

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF HABBAL ET AL. V. ARGENTINA

JUDGMENT OF AUGUST 31, 2022
(Preliminary objections and merits)

In the case of *Habbal et al. v. Argentina*,

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

Ricardo C. Pérez Manrique, President
Humberto Antonio Sierra Porto, Vice President
Eduardo Ferrer Mac-Gregor Poisot
Nancy Hernández López
Patricia Pérez Goldberg
Rodrigo de Bittencourt Mudrovitsch

also present,

Pablo Saavedra Alessandri, Registrar,**

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

* Judge Verónica Gómez, a citizen of Argentina, did not take part in the deliberation and signing of this judgment, pursuant to Articles 19(2) of the Statute and 19(1) of the Rules of Procedure of the Court.

** The Deputy Registrar, Romina I. Sijniensky, did not take part in the deliberation and signing of this judgment.

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I
INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* On February 3, 2021, 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 “Raghda Habbal and children [v.] the Republic of Argentina” (hereinafter, “the State” or “Argentina”). As the Commission itself explained, the case concerned the arbitrary deprivation of Argentine nationality of Ms. Raghda Habbal, acquired by naturalization, and the revocation of the permanent residence of her three daughters, as well as violations of judicial guarantees that occurred within the framework of the two sets of proceedings involved. The Commission adjudged that the immigration authorities had failed to consider Ms. Habbal’s status as a national and as a citizen, and the possibility of her being rendered stateless by depriving her of Argentine citizenship. The Commission also argued that the immigration proceedings, which culminated in an expulsion order against Ms. Habbal and her daughters, as well as a preventive detention order, had been carried out in violation of the guarantees of due process and the principle of non-detention of children for immigration-related purposes, and had failed to consider the impact that the expulsion would have on the rights of Ms. Habbal’s son and daughters. The Commission concluded that the State was responsible for the violation of the rights to judicial guarantees, the principle of presumption of innocence, personal liberty, the principle of legality, the rights of the child, nationality, freedom of movement and residence, and judicial protection, established in Articles 8(1), 8(2)(b), (c), (d) and (h), 7, 9, 19, 20, 22(1), 22(5), 22(6) and 25(1) of the American Convention, read in conjunction with Article 1(1) thereof.

2. *Proceedings before the Commission.* The proceedings before the Commission were as follows:

- a) *Petition.* On May 24, 1996, the representatives of the alleged victims (hereinafter also “the representatives”), filed the initial petition with the Commission.
- b) *Admissibility Report.* On July 15, 2008, the Commission approved Admissibility Report No. 64/08, in which it informed the parties that the petition was admissible and made itself available for the purpose of finding an amicable solution.
- c) *Report on the Merits.* On September 28, 2019, the Commission approved Merits Report No. 140/19 (hereinafter “the Merits Report”), in which it reached a number of conclusions and made several recommendations to the State.
- d) *Notification to the State.* The Commission sent the State a communication on December 3, 2019, regarding the Merits Report. It granted the State a period of two months to inform the Commission that it had complied with its recommendations. After being granted four extensions, the State provided details of the actions it had taken to comply with the Commission’s recommendations and asked the Commission not to submit the case to the Court in view of the steps that had been taken.

3. *Submission to the Court.* On February 3, 2021, the Commission submitted to the Court all the facts and human rights violations involved in the case.¹ It did so, as it noted, because

¹ The Commission appointed Commissioner Julissa Mantilla Falcón as its delegate before the Court. It also designated the then-Assistant Executive Secretary Marisol Blanchard, Jorge Humberto Meza Flores and Paula Rangel Garzón, as legal advisors.

of the need to obtain justice and reparation for the alleged victims. This Court notes with concern that more than 24 years elapsed between the presentation of the initial petition before the Commission, and the submission of the case to the Court, especially since this case includes allegations related to the possible situation of statelessness of one of the alleged victims.

4. *Requests of the Commission.* The Commission asked this Court to find and declare Argentina to be internationally responsible for the violations contained in the Merits Report, and to order the State to carry out the reparation measures requested.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representatives of the alleged victims.* On June 14, 2021, the representatives and the State were notified of the fact that the case had been submitted.

6. *Brief with pleadings, motions and evidence.* On August 12, 2021, the representatives submitted to the Court their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”), pursuant to Articles 25 and 40 of the Rules of Procedure.² While the representatives were in substantial agreement with the arguments of the Commission, they also offered others relating to the merits of the case. They specifically alleged that the State had violated Article 24 of the American Convention. They also asked that Argentina be ordered to adopt various other reparation measures in addition to those requested by the Commission.

7. *Preliminary objections and answering brief.* On November 1, 2021, the State presented its preliminary objections brief and its response to the submission of the case and the Merits Report, and the pleadings and motions brief (hereinafter “answering brief”), pursuant to Article 41 of the Court’s Rules of Procedure.³

8. *Briefs with observations on preliminary objections.* On December 26, 2021, and January 5, 2022, the representatives and the Inter-American Commission presented their respective observations on the preliminary objections.

9. *Call to a hearing.* On February 22, 2022, the President of the Court issued an order in which he summoned the parties and the Commission to a public hearing on the preliminary objections and possible merits, reparations and costs, and to hear the final oral arguments and observations of the parties and the Commission, respectively.⁴ Due to the exceptional circumstances created by the COVID-19 pandemic, the public hearing was held via

² Carlos Varela Álvarez and Ignacio A. Boulin acted as the alleged victims’ representatives.

³ The State appointed Javier A. Salgado, María Julia Loreto, Andrea Pochak, Gabriela Kletzel, and Rodrigo Robles Tristán as agents in the case.

⁴ *Cf. Case of Habbal et al. v. Argentina.* Call to hearing. Order of the President of the Inter-American Court of Human Rights of February 22, 2022. Available at: https://www.corteidh.or.cr/docs/asuntos/habbal_22_02_22.pdf. On March 18, 2022, following a request for reconsideration filed by the State, the full Court decided to modify the object of the expert testimony of Mr. Juan Ignacio Mondelli, proposed by the Inter-American Commission. *Cf. Case of Habbal et al. v. Argentina.* Order of the Inter-American Court of Human Rights of March 18, 2022. Available at: https://www.corteidh.or.cr/docs/asuntos/habbal_y_otros_18_03_22.pdf.

videoconference, pursuant to the Court's Rules of Procedure, on April 1, 2022, during the 147th regular session of the Court.⁵

10. *Amicus curiae*. The Court received a brief from the Semillero de Litigación ante Sistemas Internacionales de Protección de Derechos Humanos (SELIDH) of the Law and Political Sciences Faculty of the University of Antioquía.⁶

11. *Final written arguments and observations*. On April 30, 2022, the representatives presented their final written arguments. On May 2, 2022, the State and the Commission presented their final written arguments and observations, respectively.

12. *Deliberation of the case*. The Court deliberated on this Judgment in a virtual session on August 31, 2022.

III JURISDICTION

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

IV PRELIMINARY OBJECTIONS

14. The State filed two preliminary objections: a) an objection on the grounds that the alleged victims had not taken part in the proceedings, and b) an objection due to the abstract, hypothetical-conjectural and/or groundless nature of the alleged rights violations. Noting the characteristics of the State's arguments, the Court will analyze them together.

A. Arguments of the State and observations of the Commission and the representatives

A.1. The alleged victims did not take part in the proceedings and the representatives had no powers of representation

15. The **State** asserted that there was no document demonstrating the participation of the alleged victims in the proceedings before the Court, or that they had granted their attorneys powers to represent them. It said the representatives were not, in fact, in contact with the alleged victims. Hence, there was no evidence that Ms. Habbal's son and daughters wished to continue with the proceedings, nor was any information provided about the state of their lives.

⁵ The following people took part in the hearing: a) for the Inter-American Commission: Julissa Mantilla Falcón, Marisol Blanchard, Jorge Meza Flores and Paula Rangel; b) for the representatives: Carlos Varela Álvarez and Ignacio Boulín; and c) for the State: Javier A. Salgado, Andrea Pochak, Gabriela Kletzel, María Julia Loreto, and Rodrigo Robles Tristán.

⁶ The document, signed by Juliana Betancur Vásquez, Alejandro Gómez Restrepo, Yeni Fernanda García Palacio, Daniela Estefanía Cadavid Deossa, Jorge Andrés Pinzón Cabezas, Sebastián Alarcón Ruiz, Gabriel Jaime Roldán Peña and Juan Camilo Carrascal Bula, deals with points of law regarding the indirect and covert discrimination to which, they argue, the alleged victims were subjected, and presents a legal analysis of the different human rights violations alleged in this case.

It therefore argued that the Court should refrain from ruling on any of the alleged violations of the alleged victims' rights. It added that as there was no information about Ms. Habbal's son and daughters, they should not be regarded as alleged victims in the case. It also pointed out that since Ms. Habbal's son and daughters were not named in the power of attorney granted to her representatives 26 years ago, the fact that the representatives claimed to be acting on their behalf was insufficient to prove that they had powers of representation. The State also affirmed that there was no information to suggest that Ms. Habbal had taken part in the proceedings, nor that she genuinely wished that the international application to be made.

16. The **Commission** contended that the State's arguments were limited to a discussion of the representation of the alleged victims, which is a requirement for a case to be brought before the Court, but not an issue that affects its jurisdiction. Therefore, it was not a preliminary objection. Furthermore, with regard to representation and the alleged victims' wish that the case continue, the Commission noted that the Court itself had established that the fact that an alleged victim had legal representation, but had not been found, might affect the determination of reparations, but not the processing or hearing of the case. The Commission argued that in the case in question the alleged victims had a representative, as demonstrated by the powers of attorney to be found in the file, which showed that they wished to be represented. It also argued that accepting the State's reasoning would mean that powers that were still valid would need to be ratified, which could disproportionately affect some of the victims before the Inter-American System, or those who had faced serious violations such as forced disappearance or extrajudicial executions. Therefore, the Commission asked the Court to reject the State's preliminary objection.

17. The **representatives** maintained that their representation was covered by the special power of attorney granted by Ms. Habbal at the time, which had been submitted to the Court. They also argued that Mr. Varela had acted before the Commission throughout the proceedings on the basis of the power of attorney, which was still in effect. Therefore, they held that the proceedings should continue, even in the alleged victims' absence, since proceedings in absentia were prohibited only with respect to the accused, not the victim. They argued that in a number of judgments the Court had found in favor of absentees in order to safeguard the alleged victims' right to the truth and to obtain reparation. The representatives also contended that, although there was no documentation showing they had been granted powers to represent Ms. Habbal's son and daughters, they should be heard in order to protect the right to effective judicial protection, as a position that is more in keeping with access to justice and the *pro-homine* principle. Furthermore, the representatives suggested that, in accordance with the principle of estoppel, the State's position should be rejected because it was not presented at the correct point in the proceedings.

A.2. Abstract, hypothetical-conjectural and/or groundless nature of the alleged rights violations

18. The **State** argued that the actions of the immigration authorities did not have, nor were they having, any effect on the freedom of movement and residence and other rights of Ms. Habbal and her son and daughters, so there was no case or dispute that warranted the Court's intervention. That was the case, the State maintained, because neither the Merits Report nor the ESAP had identified, much less demonstrated, specific harm had been done due to the acts, facts or rules challenged, making the present matter conjectural. Therefore, it argued, there was no injury, damage or interest for which a ruling of the Court could order redress or compensation. Furthermore, the State argued that the recommendations of the

Merits Report had been implemented effectively, and that any possible inter-American public interest was not, in itself, sufficient reason for the matter to be heard. The State further contended that subjecting the State to the Court's jurisdiction, despite the fact that it had complied fully with the Commission's recommendations, went against the logic of the Inter-American System. Consequently, it asked the Court to take its observations into account when assessing the admissibility and merits of the case. The State also argued that, in keeping with the principle of complementarity, another reason that the State was not responsible was because Resolution 1088 had been revoked.

19. The **Commission** affirmed that the decision to submit a case to the Court was within the scope of its autonomy, and that the State's argument was not a preliminary objection. It further argued that cases were referred in strict compliance with Article 35 of the Court's Rules of Procedure, and Article 45 of the Commission's Rules of Procedure. It also said that, as stated in its note of referral, the case had been submitted to the Court due to the need to obtain justice and comprehensive reparation for the victims, as well as the public order issues involved. Furthermore, contrary to what the State had asserted, the Commission held that the recommendations made in the Merits Report had not been complied with in full, the State's efforts notwithstanding. The Commission also argued that, in order for the State not be held legally responsible based on the principle of complementarity, the State would have to recognize the international violation, and a ruling be issued on whether the violation had ceased, and reparation had been made. Neither applied in the instant case. The Commission therefore asked the Court to reject the State's arguments.

