel broke into the home of Amalia González and that they remained there for several hours. When they learned the location of her son, Luis Eduardo González González, they went there and detained him and took him to a military regiment where he was badly mistreated (*supra* paras. 73 to 75).¹⁴⁷ Days later, when his mother

¹⁴⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 150, 155 to 158, 186 and 187; *Case of Isaza Uribe et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 363, para. 81. Regarding the mention of the human rights violated by forced disappearances, cf. *Case of Garzón Guzmán et al. v. Ecuador*, para. 64.

¹⁴¹ Cf. *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 59 and *Case of Alvarado Espinoza et al. v. Mexico*, para. 253.

¹⁴² Cf. *Case of Anzualdo Castro v. Peru*, para. 63 and *Case of García and family v. Guatemala. Merits, Reparations and Costs*. Judgment of November 29, 2012. Series C No. 258, para. 102.

¹⁴³ Cf. *Case of Goiburú et al. v. Paraguay*, para. 82 and *Case of Rochac Hernández et al. v. El Salvador. Merits, Reparations and Costs*. Judgment of October 14, 2014. Series C No. 285, para. 94.

¹⁴⁴ Cf. *Case of Velásquez Rodríguez. Merits*, para. 158 and *Case of Tenorio Roca et al. v. Peru*, para. 140.

¹⁴⁵ Cf. *Case of Goiburú et al. v. Paraguay*, para. 84 and *Case of Tenorio Roca et al. v. Peru*, para. 140.

¹⁴⁶ Cf. *Case of Goiburú et al. v. Paraguay*, para. 85 and *Case of Alvarado Espinoza et al. v. Mexico*, para. 166. The Court made a similar reference in a prior case concerning Uruguay that also involved systematic practices of different violations of human rights during the civil-military dictatorship that ruled from June 27, 1973 to February 28, 1985 (cf. *Case of Gelman v. Uruguay. Merits and Reparations*, para. 78).

¹⁴⁷ The facts indicate that Mr. González González was apprehended together with his wife, Elena Zaffaroni Rocco, who was pregnant (*supra* paras. 73 to 75). Ms. Zaffaroni Rocco was released in 1978 (*supra* para. 76) before this Court had jurisdiction to judge Uruguay for human rights violations (*supra* para. 12). The

requested that the military authorities provide information on her son, they did not deny his detention but did state that he was deprived of his liberty, indicating that they had taken him to recognize a place and that he had fled from there (*supra* para. 76).

119. On July 19, 1977, three armed members of the military went to the residence of Óscar Tassino Asteazú and waited until he arrived, threatening the persons who were there. When he arrived, he was violently grabbed and beaten. He was taken away the next day. There is information that he was taken to the La Tablada clandestine detention center and that he was badly mistreated (*supra* paras. 88 and 96). When his wife sought information from the State authorities, they denied that he had been detained (*supra* para. 89).

120. Despite the different versions on the possible deaths of Mr. González González and Mr. Tassino Asteazú and the fate of their remains, their deaths have not been clearly proved. The doubts arise from affirmations of the State, which has informed that the “material search” continues to discover their whereabouts (*infra* para. 134).

121. Since Mr. González González and Mr. Tassino Asteazu were deprived of their liberty in a context of illegal detentions in clandestine centers, both detentions were manifestly unlawful in violation of Article 7(1) of the Convention. The detentions constitute the initial acts of a complex violation of the rights involved in a forced disappearance. They also imply the State’s failure to comply with its obligation to maintain persons deprived of their liberty in officially recognized detention centers and to present them without delay before the competent judicial authorities.¹⁴⁸

122. The victims were placed in a situation of legal uncertainty that prevented them from effectively exercising their rights, which, as the Court has stated, is “one of most serious forms of non-compliance of the State’s duty to respect and guarantee human rights.”¹⁴⁹ Therefore, the right of both victims to juridical personality, found in Article 3 of the American Convention, was violated.

123. Mr. González González and Mr. Tassino Asteazú were under the control of military authorities who, at the time of their forced disappearances, tortured and murdered with impunity (*supra* para. 31).¹⁵⁰ Each was last seen while under the custody of State agents. This is, per se, a violation of the rights to personal integrity and to life, recognized in Articles 5 and 4 of the American Convention, respectively, even if there is no evidence

infringement of the rights of Ms. Zaffaroni Rocco that occurred before April 19, 1985, the date on which Uruguay accepted the contentious jurisdiction of the Court, have not been submitted to it (*supra* para 1).

¹⁴⁸ Article XI of the IACFDP reads:

Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with the applicable domestic law.

The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.

¹⁴⁹ Cf. *Case of Anzualdo Castro v. Peru*, para. 101 and *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 328, para. 159.

¹⁵⁰ The nature of the impunity of such violations of human rights perpetrated by State agents, when the forced disappearances of the victims in this case occurred, was noted previously by the Court (cf. *Case of Gelman v. Uruguay. Merits and Reparations*, para. 95).

of torture or of the deprivation of life in the specific case.¹⁵¹ Nevertheless, information exists that indicates that both victims suffered grave mistreatment that can be considered acts of torture and the mere fact of remaining deprived of their liberty in the aforementioned context and conditions represents cruel and inhumane treatment,¹⁵² which is a violation of Article 5(1) and (2) of the American Convention.

124. The forced disappearances of Mr. González González and Mr. Tassino Asteazú are, due to the nature of the rights violated, an infringement of the norm of *jus cogens* (*supra*, para. 116) and is especially grave for being a part of a systematic practice of "State terrorism."¹⁵³ As has been mentioned, the facts in this case are linked to a state policy during the military dictatorship of surveillance, repression and control of leftist organizations, as well as the systematic practice of multiple serious violations of human rights, including forced disappearances (*supra* para. 31).

125. In view of the above, because of the forced disappearances of Luis Eduardo González González and Oscar Tassino Asteazú that continue to this very day, the Court concludes that the State is responsible for violating the rights of both persons to juridical personality, to life, to personal integrity and to personal liberty, recognized in Articles 3, 4(1), 5(1) and 5.2, and 7(1) of the American Convention on Human Rights, due to the failure to comply with the obligation to respect and to guarantee those rights established in Article 1(1) thereof, and with Articles I(a) and XI of the Inter-American Convention on Forced Disappearance of Persons.

VII.2 RIGHT TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION¹⁵⁴

A. Arguments of the Commission and of the parties

126. The **Commission** claimed that the State failed in this case in its obligation to investigate the forced disappearances and the extrajudicial executions. It pointed out that, to date, nobody has been convicted and, therefore, these events continue to be unpunished. It repeated its claim of the failure to observe the duty to investigate based on three aspects: the application of the Expiry Law; the lack of due diligence, and the failure to observe a reasonable time.

127. *Expiry Law.* - The Commission claimed that the Expiry Law, which the Court had already declared in violation of the Convention, impeded the investigations into the facts of the case as of its promulgation on December 22, 1986 and as an obstacle "at different times." It added that, although "the investigations into the events in the instant case are open" at the present time [...] there is no State certainty regarding the non-

¹⁵¹ Cf. Similarly, *Case of Velásquez Rodríguez, Merits*, paras. 175 and 187, *Case of Gelman v. Uruguay. Merits and Reparations*, para. 95 and *Case of Omeara Carrascal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 21, 2018. Series C No. 368, para. 194.

¹⁵² Similarly, and related to the same context, *Case of Gelman v. Uruguay. Merits and Reparations*, paras. 94 and 95.

¹⁵³ Cf. *Case of Gelman v. Uruguay. Merits and Reparations*, para. 99. In footnote 113, related to that paragraph, the Court stated that a violation of that nature "could be classified as a crime against humanity."

¹⁵⁴ Articles 8 and 25 of the American Convention, respectively. This chapter will also examine State responsibility regarding Article I(b) and I(d) of the IACFDP as well as Article 7(b) of the Convention of Belém do Pará.

applicability of statutory limitations for [...] crimes” such as those in this case. It stated that in this case “the lack of certainty on the non-applicability of statutory limitations has resulted in the filing of appeals by the persons under investigation, which have caused delays in the process.”

128. *Lack of due diligence.* – The Commission indicated that the State, after learning the facts, did not initiate investigations de officio. It noted that, after the appeals were paralyzed by the Expiry Law, the first efforts with respect to the extrajudicial executions were undertaken some 30 years after the incidents. In the public hearing, it affirmed that the investigation on extrajudicial executions “did not take into account a focus of gender and the duty to extend an investigation into this type of violence.”¹⁵⁵ It also indicated that it is not apparent from the facts that the State had initiated investigations de officio of the two forced disappearances.¹⁵⁶ In both cases, there were jurisdictional conflicts that took some two years to resolve because of the intervention of military justice. It also stated that even though the investigations of the disappearances “were reopened,” there has been no “substantive progress.” It added that the Government had failed to implement a “search plan” for the two alleged victims.¹⁵⁷

129. *Failure to observe a reasonable time.* – Lastly, the Commission claimed that more than 40 years had elapsed since the events occurred and there was still no clarification. It alleged that, in view of the lack of impetus in the investigations and of the application of the Expiry Law, such a period clearly involves an infringement of a reasonable time.

130. The Commission concluded that, to the detriment of Ms. Maidanik, Ms. Reyes and Ms. Raggio, the State violated Articles 8(1) and 25(1) of the Convention, read in conjunction with Articles 1(1) and 2 thereof, and that, to the detriment of Mr. González González and Mr. Tassinio Asteazu, it failed to comply with those same norms as well as Article I(b) and (c) of the IACFDP.

131. The **representative** argued that, with respect to the actions of the last military dictatorship, Uruguay lives in a “situation of inadmissible structural impunity.”¹⁵⁸ It affirmed that it accepted that there had been “some progress” in the investigations, as

¹⁵⁵ The Commission recalled that “Silvia Reyes [...] was over six months pregnant,” that “the wounds to the bodies of the victims showed a special cruelty with multiple gunshot wounds and that at least one of them was found nude.” It considered that the extrajudicial executions of the three women were “especially bloody.” The Commission found that this does not preclude the duty to adopt a perspective of gender that assumes, as a hypothesis in the investigations, that the executions occurred without the perpetrators knowing at whom they were shooting, on whether they were women, since they had fired against anyone who was in the house, without seeing whom they were attacking. The Commission stated that “the focus of gender of an investigation does not depend on the intent of the perpetrator.”

¹⁵⁶ The Commission concluded that the “lack of a response” was “particularly serious” in the cases of forced disappearance since in events of this nature “the State response must be prompt and effective and an immediate search must be initiated.”

¹⁵⁷ The Commission explained that “even though the reports of the Peace Commission and the Investigative Commission indicated that the remains [of both victims] might have been buried at facilities of the Armed Forces, such as on the grounds of the infantry battalions, there is no record that the State has adopted such measures.” It added that in 2017, “the representative alleged domestically that the remains of Mr. Tassinio might be in a place known as La Tablada, but no timely search was initiated at that place.”

¹⁵⁸ In the opinion of the representative, the alleged “structural impunity” is illustrated by what occurred in the investigation into the extrajudicial executions of the “three girls of April,” especially by the order of July 14, 2021 (*supra* para. 72 and *infra*, para. 165).

well as in the "efforts of the Office of the Special Prosecutor,"¹⁵⁹ but that "almost 50 years after the denounced acts," the next of kin of the victims "have not received satisfactory answers."

132. The representative noted that nobody has been prosecuted nor accused of the actions that ended in the deaths of the three women and that the actions undertaken had not been done "with a perspective of gender." It added that it had not received information on the whereabouts or the remains of Mr. González González and Mr. Tassino and that, recently in March 2021, "the principal suspect was prosecuted" for the disappearance of the latter. It also affirmed that "the judiciary had not processed the cases with due diligence" despite their "special urgency," but rather had acted "as if they were common cases." It also pointed out that "delaying strategies" were employed by those being tried.¹⁶⁰

133. It concluded, citing Articles 8 and 13 of the American Convention, that the right to "access to justice" and the "right to the truth" of the next of kin of the direct victims were violated. Referring to the actions on the forced disappearances of Mr. González González and Mr. Tassino Asteazú, it claimed that the State violated Articles 8(1) and 25(1) of the American Convention and Article I(b) and (d) of the IACFDP.

134. The **State** rejected the charge that there was a situation of impunity in this case since it alleged that it cannot be said that there had been a "failure in the totality of the investigation, persecution, arrest, prosecution and conviction of those responsible."¹⁶¹ It maintained that, to the contrary, "the corresponding criminal proceedings are channeled, underway and with a recent qualitatively noted progress that makes it possible to foresee their clarification."¹⁶² The State also expressed that "it had made efforts to investigate the whereabouts of [the disappeared victims] and although there may be different versions about it, the search continues." It noted, in relation to the allegations on the delaying tactics of the accused, that it is not possible to ignore due process and that the domestic judicial order has the necessary "tools" to detect abuses of law (*infra* para. 244) It also indicated that the question of the perspective of gender in the investigations into the deaths of the three women "were not raised" in the Report on the Merits and that the witness Perciballe "made a clear reference as to why this perspective was not adopted during these investigations."

¹⁵⁹ Nonetheless, it noted that that Office of the Prosecutor was not created until 2018, more than 30 years after the last "civil-military dictatorship" and that it "does not have sufficient resources to confront, in time and in form, the enormous task before it."

¹⁶⁰ The representative affirmed that that there were "practices" such as delays in scheduling a hearing or in resolving procedural requests. It added that there were frequently procedural strategies, dilatory "practices" of those being investigated, such as the presentation of "innumerable appeals" that "paralyzed the cases." It argued that the dilatory strategies "of the defenses of the perpetrators had the purpose of preventing precautionary measures." It also mentioned that "the judiciary did not use other procedural mechanisms set out in the domestic law that allow the rejection *in limine* of remedies on issues already raised on which there is firm jurisprudence, creating delays in the cases of months and even years." It also affirmed that even though perpetrators had been accused, the accusations were under the Uruguayan criminal code and not under the international standards in the field," offering "as an example" that "the accusations are for homicides instead of forced disappearances."

¹⁶¹ The State recalled the ideas of impunity expressed in the judgment of the Court in the *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 173).

¹⁶² The State emphasized that "the corresponding judicial processes have included, at least in the relevant cases, requests of extradition of third countries" and pointed out that that is the case "of [E.F.], extradited from Spain and recently prosecuted in the case of Óscar Tassino".

B. Considerations of the Court

135. The Court will now discuss: (1) general considerations on the duty to investigate; (2) an examination of the actions taken in the case, and (3) its conclusion.

B.1 General considerations on the duty to investigate

136. The Court has held that, pursuant to Articles 8(1) and 25 of the American Convention, States “must provide effective judicial remedies to victims of human rights violations,” which “must be substantiated in accordance with the rules of due process,” in keeping with the general obligation to guarantee the free and full exercise of the rights recognized by the Convention in its Article 1(1).¹⁶³

137. In this context, the right to access to justice must ensure, within a reasonable time, the right of the alleged victims of human rights violations, or their family members, that “everything necessary must be done to know the truth of what occurred and to investigate, prosecute and punish, where appropriate, those eventually found responsible.”¹⁶⁴ This obligation acquires particular importance depending on the nature of the rights violated and the gravity of the crimes committed.¹⁶⁵ The Court has declared that the State has a duty to investigate attempts against personal integrity¹⁶⁶ and against life,¹⁶⁷ including extrajudicial executions¹⁶⁸ and forced disappearances.¹⁶⁹ In cases of forced disappearances, the obligation to investigate is reinforced by the those established in the respective norms of the Inter-American Convention on Forced Disappearance of Persons,¹⁷⁰ among them those found in Article I (b) and (d), which are relevant to this case and which refer to the duties to punish the crime of forced disappearance or its attempt and to take measures to comply with the commitments

¹⁶³ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 91 and *Case of Bedoya Lima et al. v. Colombia. Merits, Reparations and Costs*. Judgment of August 26, 2021. Series C No. 431, para. 125.