20. The **representatives** did not present arguments with regard to this matter.

B. Considerations of the Court

21. The Court recalls that, in accordance with its case law, it will only consider as preliminary objections those arguments that have, or that might have exclusively those characteristics, in terms of their content and purpose; that is, if favorably resolved, they would prevent the continuation of the proceedings or a ruling on the merits.⁷ The Court has consistently held that through a preliminary objection, matters are raised concerning the admissibility of a case or the Court's jurisdiction to hear a specific case or of one of its aspects, owing to the person, matter, time or place.⁸ Accordingly, regardless of whether the State defines an approach as a "preliminary objection," if these arguments cannot be considered without previously analyzing the merits of a case, they cannot be examined by means of a preliminary objection.⁹

22. In relation to this case, the Court notes that the State's arguments raised as preliminary objections question the following: a) the alleged victims' participation in the case, and whether they are correctly represented; and b) whether the effects of the alleged violations of the alleged victims' human rights warrant analysis by this Court. The Court holds that the arguments raised by the State refer to compliance with the formal requirements for

⁷ Cf. *Case of Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 35; and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of July 8, 2020. Series C No. 406, para. 32.

⁸ Cf. *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, para. 32, and *Case of Petro Urrego v. Colombia, supra*, para. 32.

⁹ Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 39; and *Case of Petro Urrego v. Colombia, supra*, para. 32.

submitting the case to the Court pursuant to Article 35 of the Court's Rules of Procedure; to the requirements that must be met regarding the accreditation of the alleged victims' representatives; and to the existence of human rights violations as a result of the State's acts or omissions. Since these are matters that do not affect the Court's jurisdiction to hear this case, the Court holds that the preliminary objections presented by the State are inadmissible.

23. However, the Court deems it pertinent to point out, with respect to the State's first preliminary objection (*supra* para. 15), that Article 35(1) of the Court's Rules of Procedure establishes that, for a case to be examined by the Court, the alleged victims must be identified in the report referred to in Article 50 of the Convention. The Court notes that, in its Merits Report, the Commission clearly identified the alleged victims in this case, namely: Raghda Habbal, Monnawar Al Kassar, Hifaa Al Kassar, Natasha Al Kassar, and Mohammed René Al Kassar. The Court also recalls that its Rules of Procedure do not require compliance with any other formalities for submitting a case related to the identification of the alleged victims.

24. The State also alleges that the representatives are not authorized to speak on behalf of the alleged victims. In this regard, the Court notes that, on February 24, 1993, Ms. Habbal, through Mr. S.F.G.C., granted attorneys Carlos Varela Álvarez, Diego Jorge Lavado and Alejandro Omar Venier the power to represent her "in the territory of the Argentine Republic in any act, procedure, case or administrative proceedings before any state, provincial or municipal authority, and general power of attorney to represent her in proceedings and lawsuits in any judicial proceedings of any kind and before any court, including international courts or bodies outside the territory of the Argentine Republic."¹⁰ The Court observes that that Ms. Habbal granted this power of attorney when she had parental authority over her son and daughters, who appear as alleged victims in the case, and the alleged victims have not revoked that power. The Court also notes that the attorneys mentioned represented the alleged victims in the proceedings before the Inter-American Commission based on this power of attorney. Therefore, the Court holds that the power of representation is in effect and is sufficient to authorize Carlos Varela Álvarez to represent the alleged victims before this Court, especially since representation before international courts or bodies is mentioned.

25. In relation to the State's second preliminary objection (*supra* para. 18), the Court notes that the key issue in the instant case entails determining whether the State failed to fulfil its duty to respect the rights to nationality, movement and residence, the rights of the child, equality before the law, judicial guarantees and judicial protection in the immigration proceedings that resulted in a decision to expel the alleged victims and revoke Ms. Habbal's citizenship. The Court is being asked to rule on these issues, which are obviously at the heart of the dispute in this case, and to determine whether the State's actions violated the rights of the alleged victims, or whether their effects have ceased, and reparation has been made by the State's subsequent actions. In its objection, the State does not dispute the Court's jurisdiction to hear this case, but rather questions the need to establish the State's international responsibility in the specific case and, if appropriate, the corresponding reparations.

¹⁰ Cf. Power of attorney granted to Carlos Varela Álvarez, Diego Jorge Lavado and Alejandro Omar Venier on February 24, 1993 (evidence file, folios 65 to 68), and power of attorney granted to S.F.G.C. on September 18, 1991 (evidence file, folio 60).

V EVIDENCE

A. Admissibility of documentary evidence

26. The Court received a number of documents submitted as evidence by the Commission, the representatives and the State (*supra* paras. 1, 6 and 7). As in other cases, the Court admits the documents in question because they were presented at the appropriate procedural moment (Article 57 of the Rules of Procedure),¹¹ and their admissibility was neither contested nor opposed.

B. Admissibility of testimonial and expert evidence

27. This Court deems it appropriate to admit the statements rendered during the public hearing¹² and by affidavit,¹³ insofar as they are in keeping with the purpose defined by the President and the Court in the orders requiring that they be submitted in this case.¹⁴

VI FACTS

28. Based on the arguments submitted by the parties and the Commission, the relevant facts of this case will be set forth in the following order: a) Ms. Raghda Habbal and her son and daughters, and the obtaining of a certificate of Argentine citizenship; b) the revocation of Ms. Habbal's citizenship and her daughters' permanent residence; c) the dismissal of the criminal case against Ms. Habbal and the conviction of Mr. Al Kassar; d) the revocation of Resolution 1088 on June 1, 2020; and e) the relevant regulatory framework applicable at the time of the events.

A. Ms. Raghda Habbal and her son and daughters, and the obtaining of a certificate of Argentine citizenship

29. Ms. Raghda Habbal was born in 1964 in Damascus, Syria.¹⁵ On June 21, 1990, she traveled from Spain to Argentina with her three daughters Monnawar Al Kassar, Hifaa Al Kassar, and Natasha Al Kassar.¹⁶ On December 23, 1991, Mohamed René Al Kassar was born in Argentina, the son of Ms. Habbal and her spouse, Monzer Al Kassar.¹⁷

¹¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Guevara Díaz v. Costa Rica. Merits, reparations and costs*. Judgment of June 22, 2022. Series C No. 453, para. 24.

¹² Expert testimony of Juan Ignacio Mondelli rendered at the public hearing in this case. In response to a request from the Court at the public hearing, on April 28, 2022, the expert submitted a written version of his testimony, which has since been incorporated into the evidence file of the case.

¹³ Expert testimony of Ignacio Odriozola rendered before a notary public on March 18, 2022 (evidence file, folio 2368 to 2449). The Court notes that the representatives withdrew the expert testimony of Emilio García Méndez.

¹⁴ Cf. *Case of Habbal et al. v. Argentina. Call to hearing*. Order of the President of the Inter-American Court of Human Rights of February 22, 2022, and *Case of Habbal et al. v. Argentina*. Order of the Inter-American Court of Human Rights of March 18, 2022.

¹⁵ Cf. National identity document of Raghda Habbal (evidence file, folio 6).

¹⁶ Cf. Document signed by the State's Secretary of Intelligence (evidence file, folio 1422).

¹⁷ Cf. Civil Registry document attesting to the birth of Mohamed René Al Kassar (evidence file, folio 13).

30. On June 21, 1990, Mr. Al Kassar, as the spouse of Ms. Habbal, applied to the National Population and Immigration Department of Argentina (hereinafter also "the National Population and Immigration Department") for permanent residence for his wife and daughters in Argentina. In his application, Mr. Al Kassar stated that he was in the country legally and had been granted permanent residence.¹⁸ On July 4, 1990, by means of Resolution No. 241 547/90, the National Population and Immigration Department granted Ms. Habbal and her daughters permanent residence in Argentina. The granting of residence allows the person concerned to live in and enter and leave the country, undertake paid work, and rent or purchase accommodation.¹⁹

31. On December 31, 1991, Ms. Habbal applied for a naturalization certificate from the Judicial Branch of Argentina. On March 24, 1992, she presented an additional document in support of her application in which she stated that, although she was three months away from completing the required two years as a resident that would permit her to apply for citizenship, she wished to opt instead for naturalization under the terms of Article 3, subsection c, of the enabling regulations of Law 23,059.²⁰ She had qualified "by acquiring a lot owned jointly with my husband in the province of Mendoza, worth one million two hundred thousand US dollars, in order to set up a business specializing in balanced products for fattening cattle".²¹ She also informed the authorities that she had purchased a property in the federal capital that cost one hundred twenty-five thousand US dollars, and attached copies of the documentation related to both purchases.²²

32. On April 4, 1992, the Federal Judge of Mendoza approved Ms. Habbal's application for citizenship. His decision reads as follows: "grant Raghda [Habbal] [...] Argentine citizenship by naturalization. In due course, and after she has renounced the citizenship of her country of origin, the applicant shall be issued with the respective identity document within the period established by law, pursuant to Art. 37 of Law 17,671."²³ The document certifying the notification of the judge's decision reads as follows: "Ms. Raghda Habbal, having been notified of the above decision and having renounced her nationality of origin and all dependence on foreign powers and sovereignties, hereby swears [...] an oath of allegiance to the institutions of the Republic [...]"²⁴ Based on this decision, that same day Ms. Habbal received her

¹⁸ Cf. Communication from Monzer Al Kassar addressed to the Director of the National Immigration Department of June 21, 1990 (evidence file, folio 8).

¹⁹ Cf. Certificate granting Ms. Raghda Habbal permanent resident status, issued by the National Immigration Department of Argentina's Ministry of the Interior (evidence file, folios 10 and 11), and Decision DI-2020-2347-APN-DNM#MI of June 1, 2020 revoking Resolution No. 1088 (evidence file, folio 1579).

²⁰ Art. 3. The foreigners mentioned in Article 2, paragraph 1 of Law No. 346, when requesting naturalization, shall meet the following conditions: [...] c) express before federal judges their wish to be naturalized. Foreigners who meet the following criteria may also obtain naturalization regardless of how long they have been residents: [...] c) [they] have established a new business in the country, introduced a useful invention, or carried out any other action that constitutes a moral or material advance for the Republic.

²¹ Cf. Letter from Ms. Raghda Habbal addressed to the Federal Judge, presented on March 24, 1992 (evidence file, folio 17).

²² Cf. Letter from Ms. Raghda Habbal addressed to the Federal Judge, presented on March 24, 1992 (evidence file, folio 17).

²³ Cf. Decision of the Federal Judge of Mendoza of April 3, 1992 (evidence file, folio 21).

²⁴ Cf. Final notes of file 6321/2 of April 3, 1992 (evidence file, folio 2027).

certificate of citizenship, which states that she swore an oath of allegiance and renounced her nationality of origin.²⁵

B. Revocation of the permanent residence of Ms. Habbal and her daughters, and of Ms. Habbal's citizenship

33. On May 11, 1992, the Director of the National Population and Immigration Department issued Resolution No. 1088, in which he declared the permanent residence of Ms. Habbal and her daughters "null and void". Based on this decision, he also declared her presence within Argentine territory unlawful, and ordered her preventive detention and that she be expelled and returned to her country of origin or previous residence. In the considering paragraphs of the document, it was stated that, through Resolution No. 972/92, the permanent residence of Mr. Al Kassar had been revoked, and, consequently, the permanent residence granted to Ms. Habbal and her daughters was also null and void, and their presence in Argentine territory was unlawful.²⁶ On May 12, 1992, the Director of the National Immigration Department informed Federal Judge No. 2 of Mendoza of the content of Resolution 1088.²⁷ The detention and expulsion orders were not executed, but remained in force until June 1, 2020, the date on which they were revoked (*infra*, para. 45).

34. On May 18, 1992, Federal Judge No. 2 of Mendoza disqualified himself from hearing the case, "taking into account the facts and news that are in the public domain, and given their seriousness."²⁸ The facts and news in question were related to the information disseminated in different media about alleged crimes committed by Monzer Al Kassar, involving drug and arms trafficking, and terrorism.²⁹ On May 21, 1992, the Acting Federal Judge accepted his colleague's self-disqualification and ordered that the case be heard.³⁰ On May 29, 1992, the Federal Prosecutor asked the Federal Judge to revoke Ms. Habbal's citizenship, since the permanent residence previously granted to her, which was an essential requirement to obtain Argentine nationality, had been declared null and void.³¹

35. On June 11, 1992, the Acting Federal Judge ordered that Ms. Habbal be served with official notice of the action for revocation of her Argentine citizenship at the address she had given when applying for Argentine nationality. He also ordered that, if she was not at home,

²⁵ Cf. Argentine Certificate of Citizenship No. 932 in the name of Ms. Raghda Habbal, dated April 3, 1992 (evidence file, folio 23).