¹⁶⁴ Cf. *Case of Mota Abarullo et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of November 18, 2020. Series C No. 417, para. 120 and *Case of Guerrero, Molina et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of June 3, 2021. Series C No. 424, para. 136. See also, among others: *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 91.

¹⁶⁵ Cf. *Case of Goiburú et al. v. Paraguay*, para. 128 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 66.

¹⁶⁶ Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, paras. 106 and 107 and *Case of Bedoya Lima et al. v. Colombia*, paras. 125 to 133.

¹⁶⁷ Cf. *Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs*. Judgment of January 29, 1997. Series C No. 30, paras. 74 to 81 and *Case of Guerrero, Molina et al. v. Venezuela*, paras. 136 to 153 and 162.

¹⁶⁸ Cf. *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 143 and *Case of Guerrero, Molina et al. v. Venezuela*, para. 136 to 153 and 162.

¹⁶⁹ *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177 and *Case of Garzón Guzmán et al. v. Ecuador*, paras. 66 to 89.

¹⁷⁰ Cf. *Case of Terrones Silva et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2018. Series C No. 360, para. 181 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 66.

assumed in the treaty. Although the Commission indicated Article I(c) of the IACFPD, concerning the duty of cooperation between States to prevent, punish and eradicate the forced disappearance of persons, it did not specify the rationale for this violation and the Court does not find a sufficient basis to examine the alleged failure to observe this provision.

138. Given the duty to investigate, once State authorities learn of an incident, they must initiate de officio and without delay a serious, impartial, and effective investigation¹⁷¹ that is undertaken with all legal means available and is directed to ascertain the truth.¹⁷²

139. While the duty to investigate is an obligation of means and not of results, it must be undertaken by the State "in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof."¹⁷³ Due diligence in an investigation "requires the investigating body to carry out all measures and investigations necessary to try and obtain the required result."¹⁷⁴

140. Article 8(1) of the Convention requires that the facts investigated in criminal proceedings be resolved within a reasonable time since in certain cases "a prolonged delay in itself may constitute a violation of the right to a fair trial."¹⁷⁵

B.2. Examination of the actions taken in this case

141. Based on the above-mentioned points and others that are more specific that will be indicated, the Court will analyze, in the context of the effective date of its jurisdiction,¹⁷⁶ the relevant facts of the case. It will limit its examination to the arguments of the Commission and the representative on the shortcomings in the State's conduct, which refer to: (1) the application of the Expiry Law; (2) the lack of diligence in its actions; (3) the failure to observe a reasonable period, and (4) the violation of the right to the truth.

B.2.1 Obstruction of the investigations by application of the Expiry Law

¹⁷¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 69.

¹⁷² Cf. Similarly, *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99*, para. 127 and *Case of Barbosa de Souza et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2021. Series C No. 435*, para. 128.

¹⁷³ Cf. *Case of Velásquez Rodríguez. Merits*, para. 177 and *Case of Barbosa de Souza et al. v. Brazil*, para. 128.

¹⁷⁴ Cf. *Case of the Serrano Cruz sisters v. El Salvador. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120*, para. 83 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 67.

¹⁷⁵ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94*, para. 145 *Case of González et al. v. Venezuela*, para. 185.

¹⁷⁶ In view of the date of their deaths and the effective date of the jurisdiction of the Court (*supra* paras. 12 and 55 to 60), the Court considers that it is not appropriate to examine the violations of human rights regarding Ms. Reyes, Ms. Maidanik and Ms. Raggio.

142. On May 20 or in June 1985 and on July 24 of that year, the disappearances of Mr. Tassino Asteazu and Mr. González, respectively, were denounced (*supra* paras. 78 and 90). On October 15, 1986, family members of Ms. Maidanik, Ms. Reyes and Ms. Raggio denounced the deaths of the three women (*supra* para. 61).

143. A short time later, on December 22, the Expiry Law was promulgated (*supra* paras. 40 and 62). Despite the judicial remedies filed by the victims' next of kin against the constitutionality of the law, it was applied with respect to the actions related to this case (*supra* paras. 62, 80 and 92) By communications of October 20 and December 21, 1988 and May 26, 1989, the judicial bodies hearing the cases were notified that the acts denounced had been included within the terms of the Expiry Law (*supra* paras. 62, 81 and 93).

144. Between those actions and 2006, there is no report of any investigation that would have determined individual responsibilities and the application of criminal punishment. In 2006, the investigation was reopened into the deaths of the three women and, despite some activity, the case was closed on February 16, 2007 in application of the Expiry Law (*supra* para. 65). The investigation was recently reopened at the end of October 2011 (*supra* para. 66).

145. The Expiry Law, therefore, had a direct impact on all the investigative activities in this case, which was interrupted for several years.

146. It should be recalled that Article 2 of the Convention establishes the general obligation of each State Party to adapt its domestic law to the provisions of the Convention in order to guarantee the rights recognized therein, which means that the measures of domestic law have to be effective (the *effet utile* principle).¹⁷⁷ Thus, in relation to forced disappearances, Article I(d) of the IACFDP obligates the States to take "legislative, administrative, judicial, and any other measures necessary to comply" with the commitments undertaken in that treaty, among them to "punish" those persons responsible for the "crime of forced disappearance of persons" (Article I(b)).

147. The Court has held that "the failure to investigate the facts that constitute gross human rights violations that occurred in the context of systematic patterns is especially serious, because it may reveal a failure to comply with the State's international obligations established by non-derogable norms."¹⁷⁸ In its consistent case law, the Court has repeatedly pointed out the incompatibility of amnesty laws and analogous norms with the obligations of the States to investigate and, where appropriate, to punish those responsible for serious human rights violations.¹⁷⁹

¹⁷⁷ Cf. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment of February 5, 2001. Series C No. 73, para. 87 and *Case of Alvarado Espinoza et al. v. Mexico*, para. 258.

¹⁷⁸ *Case of García Lucero et al. v. Chile. Preliminary Objection, Merits and Reparations*. Judgment of August 28, 2013. Series C No. 267. Cf. *Mutatis mutandi, Case of La Cantuta v. Peru. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, paras. 96, 157 and 160 and *Case of Gelman v. Uruguay. Merits and Reparations*, para. 183.

¹⁷⁹ Cf. *Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 15, 2018. Series C No. 353, para. 277. In that paragraph, the Court pointed out that "the Inter-American Commission on Human Rights, the United Nations organs and other universal and regional bodies for the protection of human rights" had similarly ruled. In the following paragraph, the Court recalled that "it had ruled on the incompatibility of amnesties with the American Convention in cases of serious violations of human rights or crimes against humanity relating to Peru" (*Barrios Altos* and *La Cantuta*), Chile (*Almonacid*

148. The Court examined the Expiry Law in the *Gelman* case (*supra* para. 42). After that 2011 decision, the State adopted measures that would reestablish the punitive claims of the State (*supra* paras. 43 and 44). In the present case, however, the State has not defended the compatibility of the Expiry Law with the Convention nor with international law. The Court, therefore, considers that it is not necessary to review its analysis of that law, but rather, since the law had effects on the present case (*supra* paras. 143 to 145), it must take into consideration the conclusions that the Court has already reached.

149. The Court, therefore, reiterates that the provisions of the Expiry Law that impede an investigation into and the punishment of serious human rights violations lack effectiveness (*supra* para. 42) due to their manifest incompatibility with the Convention¹⁸⁰ and that "in applying the provisions of the Expiry Law (which, for all intents and purposes, constitutes an amnesty law) and thereby impeding the investigation of the facts and the identification, prosecution, and possible punishment of the possible perpetrators of continued and permanent injuries such as those caused by enforced disappearance, the State fails to comply with its obligation to adapt its domestic law set out in Article 2 of the American Convention."¹⁸¹ This applies to "continuous and permanent violations such as forced disappearances," as was pointed out in the *Gelman* case, and to other serious human rights violations, such as extrajudicial executions. With respect to forced disappearances, the Expiry Law implies, in addition to the failure to observe Article 2, the failure to comply, as of May 2, 1996 (*supra* para. 12), with Article I(d) of the IACFDP.

150. During the period in which the domestic judicial proceedings were interrupted due to the application of the Expiry Law, the State did not comply, to the detriment of the victims in this case (*infra* para. 195), with its duty to investigate in relation not only to the obligation established in Article 1(1) of the American Convention, but also to that set out in its Article 2, and, where appropriate, in Article I(d) of the IACFDP.

B.2.2 Due diligence in the actions

B.2.2.1 Regarding the determination of the whereabouts of the disappeared persons

151. The Court notes, in the first place, that in cases of disappeared persons the response of the State is essential to protect the life and integrity of the person affected. Prompt and immediate action on the part of the authorities is absolutely essential from the moment of learning of the disappearance to order and undertake timely and necessary measures directed to determine the whereabouts of the person or the place where he or she might be detained. The investigation, whether judicial or administrative, must be conducted with due diligence in a serious manner in a way that all efforts are systematic and rigorous.¹⁸²

Arellano et al.), Brazil (*Gomes Lund et al.*), Uruguay (*Gelman*) and El Salvador (*Massacres of El Mozote and surrounding areas*)".

¹⁸⁰ *Case of Gelman v. Uruguay. Merits and Reparations*, para. 232.

¹⁸¹ *Case of Gelman v. Uruguay. Merits and Reparations*, para. 240.

¹⁸² Cf., Similarly, *Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 174 and 176; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, Reparations and Costs*. Judgment of December 20, 2012. Series C No. 253, para. 334 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 74. In paragraph 75 of the latter judgment, the Court stated that "while the duty of due diligence in the search is related to the obligation

152. The facts of this case do not in any way demonstrate that the State had conducted an immediate search after receiving, between May and July of 1985, complaints on the disappearances of Mr. Tassino Asteazu and Mr. González González (*supra*, paras. 78, 90 and 142). The first State actions to collect information on the victims' possible fate date from 2005 and the observations of the State show that that information is not conclusive. Uruguay has stated that there are "different versions" and that the search continues (*supra* para. 134). More than 44 years after the disappearances, the whereabouts of these two persons or their mortal remains are still unknown and there is no record of effective actions undertaken in that regard. In this aspect, the State has not shown due diligence.

B.2.2.2 Regarding the determination of criminal responsibilities

153. Regarding actions on the determination of criminal responsibilities, prior to 2006 the principal obstacle to progress in judicial investigations was the application of the Expiry Law, an issue that has already been examined (*supra* paras. 142 to 150). The Court, therefore, considers that it is not necessary to thoroughly assess specific aspects of the actions that took place prior to that year. The Court notes that neither is it necessary to analyze alleged violations related to the intervention of the military jurisdiction nor the jurisdictional conflict between the ordinary and military jurisdictions that was resolved in favor of the former (*supra* para. 128).

154. As to what has occurred since 2006, the Court notes that, regarding the investigations into the forced disappearances of Mr. González Gonzalez and Mr. Tassino Asteazu, the arguments of the Commission and of the representative refer to aspects that are related to the reasonability of the length of the proceedings and the right to know the truth, issues that will be analyzed later (*infra* paras. 172 to 180). With respect to the inquiry regarding the violent deaths of the three women, two additional issues will now be examined: the lack of a perspective of gender and the delay in resolving the remedies.

155. *Lack of a perspective of gender.* – With respect to the first issue, the alleged lack of a perspective of gender in the domestic proceedings, although it was not argued by the parties in their initial briefs, the Court will take into consideration the Convention of Belém do Pará, a treaty in force in Uruguay since May 1996 (*supra* para. 12). It will do so on the basis the principle of *iura novit curia* (*supra* footnote 132) and because the State's right of defense is not affected as it could refer to events that support the violation of that treaty and because the issue was raised in the public hearing and in its final written arguments.

156. The Court has indicated that Article 7(b) of the Convention of Belém do Pará specifically obligates the States Parties to apply due diligence to prevent, punish and eradicate violence against women.¹⁸³ When an act of violence occurs against a woman "it is particularly important that the authorities in charge of the investigation conduct it in a determined and effective manner, taking into account society's obligation to reject

to investigate the offense of forced disappearance, it has an autonomous nature. The Court so recognized it when it indicated that the search may use means other than the judicial."

¹⁸³ Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215, para. 193 and *Case of Barbosa de Souza et al. v. Brazil*, para. 129.

violence against women and the State's obligation to eliminate it and to ensure that victims have confidence in the State institutions for their protection."¹⁸⁴

157. The Court notes that the Special Prosecutor, in his oral testimony in the public hearing (*supra* paras. 8 and 27), explained that the perspective of gender "was not analyzed" since "what occurred in this case was simply the murder of individuals who were in the apartment without the soldiers knowing whether the victims were women." Nevertheless, there are statements that indicate that the soldiers should have noted that there was a pregnant woman in the house and that the three women screamed not to kill them, which presupposes that the soldiers could have presumed that they were attacking women (*supra* para. 56 and footnote 46). In addition, there were reports that the body of one of the women was nude when found (*supra* para. 58), although it is not known whether there was an inquiry as to why she was found nude.

158. The Court, thus, understands that it cannot discard a priori the possibility that in this case there were acts of violence of gender and that they should be duly investigated. The statements of the Special Prosecutor clearly demonstrate that there have been no inquiries into the matter, which would be a negligent omission contrary to the duty to punish acts of violence against women. Therefore, the State did not comply with Article 7(b) of the Convention of Belém do Pará.

159. *Delay in resolving the remedies.* – With respect to the delay in resolving the remedies, the Court recalls that

the judges, who are in charge of directing the proceeding, have the duty to direct and channel the judicial proceeding with the aim of not sacrificing justice and due legal process in favor of formalism and impunity. Thus, if the authorities permit and tolerate such use of judicial remedies (with disproportionate actions and remedies that can have a delaying effect), they turn them into a means for those who commit the illegal act to delay and obstruct the judicial proceeding. This leads to a violation of the international obligation of the State to prevent and protect human rights and it abridges the right of the victim and the next of kin of the victim to know the truth of what happened, for all those responsible to be identified and punished, and to obtain the attendant reparations.¹⁸⁵

160. The judicial investigation into the violent deaths of Ms. Reyes, Ms. Raggio and Ms. Maidanik, as may be seen from what follows, was delayed by the repeated filing of appeals by the defense of the accused.

161. The facts show that after he had been summoned to declare on April 7, 2016 (*supra* para. 68), the accused E.K. requested that the proceedings be held to be time-barred due to prescription.¹⁸⁶ On September 19, 2016, the court denied the request of E.K. and, on October 11, he filed an appeal of revocation and further appeal.¹⁸⁷ On

¹⁸⁴ *Case of Fernández Ortega et al. v. Mexico*, para. 193 and *Case of Barbosa de Souza et al. v. Brazil*, para. 129.

¹⁸⁵ *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 211.

¹⁸⁶ *Cf.* Undated request of "suspension of proceedings, closing and archiving of the case due to prescription" (evidence file, files remitted by the State, fs. 6357 to 6368).

¹⁸⁷ *Cf.* Filing of remedies of revocation and further appeal by E.K before the Eighth Court on October 11, 2016 (evidence file, files remitted by the State, fs. 6424 to 6436). The communication mentions interlocutory decision 2010/2016 of September 19, 2016, indicating that "it did not accept the request to close and archive the proceedings.

October 21, 2016, the judge hearing the appeal denied the revocation and remitted it to the Appeals Tribunal.¹⁸⁸ On March 8, 2017, the Tribunal confirmed the appealed decision and ordered that the matter be returned to the lower court.¹⁸⁹

162. The accused then filed, on April 3, 2017, both an appeal in cassation and an objection of unconstitutionality against Law 18,831 to the Supreme Court.¹⁹⁰ On December 20, 2017, the Supreme Court partially accepted the objection with an indication that Articles 2 and 3 of Law 18,831 were not applicable to the accused.¹⁹¹ On May 23, 2018, the Supreme Court declared the appeal in cassation inadmissible.¹⁹²

163. On November 12, 2018, E.K. presented an objection of unconstitutionality with respect to Articles 1, 2, and 3 of Law 19,550,¹⁹³ The proceedings were suspended and were sent to the Supreme Court.¹⁹⁴ They were then remitted between December 3, 2018 and April 3, 2019, from the Fourth Criminal Prosecutor to the Court Prosecutor, the Prosecutor General and the Special Prosecutor.¹⁹⁵ On August 29, 2019, the Supreme Court dismissed the objection of unconstitutionality.¹⁹⁶

164. On October 23, 2019, the defense of E.K. again requested that the proceedings be closed and archived due to prescription.¹⁹⁷ The Special Prosecutor, on October 29, 2019, labeled the request a delaying tactic and asked that the accused be "urgently" summoned to testify.¹⁹⁸ On November 1, 2019, the court rejected the request to close

¹⁸⁸ Cf. Decree 2333/2016 of the acting judge, of October 21, 2016 (evidence file, files remitted by the State, f. 6446).

¹⁸⁹ Cf. Judgment 32 of the Second Tribunal of Criminal Appeals, of March 8, 2017 (evidence file, files remitted by the State, fs. 6459 to 6464).

¹⁹⁰ Cf. Filing of an appeal in cassation and an objection of unconstitutionality, presented by the defense of the accused on April 3, 2017 (evidence file, files remitted by the State, fs. 6468 to 6511).

¹⁹¹ Cf. Judgment 1984 of the Supreme Court of December 20, 2017, in cases "Reyes, Arturo Ricardo – Odizzio Di Raggio, Marta – Potasnik, Flora – Complaint – Objection of unconstitutionality – Law No. 18.831 and criminal cassation" (evidence file, files remitted by the State, fs. 6608 and 6609).

¹⁹² Cf. Judgment 1300 of the Supreme Court of May 23, 2018, in cases "Reyes, Arturo Ricardo – Odizzio Di Raggio, Marta – Potasnik, Flora – Complaint – Objection of unconstitutionality – Law No. 18.831 and criminal cassation" (evidence file, files remitted by the State, fs. 6620 to 6623).

¹⁹³ Cf. Filing of an objection of unconstitutionality, presented by E.K. on November 12, 2018 (evidence file, files remitted by the State, fs. 6686 to 6706).

¹⁹⁴ Cf. Decree 2487/2018 of the acting judge, of November 13, 2018 (evidence file, files remitted by the State, f. 6707).

¹⁹⁵ Cf. Opinion outside the hearing No. 5844/18/FPM4, of the Fourth Criminal Prosecutor, of December 3, 2018; brief of the Court Prosecutor and Prosecutor General of February 5, 2019 and brief of the Special Prosecutor of April 3, 2019 (evidence file, files remitted by the State, fs. 6722 to 6726, 6733 to 6758, and 6781 to 6794, respectively). It is important to note that the transfer to the Special Prosecutor took place after March 14, 2019, after which it was sent Fourth Criminal Prosecutor and to the Court Prosecutor and the Prosecutor General (cf. Order of the Supreme Court of March 14, 2019 (evidence file, files remitted by the State, folio. 6768)).

¹⁹⁶ Cf. Judgment 1278 of the Supreme Court of August 29, 2019 (evidence file, files remitted by the State, fs. 7054 to 7055).

¹⁹⁷ Cf. Brief of the defense of the accused requesting "the closing and archiving due to prescription," of October 23, 2019 (evidence file, files remitted by the State, fs. 7092 to 7095).

¹⁹⁸ Cf. Brief of the Special Prosecutor, No. 338, of October 29, 2019 (evidence file, files remitted by the State, fs. 7098 and 7099).

and archive the case and, five days later, summoned E.K. to appear on the 19th of the following month.¹⁹⁹ On November 11, 2019, the defense of E.K. filed an appeal of revocation and further appeal against the decision of November 1, 2019.²⁰⁰ On November 14, 2019, the Special Prosecutor argued that the matter appealed was governed by *res judicata* and that E.K. should be summoned to declare and the relevant “measures should be taken” with respect to those who defended him by using technicalities.²⁰¹ On November 18, 2019, the acting judge reaffirmed her decision and remitted the matter to the Tribunal of Criminal Appeals.²⁰² On August 19, 2020, the Tribunal confirmed the decision of November 1, 2019.²⁰³

165. On February 4, 2021, J.R. and J.G requested that the proceedings be suspended and that they be closed and archived due to prescription.²⁰⁴ On May 7, 2021, the judge denied the request of prescription and decided to continue the “investigation of the principal record.”²⁰⁵ However, in view of the appeals of unconstitutionality of J.R., on July 14, 2021 the proceedings were suspended and were transferred to the Supreme Court (*supra* para. 72). The Inter-American Court does not have information on whether those requests have been resolved.

166. This shows that a request to apply the rule of prescription, filed after April 7, 2016, was responsible for a delay of around two years until its rejection in May 2018. The accused again requested the application of prescription in October 2019, which was definitively resolved in August 2020, some 10 months later. Thus, there was a delay of more than three years in processing two requests of prescription. Moreover, the second request repeated one that, in substance, had been rejected.

167. During that period, the same accused presented an objection of unconstitutionality, the processing of which occurred between November 2018 and August 2019, in other words, during nine months.

¹⁹⁹ Cf. Decrees 3518/2019 and 3578/2019 of the acting judge, of November 1 and 6, 2019, respectively, and “remarks” of November 7 (evidence file, files remitted by the State, fs. 7101 to 7104, 7132 and 7134, respectively).

²⁰⁰ Cf. Brief of the defense of the accused of the filing of the remedies of revocation and further appeal, of November 11, 2019 (evidence file, files remitted by the State, fs. 7147 to 7160).

²⁰¹ Cf. Brief of the Special Prosecutor, No. 372, of November 14, 2019 (evidence file, file remitted by the State, f. 7163).

²⁰² Cf. Decree 3714/2019 of the acting judge, of November 18, 2019 (evidence file, files remitted by the State, f. 7165).

²⁰³ Cf. Judgment 489/2020 of the Appeals Tribunal of August 19, 2020 (evidence file, files remitted by the State, fs. 7295 to 7305). Previously, on December 19, 2019, E.K. appeared to testify, but after the hearing began his attorney advised him on the inappropriateness of his testimony due to the pending resolution of the issue of prescription and, therefore, the accused refused to continue (*cf.* Minutes of the inquiry of December 19, 2019 (evidence file, files remitted by the State, fs. 7175 and 7176)).

²⁰⁴ Cf. Brief with request of “suspension of proceedings, closing and archiving the case due to prescription,” presented by J.R. and the representation of J.G. on February 4, 2021 (evidence file, files remitted by the State, fs.7422 to 7431).

²⁰⁵ Cf. Decree 274/2021 of the acting judge of May 7, 2021 (evidence file, files remitted by the State, fs. 7422 to 7431).

168. Furthermore, due to appeals filed from February 2021 to present (some nine months) by the only survivor of the three accused persons, there remains pending the resolution of the objection of unconstitutionality. The Court has not been informed to the contrary.

169. Thus, it can be said, in the first place, that the Court recognizes that, in the context of the guarantee of due process set out in Article 8 of the American Convention, those accused of a crime have the possibility of using, in defense of their rights, the appeals provided by the legal order.

170. The judicial authorities, notwithstanding their duty to respect the guarantees of the accused, must seek to ensure that the cases are handled within a reasonable time, taking into consideration the speed required by the nature of the cases. The cases that are here being examined deal with serious violations of human rights that occurred more than 44 years ago. In this context, it is necessary, in order to safeguard the processes, that the judicial bodies resolve with all due speed the matters that are brought before them. These bodies must apply the measures that the legal order provides to avoid undue delays and tactics of litigation or defense made recklessly, maliciously or in bad faith.²⁰⁶

171. Taking into account the foregoing and the facts already established, the Court concludes that the judicial authorities, with respect to the actions related to the investigation and to the criminal proceedings regarding the deaths of the three women, did not conduct them diligently to avoid those delays. This is especially important in view of the time that elapsed since the incident, its seriousness, the delays during several years, and the advanced age of the persons possibly responsible, as well as that of the next of kin of the victims, which, in turn, contributed to the harm. All of this, in turn, contributed to the detriment of the reasonability of the time (*infra* para. 173).

B.2.3 Failure to observe a reasonable time

172. The right to access to justice presupposes that a controversy is resolved within a reasonable time, since a prolonged delay may become, *per se*, a violation of judicial guarantees.²⁰⁷

173. More than 44 years have elapsed since the forced disappearances of Mr. González González and Mr. Tassino Asteazú and more than 36 years since the inquiry into the deaths of Ms. Raggio, Ms. Reyes and Ms. Maidanik, counting from the date that Uruguay accepted the Court's jurisdiction (*supra* para. 12). Those periods surpass the parameters of reasonability.²⁰⁸ The longest delays were produced during various years before 2006 and were due to the application of the Expiry Law. The lack of diligence to avoid delays caused by the abusive filings of judicial appeals in the investigation into the deaths of the three women was also an important factor in the delay.

²⁰⁶ The State affirmed, without providing details, that its legal order has the necessary tools to detect abuses of law (*infra* para. 244).

²⁰⁷ *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, para. 145 and *Case of González et al. v. Venezuela*, para. 185.

²⁰⁸ The Court has held that it is the State's responsibility to justify why it has needed the time elapsed to process a case; otherwise, the Court has broad powers to make its own analysis of the matter (*cf. Case of Anzaldo Castro v. Peru*, para. 156 and *Case of Bedoya Lima et al. v. Colombia*, para. 142). Uruguay has not offered a satisfactory explanation on the matter.

174. The Court, thus, holds that it is not necessary to examine other phases or aspects of the proceedings, nor to scrutinize the factors that led to the delays²⁰⁹ since it is evident that the most extensive and relevant delays were due to unjustified State conduct. After many years, their families still do not know the whereabouts of the two men. Their disappearances, as well as the extrajudicial executions of the three women, have not been clarified nor have the corresponding responsibilities been determined.

175. Therefore, Uruguay, by not investigating within a reasonable period, did not comply with Article 8 of the Convention.

B.2.4 Failure to comply with the right to the truth

176. The Court has held that “everyone, including the next of kin of the victims of serious human rights violations, has the right to know the truth. Consequently, the victims’ next of kin and society in general should be informed of everything that happened regarding such violations.”²¹⁰ The right to the truth is autonomous and is broad-based. Depending on the context and circumstances of a case, the violation of this right may be related to other rights expressly established in the American Convention,²¹¹ such as the rights to judicial guarantees and to judicial protection, recognized in Articles 8 and 25,²¹² or the right to access to information, protected by Article 13. In this case, the Court does not find a basis to examine this latter provision.²¹³

177. As the United Nations High Commissioner for Human Rights has expressed, “the right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them.”²¹⁴ Therefore, it is important that, depending on the case, the inquiries undertaken to determine what occurred, for example, take into consideration the perspective of gender or the political reasons for the human rights violations. In cases of forced disappearance,

²⁰⁹ The case law of the Court has considered four elements to determine whether there is compliance with the judicial guarantee of a reasonable period, that is: (a) the complexity of the matter; (b) the procedural activity of the interested person; (c) the conduct of the judicial authorities, and (d) the harm caused to the legal situation of the person involved in the process (*cf. Case of Genie Lacayo v. Nicaragua*, para. 77; *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 155 and *Case of Bedoya Lima et al. v. Colombia*, para. 142). The examination of every one of those elements was not necessary in the latter case.

²¹⁰ *Cf. Case of Trujillo Oroza v. Bolivia. Reparations and costs*. Judgment of February 27, 2002. Series C No. 92, para. 100 and *Case of Herzog et al. v. Brazil*, para. 328. Similarly, *Case of Barbosa de Souza et al. v. Brazil*, para. 134.

²¹¹ *Cf. Case of Trujillo Oroza v. Bolivia*, para. 100 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 86.

²¹² *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 181 and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of March 26, 2021. Series C No. 423, para. 213.

²¹³ It is important to note the difference in the circumstances of this case compared to others, for example, the *Case of Gómes Lund et al.* The Court observes that the right to know the truth is related to the request of the next of kin to receive certain information. *Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 24, 2010. Series C No. 219, para. 200). Those characteristics cannot be assumed in this case.

²¹⁴ United Nations. Council of Human Rights (2009) Report of the Office of the High Commissioner for Human Rights. The Right to the Truth. Document E/CN.4/2006/91, para. 59.

an aspect of the right to the truth is "the right of the families of the victim to know the fate of the victim and, where appropriate, the location of the remains."²¹⁵

178. The Court notes that Uruguay has adopted policies that satisfy the right to the truth of the victims in this case and of society in general. The Court, thus, welcomes the creation of the Parliamentary Investigative Commission, the Peace Commission, and the Investigative Commission of the National Army. It also welcomes the creation of the Office of the Prosecutor for Crimes against Humanity. These efforts demonstrate the State's commitment, not only by the Executive but also by the Legislative and Judicial Branches, with respect to the inquiries and to learning the truth of what occurred during the period of the de facto regime. These types of actions shed light on the events, preserve the historical memory and determine responsibilities.

179. Notwithstanding the above, in accordance with the Court's consistent case law,²¹⁶ the "historical truth" that may result from this type of policies is not a substitute for nor does it satisfy the State's obligation to establish the truth and ensure the determination of individual responsibilities through judicial criminal proceedings.²¹⁷

180. The State has not judicially clarified the facts in this case nor determined individual responsibilities by investigating and prosecuting the extrajudicial executions of the three women and the forced disappearances of the two men. It has already been determined that the judicial investigation, which has not concluded, was undermined by the application of a law (the Expiry Law) in violation of the State's international obligations; there were shortcomings of due diligence, and a failure to observe a reasonable time. It may be concluded, therefore, that Uruguay violated the right to know the truth to the detriment of the next of kin of those five persons. This violation forms part of the right to access to justice. Uruguay, therefore, did not comply with Articles 8(1) and 25 of the American Convention, read in conjunction with Article 1(1) thereof.

B.3 Conclusion

181. On the basis of the foregoing, the Court concludes that, to the detriment of Luis Eduardo González González, Óscar Tassino Asteazú and their next of kin, Amalia González de González, Elena Zaffaroni Rocco, Disnarda Ema Flores Soler de Tassino, Karina Teresa Tassino, Javier Tassino and Álvaro Luis Tassino, the State violated Articles 8(1) and 25 of the American Convention, read in conjunction with Articles 1(1) and 2 thereof, and Article I(b) and (d) of the Inter-American Convention on Forced Disappearance of Persons.

182. With respect to Flora Potasnik, Mónica Raquel Wodzislowski, Marta Odizzio de Raggio, Horacio Enrique Raggio Odizzio, Daniel Raggio Odizzio, Arturo Ricardo Reyes

²¹⁵ *Case of Velásquez Rodríguez. Merits*, para. 181 and *Case of Isaza Uribe et al. v. Colombia*, para. 159.

²¹⁶ *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 150; *Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010. Series C No. 212, para. 234; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 179; *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*, para. 287 and *Case of Herzog et al. v. Brazil*, para. 330.

²¹⁷ *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, para. 297, *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*, para. 287 and *Case of Herzog et al. v. Brazil*, para. 330.

Gaetán, Celia Natividad Sedarri Aparicio, Estela Reyes Sedarri, Washington Javier Barrios Fernández, Washington Barrios, Hilda María Fernández Rodríguez and Jaqueline Barrios Fernández, next of kin of Diana Maidanik, Laura Raggio and Silvia Reyes, Uruguay violated Articles 8(1) and 25(1) of the American Convention, read in conjunction with Articles 1(1) and 2 thereof, and Article 7(b) of the Convention of Belém do Pará.