²⁶ Cf. Decision No. 1088, of May 11, 1992, issued by the Director of the National Population and Immigration Department (evidence file, folios 444 and 445); Decision No. 972, of April 28, 1992, issued by the Director of the National Population and Immigration Department (evidence file, folio 1615); Opinions of the Legal Affairs Office of the National Population and Immigration Department No. 143,949 of April 22, 1992, and No. 144,021 of May 8, 1992 (evidence file, folios 1625 and 1750).

²⁷ Cf. Official communication from the Director of the National Population and Immigration Department to Federal Judge No. 2 of Mendoza, dated May 12, 1992 (evidence file, folio 25).

²⁸ Cf. Decision of the head of Federal Court No. 2 of the city of Mendoza, dated May 18, 1992 (evidence file, folio 29).

²⁹ See, for example, Diario El País, Carlos Ares, "Menem strips alleged drug trafficker and terrorist Al Kassar of his Argentine citizenship," May 8, 1992. Available at: https://elpais.com/diario/1992/05/09/international/705362420_850215.html

³⁰ Cf. Decision of the Acting Federal Judge, dated May 21, 1992 (evidence file, folio 31).

³¹ Cf. Official communication submitted by the Federal Public Prosecutor addressed to the Federal Court, dated May 29, 1992 (evidence file, folio 33).

the action for revocation was to be published in the press.³² On June 18, 1992, the judge received an official document from the Federal Notifying Officer in which the latter stated that: "I am returning the enclosed identity card because I was unable to deliver it. Having visited the address I was given [...] [I was informed] that Ms. Raghda Habbal does not live there, but no other information was forthcoming."³³ The next day, the Acting Federal Judge ordered that Ms. Habbal be notified by publication.³⁴ On July 2, 1992, the Acting Federal Judge directed that the legal notice be published in the Official Gazette, and this was done.³⁵

36. On September 14, 1992, the Acting Federal Judge informed the public defender of developments, as Ms. Habbal had failed to contact the court following notification by publication.³⁶ The public defender asked the Acting Federal Judge to make the resolution of Ms. Habbal's case conditional on what was decided in the case against Mr. Al Kassar.³⁷ The Acting Federal Judge decided to reject the public defender's request, because Ms. Habbal's had applied for citizenship personally and voluntarily.³⁸ The public defender later argued that the fact Mr. Al Kassar allegedly acted in bad faith in applying for residence did not necessarily mean that the same was true of his wife. He also stated that the question of whether false statements had been made in public documents had to be proven and noted that Resolution 1088 had been issued without Ms. Habbal's involvement in the proceedings.³⁹

37. On November 6, 1992, the Acting Federal Judge asked Federal Court No. 1 of Mendoza to inform him, as a "matter of extreme urgency," whether a decision had been rendered in the criminal proceedings against Mr. Al Kassar regarding the following: "a) Police Certificate No. 260 issued by the Mendoza Police, Sec. Villa Nueva, Guaymallén on 01/17/1992 [...]; and b) the option contract for the purchase of a rural property signed before the Notary Public [...], in the city of Montevideo, Oriental Republic of Uruguay, dated 01/17/92 [...]."⁴⁰ In response to this request, Federal Judge No. 1 of Mendoza replied that he had not rendered a decision on the matters in question.⁴¹

38. On October 27, 1994, the Acting Federal Judge delivered a judgment in the case of "Habbal Raghda for review and/or revocation or annulment of citizenship," declaring invalid the act by which Ms. Habbal was granted citizenship and canceling her national identity card and any other identity document she might have been granted as an Argentine citizen. In the considering paragraphs, the judgment stated that Article 15 of Decree 3213/84 provided for the revocation of citizenship if it had been obtained fraudulently. It was also pointed out in the document that the case law on the subject recognized that citizenship could be revoked if it was proven that the person who obtained it did not meet the basic conditions established

³² Cf. Decision of the Acting Federal Judge, dated June 11, 1992 (evidence file, folios 34 to 36).

³³ Cf. Note from the Federal Notifying Officer to the Judge, dated June 18, 1992 (evidence file, folio 38).

³⁴ Cf. Decision of the Federal Judge, dated June 19, 1992 (evidence file, folio 40).

³⁵ Cf. Decision of the Federal Judge, dated July 3, 1992, and proof of publication of the notification in the Official Gazette (evidence file, folios 42 to 45 and 1437 to 1446).

³⁶ Cf. Judicial decision of the Federal Judge, dated September 14, 1992 (evidence file, folio 49).

³⁷ Cf. Note from the Public Defender, dated September 14, 1992 (evidence file, folio 49).

³⁸ Cf. Decision of the Federal Judge, dated September 28, 1992 (evidence file, folio 51).

³⁹ Cf. Note from the Public Defender, dated October 20, 1992 (evidence file, folio 54).

⁴⁰ Cf. Decision of Federal Judge No. 2 of Mendoza, dated November 6, 1992 (evidence file, folio 56).

⁴¹ Cf. Decision of the Federal Judge, dated November 24, 1992 (evidence file, folio 58).

by the Constitution. In this specific case, it was noted that "a series of situations are evident indicating that Argentine citizenship was obtained by fraudulent means because there was no legal way of obtaining it."⁴²

39. On November 2, 1994, Ms. Habbal's attorneys filed an appeal for annulment.⁴³ The State Prosecutor asked for the appeal be rejected.⁴⁴ On June 20, 1995, the Mendoza Court of Appeals rejected the appeal filed against the decision of the Acting Federal Judge.⁴⁵ In the considering paragraphs of its decision, the Court of Appeals found that there were insufficient grounds to annul the judgment, as the matters in question were not significant enough to affect the right to a defense or invalidate the judgment. The Court of Appeals also maintained that any shortcomings that Resolution 1088/92 might have did not apply to the proceedings as such, since the lower court's decision to revoke Ms. Habbal's citizenship was not based on them.⁴⁶

40. Ms. Habbal's attorneys filed an extraordinary appeal for judicial review with the Federal Court of Appeals.⁴⁷ The Court Prosecutor was of the opinion that the appropriate course of action would be to "accept and allow the appeal," as the person involved had not been notified, there had been no ruling on preliminary matters, and it was a matter of public interest.⁴⁸ On October 18, 1995, the Federal Court of Appeals of the Province of Mendoza rejected the extraordinary appeal filed by Ms. Habbal's attorneys. It held that there was no evidence of the existence of a "federal case," although the formal requirements of the appeal had been met.⁴⁹ On November 3, 1995, Ms. Habbal's attorneys filed a remedy of complaint with the Supreme Court of Justice.⁵⁰ On February 27, 1996, the Supreme Court of Justice ruled that the extraordinary appeal was inadmissible.⁵¹

41. Ms. Raghda Habbal traveled to Argentina on a number of occasions in the years 1994, 1995 and 1996. In Argentina's National Register of Arrivals and Departures, Ms. Habbal's

⁴² Cf. Lower court judgment delivered by Federal Judge No. 2 of Mendoza, dated October 27, 1994 (evidence file, folios 76 to 80).

⁴³ Cf. Note submitted by Carlos Varela Álvarez on November 2, 1994 (evidence file, folio 82), and the arguments put forward in the appeal for annulment by attorneys Carlos Varela Álvarez and Diego Lavado dated February 1995 (evidence file, evidence, folio 84).

⁴⁴ Cf. Opposing arguments of the State Prosecutor (evidence file, folio 2169).

⁴⁵ Cf. Judgment of Division 8 of the Federal Court of Appeals of Mendoza, dated June 30, 1995 (Evidence file, folio 104).

⁴⁶ Cf. Judgment of Division 8 of the Federal Court of Appeals of Mendoza, dated June 30, 1995 (evidence file, folios 104 to 112).

⁴⁷ Cf. Extraordinary appeal, dated August 7, 1995 (evidence file, folio 2200).

⁴⁸ Cf. Opposing arguments presented by the State Prosecutor (evidence file, folio 1406).

⁴⁹ Cf. Judgment of the Federal Court of Appeals, dated October 18, 1995 (evidence file, folio 2232).

⁵⁰ Cf. Remedy of complaint filed with the Supreme Court of Justice on November 3, 1995 (evidence file, folio 114).

⁵¹ Cf. Decision of the Supreme Court of Justice, dated February 27, 1996 (evidence file, folio 126).

nationality was recorded as Syrian, Spanish and Argentine.⁵² On March 10, 1987, Ms. Habbal had entered Argentina as a Brazilian citizen with a passport issued in Rio de Janeiro.⁵³

C. Dismissal of the criminal charges against Ms. Habbal and conviction of Mr. Al Kassar

42. In addition to the proceedings that led to the loss of nationality, criminal charges were brought simultaneously against Mr. Al Kassar and Ms. Habbal for acts related to the documentation presented to obtain residence and citizenship.⁵⁴ In the proceedings against Ms. Habbal, the court decided to "order the preventive detention of Raghda Habbal [...], as the perpetrator, based on prima facie evidence, of the crime of making false statements in relation to three public documents (Police Certificate of Residence, Option Contract for the Purchase of a Property, and Certificate of Citizenship) [...]."⁵⁵ In response to the decision, on November 17, 1995, Federal Court No. 1 of Mendoza decided to annul the preventive detention order issued with respect to Ms. Habbal.⁵⁶

43. On April 14, 1997, the Criminal Court Judge ruled on the charge brought against Ms. Habbal concerning "her role in the issuing of Police Certificate of Residence No. 260 at Mendoza Police station on January 17, 1992, and the option contract for the purchase of a property."⁵⁷ Regarding these acts, the Criminal Court Judge found that "the accused's inability to speak the language is, clearly in this case, an insurmountable barrier to any type of accusation against her." Specifically, he found that Mr. Al Kassar, rather than Ms. Habbal, was responsible for the purchase agreement involving a property in the province of Mendoza. Therefore, the Criminal Court Judge found that Ms. Habbal was not responsible for the matters investigated, nor was there any evidence against her. As a result, the case against Ms. Habbal was dismissed.⁵⁸

44. On September 9, 2009, Federal Court No. 1 of Mendoza found Mr. Al Kassar guilty of the crime of fraudulently obtaining his certificate of permanent residence and, in collusion with others, of fraudulently obtaining his certificate of citizenship by "making false statements on several occasions at the administrative and judicial offices" in order to do so.⁵⁹ On May 18, 2010, Division II of the National Federal Criminal and Correctional Appeals Court confirmed the sentence against Mr. Al Kassar, and modified the legal classification to that of "necessary participant in the crime of making false statements in documents related to residence and

⁵² Cf. Immigration Information Office, arrival/departure records of Raghda Habbal from August 20, 1994 to March 17, 1996 (evidence file, folio 1047).

⁵³ Cf. Immigration Information Office, arrival/departure record of Raghda Habbal for March 10, 1987 (evidence file, folio 1059).

⁵⁴ Cf. Decision of April 14, 1997 (evidence file, folio 128), and brief with pleadings, motions and evidence (merits file, folio 156).

⁵⁵ Cf. Decision of November 17, 1995, of Federal Court No. 1 of Mendoza (evidence file, folio 2300).

⁵⁶ Cf. Decision of November 17, 1995, of Federal Court No. 1 of Mendoza (evidence file, folio 2311).

⁵⁷ Cf. Decision of April 14, 1997 (evidence file, folio 128).

⁵⁸ Cf. Decision of April 14, 1997 (evidence file, folio 128).

⁵⁹ Cf. Decision of Federal Trial Court No. 1 of September 9, 2009 (evidence file, folios 133 to 171).

citizenship applications.”⁶⁰ On May 31, 2011, the extraordinary appeal contesting the Court’s decision was declared inadmissible.⁶¹

D. Revocation of Resolution 1088 on June 1, 2020

45. On June 1, 2020, the National Immigration Department, “in response to the conclusions reached by the Inter-American Commission on Human Rights [through Report No. 140/19 of September 28, 2019]” deemed it appropriate to revoke Resolution 1088 of May 11, 1992. In the preamble to its decision, the National Immigration Department maintained that the Inter-American Commission had concluded that the Argentine State was responsible for the violation of the rights of children, nationality, freedom of movement and residence, and judicial protection, established in the American Convention, and had recommended that the State “[...] 2. Revoke Resolution No. 1088 of the National Population and Immigration Department that revoked the residence status of the victims [...].”⁶²

E. The relevant regulatory framework at the time of the events

46. With respect to naturalization, Article 20 of the Argentine Constitution, applicable at the time of the events, provided that:

Within the territory of the Nation, foreigners enjoy all the civil rights of a citizen; they may engage in their business, trade or profession; own, purchase or transfer real property; navigate the rivers and coasts; freely practice their religion; [and] make wills and marry in accordance with the laws. They are not obligated to assume citizenship, or to pay extraordinary compulsory taxes. They may obtain naturalization by residing in the Nation for two years continuously, but the authorities may shorten this term in favor of anyone who requests it if they affirm and can prove they are providing services to the Republic.⁶³

47. Article 3 of Regulatory Decree 3213 of 1984, regarding nationality and citizenship, established that:

The foreigners described in Article 2, Paragraph 1 of Law No. 346, when applying for naturalization, must meet the following conditions: a) be over eighteen (18) years of age; b) have resided in the Republic continuously for two (2) years; and c) declare before federal judges that they wish to do so. Foreigners whose situation is as follows may also obtain naturalization regardless of the length of time they have resided in the country: [...] c) they have established a new business in the country, introduced a useful invention, or performed an action of some other kind that represents a moral or material advance for the Republic [...].⁶⁴

48. Regarding the procedure for obtaining nationality, Regulatory Decree 3213 of 1984 established that:

⁶⁰ Cf. Division II of the National Federal Criminal and Correctional Appeals Court, judgment of May 18, 2010 (evidence file, folios 1095 to 1157).

⁶¹ Cf. Division II of the National Federal Criminal and Correctional Appeals Court, decision of May 31, 2011 (evidence file, folio 173).

⁶² Cf. National Immigration Department, Decision DI-2020-2347-APN-DNM#MI of June 1, 2020 revoking Resolution No. 1088 (evidence file, folios 1578 to 1581).

⁶³ Constitution of the Argentine Nation of May 1, 1853, Article 20.

⁶⁴ Enabling Regulations of Law No. 23,059, Regulatory Decree 3213 of 1984, Article 3.

Article 5. Judges who receive a request for naturalization shall, within three (3) days, on their own initiative, request any report or certificate deemed appropriate from the National Population and Immigration Department, the Argentine Federal Police, the State Intelligence Secretariat, the National Civil Registry, the National Registry of Recidivism and Criminal and Prison Statistics, or any public or private agency, or individual.⁶⁵

49. Regarding the revocation of citizenship, Law 21,610 on citizenship added an article to Law 346 that reads as follows:

3) New Article. In revoking citizenship, the following procedure shall be observed: a) The corresponding federal prosecutor, upon learning of the existence of some of the pertinent causes, shall promote the revocation of Argentine citizenship obtained by naturalization, which shall be done by means of a summary procedure; b) citizenship by naturalization shall be revoked by the Federal Judge whose jurisdiction includes the naturalized person's most recent legal residence in Argentina; c) an appeal may be filed before the competent Federal Court against any ruling rejecting or ordering the revocation of citizenship obtained by naturalization. The maximum period allowed for lodging an appeal shall be five days, and fifteen days for rendering a decision; d) once the decision ordering the revocation of citizenship obtained by naturalization is final, the court shall take possession of the "certificate of citizenship," the respective records of the National Civil Registry, and the communications sent to the National Immigration Department and the Security Forces; e) the National Executive Branch shall designate the national agencies that are to inform the federal judges and courts, in cases of impediment and revocation.⁶⁶

50. Articles 15 and 18 of Regulatory Decree 3213 of 1984 establish:

Article 15. The agencies mentioned in Article 5 of this decree and Argentine consuls acting overseas have a responsibility to lodge a criminal complaint with the National Electoral Court regarding any cases of which they are aware that fall within the purview of Article 8 of Law No. 346, or in which citizenship obtained by choice, naturalization or the application of Law No. 16,569 may have been obtained by fraudulent means, because the facts on which the application was based were untrue, in order to proceed to revoke the citizenship, explaining precisely in the report the reason for the action and providing the necessary evidence. The criminal complaint shall be forwarded to the Public Prosecutor, so they may be a party in the judicial proceedings. Public Prosecutors may also take action on their own initiative. When a request is received to suspend the exercise of political rights or revoke citizenship obtained by fraudulent means, the interested party shall be notified and given fifteen (15) working days to respond and provide evidence in rebuttal. The interested party shall be notified of the proceedings in writing at the most recent legal residence on record with the National Electoral Registry. If the interested party is absent or no longer resides there, they shall be notified by means of legal notices published three (3) times, ten (10) days apart, in the Official Gazette. A public defender shall be appointed to defend the accused unless they or their representative wish to be represented by their own attorney.

[...]

Article 18. If citizenship obtained by choice, naturalization or the application of Law No. 16,569 is revoked because it was obtained by fraudulent means, the National

⁶⁵ Regulatory Decree 3213 of 1984, *supra*, Article 5.

⁶⁶ Law 21,610 of August 5, 1977, Article 1(3).

Population and Immigration Department shall be notified and thus made aware that the status of the individual concerned is once again that of a foreigner.⁶⁷

51. Moreover, the rule governing the preliminary ruling procedure is to be found in Article 1101 of Chapter IV of the Civil Code, which deals with "proceedings for compensation for the damage caused by offences." The rule is as follows:

Article 1101. If the criminal proceedings preceded the civil proceedings, or if the former are instituted while the latter are pending, the defendant may not be sentenced in the civil proceedings before sentenced in the criminal proceedings, except in the following cases: 1 - If the defendant has died before being tried in the criminal proceedings, in which case the civil suit may be brought or continued against the respective heirs; 2 - If the defendant is absent, in which case the criminal proceedings may not be brought or continued.⁶⁸

VII MERITS

52. The Court notes that the main point in dispute in this case is whether the State failed in its duty to respect the rights to freedom of movement and residence, to nationality, to equality before the law, and judicial protection, and the rights of the child, to the detriment of the alleged victims. The key facts that will be analyzed refer to the content and effects of Resolution 1088 of May 11, 1992, in which the National Population and Immigration Department declared the presence in Argentina of Ms. Habbal and her daughters to be unlawful, and ordered their preventive detention and expulsion; the impact that this decision may have had on the rights of the child Mohamed René Al Kassar; and the decision of the Acting Federal Judge, of October 27, 1994, revoking Ms. Habbal's Argentine nationality. The Court will also rule on the alleged violations of judicial protection with respect to the effectiveness of the appeals filed in relation to those rulings. This Court will therefore analyze the merits of this case in two chapters: a) the alleged violation of the rights of movement and residence, due process, nationality, equality before the law, personal liberty and the rights of the child, in relation to the obligation to respect rights; and b) the alleged violation of the right to judicial protection. Furthermore, in response to the State's arguments (*supra*, para. 18), as part of its analysis the Court will address whether the facts had a specific impact on the rights of the alleged victims, and, if so, whether the violations have ceased, and reparation made.

VII-1 RIGHTS TO FREEDOM OF MOVEMENT AND RESIDENCE, DUE PROCESS, NATIONALITY, EQUALITY BEFORE THE LAW AND PERSONAL LIBERTY, AND THE RIGHTS OF THE CHILD, IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS

A. Rights to freedom of movement and residence, due process, equality before the law and personal liberty, and the rights of the child

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

⁶⁷ Regulatory Decree 3213 of 1984, *supra*, Articles 15 and 18.

⁶⁸ Argentine Civil Code of January 1, 1871, Article 1101.

53. The **Commission** pointed out that Ms. Habbal had acquired Argentine nationality on April 3, 1992, and Resolution 1088 subsequently ordered her expulsion while she still enjoyed that status, since her nationality was only revoked some time later. The Commission noted that, by virtue of Article 22(5) of the American Convention, the National Population and Immigration Department had undoubtedly issued an order incompatible with a citizen's right to freedom of movement within their own country, which is contrary to the Convention. It also maintained that Resolution 1088 was issued in violation of various guarantees of due process. Those violations were in relation to the rights contained in Articles 22(5), 8(1) and 8(2)(b), (c), (d) and (h) of the American Convention. With regard to the girls Monnawar, Hifaa and Natasha Al Kassar, the Commission held that, since their Argentine nationality had not been proven, they should be regarded as migrants in Argentine territory. It argued that the guarantees enshrined in Article 22(6) of the Convention should be applied. Moreover, it observed that Resolution 1088 had been issued without complying with the minimum guarantees that should be provided in such proceedings under the terms of the Convention. Consequently, it concluded that Articles 22(6), 8(1) and 8(2)(b), (c) and (d) of the Convention had been violated, to the detriment of Ms. Habbal's daughters.

54. The Commission further maintained that, as a general rule, child migrants, whether accompanied by their families or not, should not be detained. It argued that the National Population and Immigration Department had not stated the grounds for the arrest warrant issued against Ms. Habbal and her daughters. It concluded that the only reason for issuing the arrest warrant was because of their status as irregular migrants. The Commission also pointed out that, in the case of Ms. Habbal, the arrest warrant had no basis in law, since she was an Argentine citizen. Regarding her son and daughters, it held that the order was issued without respect for the principle of non-detention of children for immigration-related reasons, with the State failing to explain the existence of exceptional, legally established circumstances that would justify pre-trial detention. Therefore, it concluded that issuing an arrest warrant constituted a violation of Article 7 of the Convention. The Commission likewise concluded that the National Population and Immigration Department was indifferent to the status of Ms. Habbal's son and daughters as children, failing to apply the principle of the best interests of the child, or state the grounds for the decision, which violated their rights under Articles 19 and 8(1) of the American Convention.

55. The **representatives** agreed with the legal grounds set forth by the Commission in the Merits Report. They also alleged that the issuing of Resolution 1088 was a punitive administrative action, the only reason for which was an alleged offence committed by a person other than those affected, whose effect was similar to that of a punishment, since it seriously affected the fundamental rights of the alleged victims. Therefore, they argued that the authorities should have taken the utmost care to ensure that the measures were adopted with strict respect for the basic rights of individuals and after verifying the effective existence of unlawful conduct, but failed to do so. They concluded that Resolution 1088 did not comply with the duty under the Convention to explicitly state the grounds for such decisions, according to the criteria of the inter-American system. The representatives expressly referred to the "very serious failure to state the reasons," which made Resolution 1088 a violation of the American Convention.

56. Moreover, the representatives claimed that the authorities had violated Article 8, read in conjunction with Article 19 of the Convention, in issuing Resolution 1088/92 against Ms. Habbal's son and daughters, who were minors at the time of the events. In particular, they alleged that the State had acted contrary to the American Convention with respect to Ms. Habbal's three daughters by revoking their residence and ordering their expulsion without

respecting their right to due process. They argued that the girls' expulsion from Argentine territory was ordered without a hearing and without any judicial protection whatsoever. They also maintained that Resolution 1088 and the arrest warrant constituted violations of Articles 8 and 7 of the American Convention. The representatives argued that by failing to notify the alleged victims of Resolution 1088, while at the same time notifying the judicial bodies of the decision taken, the authorities had left the victims in a situation in which they were unaware of the content of the ruling that was being executed by the judicial authorities. The representatives alleged a violation of Article 8 of the Convention in relation to the minimum procedural guarantees in immigration proceedings.

57. The **State** argued that it had not failed to state the grounds for its decision in Resolution 1088, because under Argentine administrative law grounds for rulings from another source are generally accepted. It further argued that Article 22(5) of the Convention was never affected, since Ms. Habbal was not expelled, nor were her son and daughters detained. Regarding the alleged violations of procedural guarantees, the State maintained that the immigration authorities' decision could be challenged through an appeal for review, a remedy of appeal, or an appeal filed with a higher administrative authority. These appeals could have been granted with suspensive effect. However, neither Ms. Habbal nor her legal representatives took any of those actions, the State argued. The State contended that Resolution 1088 had no legal effects, since the party involved was not notified. It also maintained that the processing of the resolution and the criminal proceedings were two separate issues that did not have a cause-and-effect relationship. It further argued that the scope of, and grounds for, the decision were different. The State added that Ms. Habbal and her son and daughters were not prevented from re-entering the country, and Ms. Habbal returned to Argentine territory four more times after the resolution was issued. Lastly, the State asserted that it had never been shown how Resolution 1088 could have had an impact on the rights of the alleged victims.