VII.3 RIGHT TO THE PERSONAL INTEGRITY OF THE NEXT OF KIN OF VICTIMS OF FORCED DISAPPEARANCES AND OF EXTRAJUDICIAL EXECUTIONS

A. Arguments of the Commission and of the representative

183. The **Commission** alleged that the extrajudicial executions and disappearances caused grief, anguish, and uncertainty in the victims' next of kin for those acts that were intensified by the lack of clarification of the facts. The Commission determined that the right to personal integrity (Article 5(1) of the Convention) of the next of kin of the victims of extrajudicial executions and forced disappearances was violated.

184. The **representative** also alleged that the right to personal integrity of the next of kin of the persons who were disappeared or were extrajudicially executed was violated.²¹⁸

B. Considerations of the Court

185. The Court has repeatedly noted that the next of kin of victims of certain violations of human rights may be considered as victims because of the suffering caused by the violations committed against their loved ones or due to later acts or omissions on the part of State authorities.²¹⁹ Thus, there is a violation of the right to personal integrity, applying a presumption of *iuris tantum* with regard to family members such as the parents, children, spouses and permanent companions (the direct next of kin) of the victims of certain human rights violations, provided that this responds to the particular circumstances in the case.²²⁰ With respect to those family members, the State must

²¹⁸ It mentioned that the uncertainty and the fake information that the family obtained about Mr. Tassino and that he was "moved from one place in the country to another" was an "additional form of psychological torture." It also pointed out that the family could not undergo the "proper mourning" since "he was never considered dead." It also expressed that "the son of Luis Eduardo and Elena Zaffaroni was born in captivity and grew up not only not knowing his father, but also being a child who is afraid that the same may happen to him because of nothing more than bearing the same name as his father."

²¹⁹ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114 and *Case of Vera Rojas et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 1, 2021. Series C No. 439, para. 153.

²²⁰ Cf. *Case of Valle Jaramillo et al. v. Colombia*, para. 119; *Case of Ruano Torres et al. v. El Salvador. Merits, Reparations and Costs*. Judgment of October 5, 2015. Series C No. 303, para. 177 and *Case of Herzog et al. v. Brazil*, para. 351.

disprove that presumption,²²¹ the application of which is appropriate in cases of extrajudicial executions²²² and forced disappearances, among others.²²³

186. Regarding the next of kin of Ms. Raggio, Ms. Maidanik and Ms. Reyes, although the Court lacks jurisdiction to evaluate the State conduct with respect to the circumstances of their deaths, it is obvious that the seriousness of the failure to conduct an investigation for more than 36 years should be understood in the light of this fact. The Court considers that it may presume that the three women's parents or spouses, indicated as victims in this case, were affected in their personal integrity because of State conduct that violated human rights, which was analyzed in this judgment.

187. The Court also notes that, in addition to the parents, children and spouses, another type of family members of Ms. Maidanik, Ms. Raggio, Ms. Reyes and Mr. Tassino has been indicated as victims. That is the case of the siblings of Ms. Raggio, Ms. Reyes and Mr. Tassino, the cousin of Ms. Maidanik and the parents-in-law and sister-in-law of Ms. Reyes.

188. Testimony have been offered to explain how the human rights violations affected the different family members as a group. Thus, Aidee Santo, whose family was friendly with the Tassino family, stated that the forced disappearance of Mr. Tassino "totally changed" the life of her family and that his mother, as well as other members of his family, had died without knowing what happened to him. She added that the family continues to "seek answers." Silvana Bocage, also a friend of the Tassino family, declared that the whole family had "emotional sequelae" because of what occurred. Ana Guliak Potasnik, sister of Diana Maidanik, stated that after Diana's death "fear and insecurity [...] profoundly traumatized the family." Juan Quiñones, brother-in-law of Silvia Reyes, indicated that the impact of the incident on the family was "total, heartbreaking; a material and human destruction that even today has consequences for the survivors." He also stated that "they have suffered and have continued to suffer tremendous solitude because of what they had to live through." He also indicated that Estela Reyes "was very affected by what she lived through [...] especially because of the tragic way in which she lost her brother." The witness Wálter Pérez expressed that the family of Jaqueline Barrios, sister-in-law of Silvia Reyes, was "destroyed and finished" and that their psychological and physical health deteriorated.

189. The Court considers that, in view of the above and of the gravity of the facts, it is reasonable to assume that, given the circumstances of the case, those persons who belong to each of the families involved, who were indicated as victims, have suffered in their personal integrity for the distress caused by State conduct that violated the human rights declared in this judgment, in other words, for the forced disappearances of the two men, for the failure to locate their whereabouts and for the lack of judicial proceedings to determine the criminal responsibilities for such acts and for the extrajudicial executions of the three women. It has been more than 35 years since the Court assumed contentious jurisdiction with respect to Uruguay and more than 44 or 47 years, depending on the case, since the first notice of those two forced disappearances

²²¹ Such a presumption would shift the burden of proof since it would not be for the "direct family" to prove the violation of human rights, but rather for the State to disprove it. (*cf. Case of Valle Jaramillo et al. v. Colombia. Interpretation of the judgment on the Merits, Reparations and Costs. Judgment of July 7, 2009. Series C No. 201*, para. 119 and *Case of Herzog et al. v. Brazil*, para. 351).

²²² *Cf. Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 146; and *Case of Herzog et al. v. Brazil*, para. 351.

²²³ *Cf. Case of Blake v. Guatemala*, para. 263.

and nobody has been punished. Moreover, the Court notes that the State has not refuted the arguments on the violation of the right to personal integrity with respect to any of the persons indicated as victims in this case.²²⁴

190. The Court, therefore, concludes that the State is responsible for violating the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, read in conjunction with Article 1(1) thereof, to the detriment of Flora Potasnik, Mónica Raquel Wodzislawski, Marta Odizzio de Raggio, Horacio Enrique Raggio Odizzio, Daniel Raggio Odizzio, Arturo Ricardo Reyes Gaetán, Celia Natividad Sedarri Aparicio, Estela Reyes Sedarri, Washington Javier Barrios Fernández, Washington Barrios, Hilda María Fernández Rodríguez, Jaqueline Barrios Fernández, Amalia González de González, Elena Zaffaroni Rocco, Disnarda Ema Flores Soler de Tassino, Karina Teresa Tassino, Javier Tassino and Álvaro Luis Tassino.

VIII REPARATIONS

191. On the basis of Article 63(1) of the American 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.²²⁵

192. Reparation for the damage 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 the measures to guarantee the infringed rights and to repair the consequences of the violation.²²⁶ The Court has, therefore, considered the need to provide different types of reparation in order to fully redress the damages and, thus, in addition to pecuniary measures, other measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition have special relevance due to the damage caused.²²⁷

193. Reparations must have a causal link with the facts of the case, the alleged violations, the proven harm, as well as with the measures requested to repair the resulting damages. The Court, therefore, must observe such coincidence in order to adjudge and declare according to the law.²²⁸

²²⁴ The Court recalls that, pursuant to Article 41(3) of its Rules, it “may consider those facts that have not been expressly denied and those claims that have not been expressly controverted as accepted.”

²²⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25 and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, para. 173.

²²⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 24 and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, para. 174.

²²⁷ 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 the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, para. 174.

²²⁸ 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 the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, para. 175.

194. In view of the violations of the American Convention declared in the previous chapters and in the light of the criteria established in the Court's case law with respect to the nature and scope of the obligation to repair,²²⁹ the Court will analyze the claims presented by the Commission and by the representative, as well as the arguments of the State, with the object of ordering the measures that would repair those violations.

A. Injured parties

195. The Court considers an "injured party" to be, in the terms of Article 63(1) of the Convention, anyone who has been declared a victim of a violation of a right recognized in the Convention. In this case, the Court considers the injured parties to be Flora Potasnik, Mónica Raquel Wodzislowski, Marta Odizzio de Raggio, Horacio Enrique Raggio Odizzio, Daniel Raggio Odizzio, Arturo Ricardo Reyes Gaetán, Celia Natividad Sedarri Aparicio, Estela Reyes Sedarri, Washington Javier Barrios Fernández, Washington Barrios, Hilda María Fernández Rodríguez, Jaqueline Barrios Fernández, Luis Eduardo González González, Amalia González de González, Elena Zaffaroni Rocco, Óscar Tassino Asteazu, Disnarda Ema Flores Soler de Tassino, Karina Teresa Tassino, Javier Tassino and Álvaro Luis Tassino, who as victims of the violations declared in Chapter VII of this judgment, will be the beneficiaries of the reparations that the Court orders.

196. The Court notes that there are indications that the following persons have died: Amalia González de González, Marta Odizzio de Raggio, Arturo Ricardo Reyes Gaetán, Celia Natividad Sedarri Aparicio, Estela Reyes Sedarri, Washington Barrios, Hilda María Fernández Rodríguez, Disnarda Ema Flores Soler de Tassino and Álvaro Luis Tassino.

B. Obligation to investigate the facts and identify, prosecute and, where appropriate, punish those responsible

B.1 Investigation, prosecution and, where appropriate, punishment of those responsible

197. The **Commission** requested that the State be ordered "to conduct a thorough, impartial, diligent, and effective investigation within a reasonable period of time with a view of fully clarifying the facts, identifying all those responsible for perpetrating or instigating them, and imposing the corresponding punishments." It underscored that, given the "seriousness of the violations found," the State "may not invoke the principle of *non bis in idem*, *res judicata* or the statute of limitations" to justify the failure to implement the recommendation. In the public hearing, the Commission maintained that the State must "remove the obstacles that persist and adopt the necessary measures to avoid that the cases remain in impunity." The Commission also requested that Uruguay be ordered to "establish and disseminate the historical truth on the events."

198. The **representative** joined the Commission's request that the facts be investigated. It also asked that the Supreme Court be urged to make manifest, by "logistical, administrative and financial decisions, the State's commitment to clarify the facts submitted to the judicial proceedings that have been open for more than 30 years, incorporating the necessary perspective of gender."

²²⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, paras. 25 to 27, *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, para. 176.

199. The **State** claimed that “all of the proceedings concerning this case are open and, although at different procedural stages, have a good and concrete perspective of clarification.”

200. Uruguay added that the Expiry Law is not an obstacle to the proceedings (*infra* para. 242), and that “the doubts that might be raised regarding the interpretation of statutory limitations by the [domestic] courts have not had a decisive impact in any case and less so in the cases being examined.” It also manifested that “neither the guarantee of *non bis in idem*, nor of *res judicata* [...] has been raised to oppose compliance of the obligation to investigate.”

201. The **Court** takes note of the progress pointed out by the State with respect to the investigations involved in the case, and with respect to the lack of effectiveness of the Expiry Law (*infra* paras. 241 to 243). It also notes the State’s assertion that the legal provisions on prescription have not had an impact of the proceedings relating to this case.

202. Notwithstanding the positive assessment that those aspects merit, the Court has determined that the State has not complied with its obligation to investigate, diligently and within a reasonable time, the extrajudicial executions of Diana Maidanik, Silvia Reyes and Laura Raggio and the forced disappearances of Óscar Tassinio Asteazú and Luis Eduardo González. The respective investigations and criminal proceedings continue although there has not yet been an effective determination of responsibilities for the serious violations of human rights and, where appropriate, the application of the corresponding sanctions. While there has been progress in identifying the presumably responsible persons, there has not yet been a determination of personal responsibility. The witness Perciballe, the Special Prosecutor, mentioned that in some cases “in the preliminary stage there have been objections” of prescription and unconstitutionality and for that reason, these cases “have been very extensive in terms of time.”²³⁰

203. The Court, therefore, holds, in view of the proven facts and in accord with the declared violations, that the State must continue the investigations to identify, prosecute and, where appropriate, punish those responsible for the extrajudicial executions of Diana Maidanik, Silvia Reyes and Laura Raggio, as well as for the forced disappearances of Óscar Tassinio Asteazú and Luis Eduardo González González

204. Since the Court has already concluded that the Expiry Law lacks effectiveness because it is incompatible with the American Convention and the Inter-American Convention on Forced Disappearance of Persons, to the extent that it can impede an investigation and the possible sanction of those responsible for serious human right

²³⁰ The Special Prosecutor also mentioned, as an example, that in the investigation into the Tassanio case, “the defense of one of the officials, who is currently imprisoned pending trial, on three occasions raised an objection to the unconstitutionality of Law 18,831.” He also stated that “on different occasions [the Office of the Special Prosecutor] had to find different strategies to prevent cases from being suspended,” which were “responded to in different ways.” The expert Chargoña pointed out that according to information from the Office of the Special Prosecutor, of 140 cases only 23 “are being tried” and in only 14 has there been a conviction, which means that “84% of the cases involving crimes against humanity are slowed down at the pre-trial phase, a phase prior to a trial that is, in turn, adversely affected by the avalanche of appeals with an obvious dilatory purpose on the part of the accused and their defense.” In addition, he mentioned that “pre-trials in cases of serious violations of human rights have an average duration of 10 years,” which is “considerably more” than the “pre-trials for ordinary offenses.” He explained that there is also “a constant delay between the request for prosecution and the judicial decision,” the difference between one and the other “in some cases are months and in other cases years.”

violations, the State must ensure that it never again becomes an impediment to investigate the facts at hand."²³¹

205. It should be recalled that the Court has already noted in its March 20, 2013 Order of monitoring compliance of judgment in the *Gelman* case that, in the first place, "it is inadmissible to consider the statute of limitations with respect to the prosecution of crimes, which may be continued to be committed over time, such as the crime of forced disappearance. Being a crime of a permanent nature, the admissibility of the principle of non-retroactivity of criminal law or of statutory limits is not in dispute."²³²

206. Secondly, with respect to both the act of forced disappearance as well as other serious violations of human rights, such as extrajudicial executions, the Court stated that "it is incompatible with the international obligations of a State Party to the Convention to cease investigating, prosecuting and, where appropriate, punishing those responsible for gross violations of human rights which, by their nature, are not subject to the statute of limitations, and which impair the victims' right to have access to justice and maintain a situation of impunity which the State's own authorities and organs have fostered...."²³³

207. The Court added that, "in cases where the State apparatus has served as an instrument for the commission of these serious crimes and where the State agents who committed them have been assured the tolerance, support, at the time of their commission, with the tolerance, support and guarantees of impunity by the State itself," there can be no strict interpretation of the procedural guarantees of statutory limitations without this implying "a distortion of their very meaning and failing to meet the victims' legitimate expectations to their right to access to justice."²³⁴

208. The State must conduct the investigations ordered in this judgment in accordance with the above-mentioned guidelines.

209. It must also conduct those investigations effectively so that they are done speedily and within a reasonable time by implementing the appropriate measures,²³⁵ including the avoidance and, pursuant to the domestic law, the punishment of the abusive use of appeals or other actions by the accused or their legal representative that are clearly dilatory.²³⁶

210. As the Court has already held with respect to Uruguay, the State must not allow the exercise of actions or appeals to delay and undermine the proceedings nor to impede the victims' access to justice. Judges, as overseers of the process, must direct and channel judicial proceedings with the goal of not sacrificing justice and due process to

²³¹ *Case of Gelman v. Uruguay. Merits and Reparations*, para. 253.

²³² *Case of Gelman v. Uruguay. Monitoring compliance of judgment*. Order of the Inter-American Court of March 20, 2013, considering paragraph 101.

²³³ *Case of Gelman v. Uruguay. Monitoring compliance of judgment*. Order of the Inter-American Court of March 20, 2013, considering paragraph 94.

²³⁴ *Case of Gelman v. Uruguay. Monitoring compliance of judgment*. Order of the Inter-American Court of March 20, 2013, considering paragraph 98.

²³⁵ *Case of Gelman v. Uruguay. Merits and Reparations*, para. 255.