A.2. Considerations of the Court

A.2.1. Right to freedom of movement and residence, and the minimum guarantees of due process in expulsion proceedings

58. Article 22 of the American Convention recognizes the right to freedom of movement and residence. Paragraph 5 establishes that "No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it." Paragraph 6 states that "An alien lawfully in the territory of a State party to this Convention may be expelled from it only pursuant to a decision reached in accordance with the law." The Court has stated that in the exercise of their authority to establish immigration policies, States may establish mechanisms to control the entry into and departure from its territory of non-nationals, provided that these policies are compatible with the norms for the protection of the human rights established in the American Convention.⁶⁹ In other words, although States have a margin of discretion when determining their immigration policies, the objectives of such policies must respect the human rights of migrants.⁷⁰

⁶⁹ Cf. *Juridical condition and rights of undocumented migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 164, and *Case of expelled Dominicans and Haitians v. Dominican Republic. Merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 282, para. 350.

⁷⁰ Cf. Advisory Opinion OC-18/03, *supra*, para. 168, and *Case of expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 350.

59. The Court has also maintained that due process must be guaranteed to everyone, regardless of their migratory status, because the broad scope of the intangible nature of due process applies not only *ratione materiae* but also *ratione personae* without any discrimination.⁷¹ Regarding the content of the right to due process, enshrined in Article 8 of the American Convention, the Court has established that it refers to the set of requirements that must be observed in the procedural instances so that individuals are in a position to adequately defend their rights before any act of the State, adopted by any public authority, be it administrative, legislative or judicial, that may impair them.⁷² It has further indicated that the set of minimum guarantees of due process applies in the determination of rights and obligations of a "civil, labor, fiscal, or any other nature."⁷³ In other words, "due process of law must be respected in any act or omission on the part of State bodies in any proceeding, whether of an administrative, punitive or jurisdictional nature."⁷⁴

60. Therefore, the Court has established that the State must respect the minimum guarantees of due process in immigration proceedings that may result in the expulsion of aliens, which are the same as those established in paragraph 2 of Article 8 of the American Convention.⁷⁵ It has further held that such proceedings must not be discriminatory, and the persons subject to them must also enjoy the following minimum guarantees: a) to be informed expressly and formally of the charges against them and the reasons for the expulsion or deportation. This notice must include information on their rights, such as: i) the possibility of explaining their reasons and contesting the charges against them, and ii) the possibility of requesting and receiving consular assistance, legal advice and, if appropriate, translation or interpretation services; b) if an unfavorable decision is taken, the right to request a review of their case before the competent authority and to appear before that authority in that regard, and c) to receive formal legal notice of the eventual expulsion decision, which must be duly reasoned pursuant to the law.⁷⁶

A.2.2. Right to personal liberty in immigration expulsion proceedings

61. Furthermore, the Court has established the incompatibility with the American Convention of the punitive deprivation of liberty in order to control migratory flows, in

⁷¹ Cf. Advisory Opinion OC-18/03, *supra*, para. 163, and *Case of expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 351.

⁷² Cf. *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 69, 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. 133.

⁷³ *Case of the Constitutional Court v. Peru*, *supra*, para. 70, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary objections, merits and reparations*. Judgment of February 1, 2022. Series C No. 448, para. 80.

⁷⁴ *Case of Baena-Ricardo et al. v. Panama. Merits, reparations and costs*. Judgment of February 2, 2001. Series C No. 72, para. 124, and *Case of the former employees of the Judiciary v. Guatemala. Preliminary objections, merits and reparations*. Judgment of November 17, 2021. Series C No. 445, para. 63.

⁷⁵ Cf. *Case of Vélez Loo v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 142, and *Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 272, para. 132.

⁷⁶ Cf. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251, para. 175, and *Case of expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 356.

particular those of an irregular nature.⁷⁷ It has also maintained that both administrative and penal sanctions are an expression of the punitive powers of the State and, on occasions, may be of a similar nature,⁷⁸ and given that, in a democratic society, punitive power is only exercised as strictly necessary to protect fundamental rights from the most serious attacks that harm or endanger them,⁷⁹ the detention of an individual for failing to comply with the immigration laws should never be for punitive purposes.⁸⁰ Consequently, the Court has established that immigration policies whose central focus is the obligatory detention of irregular migrants will be arbitrary, if the competent authorities do not verify, in each particular case and by an individualized evaluation, the possibility of using less restrictive measures that are effective to achieve those ends.⁸¹

62. The Court holds that the essence of Article 7 of the American Convention is the protection of the liberty of the individual against any arbitrary or illegal interference by the State.⁸² Furthermore, the Court has stated that this article has two types of regulations that are well differentiated from each other, one general and the other specific. The general is found in the first numeral: “[e]very person has the right to personal liberty and security.” While the specific one is made up of a series of guarantees that protect the right not to be unlawfully deprived of liberty (Article 7(2)) or arbitrarily (Article 7(3)), to know the reasons for the detention and the charges filed against the detainee (Article 7(4)), to judicial control of the deprivation of liberty and the reasonableness of the period of preventive detention (Article 7(5)), and to challenge the legality of the detention (Article 7(6)).⁸³ Therefore, any violation of numerals 2 to 7 of Article 7 of the Convention will necessarily entail the violation of Article 7(1) thereof.

63. The Court deems it pertinent to recall, for the purposes of this case, that it follows from Article 7(3) of the Convention that no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as lawful, may be incompatible with the respect for the fundamental rights of the individual because, *inter alia*, they are unreasonable, unpredictable or disproportionate.⁸⁴ The Court has held that domestic law, the applicable procedure, and the corresponding general explicit or tacit principles must, in themselves, be compatible with the Convention. Thus, the concept of “arbitrariness” is not be

⁷⁷ Cf. *Case of Vélez Loor v. Panama*, *supra*, paras. 163 to 172, and *Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections*, *supra*, para. 359.

⁷⁸ Cf. *Case of Vélez Loor v. Panama*, *supra*, para. 172, and *Case of the Pacheco Tineo Family v. Bolivia*, *supra*, para. 131.

⁷⁹ Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 76, and *Case of the Pacheco Tineo Family v. Bolivia*, *supra*, para. 131.

⁸⁰ Cf. *Case of Vélez Loor v. Panama*, *supra*, para. 171, and *Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections*, *supra*, para. 359.

⁸¹ Cf. *Case of Vélez Loor v. Panama*, *supra*, para. 171, and *Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections*, *supra*, para. 359.

⁸² Cf. *Case "Juvenile Reeducation Institute" v. Paraguay. Preliminary objections, merits, reparations and costs*. Judgment of September 2, 2004. Series C No. 112, para. 223, and *Case of Palacio Urrutia et al. v. Ecuador. Merits, reparations and costs*. Judgment of November 24, 2021. Series C No. 446, para. 130.

⁸³ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 51, and *Case of Palacio Urrutia et al. v. Ecuador*, *supra*, para. 130.

⁸⁴ Cf. *Case of Gangaram Panday v. Suriname. Merits, reparations and costs*. Judgment of January 21, 1994. Series C No. 16, para. 47, and *Case of Villarroel Merino et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of August 24, 2021. Series C No. 430, para. 91.

equated with “against the law,” but must be interpreted more broadly to include elements of inappropriateness, injustice [and] lack of predictability.⁸⁵

64. Accordingly, the Court has held that to ensure that a precautionary measure that restricts liberty is not arbitrary, it is necessary that: a) substantive presumptions exist relating to an unlawful act and to the connection of the defendant to that act, b) the measure that restricts liberty complies with the four elements of the “proportionality test,” in other words, the purpose of the measure must be legitimate (compatible with the American Convention),⁸⁶ appropriate to comply with the purpose sought, necessary, and strictly proportionate,⁸⁷ and c) the decision imposing such measures must include sufficient reasoning to permit an assessment of whether they are in keeping with the aforementioned conditions.⁸⁸ In this respect, the Court has established in its case-law that rulings by domestic bodies that may impair human rights, such as the right to personal liberty, and which are not properly substantiated, are arbitrary.⁸⁹

A.2.3. Rights of the child in immigration expulsion proceedings

65. Moreover, as this Court has maintained previously,⁹⁰ although due process and its correlative guarantees are applicable to everyone, in the case of child migrants their exercise supposes, owing to the special conditions in which the children find themselves, the adoption of certain specific measures in order to ensure access to justice in conditions of equality, to guarantee effective due process, and to ensure that the best interest of the child is a paramount consideration in all the administrative or judicial decisions adopted. The Court has stipulated that administrative or judicial proceedings during which decisions are taken on the rights of child migrants and, if applicable, of the persons whose protection or authority they are under, should be based on the foregoing considerations and be adapted to their situation, needs and rights.⁹¹

66. Therefore, this Court has established the specific guarantees that must govern all immigration proceedings that involve children, in relation to the following aspects: (i) the right to be notified of the existence of proceedings and of the decision adopted during the immigration proceedings; (ii) the right that immigration proceedings are conducted by a specialized official or judge; (iii) the right of the child to be heard and to participate in the

⁸⁵ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 92, and *Case of Villarroel Merino et al. v. Ecuador*, *supra*, para. 86.

⁸⁶ Cf. *Case of Servellón-García et al. v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of September 21, 2006. Series C No. 152, para. 89, and *Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 2, 2021. Series C No. 441, para. 99.

⁸⁷ Cf. *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, para. 197, and *Case of Manuela et al. v. El Salvador*, *supra*, para. 99.

⁸⁸ Cf. *Case of García-Asto and Ramírez-Rojas v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 25, 2005. Series C No. 137, para. 128, and *Case of Manuela et al. v. El Salvador*, *supra*, para. 99.

⁸⁹ Cf. *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of June 23, 2005. Series C No. 127, para. 152, and *Case of Vélez Loor v. Panama*, *supra*, para. 116.

⁹⁰ Cf. *Juridical status and human rights of the child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, *supra*, paras. 96 to 98, and Advisory Opinion OC-21/14, *supra*, para. 115.

⁹¹ Cf. Advisory Opinion OC-21/14, *supra*, para. 115, and Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (Article 3, paragraph 1), para. 14.b).

different stages of the proceedings; (iv) the right to be assisted without charge by a translator or interpreter; (v) effective access to communication with consular authorities and to consular assistance; (vi) the right to be assisted by a legal representative and to communicate freely with the representative; (vii) the obligation to appoint a guardian in the case of unaccompanied or separated children; (viii) the right that the decision adopted has assessed the child's best interest and is duly reasoned; (ix) the right to appeal the decision before a higher court with suspensive effect, and (x) reasonable time for the duration of the proceedings.⁹²

67. On this point in particular, the Court recalls that all migrants have the right to be notified of proceedings against them because, otherwise, it would not be possible to guarantee their right to defend themselves. In the case of child migrants, the Court has stipulated that this right extends to every kind of procedure that involves them. For this reason, trained personnel are needed to communicate to the child, according to her or his cognitive development, that her or his case is being subjected to administrative or judicial determination. This will ensure that the child can exercise the right to defense; in the sense that the child can understand the proceedings taking place and can contribute with her or his opinions as deemed pertinent.⁹³ In addition, this Court has already emphasized the importance of serving notice of the final decision so that the right to appeal the decision may be exercised.⁹⁴ In keeping with the above, and in order to guarantee the right to appeal an unfavorable decision effectively, decisions on entry, permanence or expulsion must be duly notified, which also reinforces the right for the decision to be duly reasoned.⁹⁵

68. Furthermore, the Court has stated that it is essential that all decisions taken in migratory proceedings involving children must be duly justified, that is to say, are accompanied by the exteriorization of the reasoned justification that allows conclusions to be reached.⁹⁶ The duty to state the reasons for a decision is one of the "due guarantees" to safeguard the right to due process.⁹⁷ The Court recalls that the obligation to provide the reasons for a decision is a guarantee related to the proper administration of justice, which protects the right of the individual to be tried for the causes established by law, and accords credibility to juridical decisions in a democratic society.⁹⁸ Accordingly, the decisions adopted by the domestic organs that may affect human rights must be duly reasoned because, otherwise, they would be arbitrary.⁹⁹ Accordingly, the reasoning of a decision and of certain administrative acts allows the facts, reasons and laws on which the authority based its

⁹² Cf. Advisory Opinion OC-21/14, *supra*, para. 116.

⁹³ Cf. Advisory Opinion OC-21/14, *supra*, para. 117, and Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, UN Doc. CRC/GC/2005/6, September 1, 2005, paras. 40 to 47 and 82.

⁹⁴ Cf. Advisory Opinion OC-21/14, *supra*, para. 118.

⁹⁵ Cf. *Case of Nadege Dorzema et al. v. Dominican Republic*, *supra*, para. 175, and Advisory Opinion OC-21/14, *supra*, para. 119.

⁹⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*, *supra*, para. 107, and Advisory Opinion OC-21/14, *supra*, para. 137.

⁹⁷ Cf. *Case of López Mendoza v. Venezuela. Merits, reparations and costs*. Judgment of September 1, 2011. Series C No. 233, para. 141, and *Case of Manuela et al. v. El Salvador*, *supra*, para. 148.

⁹⁸ Cf. *Case of Aritz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 77, and Advisory Opinion OC-21/14, *supra*, para. 137.

⁹⁹ Cf. *Case of Yatama v. Nicaragua*, *supra*, para. 152, and Advisory Opinion OC-21/14, *supra*, para. 137.

decision to be known, in order to rule out any indication of arbitrariness.¹⁰⁰ It must also show that the arguments of the parties have been duly taken into account and that the body of evidence has been studied.

69. Moreover, this Court has stipulated that, although deprivation of liberty may seek a legitimate purpose and be appropriate to achieve this, on combining the criteria developed and based on the principle of the best interest of the child, the deprivation of liberty of children based exclusively on migratory reasons exceeds the requirement of necessity,¹⁰¹ because this measure is not absolutely essential in order to ensure their appearance at the immigration proceedings or to guarantee the implementation of a deportation order. Adding to this, the Court finds that the deprivation of liberty of a child in this context can never be understood as a measure that responds to the child's best interest. Thus, the Court considers that measures exist that are less severe and that could be appropriate to achieve such an objective and, at the same time, satisfy the child's best interest. In sum, the Court finds that the deprivation of liberty of a child migrant in an irregular situation, ordered on this basis alone, is arbitrary and, consequently, contrary to the Convention.¹⁰²

70. In addition, the Court has recognized that, in immigration matters, a child's right to the protection of the family and, in particular, to enjoy family life preserving family unity insofar as possible, should always be given prevalence, except in those cases in which the separation of the child from one or both parents would be necessary owing to the best interest of the child. However, the child's right to family life per se does not override the authority of the States to implement their own immigration policies in keeping with human rights, in the context of proceedings relating to the expulsion of one or both parents.¹⁰³ Therefore, to determine whether an immigration measure that may imply the separation of children from their family complies with the terms of the Convention, an assessment must be made of whether it is: established by law, and complies with the requirements of (a) suitability; (b) necessity, and (c) proportionality; in other words, it must be necessary in a democratic society.¹⁰⁴

71. However, in this regard this Court has established that in those situations in which the child has a right to nationality – original, by naturalization, or for any other reason established in domestic law – of the country from which one or both of the parents may be expelled owing to their irregular migratory situation, or in which the child complies with the legal conditions to reside there on a permanent basis, it is axiomatic that the child must conserve the right to continue enjoying her or his family life in said country and, as a component of this, mutual enjoyment of the cohabitation of parents and children. The Court has found that the rupture of the family unit by the expulsion of one or both parents due to a breach of immigration laws related to entry or permanence is disproportionate in these situations, because the sacrifice inherent in the restriction of the right to family life, which may have repercussions on the life

¹⁰⁰ Cf. *Case of Claude-Reyes et al. v. Chile. Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, para. 122, and *Case of Pávez Pávez v. Chile. Merits, reparations and costs*. Judgment of February 4, 2022. Series C No. 449, para. 154.

¹⁰¹ Cf. *Case of Vélez Loor v. Panama, supra*, para. 166, and *Advisory Opinion OC-21/14, supra*, para. 154.

¹⁰² Cf. *Advisory Opinion OC-21/14, supra*, para. 154.

¹⁰³ Cf. *Advisory Opinion OC-21/14, supra*, para. 274.

¹⁰⁴ Cf. *Advisory Opinion OC-21/14, supra*, para. 275.

and development of the child, appears unreasonable or excessive in relation to the advantages obtained by forcing the parent to leave the territory because of an administrative offense.¹⁰⁵

72. The Court has held that any administrative or judicial organ that must decide on family separation owing to expulsion based on the migratory status of one or both parents must, when weighing all the factors, consider the particular circumstances of the specific case, and guarantee an individual decision in keeping with the parameters already described, evaluating and determining the child's best interest.¹⁰⁶ In this regard, the Court has found it to be essential that, when making this assessment, States ensure the right of children to have the opportunity to be heard based on their age and maturity, and that their views are duly taken into account in those administrative or judicial proceedings in which a decision may be adopted that entails the expulsion of their parents. If the child is a national of the receiving country, but one or neither of her or his parents is, it is necessary to hear the child in order to understand the impact that the expulsion of the parent(s) may have on her or him. Also, granting the child the right to be heard is fundamental in order to determine whether there is an alternative that is more appropriate to her or his best interest.¹⁰⁷

A.2.4. Analysis of the specific case

73. Firstly, the Court recalls that the Federal Judge granted Ms. Habbal Argentine nationality on April 4, 1992. Likewise, that on May 11, 1992, the National Population and Immigration Department ordered Ms. Habbal's expulsion, after she had obtained Argentine nationality, and before her citizenship was revoked. In this regard, the Court notes that Article 22(5) of the American Convention prohibits the expulsion of individuals from the territory of which they are nationals in the following terms: "no one can be expelled from the territory of the State of which he is a national." The Court also recalls that the State is obligated to respect the minimum guarantees of due process in expulsion proceedings, including those set forth in Article 8(2) of the Convention (*supra*, paras. 58 to 60). The Court notes that the National Population and Immigration Department issued Resolution 1088 on its own initiative, without notifying Ms. Habbal at any time during the proceedings. This failure to notify Ms. Habbal meant that the alleged victim was unaware of the existence of the proceedings to expel her and the reasons for the action taken, and was denied the possibility of receiving legal assistance, being heard during the proceedings, and submitting her case for review by a competent authority.

74. Secondly, the Court confirms that Monnawar Al Kassar, Hifaa Al Kassar and Natasha Al Kassar were children at the time when their expulsion was ordered, and that - unlike Ms. Habbal - they were not Argentine citizens, but permanent residents. In this regard, the Court recalls that Article 22(6) of the Convention provides that "an alien lawfully in the territory of a State party to this Convention may be expelled from it only pursuant to a decision reached in accordance with the law." As already noted, while States may establish immigration policies, any immigration proceedings used to expel individuals, such as the one in which the alleged victims found themselves, must respect the minimum guarantees of due process (*supra*, paras. 58 to 60), taking into account the special circumstances in which children find themselves (*supra*, paras. 65 to 72).

¹⁰⁵ Cf. Advisory Opinion OC-21/14, *supra*, para. 280.

¹⁰⁶ Cf. Advisory Opinion OC-21/14, *supra*, para. 281.

¹⁰⁷ Cf. Advisory Opinion OC-21/14, *supra*, para. 282.

75. In the instant case, the Court notes that, as occurred with Ms. Habbal, the failure to notify Monnawar Al Kassar, Hifaa Al Kassar and Natasha Al Kassar of the decision to institute proceedings against them, and the fact that they were denied the possibility of being heard, receiving legal assistance and appealing the decision, meant that they were unaware of the existence of the expulsion proceedings and the reasons why the authorities had taken such action, and were prevented from exercising their right to a defense. In addition, the Court recalls that the State has special obligations to protect children in immigration proceedings (*supra*, para. 66). It was therefore due to the State's omissions that the expulsion proceedings were not handled by an official specializing in cases involving children, and the alleged victims were denied the possibility of taking part in the different procedural stages, and submitting their case to a competent authority for review.

76. On this point, the Court deems it pertinent to recall that, particularly in the case of children, based on Articles 8(1) and 19 of the American Convention, decisions taken in the context of immigration proceedings must explain in detail the way in which the opinions expressed by the child were taken into account and also the way in which her or his best interest was assessed.¹⁰⁸ The Committee on the Rights of the Child has also highlighted the close relationship between the best interests of the girl or boy and the right to be heard, stating that "there can be no correct application of article 3 [(best interest)] if the components of article 12 are not respected [(right to participate and have their views considered)]."¹⁰⁹ Similarly, "article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives."¹¹⁰

77. This Court notes that Resolution 1088 did not consider the impact that the expulsion could have on Monnawar Al Kassar, Hifaa Al Kassar and Natasha Al Kassar, and in that sense failed to assess the children's best interests or properly state the reasons for the decision according to this principle. In addition, the Court notes that the decision failed to consider the particular circumstances of Mohamed Al Kassar, the brother and son of the alleged victims, who at the time of the events was less than one year old and had been born in Argentina. Although Resolution 1088 did not order Mohamed Al Kassar's expulsion, the authorities failed to consider how the expulsion of his mother and sisters would affect his family life. The Court holds that, even though the child was not part of the proceedings, the immigration authorities should have taken into account the impact that the expulsion would have on Mohamed Al Kassar, and explained the reasons for their decision.

78. Thirdly, the Court recalls that measures depriving people of their liberty, including those ordered in the context of immigration proceedings, must be strictly necessary to protect fundamental legal rights from more serious attacks and should not be used for punitive purposes. Consequently, as can be deduced from what has already been noted (*supra*, paras. 61 to 64), detention for immigration purposes must be in accordance with the essential content of Article 7 of the Convention, which protects the freedom of individuals against unlawful or arbitrary interference. In particular, the Court emphasizes that Article 7(3) of the Convention protects people from arrests that are unreasonable, unpredictable, or disproportionate (*supra*, para. 63). In this case, the Court notes that Resolution 1088, which

¹⁰⁸ Cf. Advisory Opinion OC-21/14, *supra*, para. 139.

¹⁰⁹ Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, UN Doc. CRC/C/GC/12, July 20, 2009, para. 74.

¹¹⁰ Advisory Opinion OC-21/14, *supra*, para. 139, and Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, *supra*, para. 74.

ordered the preventive detention of the alleged victims, offered no individualized justification or assessment of the necessity and proportionality of the preventive detention measure, as required under Article 7 of the Convention. Likewise, this Court recalls that, by virtue of the best interests of the child, deprivation of liberty for exclusively immigration-related reasons exceeds the requirement of necessity, since it is not absolutely essential to ensure the purposes of the immigration proceedings.

79. However, the Court recalls that the State argued, as a preliminary objection, that the actions of the immigration authorities neither had, nor are presently having, effects on the rights of the alleged victims, and, therefore, that no case or dispute exists that requires the intervention of the Court. In particular, the State contended that, since it is not possible to identify any specific harm done by the acts, events or rules as claimed by the Commission and the representatives, the case is conjectural. The State also argued that, as the Commission's recommendations were implemented effectively, a ruling by the Court on the case is not justified. After considering this argument, the Court found that determining whether the rights of the alleged victims had been affected was a question related to the merits of the dispute, as was the matter of establishing whether the possible violations had ceased and reparation had been made by the State's subsequent actions (*supra*, para. 25). For this reason, the Court will now proceed to analyze both questions.

80. Firstly, the Court notes that, for the reasons indicated above (*supra*, paras. 58 to 78), the content of Resolution 1088, and the procedure followed for its adoption, constituted a breach of the obligations of the State contained in Articles 22(5), 22(6), 22(7), 8(1), 8(2)(b), (c), (d) and (h), and 19 of the American Convention, read in conjunction with Article 1(1) thereof. This Court notes that the failure to discharge those obligations stems from the issuance of Resolution 1088, and the procedure followed for its adoption, which constituted unlawful international acts, because the Resolution's content ran contrary to the State's obligations under the American Convention. Therefore, the State's non-compliance with its obligations stemmed from the very existence of its decision and the procedure followed for its adoption. Viewed in that light, the case is neither conjectural nor hypothetical, since the State failed to comply with its international obligations, which have been analyzed by this Court.

81. However, this Court finds that, in point of fact, there is no evidence to prove that Resolution 1088, although it was in force from 1992 to 2020, interfered in any way with the possibility of the alleged victims remaining in, or entering, Argentina, or otherwise impeded the exercise of their personal freedom. The Court notes that Ms. Habbal entered Argentina on at least four occasions after Resolution 1088 was issued, between 1994 and 1996 (*supra* para. 41), and there is no indication that her right to freedom of movement or personal freedom was restricted by the immigration authorities or any other authority. On this point, the Court deems it pertinent to recall that the alleged victims' failure to take part in the proceedings made it impossible to ascertain whether, beyond those aspects that emerge from the evidence provided in the proceedings, Ms. Habbal and her son and daughters have suffered concrete harm due to the authorities' expulsion and preventive detention order.