²³⁶ Similarly, *Case of the Las Dos Erres Massacre v. Guatemala*, para. 233.

formalism and impunity and must deal with judicial appeals in a manner that restricts the disproportionate use of actions that might have dilatory or undermining effects.²³⁷ The authorities, in turn, must abstain from actions that would obstruct the investigatory process.²³⁸

211. The State must ensure that the competent authorities conduct the relevant investigations *ex officio* and have at their disposal the necessary powers and resources,²³⁹ including logistical and scientific, to gather and process the evidence, as well as to have full access to the pertinent documentation and information and to conduct the essential actions and inquiries to clarify what happened to the disappeared persons and to the victims of extrajudicial executions.²⁴⁰ The authorities must avoid omissions in considering and evaluating the evidence and in following the logical lines of investigation. Each State official is obligated to collaborate in the collection of evidence in order to provide the judge of the case with all the required information and to abstain from acts that would imply the obstruction of the investigative proceedings.²⁴¹

212. The State must, to the extent necessary, adopt all appropriate diplomatic and judicial measures to prosecute and punish those responsible for violations, fostering by all possible means the extradition requests that are admissible under the domestic norms or the pertinent international law. Uruguay and the other States Parties to the American Convention should collaborate among themselves to eliminate impunity for the violations committed in this case by prosecuting and punishing those responsible.²⁴²

213. The State must also ensure that the victims' next of kin have full access and the capacity to act during all stages of the investigation and the prosecution of those responsible.²⁴³ Those persons, as well as others who participate in the investigations such as witnesses and justice operators, must be provided the necessary security guarantees.²⁴⁴

²³⁷ *Case of Gelman v. Uruguay. Monitoring compliance of judgment.* Order of the Inter-American Court of November 19, 2020, considering paragraph 10.

²³⁸ *Case of Gelman v. Uruguay. Merits and Reparations*, para. 254.

²³⁹ *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 174; *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 31, 2010. Series C No. 216, para. 211; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, para. 237-c, *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, para. 256-c. and *Case of Gelman v. Uruguay. Merits and reparations*, para. 255.

²⁴⁰ *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 14, 2014. Series C No. 287, para. 556.

²⁴¹ *Case of the Las Dos Erres Massacre v. Guatemala*, para. 233.

²⁴² Similarly, *Case of Goiburú et al. v. Paraguay*, para. 166.

²⁴³ *Cf. Case of the Caracazo vs. Venezuela. Reparations and Costs.* Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, para. 238 and *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, para. 257 and *Case of Gelman v. Uruguay. Merits and Reparations*, para. 256.

²⁴⁴ *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 174; *Case of Rosendo Cantú et al. v. Mexico*, para. 211; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, para. 237-c; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, para. 256-c and *Case of Gelman v. Uruguay. Merits and Reparations*, para. 255.

214. With respect to the extrajudicial executions of the three women, the State must take action to observe the perspective of gender, in accordance with the guidelines presented in this judgment (*supra* paras. 156 to 158).

215. Additionally, the results of the relevant proceedings must be made public so that Uruguayan society is aware the facts of this case, as well as who was responsible.²⁴⁵

B.2 Determination of the whereabouts of Luis Eduardo González González and Óscar Tassino Asteazu

216. The **Commission**, with respect to the victims of forced disappearance, requested that Uruguay be ordered “to thoroughly, impartially and effectively investigate their whereabouts” and, where appropriate, “take all necessary steps to identify their remains and deliver them to family members in the manner they desire.” It underscored the importance that there be a “specific plan to search for the two disappeared victims.”

217. The **representative** agreed with the request of the Commission. It asked that the State be ordered “to investigate by maximizing the adequate judicial and/or administrative efforts to determine, as soon as possible, the whereabouts of the disappeared persons.” It also requested that “a systematic and rigorous search be conducted, with all of the adequate, appropriate, and necessary human, technical and scientific resources.”

218. The **State**, in its answer, argued that “it had maintained a consistent commitment and action plan” to investigate “within all the possible factual possibilities” the whereabouts of the victims of forced disappearance and to identify and deliver to the next of kin their mortal remains, if found.”²⁴⁶ Uruguay, in its final written arguments,

²⁴⁵ Cf. *Case of the Caracazo v. Venezuela*, para. 118, *Case of Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 16, 2010. Series C No. 213, para. 217, *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, para. 238 and *Case of Gelman v. Uruguay. Merits and Reparations*, para. 256.

²⁴⁶ The State referred to diverse general policies that are not directly related to the case. In the first place, it alluded to the Investigative Commission, created in 1985, and the Peace Commission, established in 2000 (*supra* paras. 33 to 36). It added the following: (i)- Resolution 832/006, of December 26, 2006, ordered the publication of the reports of the Commanders-in-Chief of the Armed Forces and the University of the Republic and marked June 19 of each year as “a day to commemorate that these episodes shall never again occur amongst Uruguayans.” (ii)- Resolution 297/007, of May 14, 2007, ordered the printing of the “Historic Investigation on the Detained Disappeared to comply with Article 4 of Law 15,848.” (iii)- Pursuant to the judgment of the Inter-American Court in the *Gelman* case, Resolution 450/011, of August 31, 2011, ordered the creation of an Inter-Ministerial Commission under the Presidency of the Republic and, on December 4, 2011, Resolution 805/013 adopted a “Protocol of Procedures to follow in the search, recuperation and analysis of the remains of the detained disappeared persons.” (iv)- Decree 131/015, of May 19, 2015, created the Truth and Justice Working Group, with the basic purpose of investigating crimes against humanity and contributing to the historical truth and the promotion of justice, establishing the Secretariat of Human Rights for the Recent Past as its “functional and administrative support.” (v)- On October 14, 2019, the Truth and Justice Working Group presented its final report (*cf.* Evidence file, annex XIX to the answering brief, fs. 2973 to 2995). (vi)- “Similarly, the Investigative Group in Forensic Anthropology has published various reports (the State remitted copies of the “Report(s) on Activities” of 2005, of 2005-2010 and of 2013 and 2014 (evidence file, annex XXI to the answering brief, fs. 3111 to 3774)). (vii)- On September 18, 2019, Law 19,822 was enacted, which charged the INDDHH, which is independent of the Executive Branch, with “the search for the detained and disappeared persons” during the dictatorship. It has already published two reports, one on May 18, 2020 and the other on October 7 of the same year, which show that “the search for the mortal remains of the detained disappeared is a true policy of the State of Uruguay,” whose “long term” continuity is guaranteed,

affirmed that “it maintains and reaffirms” that commitment. Regarding the determination of the whereabouts of Mr. González González and Mr. Tassino Asteazu, it stated that “even though there might be different versions on the matter, the search continues.”

219. The **Court** welcomes the information provided by the State on the search activities (*supra* paras. 32 to 39, 82, 83, 94 to 96, 134 and 218). It notes, as it has done previously,²⁴⁷ the desire of the victims’ next of kin to identify the whereabouts of the disappeared and, where appropriate, to know the location of their remains, to receive and bury them according to their beliefs, thus bringing closure to the mourning that they have undergone these past years, is a measure of reparation and, therefore, created a corresponding duty on the State to satisfy that expectation, in addition to providing valuable information on the perpetrators of the violations or the institution to which they belonged.

220. Consequently, as a measure of reparation of the victims’ right to know the truth, the State must undertake a rigorous judicial and administrative search in which it makes every effort to determine, as soon as possible, the whereabouts of Mr. Tassino Asteazu and Mr. González González, which must be done systematically and with the adequate and appropriate human, technical and scientific resources. To do so, it must establish a communications strategy with the next of kin and agree to a framework of coordinated action that seeks their participation, knowledge, and presence. If the victims or either of them have died, the mortal remains must be delivered to their families, after having been duly identified, as soon as possible and without any cost to them. In addition, the State must cover the funeral costs, if applicable, in agreement with the next of kin.²⁴⁸

C. Measures of rehabilitation

221. The **Commission** requested that the State be ordered to “implement an adequate program of assistance for the next of kin” of the five alleged disappeared or extrajudicially executed victims.²⁴⁹

222. The **representatives** joined the request of the Commission.

223. The **State** pointed out that, pursuant to “Law 18,033 of October 13, 2006 and the health coverage of the victims and their next of kin under Laws 18,033 and 18,596

including budgetarily. The State presented those reports (evidence file, annex XV to the answering brief, fs. 2675 to 2698) and underscored that, in February 2021, “the Senate adopted, together with the budget of the INDDHH- a draft budget for the search of the detained disappeared” It pointed out that the budgetary item assigned was that requested by the INDDHH” and that the draft budget has two objectives: (a) to guarantee coherence and continuity in the searches during the next five years and (b) to maintain the resources assigned to the searches at the level at which they were when the INDDHH began its work.” The State also presented the “strategic guidelines” for implementing Law 19,822 of 2019, which, among other aspects, assigns functions to the National Institute of Human Rights and to the Office of the Ombudsman for the search for disappeared persons (evidence file, annex XVII to the answering brief, fs. 2702 to 2711).

²⁴⁷ *Case of Gelman v. Uruguay. Merits and Reparations*, para. 258.

²⁴⁸ Similarly, *Case of Gelman v. Uruguay. Merits and Reparations*, para. 260 and *Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia*, para. 564.

²⁴⁹ Regarding these measures, the Commission “notes that, according to the State, the family members of the five victims received some reparation under Law 18,596” and, although the Commission has no documentary evidence thereon, it considers that “the State may take it into account when determining the amount of compensation to be paid” due to the human rights violations declared in the Merits Report.

and Decree 297/010 of October 6, 2010," it ordered "integral health assistance" for certain categories of the direct victims of violations of human rights during the military dictatorship,²⁵⁰ as well as for the "their children and grandchildren, regardless of whether they are biological or adoptive."

224. The **Court** has concluded that there has been harm to the personal integrity of the victims who are the next of kin of the three extrajudicially executed victims and the two victims of forced disappearance (*supra* para. 190).

225. Therefore, the Court considers that it is necessary to order a measure of reparation that provides adequate attention to the psychological and/or psychiatric afflictions of the victims who are the next of kin of Luis Eduardo González González, Óscar Tassino, Diana Maidanik, Silvia Reyes and Laura Raggio, which takes into account their particularities and history.

226. Consequently, the Court orders the State, in line with the guidelines indicated in the following paragraphs (*infra* paras. 227 to 229), to provide those persons with the psychological or psychiatric treatment that they might require.

227. This treatment should be provided without charge and as a priority and should include a provision for the medicine that might be necessary and, where appropriate, for transportation and other directly related and necessary expenses. The treatment also should be provided, to the extent possible and for the necessary time, in the appropriate places that are closest to the beneficiaries' residences. In providing the treatments, the special circumstances and needs of each victim should be considered, in agreement with the victim after an individual evaluation.²⁵¹

228. The State may comply with the measure ordered through public institutions and/or through actions established in Laws 18,033 and 18,596 and Decree 297/010, as well as through other existing normative provisions or public policies, as long as they meet the above-mentioned guidelines. In any case, the psychological or psychiatric attention to the victim cannot be impeded or delayed by administrative or bureaucratic rules or processes. Regardless of the eventual application of the norms or policies to comply with the measure of rehabilitation, they are owed to the victims as victims and by virtue of the direct mandate of this judgment, which may not be subordinated, limited, delayed, or impeded by domestic requirements or processes.

229. The beneficiaries have six months of notification of this judgment to confirm to the State their intention to receive psychological/psychiatric attention.²⁵² For its part, the State shall also have six months of notification of this judgment to begin to effectively provide the attention requested. In any case, notwithstanding those time frames, the State should comply with this measure as promptly as possible. Should the beneficiaries

²⁵⁰ The State referred to "those persons who might have been detained for more than six (6) months without having been tried, or who might have been tried or who might have suffered serious wounds because of or on the occasion of the acts of State agents or who being children have been abducted or have remained in captivity with their parents."

²⁵¹ Cf. *Case of Las Dos Erres Massacre v. Guatemala*, para. 270, *Case of Pobleto Vilches et al. v. Chile. Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 349, para. 231 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 114.

²⁵² Cf. *Case of Rosendo Cantú et al. v. Mexico*, para. 253 and *Case of Garzón Guzmán et al. v. Ecuador*, para. 114.

not inform their intention to receive such care within the established period, the State is excused from providing it.

D. Measures of satisfaction

230. The **Commission** considered that the State should “adequately repair the victims” in the “moral [...] aspect.”

231. The **representative** requested that the Court order that the State publish the judgment in the Official Gazette of the Republic of Uruguay.” It also asked that Uruguay “hold an act of apology and recognition of the actions of the State,” which is to be done jointly with the delivery of information on the whereabouts of the disappeared persons.

232. The **State** noted that, in March 2012, in compliance with the Court’s decision in the *Gelman* case, it held a public act of recognition of responsibility and that on the day of the act a plaque was placed in the building that was the headquarters of the Ministry of Defense’s Intelligence Service during the dictatorship in homage to “the victims who were clandestinely detained there.” It added that, since December 9, 2016, the building houses the National Institute of Human Rights and is “the first site of recovered memory in Uruguay.” It also pointed out that Law 19,641, of July 13, 2018, “declared and created sites of Historical Memory of the Recent Past.”²⁵³ It also indicated the “existence of the Memorial of Remembering the Detained-Disappeared, also known as the Memorial of the Disappeared, located in the Parque Carlos Vaz Ferreira in the Cerro de Montevideo,” inaugurated on December 10, 2001, and declared a National Historical Monument in 2014. The State also underscored that the Truth and Justice Working Group and the Secretariat of Human Rights for the Recent Past published a “Guide of places of memory of the recent past of Uruguay,” which directly refers to the alleged victims of this case.²⁵⁴ It also provided information about the placing of plaques in the school where Mr. González González studied and the location where Ms. Maidanik, Ms. Reyes and Ms. Raggio were extrajudicially executed.²⁵⁵

D.1. Publication and dissemination of the judgment

233. The **Court**, as in other cases,²⁵⁶ orders 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 widespread national circulation, in a legible and adequate font, and (c) the complete judgment, available for one year, on an official Web site of the National Government. The State must immediately inform the Court when it has published each of the above, regardless of the period of one year to present its first report ordered in operative paragraph 9 of this judgment.

²⁵³ The State remitted the “First Annual Memorial 2018-2019” of the Honorary National Commission of Massacre Sites (evidence file, annex XXXVIII to the answering brief, fs. 5199 to 5310).

²⁵⁴ The State remitted this document (*cf.* Evidence file, annex XX to the answering brief, fs. 2999 to 3110).

²⁵⁵ *Cf.* Evidence file, annex XVII to the answering brief, fs. 2699 to 2701.

²⁵⁶ *Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs.* Judgment of December 3, 2001. Series C No. 88, para. 79 and *Case of Vera Rojas et al. v. Chile*, para. 169.

D.2 Public act of recognition of responsibility

234. The Court welcomes the information provided by the State on the different measures of symbolic reparation that it has adopted with respect to the victims of violations of human rights committed during the military dictatorship. As it has done on previous opportunities and particularly in the *Gelman* case, the Court welcomes those State acts that aid in the recovery of the memory of the victims, the recognition of their dignity and the consolation of their families,²⁵⁷ such as the events mentioned in paragraph 232.

235. The Court, however, also takes into consideration the seriousness of the violations committed in this case, as well as the fact that, even more than 44 years later, the whereabouts of Mr. Tassino Asteazú and Mr. González González have not been determined and the investigations and criminal proceedings related to the extrajudicial executions of Ms. Maidanik, Ms. Reyes and Ms. Raggio have not concluded. Notwithstanding the value of the symbolic reparations adopted by the State, the above-mentioned circumstances make it important that the State, through its high-ranking authorities, publicly reaffirm its willingness to discover the whereabouts of the disappeared victims and to investigate, punish and adequately repair the violations of human rights committed in this case.

236. The Court, therefore, orders Uruguay to hold a public act of recognition of international responsibility relating to the facts of the present case, referring to the violations declared in this judgment, as well as the State's commitment to comply with the judgment and to discover the whereabouts of the disappeared victims and to investigate, punish and adequately repair the human rights violations committed in this case. The act should be held during a public ceremony conducted by national authorities, in the presence of high-ranking authorities of the Executive, Legislative and Judicial Branches, as well as high-ranking authorities of the military and the Office of the Special Prosecutor, the National Institute of Human Rights and the Office of the Ombudsman. The public act should also be held in the presence of the victims of this case. The State should come to an agreement with the victims or their representatives on the manner of compliance of this public act,²⁵⁸ as well as on details, such as the place and date of the act. The act should be disseminated by the mass media and must be held within one year of the notification of this judgment.

E. Guarantees of non-recurrence

E.1 Actions that would ensure the effective investigation of serious violations of human rights committed during the dictatorship

237. The **Commission**, in its Report on the Merits and in its submission of the case, requested that the Court order the State to "adopt legislative and other measures necessary to ensure that, in practice and through judicial rulings, the non-applicability of the statute of limitations of grave human rights violation is guaranteed in accordance with inter-American standards" and stated that "the State must guarantee that the

²⁵⁷ Cf. *Case of the Pueblo Bello Massacre v. Colombia*, para. 254; *Case of Cepeda Vargas v. Colombia*, para. 223; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, para. 248 and *Case of Gelman v. Uruguay. Merits and Reparations*, para. 265.

²⁵⁸ This includes the possibility that the parties agree that the act, as was requested by the representative (*supra* para. 231), be held together with the delivery of information on the whereabouts of the detained disappeared persons.

[Expiry Law] does not represent any obstacle for the investigation of the facts of the case."²⁵⁹

238. In addition, at the public hearing, the Commission referred to other actions and underscored "the importance that the judicial apparatus be strengthened through budget coordination, institutional design and the permanent training of justice operators to effectively investigate these serious violations, incorporating a focus of gender in investigations, especially in those case in which the victims are women."²⁶⁰

239. The **representative**, in its brief with petitions and motions, joined the request made by the Commission in its Report on the Merits. With respect to the Expiry Law, it pointed out that it "continues to be an obstacle because it has a widespread effect in the legal community, connected with the use of prescription," since "the issue of the non-applicability of the statute of limitations" has not been clearly resolved."²⁶¹ It recalled that IELSUR proposed the enactment of an "interpretation" of Article 72 of the Constitution under the Legislature's authority pursuant to Article 85(20) of the Constitution. It considered that such a law should expressly state that the rights recognized in human rights treaties form part of those that are "inherent to the human personality or derive from the republican form of government." It explained that it is not sufficient for a state to ratify human rights treaties, especially in the case of Uruguay where there is no agreement (neither doctrinal nor jurisprudential) on the normative hierarchy of those instruments."

240. With respect to the above, the representative referred to the State's comments on the creation of an Office of the Special Prosecutor (*infra* paras. 241 and 242). It recognized that this implied "progress," but maintained that "other than the good will and the efforts of the Prosecutor [in charge] and his team,²⁶² this Office does not have sufficient resources to deal, in time and in form, with its enormous task."

241. The **State** explained that there were "three basic phases" that "clarify" the events that occurred during the civil-military dictatorship that governed between 1973 and 1985: (a) the non-judicial institutional investigations carried out when the Expiry Law

²⁵⁹ The Commission, in the public hearing, added that "it underscores the importance that the judicial authorities promptly resolve any request of statutory limitations taking into account the non-applicability of the statute of limitations for serious violations in accordance with inter-American standards."

²⁶⁰ In its final written arguments, the Commission added that, according to the comments of the organizations of civil society in a thematic hearing before the Commission, which was not directly related to the case, "to date there are no judicial protocols on sexual violence, nor any convictions for sexual violence that occurred during the dictatorship." (The Commission alluded to the thematic hearing, held in March 2021, on "Access to the truth, justice and reparation with a perspective of gender in Uruguay.")

²⁶¹ The representative affirmed that, while Law 18,831 declared that the crimes included in the Expiry Law are crimes against humanity and that, therefore, because those crimes "become imprescriptible," the Supreme Court has admitted remedies of unconstitutionality of Law 18,831. It averred that "the Uruguayan Supreme Court has exercised control of constitutionality regarding [Law 18,831] in some 100 cases between 2013 and 2021, the results of which fluctuate depending on the composition of that body and that in [July 2021, when the final written arguments were presented] it was inclined to declare the law unconstitutional and, therefore, did not apply it in the specific case. Taking into consideration that, in the Uruguayan legal order, trials are suspended when an objection of unconstitutionality is presented, the use of this remedy became part of the extended dilatory practice of the accused in cases involving the investigation into crimes against humanity."

²⁶² It highlighted that the Office of the Special Prosecutor for Crimes against Humanity has "one prosecutor and two deputy prosecutors."

was in force;²⁶³ (b) the current normative framework, which has fully re-established the punitive claims of the State (Law 18,831 of October 27, 2011) and (c) the impetus given to the judicial cases since the creation of the Office of the Special Prosecutor for Crimes against Humanity (Law 19,550 of October 25, 2017).” Uruguay maintained, referring to current State actions, that it has led a “fight against impunity.”²⁶⁴

242. The State also maintained that, although during the “first phase,” beginning in December 1986, the Expiry Law impeded the prosecution of different types of crimes, this was reversed in the “second phase.” It pointed out that, since the enactment of Law 18,831 in 2011, there are no obstacles to investigating serious violations of human rights committed during the dictatorship. It especially pointed out that “the Expiry Law is no longer an obstacle.”²⁶⁵ Uruguay added that, during the “third phase,” it has “strengthened the institutions involved in clarifying the events, increased their resources and strengthened the human rights training of the operators involved.”²⁶⁶ It underscored the creation of the Office of the Special Prosecutor in 2017²⁶⁷ “with exclusive competence in all criminal cases concerning violations of human rights that occurred during [the dictatorship].”²⁶⁸ It emphasized that that resulted in a “significant strengthening” of the capacity to conduct criminal investigations,²⁶⁹ which resulted in an increase of

²⁶³ Regarding the “first phase,” the State mentioned the following actions: (a) the creation, on April 9, 1985, of a Parliamentary Investigative Commission, which investigated events that occurred during the dictatorship, including the disappearances of Mr. Tassino and Mr. González González and presented complaints before the judiciary; (b) the creation, on August 9, 2000, by Presidential Order 858/000, of the Peace Commission to “compile information on forced disappearances during the de facto regime” which in 2003 issued its Final Report that expresses the “firm conviction” of the perpetration of “serious violations of human rights,” such as torture, “unlawful” detentions and forced disappearances; and (c) as a consequence of the prior work, the creation in April 2003 of a Follow-Up Secretariat” of the work of the Commission, which in August 2013, became the “Secretariat of Human Rights for the Recent Past,” having among its functions that of “seeking knowledge on the events and the truth about the forced disappearances, political assassinations and the factual context of the violation of human rights during the dictatorship.”

²⁶⁴ As an element of evidence, the State mentioned that “it was a civil party in criminal proceedings in Italy as part of the “Operation Condor” case, presenting evidence as such.” It pointed out that “that case, as is public knowledge, concluded in Rome on July 9, 2021 with the unappealable sentencing by the Supreme Court of Cassation to perpetual imprisonment of 11 Uruguayan citizens, most of them former members of the military.” It affirmed that “the Italian justice acknowledged the documentary evidence provided by the State of Uruguay.”

²⁶⁵ Uruguay pointed out regarding the possibility of investigating crimes committed during the dictatorship, that the issue of the alleged effects of the Expiry Law is distinct from the functioning of the Rule of Law and of the independence of the judicial bodies” since one can agree or not with certain decisions, but that is not a shortcoming of the State, but rather it is one of the avatars of the Rule of Law.”

²⁶⁶ It informed that, since 2012, it has “trained prosecutors, providing as some examples the “creation by the Ministry of the Interior of a Special-Aid Team of the Ministry of Justice for crimes of State terrorism to collaborate directly with the justice operators of the Judiciary and the forming of a Specialized Human Rights Unit of the Office of the Prosecutor General in 2015.” It also pointed out that the Supreme Court “has implemented human rights modules in courses at the Center of Judicial Studies for aspiring judges, public defenders and prosecutors.”

²⁶⁷ The State mentioned that this was “part of the [State] commitment to comply with the Court’s judgment in the *Gelman*” case.

²⁶⁸ The State underscored that the Office of the Special Prosecutor has “a direct and permanent relationship” with “the family groups of the victims.”

²⁶⁹ The State emphasized that the creation of the Office of the Special Prosecutor, with national jurisdiction, resulted in “a sole criterion of investigation,” [...] “a sole legal position” and “a specialized technique.”

convictions²⁷⁰ and “significant and constant progress in the cases that remain open.”²⁷¹ The State affirmed, indicating that it had done so on the basis of the suggestions of the Special Prosecutor, that all the cases of serious human rights violation are on track to be clarified in the short term.”

243. The State added that it had requested, in order to present its answering brief, a Report of the Supreme Court, the hierarchical judicial body, and that that Court had maintained that “notwithstanding judgments 20/2013 and 680/2017,²⁷² at the present time the Supreme Court’s jurisprudence demonstrates that there is no legal obstacle that would impede the investigation, prosecution and punishment of crimes that might have been committed during the dictatorship and, therefore, the investigations into the human rights violations committed during that time have continued.”

244. Uruguay also referred to comments regarding dilatory strategies employed by the accused. It alleged, in its final written arguments, that “the existence of due process is an unavoidable and necessary consequence of the Rule of Law [and that the] legal order of Uruguay has the necessary tools to detect abuses of law.” The State did not offer details on which “tools.”

245. The State also referred to the “perspective of gender” with respect “to the judicial system of Uruguay and to society as a whole.” It noted that “the matter” was brought up for the first time in the public hearing and that it is not part of the petition of the Inter-American Commission as set out in its Merits Report.²⁷³ Nonetheless, Uruguay referred to policies that it had adopted with respect to gender violence and the research on a perspective on gender. It pointed out that it “had ratified all the existing

²⁷⁰ The State highlighted that, since its creation, the Office of the Special Prosecutor has obtained 12 firm convictions; two convictions at the second instance, pending resolution of appeals of cassation, and indictments in 9 cases.

²⁷¹ As an example, the State mentioned a judicial decision of June 3, 2021, which does not refer to the facts of this case, which ordered the imprisonment pending trial of several persons accused of offenses that occurred during the civil-military dictatorship. The State emphasized that the decision of the Twenty-seventh Criminal Court of the Capital alluded to the decision of the Inter-American Court in the *Gelman* case, acknowledging that it is binding, and it noted that crimes against humanity were not subject to a statute of limitations. The State asserted that the judicial decision reflects “the current trend in the matter.” (The State presented a copy of that decision: Judgment N539/2021 of the Twenty-seventh Criminal Court of the Capital, of June 3, 2021 (evidence file, fs. 7561 to 7639)).

²⁷² The State did not provide information on those cases. The Court’s order of monitoring compliance of judgment in the *Gelman* case, of March 20, 2013, stated that “the Supreme Court held, in its decision of February 20, 2013 that ‘for crimes committed during the dictatorship and protected by the Expiry Law, there was no special prescription, but only the same discontinuance terms as that for any other crime, and consequently, there will be no application of the conviction imposed by the Inter-American Court in terms of eliminating the statute of limitations established especially for those cases, given that no laws of this nature were passed.’” The Inter-American Court considered that “it is incompatible with the international obligations of a State Party to the Convention to cease investigating, prosecuting and, where appropriate, punishing those responsible for gross violations of human rights, which by their very nature are not subject to the statute of limitations, and which impair the victims’ right to have access to justice and maintain a situation of impunity that the States own authorities and organs have fostered through the creation of de jure and de facto obstacles that prevented efforts to carry out investigations or move forward with proceedings during a certain period.” (*Case of Gelman v. Uruguay. Monitoring compliance of judgment.* Order of the Inter-American Court of March 20, 2013, footnote 77 and considering paragraph 94, respectively.)

²⁷³ The State alleged that “any reference to the issue of gender in a broader and more structured context was never presented as such either by the Commission or by the representative of the alleged victims.”

international commitments on gender equality and the rights of women.”²⁷⁴ It also emphasized, institutionally, the creation in 2005 of the National Institute of Women with “the commitment to promote policies of gender equality,” as well as the creation of specialized courts in the matter. It also affirmed that “there has been sustained progress on the normative plane.”²⁷⁵

E.1.1 Non-applicability of exclusionary factors of criminal responsibility

246. The **Court** recalls that, in deciding the *Gelman* case, it determined that “the Expiry Law lacks effectiveness due to its incompatibility with the American Convention and the Inter-American Convention on Forced Disappearance of Persons, inasmuch as it can impede the investigation and eventual punishment of those responsible for serious violations of human rights.” It, therefore, ordered that “the State must ensure that [such law] does not again represent an obstacle [...] for the identification and, if appropriate, the punishment of those responsible of [...] serious violations of human rights [...] in Uruguay.”

247. In monitoring compliance of that case, the Court noted that Uruguay had adopted Decree 323 of June 30, 2011 and Law 18,831 of October 27, 2011, the latter of which in its Article 1 deprived the Expiry Law of effectiveness. It pointed out that these measures were “concrete steps directed to compliance of the ordered reparation” and that the Court considered “that the enacting of those norms are a partial compliance with this measure of reparation.”²⁷⁶ The Court, however, stated that it could not “assess the total compliance of the measure” ordered because “there persist judicial interpretations that represent an obstacle to the investigation of serious violations of human rights committed during the dictatorship.” It especially referred to the judicial interpretations that held unconstitutional Articles 2 and 3 of Law 18,831, which referred to the non-applicability of the statute of limitations and the nature of the crimes against humanity that occurred during the dictatorship, but that do not recognize the non-applicability of the statute of limitations of such serious human rights violations.²⁷⁷

²⁷⁴ Uruguay expressly mentioned “the Convention on the Political Rights of Women of 1948, the Convention on the Elimination of all Forms of Discrimination against Women of 1979 and the Convention to Prevent, Sanction and Eradicate Violence against Women of 1994.”

²⁷⁵ It mentioned as “an example,” the law on sexual and reproductive health of 2009, the law on sexual harassment of 2009, the law on gender identity of 2009; the law on the voluntary interruption of pregnancy of 2012 and the Law on Violence against Women based on Gender (Law 19,580), of December 22, 2017, which created “Specialized Courts,” as well as “the incorporation of gender into educational, health, work and security policies, as well as those for older adults.” The State also underscored that it had incorporated, in the criminal area, “femicide as murder in the first degree in those cases in which a woman is murdered for reasons related to her gender.” It also indicated that, in 2020, it published a “guide for the judiciary on stereotypes of gender and the international standards on women’s rights.” The State also pointed out that “the Budgetary Law 19,924 of [2020] created in each ministry a specialized unit” for issues of gender.

²⁷⁶ *Case of Gelman v. Uruguay. Monitoring compliance of judgment.* Order of the Inter-American Court of November 19, 2020, considering paragraph 28.

²⁷⁷ *Case of Gelman v. Uruguay. Monitoring compliance of judgment.* Order of the Inter-American Court of November 19, 2020, considering paragraph 30. The Court notes that the State remitted, as a “new fact,” in this case, a decision of the Court of Flores, of December 14, 2020, that, as the State itself indicated, “encompasses both the principle of statutory limitations and the classification of crimes against humanity for facts initially included in the so-called “Expiry Law” (evidence file, f. 7656). Without evaluating this decision, the Court considers that it does not contradict the affirmations of the witness Perciballe and the expert Chargoña, referred to in a following paragraph.

248. In the present case, the State presented a Supreme Court document that indicated that, after 2013, that Court had dismissed on various occasions actions of unconstitutionality against Articles 2 and 3 of Law 18,831, and that it had rejected requests to close criminal proceedings on the grounds of prescription.²⁷⁸ The State, moreover, has enacted Law 17,347, of June 13, 2001, adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and Law 18,026, of September 13, 2006, on Cooperation with the International Criminal Court in Matters of the Fight against Genocide, War Crimes and Crimes against Humanity, Article 7 of which deals with the non-applicability of statutory limitations for genocide, war crimes and crimes against humanity.²⁷⁹

249. Notwithstanding the above, the witness Perciballe, offered by the State and who is in charge of the Office of the Special Prosecutor, pointed out that the Expiry Law is not at present an obstacle, but that there persist “different interpretations regarding what is and what is not prescription for these types of crimes.”²⁸⁰ The expert Chargoña Pérez pointed out that “despite the norms adopted by the State there persist judicial interpretations that do not afford sufficient legal certainty,” alluding to interpretations on statutory limitations and the nature of crimes against humanity of “the crimes of the dictatorship.” The expert explained that some courts looked upon these crimes as “ordinary” and, therefore, applied “the statutory period” to them.