82. A second point raised by the State is that, as Resolution 1088 was revoked, the Court is bound to conclude that the State is not internationally responsible for violating the American Convention, because it complied with the Commission's recommendations. The Court recalls that in the inter-American system there is a joint dynamic and complementary control of the State's treaty-based obligations to respect and to ensure human rights between the domestic authorities (who have the primary obligation) and the international instances

(complementarily), so that both the domestic and the international decision criteria and the protection and reparation mechanisms can be established and harmonized.¹¹¹ As a result, in application of the principle of complementarity (or subsidiarity), the Court has held that, under the Convention, state responsibility can only be required at the international level after the State has had the opportunity to recognize, as appropriate, a violation of a right and to redress the harm caused by its own means.¹¹² Thus, when the State ceases to violate human rights and makes reparation to the victims for the violations, it does not behoove the Court to declare international responsibility for the violations in question.

83. In relation to the above, the Court notes that, on June 1, 2020, the National Population and Immigration Department “in view of the conclusions presented by the Inter-American Commission on Human Rights” deemed it appropriate to revoke Resolution 1088 of May 11, 1992. The Court holds that this decision effectively ended the State’s non-compliance with the obligations contained in Articles 22(5), 22(6), 7, 8(1), 8(2)(b), (c), (d) and (h), and 19 of the American Convention. Likewise, the Court recalls that, as previously indicated (*supra*, para. 81), although the content of Resolution 1088 ran contrary to the Convention, it never materially affected the rights of the alleged victims. Therefore, given the lack of evidence of specific violations of the rights of the alleged victims, the Court holds that the revocation of Resolution 1088 constituted an adequate reparation in relation to the violations of the American Convention that occurred when it was issued.

84. Consequently, this Court concludes, as it has done in other cases,¹¹³ and considering the circumstances of this case, that since the violations ceased, and reparation was made, in application of the principle of complementarity, the State is not internationally responsible for violating the rights contained in Articles 22(5), 7, 8(1), 8(2), 8(2)(b), (c), (d) and (h), and 9 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Ms. Habbal, nor for violating the rights contained in Articles 22(6), 7, 8(1), 8(2)(b), (c), (d) and (h), and 19 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Monnawar Al Kassar, Hifaa Al Kassar and Natasha Al Kassar, nor for violating Articles 19 and 8(1) of the American Convention, to the detriment of Mohamed Al Kassar.

85. With respect to the representatives’ argument regarding the alleged violation of the right to equality before the law contained in Article 24 of the Convention, read in conjunction with Article 1(1) thereof, the Court notes that the legal consequences of the immigration authorities’ failure to consider the special situation of vulnerability in which the alleged victims found themselves in the immigration proceedings have already been addressed in the analysis in relation to Articles 22, 19, 8, and 7 of the Convention. Therefore, it does not deem it necessary to carry out a specific analysis in the light of Article 24 of the Convention.

¹¹¹ Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 143, and *Case of Martínez Esquivia v. Colombia. Preliminary objections, merits and reparations*. Judgment of October 6, 2020. Series C No. 412, para. 167.

¹¹² Cf. *Case of the Santo Domingo Massacre v. Colombia, supra*, para. 143, and *Case of Urrutia Laubreaux v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of August 27, 2020. Series C No. 409, para. 90.

¹¹³ Cf. *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of October 15, 2014. Series C No. 286, para. 140, and *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 102.

B. Right to nationality, due process and the principle of legality

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

86. The **Commission** pointed out that nationality is the legal expression of the social fact of an individual's connection with the State, from which political and certain civil rights are derived. It also observed that States have the discretionary authority to establish the conditions that people who wish to obtain another nationality must meet. However, it noted that States may not act arbitrarily in the exercise of their discretionary authority, and so are limited by the duty to provide equal and effective protection under the law, without discrimination, and the duty to prevent, avoid and reduce statelessness. In the instant case, the Commission maintained that the Acting Federal Judge studied the documentation of the criminal proceedings to ascertain the situation. Although no final judgment had been delivered, and based on the information available, he concluded that Ms. Habbal had acted fraudulently and therefore stripped her of her nationality. According to the Commission, the Federal Judge's actions constituted a violation of the principle of presumption of innocence. The Commission furthermore concluded that the decision of the Acting Federal Judge and the Appeals Court showed disregard for the principle of legality, and the obligation to provide sufficient grounds for its decision.

87. In addition, the Commission emphasized that the procedure followed in revoking Ms. Habbal's nationality should have provided her with procedural guarantees, since there was a possibility that she could be stripped of her nationality. Regarding the reasons for the decision, the Commission argued that the judicial decision revoking Ms. Habbal's nationality did not contain a proportionality analysis taking into account the legitimate purpose and the violation of rights. It observed that the authorities never took into consideration the fact that Raghda Habbal was the mother of a child born in Argentina. The Commission also maintained that the State failed to consider the risk of Ms. Habbal being rendered stateless if her citizenship was revoked, in violation of the duty to prevent statelessness. For all these reasons, the Commission concluded that the Argentine State had violated the principle of presumption of innocence, the principle of legality and the right to nationality, established in Articles 8(2), 9, and 20 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Raghda Habbal.

88. The **representatives** argued that the State had violated the rights protected by Articles 8, 20 and 9 of the Convention, read in conjunction with Article 1(1) thereof, due to the violation of the principle of presumption of innocence. They asserted that the judge had revoked Raghda Habbal's citizenship without waiting for the outcome of the criminal proceedings, thus violating the principle of innocence. The representatives also argued that the right to nationality and the prevention of statelessness had been violated because Ms. Habbal had been forced to renounce her Syrian nationality in order to adopt Argentine citizenship, and so was rendered stateless when the Judiciary revoked her Argentine nationality. The representatives maintained that the civil courts involved had said nothing on the matter. Likewise, they argued that Resolution 1088 had violated Ms. Habbal's rights because it failed to take into account the possibility of her being rendered stateless. They argued that this administrative act was extremely onerous for the alleged victims, as it did not allow them to exercise the right of defense, and failed to provide an exhaustive analysis of the grounds for the decision and thus demonstrate its proportionality.

89. The **State** contended that the Commission's conclusion that the principles of legality and presumption of innocence, as well as the obligation to provide sufficient grounds, had

been violated as a result of the revocation of citizenship, was based on an incorrect interpretation of the legal principles involved, particularly with respect to the scope of the principle of “grounds for prejudiciality” and its derivation from the principle of presumption of innocence. It argued that what Federal Court No. 2 of Mendoza had taken into account when declaring the citizenship granted to Ms. Habbal invalid was not her individual criminal responsibility for submitting documents containing false statements, but rather the false information contained in the documents on which the granting of naturalization was based. Hence, there was no need to wait for a criminal judgment to determine that “fraud” had been committed, since the connotation was not criminal, but civil, according to the Federal Court’s analysis. Therefore, it argued that the revocation of citizenship did not violate the principle of the presumption of innocence in the case of Ms. Habbal, since it did not judge or prejudge her criminal guilt, but rather based its decision on the confirmation that the documents that Ms. Habbal submitted contained false statements.

B.2. Considerations of the Court

B.2.1. Right to nationality and the minimum guarantees of due process in proceedings that may lead to the deprivation of nationality

90. Regarding the right to nationality recognized in Article 20 of the American Convention, the Court has maintained that nationality, “as a legal and political bond that links a person to a particular State, allows the individual to acquire and to exercise the rights and responsibilities inherent in membership in a political community. As such, nationality is a prerequisite for the exercise of certain rights,¹¹⁴ and is also a non-derogable right according to Article 27 of the Convention. In this regard, it is pertinent to mention that nationality is a fundamental right of the human person that is established in other international instruments.¹¹⁵ It is also worth mentioning that the American Convention includes two aspects of the right to nationality: a) the right to a nationality from the perspective of endowing the individual with the basic legal protection for a series of relationships by establishing his connection to a specific State, and b) the protection of the individual against the arbitrary deprivation of his nationality because this would deprive him of all his political rights and of those civil rights that are based on a person’s nationality.¹¹⁶

91. Moreover, this Court has established that nationality, as it is mostly accepted, should be considered a natural condition of the human being. This condition is not only the very basis of his political status but also part of his civil status. Consequently, even though it has traditionally been accepted that the determination and regulation of nationality fall within the competence of each State, developments in this area reveal that international law has imposed certain limits on the State’s margin of discretion.¹¹⁷ In this regard, the Court has considered that the determination of its nationals continues to be subject to the internal jurisdiction of the States. Nevertheless, this State attribute must be exercised in conformity

¹¹⁴ Cf. *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra*, para. 137, and *Case of expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 253.

¹¹⁵ Cf. *Case of expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 253.

¹¹⁶ Cf. *Proposed Amendments to the Naturalization Provision of the Political Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 34, and *Case of Dominicans and Haitians expelled v. Dominican Republic*, *supra*, para. 254.

¹¹⁷ Cf. Advisory Opinion OC-4/84, *supra*, para. 32, and *Case of expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 255.

with the parameters that emanate from binding norms of international law which States, in the exercise of their sovereignty, have undertaken to abide by.¹¹⁸

92. Thus, in accordance with the current trend in international human rights law, the Court has held that, when regulating the granting of nationality, States must take into account: (a) their obligation to prevent, to avoid and to reduce statelessness, and (b) their obligation to provide each individual with the equal and effective protection of the law without discrimination.¹¹⁹ Regarding their duty to prevent, avoid, and reduce statelessness, the Court has established that States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons. This condition arises from the lack of a nationality, when an individual does not qualify to receive this under the State's laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective. Statelessness deprives an individual of the possibility of enjoying civil and political rights and places him in a condition of extreme vulnerability.¹²⁰ Thus, the Court has stipulated that Article 20(2) of the American Convention indicates that "every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality." This principle must be interpreted in light of the obligation to ensure the exercise of the rights to all persons subject to the State's jurisdiction, established in Article 1(1) of the Convention.¹²¹

93. This Court holds that these obligations are applicable with regard not only to the granting of nationality, but also, where pertinent, to the deprivation of nationality. The right to nationality includes the State's obligation to provide persons with minimum legal protection from the deprivation of nationality. Article 20(3) of the Convention states that "no one shall be arbitrarily deprived of his nationality or of the right to change it." From this it follows that although States may establish the guidelines for regulating the right to nationality pursuant to their domestic law, any proceedings related to the deprivation of nationality must be compatible with the human rights recognized in the American Convention. Therefore, any person against whom deprivation of nationality proceedings are instituted must be guaranteed due process in order to avoid arbitrariness and ensure that the persons concerned are in a position to defend their rights. Likewise, States must comply with the principle of legality. All this means that proceedings for the deprivation of nationality must be carried out according to Articles 8(1), 8(2) and 9 of the American Convention.

94. In relation to the obligations arising from Article 8(1) of the Convention, and as has already been pointed out (*supra*, para. 68), this Court has stipulated that the duty to state the reasons for a decision is one of the due guarantees included in that article to safeguard the right to due process. The duty to state grounds is a guarantee linked to the proper administration of justice, which protects the right of citizens to be tried for the reasons provided by law, while giving credibility to the legal decisions adopted in a democratic society.¹²² By virtue of this, the decisions adopted by national bodies that could affect human rights must be

¹¹⁸ Cf. *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra*, para. 140, and *Case of expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 256.

¹¹⁹ Cf. *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra*, para. 140, and *Case of expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 256.

¹²⁰ Cf. *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra*, para. 142.

¹²¹ Cf. *Case of expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 259.