250. The Court concludes that, despite the important advances made by the State, including the legislative and judicial acts to eliminate the effect of the Expiry Law and the non-applicability of statutory limitations that the Court welcomes, the Court finds that there does not yet exist sufficient certainty with respect to the legal possibility that the serious human rights violations that occurred during the dictatorship can be effectively investigated and punished. The Court, however, does not have elements that permit it to conclude that such lack of legal certainty can be related to the problems or deficiencies of the legislation or the domestic normative.

251. In consideration of the above, the Court understands it necessary to remind that State that

[...] when a State is Party to an international treaty, such as the American Convention, all its organs, including judges and other bodies responsible for the administration of justice at all levels, are bound by the treaty which requires them to ensure the effects of the provisions of the Convention are not impaired by the application standards that are not contrary to their object and purpose, so that their judicial or administrative decisions do not render total or partial compliance with international obligations illusory. In other words, all State authorities have the obligation to exercise *de officio* a “control of conventionality” between domestic standards and the American Convention, within the framework of their respective competence and the corresponding procedural rules. Both the treaty and

²⁷⁸ Response of the Supreme Court of December 31, 2018 (evidence file, annex II to the answering brief, fs. 2314 to 2324).

²⁷⁹ The texts of both laws have been incorporated into the evidence *de officio* (*supra* para. 25).

²⁸⁰ The Special Prosecutor, in a document submitted as evidence by the State as an annex to its answering brief, indicated two “objections” to his statement that “all the courts of the country” were in agreement in denying the objections of prescription regarding crimes committed during the dictatorship. He also mentioned that, in denying such objections, the courts employed “various arguments.” (Undated Report of the Special Prosecutor (evidence file, annex XXVIII to the answering brief, fs. 3836 to 3848)).

its interpretation by the Inter-American Court, the final arbiter of the American Convention, must be taken into account in this task.²⁸¹ [...]

[...] the mere fact of being a Party to the American Convention means that all the public authorities and all the organs of the State, including the democratic bodies, judges and other organs involved in the administration of justice at all levels, are bound by the treaty. This obliges them to exercise a control of conventionality, [...] within the framework of their respective spheres of competences and of the corresponding procedural rules, either by the enactment or enforcement of laws as regards their validity and compatibility with the Convention or through the identification, prosecution and deciding of particular situations and specific cases, bearing in mind the treaty and, as appropriate, the jurisprudential precedents and guidelines of the Inter-American Court.²⁸²

252. In accordance with the above guidelines, all State authorities and bodies, including judicial, within the framework of their competence and rules, must exercise an adequate control of conventionality that takes into consideration, in accordance with international law and the observations found in this judgment, the non-applicability of the statutory limitations of crimes of serious human rights violations committed during the military dictatorship. The Court will not monitor those actions.

E.1.2 Strengthening the Office of the Special Prosecutor for Crimes against Humanity

253. The Court takes notes of the testimony of the expert Chargoña, who stated that to effectively advance the cases of serious human rights violations committed during the dictatorship "it is necessary to have an institutional plan, a budget, and sufficient human resources." He noted that "the Office of the Special Prosecutor [...] is comprised of a prosecutor and two deputy prosecutors" and thus does not have "sufficient capacity or authority to deal with the cases that are spread throughout the courts of the country." He underscored that "the Office of the Prosecutor must deal with a whole universe of cases of serious human rights violations and that it has a budget for just three technical officials and that it depends mainly on the commitment of the prosecutors is also a factor of impunity."

254. The Court, taking into consideration the obvious need to accelerate the actions to investigate and punish serious human rights violations committed during the dictatorship, orders that the State, within a reasonable time and with the greatest speed possible, adopt the relevant legislative, administrative, financial and budgetary actions or of any other kind to strengthen the capacity of the Office of the Special Prosecutor, by providing more personnel and/or budget, as well as any other resource deemed relevant.

²⁸¹ Cf. *Case of Almonacid Arellano et al. v. Chile*, para. 124; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, para. 176 and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 225. See, also, *Case of Gelman v. Uruguay. Merits and Reparations*, para. 193 and *Case of Furlán and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2012. Series C No. 246, para. 303 and *Case of Gelman v. Uruguay. Monitoring compliance of judgment*. Order of the Inter-American Court of March 20, 2013, considering paragraph 66.

²⁸² *Case of Gelman v. Uruguay. Monitoring compliance of judgment*. Order of the Inter-American Court of March 20, 2013, considering paragraph 69.

255. In the context of those actions to strengthen the Office of the Special Prosecutor, it should adopt a strategic plan directed to duly prosecute and punish the perpetrators of acts of violence against women committed during the civil-military dictatorship.

E.2 Training and sensibilization of personnel of the Armed Forces

256. The **representative**, in its brief with petitions and motions, asked for an order to modify the study plans in the Armed Forces so that they include a topic on human rights “specifically and transversally in all the training.”²⁸³

257. The **State** indicated that the National Army issued a communiqué that expressed its willingness to “develop a process of analysis to strengthen the knowledge of its members [...] on the historical reality of the 1958-2000 period.”²⁸⁴

258. The **Court** welcomes the State’s “willingness” to “strengthen” the knowledge of the members of the armed forces on the “historical reality.” The Court takes note of the information presented by Uruguay, while observing that it does not refer to permanent or continuing acts of training and sensibilization. Therefore, in view of the nature of the events that gave rise to the human rights violations declared in this case, the Court orders that State, within one year, include in the training or study plans of the members of the Armed Forces, with the respective assignment of funds, training courses relating to human rights that include, in addition to other relevant aspects, content on the serious human rights violations committed during the dictatorship, their incompatibility with international law and the necessity and importance of avoiding their repetition.

F. Other measures requested

259. The **Commission** requested, as a measure of reparation, the strengthening of the apparatus of justice. It also requested that the Court order the training of justice operators, including the incorporation of a focus on gender (*supra* para. 238).

260. The **representative** coincided with the requests of the Commission. In addition, in its brief with petitions and motions, it requested that “the Ministry of Defense [...] be required to make available the complete archives, not only those that are in its headquarters but also those that might be hidden in other military facilities, and that it should carry out an exhaustive investigation of each case and punish anyone responsible for hiding archives.”²⁸⁵

²⁸³ It alleged that such a measure “is justified when it is taken into account that members of the Armed Forces have systematically defended those responsible for crimes against humanity.”

²⁸⁴ The State remitted a document of November 6, 2020, in which the National Army manifested its “institutional goal” to conduct an analysis of the “historical reality” indicated by the State, as well as to hold a specific “academic activity,” as an “initial step” in that process (evidence file, annex XIV to the answering brief, fs. 2672 a 2674).

²⁸⁵ Regarding this request, formulated in those terms in the section on reparations in the brief with petitions and motions, its petition in that document alluded to the “furnishing of information” and not of “archives”; it specified that such information concerns “the whereabouts of the detained disappeared” and should not be limited to the Ministry of Defense, but rather referred to the State, in general terms, and it added the request that the State “duly” identify the detained disappeared persons and deliver their remains to their next of kin. In the public hearing, the representative requested that the Court “urge the State that it immediately, and through the competent authorities, order the delivery to the national institution of human rights and to the families all the information concerning the military operatives, files and ranks, specifically that they obtain the archives on the operations of the repressive agencies of the dictatorship [...] as well as the archives that are outside the country and might serve to clarify the cases.” In addition, it requested that the Legislative Branch be urged to adopt actions to overcome the “difficulties of implementation and

261. In its final written arguments, the representative also requested that the Court order that the State take the following actions:

- a) "The presentation, within six months of the promulgation of the judgment [of the Inter-American Court], of a state policy on the violation of human rights and guarantees during the State terrorism," which "should consist in affirmative, concrete and efficacious actions that would foster a substantive change in eliminating the structural impunity in this area."²⁸⁶
- b) The implementation of a "public, visible and continuing campaign," to "encourage those persons who possess information on the location of the remains and the burial places to provide it, ensuring confidentiality, security, and protection to eliminate any reprisal by those responsible for the commission of crimes against humanity.
- c) The determination of the obligation of "the Presidency and the Ministry of Foreign Affairs to promote, without more bureaucracy, and to obtain the declassification of documents in the hands of foreign States and their intelligence agencies, particularly, the United States of America, of repressive activities in [Uruguay] during the period from 1968 to 1985."
- d) The urging, by "the President [...], as Commander in Chief of the Armed Forces, [...] in a public act for his subordinates to furnish all the information and archives relating to the military proceedings and operations on the disappearances and extrajudicial executions during the period 1968 to 1985."²⁸⁷

262. The **State**, with respect to the request in the brief with petitions and motions on the access to archives, underscored "the creation of the Judicial Archives of the Military Justice in the area of the judiciary that contain approximately three thousand files on the proceedings before the Military Justice during the dictatorship; and that "the archive of the Secretariat of Human Rights for the Recent Past, in which may be found the documents obtained and analyzed by the Peace Commission, is at the disposal of the judiciary, victims, families and their legal representatives."²⁸⁸

263. The **Court** notes that the request of the Commission and the representative that the "judicial apparatus be strengthened" was expressed in general terms and not limited to the Office of the Special Prosecutor with respect to which orders have already been given. However, the Court considers that it does not have sufficient elements that would permit it to determine and order actions regarding the organization and functioning of the judiciary. However, it urges the State to adopt the relevant legislative,

compliance of the existing legislation in the area of access to the archives and to information." In its final written arguments, the representative indicated that, in the context of this measure of reparation, the Ministry of Defense be required to "maximize the procedure to obtain the operative archives of the SID and the OCOA, the main institutions in the repression and coordination."

²⁸⁶ The representative requested that the public policy that it requested "go beyond the persons who are in the institutions that are responsible." It also asked that the Executive Branch be ordered to "present an annual report to the General Assembly of the Eastern Republic of Uruguay on the progress and obstacles that have been encountered in the implementation of such policy."

²⁸⁷ It added the request that the President of the Republic be ordered "to annually inform the General Assembly of the Eastern Republic of Uruguay on the status of compliance of this urging.

²⁸⁸ Moreover, the State recalled that the Inter-American Court, in the *Gelman* case, considered that the State "has been complying" with the order to adopt measures to "guarantee technical and systematized access to information on the serious violations of human rights that occurred during the dictatorship that are in the national archives."

administrative, financial, budgetary, training or sensibilizing measures or any other that are necessary for the judiciary to have the capacity to try, effectively and promptly, the cases of serious violations of human right committed during the dictatorship. The adoption of these measures will not be monitored by the Court.

264. The Court does not consider it appropriate to order measures relative to the training of justice operators, as was requested by the Commission and the representative (*supra* paras. 238, 239, 259 and 260). It recalls that, in its judgment in the *Gelman* case, it had ordered the implementation of “a permanent program of human rights for officials of the Public Ministry and the judges of the Judicial Branch of Uruguay.” The State has partially complied with this measure²⁸⁹ and the Court will continue to monitor compliance of the *Gelman* case so that it is not necessary to repeat this measure or a similar one.

265. In this context, it is necessary to clarify that the Court also does not deem it appropriate to order measures on the training of justice operators on the incorporation of a focus of gender, as was requested by the Commission and the representative (*supra* paras. 238, 239, 259 and 260) since there is no evidence that the violation of the rights to judicial guarantees and to judicial protection declared in this case, which are related to the issue of the adoption of a perspective of gender in its activities, are due to structural deficiencies in the training of those operators. In addition, the Court notes that the State informed that it has adopted a series of laws and policies on the matter (*supra* para. 245).

266. The Court notes that, with respect to the request on the access to archives, in the *Gelman* case it ordered the State to “adopt, within two years and with the necessary budget, the relevant measures to guarantee technical and systematized access to information on the serious violations of human rights that occurred during the dictators.” The Court has since “observed that Uruguay has implemented various initiatives directed to gather, systematize and digitize information on events committed during the dictatorship that were in various State facilities” and has understood that the State “has been complying with [that] measure of reparation.” It also noted that “Uruguay must continue to implement this measure as thoroughly as possible.”²⁹⁰ The Court will continue to monitor the implementation of this measure in the context of the corresponding proceedings in the *Gelman* case.

267. Therefore, the Court considers that it is not necessary to again order Uruguay to adopt measures on the access to information or to the archives related to serious human rights violations.²⁹¹

²⁸⁹ *Case of Gelman v. Uruguay. Monitoring compliance of judgment.* Order of the Inter-American Court of November 19, 2020, operative paragraph 1.

²⁹⁰ *Case of Gelman v. Uruguay. Monitoring compliance of judgment.* Order of the Inter-American Court of November 19, 2020, considering paragraphs 52 and 55.

²⁹¹ The Court takes note that the State informed on the delivery, by the Executive Branch, the Court Prosecutor, and the National Institute of Human Rights, of the military reports during the dictatorship (*supra* footnote 12). This Court also notes that, according to a June 7, 2021 newspaper item provided by the representative, these reports were not of much use for the Office of the Prosecutor or for the National Institute of Human Rights (evidence file, fs. 7467 to 7470). In any case, this information provided by the parties does not alter the contents of the prior paragraph on the continuity of monitoring the measure ordered in the *Gelman* case, nor the determination, for the reasons given, to not order a new measure of reparation related to access to information or to archives.

268. With respect to the other requests of reparation made by the representative (*supra* para. 261), they are time-barred and therefore will not be considered because they were made in the final written arguments.

G. Compensation

269. The **Commission** requested that Uruguay be ordered to repair the violations of human rights materially and morally, including a just compensation.²⁹²

270. The **representative** made the same request as the Commission. It expressed that the “measures for a “just compensation” must take into account: (a) expenses incurred by the family members of the detained disappeared, specifically regarding the search for the victims, visits to military facilities, military courts, lawyers²⁹³ [...] and the totality of the expenses accumulated during more than 40 years;” (b) *lucro cesante* or loss of wages, which are requested to be set “in equity,” and (c) pain and suffering, which it considered obvious.

271. The representative did not specify specific monetary amounts in its claims of compensation. In its final written arguments, it asked that “the petitioners and victims be repaired, in equity, as in the case of *Gelman v. Uruguay*, taking into account the amounts granted by the State.”

272. The **State** pointed out that on August 8, 1991 “there was a judicially approved agreement with the next of kin of Luis Eduardo González González,” by which María Amelia González Picart de González and Elena Zaffaroni Rocco, “the latter in representation of her minor son, Luis Eduardo González Zaffaroni,” received USD 156,000.00 (one hundred fifty-six thousand United States dollars).

273. Uruguay also noted that Law 18,596, of September 18, 2009, known as the law of “Reparation to the victims of unlawful State acts between June 13, 1968 and February 28, 1985,” established the right to “integral reparation” for the next of kin of the victims. It informed that, under that legislation, family members of the direct victims received the monetary compensation, as follows:

²⁹² With respect to these measures, the Commission “took note that, according to information that it received from the State, the next of kin of the five [alleged direct] victims received some reparations under the terms of Law 18,596” and, although the Commission does not have the corresponding documentary evidence, it considered that “those reparations could be taken into account at the time of determining the amount of compensation” for the violations of human rights declared in the Merits Report. In the public hearing, the Commission indicated that the Court could “take into consideration the amounts that were granted domestically.” It recalled, nonetheless, what it stated during a visit to Uruguay in 2019: the monetary amounts granted as reparations “established by law for victims of unlawful acts of the State [...] are due to the quality of the victims for serious violations of human rights for which the State is responsible. These reparations are not incompatible, nor a substitute for their own income, nor subsidies nor social security pensions. Therefore, the State must adopt the necessary measures to adapt its domestic legislation to adequately permit this aspect of reparations to the victims.” The Court notes that the State presented a document that refers to Law 18,033, which establishes rights to retirement and to a pension for those who for “political reasons” could not work between February 9, 1973 and February 28, 1985. According to the report, a reason for excluding benefits under Law 18,033 is due to having “obtained amparo” by previous reparatory laws. This same document, moreover, explains that the detained disappeared persons do not qualify under the regime of Law 18,033 and that Law 18,596 purported to “fill this vacuum” (evidence file, annex VIII to the answering brief, fs. 2385 and 2387). The Court, thus, takes note of what the Commission has pointed out and of the referred-to information, but it will not rule on the matter since it notes that, with respect to the facts and victims in this case, there have been no arguments nor concrete petitions on the matter.

²⁹³ Notwithstanding that comment, the representative clarified that IELSUR and its lawyers work “pro bono on these cases.” It did not request reimbursement of its costs and expenses for representing the victims.

a.- *Next of kin of Luis Eduardo González González:*

- Luis Eduardo González (son), on December 22, 2011, received the approximate equivalent of USD 23,109.00 because he was born during his mother's deprivation of liberty.
- Raúl Oscar González, (brother) on December 20, 2011, received the equivalent of USD 28,879.00
- Daniel Edgardo González, (brother) on December 23, 2011, received the equivalent of USD 28,855.00.

b.- *Next of kin of Óscar Tassino Asteazu:*

- Karina Tassino Flores (daughter), on January 25, 2012, received the equivalent of USD 29,463.00
- Pablo Marcelo Tassino Flores (son), on January 25, 2012, received the equivalent of USD 29,463.00

c.- *Next of kin of Silvia Reyes:*

- Stella Reyes Sedarri (sister), on August 2, 2011, received the equivalent of USD 30,455.00.
- Celia Sedarri Aparicio (mother), on August 2, 2011, received the equivalent of USD 30,455.00.

d.- *Next of kin of Diana Maidanik:*

- Flora Potasnik Cogan (mother), on May 13, 2013, received the equivalent of USD 34,210.00.
- Ana Loleley Guliak Potasnik (sister), on May 13, 2013, received the equivalent of USD 34,210.00.

e.- *Next of kin of Laura Raggio:*

- Horacio Enrique Raggio Odizzio (brother), on August 8, 2013, received the equivalent of USD 30,224.00.
- Daniel Raggio Odizzio (brother), on August 8, 2013, received the equivalent of USD 30,224.00.

274. The **Court** has developed in its case law the concept of pecuniary damages and the assumptions that give rise to compensate them. The Court has established that pecuniary damages presuppose "the loss of or the detriment to the income of the victims, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the *sub judice* case."²⁹⁴ It has pointed out, moreover, that non-pecuniary damages can include "the suffering and afflictions caused to the direct victims and their relatives, detriment to values that are very significant for individuals, as well as non-monetary alterations in the conditions of existence of the victim or the victim's family."²⁹⁵

275. As to pecuniary damages, the representative did not confirm specific disbursements, related to the search for justice and/or the whereabouts of the disappeared persons, made by the next of kin of Mr. González González, Mr. Tassino

²⁹⁴ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43 and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, para. 208.

²⁹⁵ *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 the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, para. 209.

Asteazú, Ms. Maidanik, Ms. Reyes and Ms. Raggio. Nevertheless, the Court considers it reasonable to assume that such expenses do exist. The Court, however, does not have elements to determine which family members made the disbursements or, if so, the proportion in which each one of them assumed the expenses.²⁹⁶ The Court, therefore, deems it appropriate, in equity, to set a compensation for each family group of USD 15,000.00 (fifteen thousand United States dollars). This amount is to be divided equally among each of the members of each family group who, being the next of kin of the five victims, are, in turn, victims declared in this judgment. Therefore:

a) the next of kin of Diana Maidanik are due USD 7,500.00 (seven thousand five hundred United States dollars) for each of the following persons: Mónica Raquel Wodzislowski and Flora Potasnik;

b) the next of kin of Laura Raggio are due USD 5,000.00 (five thousand United States dollars) for each of the following persons: Marta Odizzio de Raggio, Horacio Enrique Raggio Odizzio and Daniel Raggio Odizzio;

c) the next of kin of Silvia Reyes are due USD 2,500.00 (two thousand five hundred United States dollars) for each of the following persons: Arturo Ricardo Reyes Gaetán, Celia Natividad Sedarri Aparicio, Estela Reyes Sedarri, Washington Barrios, Hilda María Fernández Rodríguez and Jaqueline Barrios Fernández;

d) the next of kin of Óscar Tassino Asteazu are due USD 3,750.00 (three thousand seven hundred fifty United States dollars) for each of the following persons: Disnarda Ema Flores Soler de Tassino; Karina Teresa Tassino; Javier Tassino and Álvaro Luis Tassino, and

e) the next of kin of Luis Eduardo González González are due USD 7,500.00 (seven thousand five hundred United States dollars) for each of the following persons: Amalia González de González and Elena Zaffaroni Rocco.

276. Regarding pecuniary damage, lost wages (income that was not received due to the declared human rights violations) should be indemnified. It is not appropriate to assign this item to the next of kin of the three women who suffered violent deaths because of the effective date of the Court's jurisdiction. It is, however, appropriate with respect to Mr. Tassino Asteazú and Mr. González González. The Court, in equity, taking into consideration their ages when they disappeared, establishes the following amounts of compensation: (a) for Óscar Tassino Asteazú, USD 180,000.00 (one hundred eighty thousand United States dollars); b) for Luis Eduardo González González, USD 280,000.00 (two hundred eighty thousand United States dollars).

277. Finally, there remains to be set compensation for non-pecuniary damages, which are appropriate for the next of kin of Ms. Maidanik, Ms. Reyes and Ms. Raggio. Due to the effective date of its jurisdiction, the Court has not declared violations of human rights to the detriment of those three, but it has found harm to the detriment of their next of kin (*supra* paras. 182 and 19). It is also appropriate for Mr. Tassino Asteazu, Mr. González González and their next of kin. The Court, in equity, taking into consideration the family relationship with each of those five victims, establishes the amounts of compensation for each of the victims for the concept of non-pecuniary damages, as follows:

²⁹⁶ Nonetheless, the Court considers that it is not reasonable to assume that Washington Javier Barrios Fernández, who, according to the representative, is disappeared (*supra* footnote 41), had such expenses. Therefore, it is not proper to assign to him a monetary amount for this concept.

- 1.- Óscar Tassino Asteazu: USD 100,000.00 (one hundred thousand United States dollars).
- 2.- Luis Eduardo González González: USD 100,000.00 (one hundred thousand United States dollars).
- 3.- Flora Potasnik (mother of Diana Maidanik): USD 40,000.00 (forty thousand United States dollars).
- 4.- Mónica Raquel Wodzislawki (cousin of Diana Maidanik): USD 15,000.00 (fifteen thousand United States dollars).
- 5.- Marta Odizzio de Ragio (mother of Laura Raggio): USD 40,000.00 (forty thousand United States dollars).
- 6.- Horacio Enrique Raggio Odizzio (brother of Laura Raggio): USD 25,000.00 (twenty-five thousand United States dollars).
- 7.- Daniel Raggio Odizzio (brother de Laura Raggio): USD 25,000.00 (twenty-five thousand United States dollars).
- 8.- Arturo Ricardo Reyes Gaetán (father de Silvia Reyes): USD 40,000.00 (forty thousand United States dollars).
- 9.- Celia Natividad Sedarri Aparicio (mother of Silvia Reyes): USD 40,000.00 (forty thousand United States dollars).
- 10.- Washington Javier Barrios Fernández (wife of Silvia Reyes): USD 40,000 (forty thousand United States dollars).
- 11.- Estela Reyes Sedarri (sister of Silvia Reyes): USD 25,000.00 (twenty-five thousand United States dollars).
- 12.- Washington Barrios (father-in-law of Silvia Reyes): USD 10,000.00 (ten thousand United States dollars).
- 13: Hilda María Fernández Rodríguez (mother-in-law of Silvia Reyes): USD 10,000.00 (ten thousand United States dollars).
- 14.- Jaqueline Barrios Fernández (sister-in-law of Silvia Reyes): USD 5,000 (five thousand United States dollars).
- 15.- Amalia González de González (mother of Luis Eduardo González González): USD 40,000.00 (forty thousand United States dollars).
- 16.- Elena Zaffaroni Rocco (wife of Luis Eduardo González González): USD 40,000.00 (forty thousand United States dollars).
- 17.-Disnarda Ema Flores Soler de Tassino (wife of Óscar Tassino Asteazu): USD 40,000.00 (forty thousand United States dollars).
- 18.- Karina Teresa Tassino (daughter of Óscar Tassino Asteazu): USD 40,000.00 (forty thousand United States dollars).
- 19.-Javier Tassino (brother of Óscar Tassino Asteazu): USD 25,000.00 (twenty-five thousand United States dollars).
- 20.-Álvaro Luis Tassino (brother of Óscar Tassino Asteazu): USD 25,000.00 (twenty-five thousand United States dollars).

278. The amounts that have already been distributed domestically to the victims as monetary reparation for acts declared in violation of human rights in this judgment may be discounted by the State from the amount due to each victim as compensation under the terms of this judgment. This does not apply to the monetary reparations that the State awarded to the next of kin of Ms. Maidanik, Ms. Reyes and Ms. Raggio for their deaths since that is beyond the determination of reparations of this judgment. Notwithstanding the information that the State has already provided to the Court (*supra* para. 273), to implement the discount the State must, at the stage of monitoring compliance in this case, prove the effective delivery of the amounts awarded

domestically.²⁹⁷ Moreover, in no case can the State view the domestic awarding of monetary reparations, set by domestic judicial and extrajudicial mechanisms, that might result in monetary amounts greater than those stipulated in this judgment as implying a balance in favor of the State that the beneficiaries are obligated to return,

279. The compensation (for both pecuniary and non-pecuniary damages) for Luis Eduardo González González, Óscar Tassino Asteazú, Washington Javier Barrios Fernández and those victims who died before the issuance of this judgment is to be distributed among their heirs, pursuant to the applicable domestic law.

H. Method of compliance with the payments ordered

280. The State shall make payment of the compensation ordered for the pecuniary and non-pecuniary damages, as awarded in this judgment, directly to the beneficiaries, within one year of notification of this judgment.

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

282. The State shall comply with the monetary obligations by payment in United States dollars, or its equivalent in the national currency, using the exchange rate published or calculated by a pertinent banking or financial authority, at the date closest to the payment.

283. If, for causes that can be attributed to the beneficiaries of the compensations or to their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit said amount in their favor in a bank account or certificate of deposit in a solvent Uruguayan 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.

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

285. If the State should fall in arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in the Eastern Republic of Uruguay.

IX OPERATIVE PARAGRAPHS

286. Therefore,

THE COURT

²⁹⁷ Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 4, 2012. Series C No. 250, para. 304.

DECLARES,

1. The State is responsible for violating the rights to juridical personality, to life, to personal integrity and to personal liberty, established in Articles 3, 4(1), 5(1), 5(2), and 7(1) of the American Convention on Human Rights, read in conjunction with Article 1(1) thereof, and with Articles I(a) and XI of the Inter-American Convention on Forced Disappearance, to the detriment of Óscar Tassino Asteazú and Luis Eduardo González González, in the terms of paragraphs 112 to 125 of this judgment.

2. The State is responsible for violating the rights to judicial guarantees and to judicial protection, established in Articles 8(1) and 25(1) of the American Convention on Human Rights, read in conjunction with the obligations established in Articles 1(1) and 2 thereof, and with Article I(b) and I(d) of the Inter-American Convention on Forced Disappearance, to the detriment of Luis Eduardo González González and Óscar Tassino Asteazú and their next of kin, Amalia González de González, Elena Zaffaroni Rocco, Disnarda Flores de Tassino, Karina Teresa Tassino, Javier Tassino and Álvaro Luis Tassino. To the detriment of those family members, the State also violated the right to know the truth. All the above in the terms of paragraphs 136 to 152 and 172 to 182 of this judgment.

3. The State is responsible for violating the rights to judicial guarantees and to judicial protection, established in Articles 8(1) and 25(1) of the American Convention on Human Rights, read in conjunction with the obligations established in Articles 1(1) and 2 thereof, and of Article 7(b) of the Convention of Belém do Pará, to the detriment of Mónica Raquel Wodzislawski, Flora Potasnik, Marta Odizzio de Raggio, Horacio Enrique Raggio Odizzio, Daniel Raggio Odizzio, Washington Javier Barrios Fernández, Arturo Ricardo Reyes Gaetán, Celia Natividad Sedarri Aparicio, Estela Reyes Sedarri, Washington Barrios, Hilda María Fernández Rodríguez and Jaqueline Barrios Fernández. In addition, the State violated the right to know the truth, to the detriment of those persons. All the above, in the terms of paragraphs 136 to 150 and 155 to 182 of this judgment.

4. The State is responsible for violating the right to personal integrity recognized in Article 5(1) of the American Convention on Human Rights, read in conjunction with Article 1(1) thereof, to the detriment of Flora Potasnik, Mónica Raquel Wodzislawski, Marta Odizzio de Raggio, Horacio Enrique Raggio Odizzio, Daniel Raggio Odizzio, Arturo Ricardo Reyes Gaetán, Celia Natividad Sedarri Aparicio, Estela Reyes Sedarri, Washington Javier Barrios Fernández, Washington Barrios, Hilda María Fernández Rodríguez, Jaqueline Barrios Fernández, Amalia González de González, Elena Zaffaroni Rocco, Disnarda Ema Flores Soler de Tassino, Karina Teresa Tassino, Javier Tassino and Álvaro Luis Tassino, in the terms of paragraphs 185 to 190 of this judgment.

AND ESTABLISHES THAT

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

6. The State shall continue the investigation into the events in order to identify, prosecute and, where appropriate, punish those responsible for the extrajudicial executions of Diana Maidanik, Silvia Reyes and Laura Raggio, as well as the forced disappearances of Óscar Tassinio Asteazú and Luis Eduardo González González, in the terms of paragraphs 203 to 215 of this judgment.

7. The State shall continue the effective search and the implementation of actions that would lead to the immediate location of Luis Eduardo González González and Óscar Tassinio Asteazú, or of their mortal remains, in the terms of paragraph 220 of this judgment.

8. The State shall provide psychological or psychiatric treatment to the victims, in the terms of paragraphs 226 to 229 of this judgment.

9. The State shall issue the publications ordered in paragraph 233 of this judgment.

10. The State shall hold a public act of recognition of international responsibility in relation to the events of this case, in the terms of paragraph 236 of this judgment.

11. The State shall adopt the pertinent actions to strengthen the capabilities of the Office of the Special Prosecutor for Crimes against Humanity, in the terms of paragraphs 254 and 255 of this judgment.

12. The State shall adopt permanent programs of human rights training and sensibilization for the members of the Armed Forces, in the terms of paragraph 258 of this judgment.

13. The State shall pay the amounts fixed in paragraphs 275 to 277 of this judgment as reparations for pecuniary and non-pecuniary damages, in the terms of paragraphs 278 to 285 of this judgment.

14. The State shall, within one year of the notification of this judgment, present the Court with a report on the measures adopted to comply with the judgment, notwithstanding the terms found in paragraph 233 of this judgment.

15. The Court will monitor the full compliance of this judgment, in the 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 November 15, 2021.

I/A Court H.R. *Case of Maidanik et al. v. Uruguay. Merits and Reparations*. Judgment of November 15, 2021. Judgment adopted at San José, Costa Rica at a virtual meeting.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Pablo Saavedra Alessandri
Registrar

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Registrar