¹²² Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Litigation") v. Venezuela*, *supra*, para. 77, and *Case of Pávez Pávez v. Chile*, *supra*, para. 152.

duly justified, otherwise they would be arbitrary decisions.¹²³ The reasoning of a judgment must make it possible to learn the facts, motives, and laws on which the authority is basing its decision, so as to rule out any possibility of arbitrariness and show the parties that they have been heard.¹²⁴ It must also show that the pleadings of the parties have been duly taken into account and that the totality of the evidence has been examined.¹²⁵

95. Likewise, Article 8(2) of the Convention establishes that “[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.” For this reason, the Court has indicated that that the principle of presumption of innocence constitutes a cornerstone of judicial guarantees.¹²⁶ The presumption of innocence implies that the defendant enjoys a legal state of innocence or not guilty while his responsibility is being determined, and therefore must be treated by the State in a manner that accords with their condition of a person who has not been convicted.¹²⁷ In relation to the foregoing, the principle of presumption of innocence requires that no one be convicted unless there is complete evidence or evidence beyond any reasonable doubt of their guilt, after a trial with due guarantees.¹²⁸

96. In addition, Article 9 of the American Convention provides that: “No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.” In relation to this provision, this Court has interpreted that these mandates are applicable not only to the criminal sphere, but that their scope extends to administrative sanctioning matters.¹²⁹ The Court has maintained that administrative sanctions are an expression of the punitive power of the State and, at times, they are of a similar nature to criminal sanctions because both of them entail impairment, deprivation or alteration of human rights. Consequently, in a democratic system, it is necessary to take special care to ensure that such measures are adopted strictly respecting the basic rights of the individual and following a careful verification of the effective existence of a wrongful conduct.¹³⁰

97. Therefore, the Court holds that for the deprivation of nationality not to be arbitrary, any administrative or judicial act involved must: a) respect the principle of legality, so that the individual is not punished for actions and omissions not provided for by law; b) respect

¹²³ Cf. *Case of Yatama v. Nicaragua*, *supra*, para. 152, and *Case of Pávez Pávez v. Chile*, *supra*, para. 152.

¹²⁴ Cf. *Case of Claude Reyes et al. v. Chile. Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, para. 122, and *Case of López et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2019. Series C No. 396, para. 214.

¹²⁵ Cf. *Case of Apitz Barbera et al. (“First Court of Administrative Litigation”) v. Venezuela*, *supra*, para. 78, and *Case of López et al. v. Argentina*, *supra*, para. 214.

¹²⁶ Cf. *Case of Suárez Rosero v. Ecuador. Merits*, *supra*, para. 77, and *Case of Manuela et al. v. El Salvador*, *supra*, para. 132.

¹²⁷ Cf. *Case J v. Peru*, *supra*, para. 157, and *Case of Petro Urrego v. Colombia*, *supra*, para. 125.

¹²⁸ Cf. *Case of Cantoral Benavides v. Peru. Merits*, *supra*, para. 120, and *Case of Grijalva Bueno v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 426, para. 114.

¹²⁹ Cf. *Case of Baena Ricardo et al. v. Panama*, *supra*, para. 106, and *Case of Cuya Lavy et al. v. Peru*, *supra*, para. 141.

¹³⁰ Cf. *Case of Baena Ricardo et al. v. Panama*, *supra*, para. 106, and *Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of May 3, 2016. Series C No. 311, para. 89.

the right to equality and the prohibition of discrimination; c) prevent statelessness; d) be proportional, which requires verification of the legitimacy of the aims pursued and the means used by the authorities, and e) respect the guarantees of due process, providing special guarantees for the protection of children.¹³¹ Regarding the duty to respect due process, this Court holds that any administrative or judicial act that entails loss of nationality must comply with the guarantees enshrined in Article 8 of the Convention, including the following:

- a) The person concerned must be notified about the start of the proceedings, and the authorities must present the reasons for the loss of nationality;
- b) Individuals must have the possibility of defending themselves, which includes the existence of a fair hearing and legal advice and, if applicable, translation or interpretation services;
- c) The act by which loss of nationality is determined must be subject to full review by a higher judicial body, or an independent and impartial body;
- d) If children or adolescents are involved, their best interests must be considered, and they must be allowed to take part in the proceedings according to their degree of maturity.

B.2.2. Analysis of the specific case

98. In the instant case, the Court recalls that Ms. Habbal acquired Argentine nationality on April 4, 1992, after renouncing her original citizenship, in accordance with the resolution issued by Federal Judge Number 2 of Mendoza (*supra*, para. 32). On May 12, 1992, the Director of the National Population and Immigration Department informed Federal Judge No. 2 of the content of Resolution 1088, leading eventually to the Acting Federal Judge's ruling on October 27, 1994, confirmed by the Federal Court of Appeals, revoking Ms. Habbal's citizenship obtained by naturalization and ordering the cancellation of any identity document granted to her as an Argentine citizen. The Court also recalls that Ms. Habbal was the subject of criminal proceedings for allegedly making false statements in the documentation presented in order to obtain residence and citizenship (*supra*, para. 42). In relation to these matters, on April 14, 1997, the Criminal Court Judge who heard the case concluded that Ms. Habbal was not responsible for the matters investigated, nor was there any evidence against her. Therefore, he dismissed the case against the alleged victim.

99. In relation to the above, firstly, the Court noted that the Criminal Court Judge ruled on the criminal case brought against Ms. Habbal based on the part that Ms. Habbal played in obtaining the police certificate of residence and the option contract for the purchase of a property. The Judge held that "her inability to speak the language is, clearly in this case, an insurmountable barrier to the formulation of any kind of charge against the accused." Regarding the option contract for the purchase of a property in the province of Mendoza, he noted that the person responsible for those operations was not Ms. Habbal, but her husband, Mr. Al Kassar. Therefore, the judge ruled that Ms. Habbal had no criminal responsibility for the matters investigated, nor was there any evidence against her. Therefore, he ordered a temporary stay of proceedings against Ms. Habbal.

100. The Court notes that the Criminal Court Judge ordered a temporary stay of proceedings against the alleged victim because he concluded that Ms. Habbal was not involved in the processing of the police certificate of residence or the document for the purchase of the property, but not necessarily that the facts used to obtain nationality were true. For this

¹³¹ Cf. Written version of the expert opinion of Juan Ignacio Mondelli (evidence file, folios 2451 to 2617).

reason, this Court holds that the Acting Federal Judge did not violate the principle of presumption of innocence in ordering the revocation of nationality in civil proceedings before a judgment was delivered in criminal proceedings, since the facts on which the naturalization application was based could be declared false without having to wait for a final ruling on the crime of making false statements that Ms. Habbal allegedly committed.

101. In relation to the principle of legality, and bearing in mind what was stated above, the Court emphasizes that Article 15 of Decree 3213/84 attributes legal consequences to a different type of crime. The first concerns the use of false information to obtain citizenship, without specifying that the person making the application must be aware that the information is untrue. The Court finds that a civil case was brought against Ms. Habbal on legal grounds. The grounds concerned the false information included in the application for nationality regardless of whether the alleged victim was aware of it or guilty of committing a crime. Therefore, in the opinion of this Court, the application of Article 15 of Decree 3213/84, without a judgment having been delivered in the criminal proceedings, does not constitute, in the instant case, a violation of the principle of legality.

102. Secondly, this Court recalls that the duty to state reasons is one of the “due guarantees” included in Article 8(1) to safeguard the right to due process. The Court notes that the Acting Federal Judge found that false information was used to obtain nationality, based on the fact that “... The certificate of residence itself was evidently obtained fraudulently, because of the date of entry into the country. Regarding the alleged business that was to be set up, the seller is none other than ADUR, for whom an arrest warrant is pending. In the aforementioned criminal case, it was shown that the owner of the rural property that Raghda [Habbal] was allegedly going to purchase with her husband had never thought of selling it...” Therefore, the Acting Federal Judge held that Ms. Habbal obtained Argentine nationality based on Article 15 of Decree 3213/84, which was the rule cited as the grounds for revoking it. The Court notes that the judge explains the reasons why he reached the conclusions that he did, setting forth the facts, grounds and rules of procedure involved. Therefore, the Court finds that there was no failure to state the reasons under Article 8(1) of the Convention.

103. Thirdly, this Court notes that it is indeed the case that, in his judgment of October 27, 1994, the Acting Federal Judge did not consider whether Ms. Habbal would be rendered stateless due to her renunciation of her nationality of origin. However, from the evidence submitted to this Court it can be seen that, according to the official entry and exit records, Ms. Raghda Habbal entered the Argentine Republic on at least four occasions between 1994 and 1996 as a Syrian and Spanish, as well as an Argentine, national.¹³² The Court also notes that, as alleged by the State, since Ms. Habbal’s renunciation of her nationality of origin had no effect in Syria, she never ceased to be a national of that State.¹³³ Based on these facts, this Court concludes that, in the circumstances of this case, since it is evident that there was no risk of the alleged victim being rendered stateless following the revocation of her Argentine

¹³² Cf. Record of Migratory Movements of Raghda Habbal, Immigration Information Office, between August 20, 1994 and March 17, 1996 (evidence file, folio 1047); Ministry of the Interior, Public Works and Housing, Antecedentes EN.SA, of October 7, 2016 (evidence file, folio 1059), and passport of Ms. Raghda Habbal issued on June 23, 1994 (evidence file, folios 201 to 211).

¹³³ See Legislative Decree 276 of the Arab Republic of Syria of November 24, 1969, on nationality. Article 10 of the decree reads as follows: “A Syrian Arab forfeits nationality if he acquired a foreign nationality, provided that a decree has been issued, based on his request and upon recommendation by the Minister allowing him to abandon his nationality after having fulfilled all his obligations and duties towards the State.”

nationality, the actions of the Acting Federal Judge did not constitute a violation of Article 20 of the American Convention.

104. Based on the above, the Court concludes that the State is not responsible for the violation of Articles 8(1), 8(2), 9 and 20 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Ms. Raghda Habbal.

VII-2 RIGHT TO JUDICIAL PROTECTION IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS

A. Arguments of the parties and observations of the Commission

105. The **Commission** found that in the instant case the right to judicial guarantees was violated in both the administrative proceedings that led to the revocation of the residence permits, and the judicial proceedings that deprived Ms. Raghda Habbal of Argentine nationality. Regarding the administrative proceedings, it noted that the fact that the people affected did not take part and were not notified of Resolution 1088 meant that they were unable to contest the decision in the courts, which affected their right to file an appeal before competent judges or courts. In the case of the judicial proceedings that revoked Ms. Habbal's Argentine citizenship, the Commission found that within the framework of the appeals filed, no effective protection was provided for the rights violated in the process of revoking her nationality. Therefore, the Commission held that Argentina had violated the right to judicial protection of Raghda Habbal and her daughters contained in Article 25 of the American Convention read in conjunction with Article 1(1) thereof.

106. The **representatives** alleged that the State had violated the right to judicial protection (Article 25 read in conjunction with Article 8(1) of the Convention). Firstly, because there was no opportunity to question the validity of Resolution 1088 at the administrative level or, subsequently, to seek judicial redress. The representatives argued that in this case there was no adequate remedy. Secondly, they alleged that the federal civil proceedings for revocation of citizenship were notified incorrectly. The invalid notification, to which the public defender and the private legal representatives drew attention, was a violation of Article 25. Thirdly, they maintained that, since it was based on an administrative resolution that, as the courts confirmed, was invalid, the result was also invalid. The representatives argued that Resolution 1088 could not be used to commence proceedings. However, the judgment revoking Ms. Habbal's citizenship and making her a foreigner once again was delivered in a lower court and confirmed by the Federal Court, and every possible appeal was rejected, making the decisions final. The representatives concluded, therefore, that there had been a failure to respect both the right to be heard and to judicial protection under the Convention.

107. The **State** rejected the conclusions of the Commission and the representatives regarding the absence of effective judicial remedies. It maintained that the arguments presented were not based on an independent violation of rights, as it was claimed that rights were violated according to points of law presented regarding other rights. It also argued that the fact that the appeals were unsuccessful did not constitute, in and of itself, a violation of the right to judicial protection or due process. It held that, for that to be established, it had to be shown that there were obstacles to the filing of appeals or the exercise of the defense, that the judicial authorities had been dismissive of the alleged violations, or that the decision was arbitrary, which did not occur in the instant case. They explained that Ms. Habbal had had the opportunity to ascertain information about the grounds and reasons for the annulment

of her nationality and the court decisions that had confirmed it, and to present the appropriate appeals, arguments, and defense, which received adequate answers.

B. Considerations of the Court

108. With regard to Article 25(1) of the Convention, the Court has pointed out that under this provision requires the States Parties to guarantee, to all persons under their jurisdiction, an effective judicial remedy against acts that violate their fundamental rights.¹³⁴ This presupposes that, in addition to the formal existence of such remedies, they must ensure results or responses to violations of the rights established in the Convention, the Constitution or the laws.¹³⁵ This means that the remedy must be suitable for combating the violation, and its application by the competent authority must be effective.¹³⁶ Likewise, this Court has established that an effective judicial remedy means that the analysis by the competent authority of a judicial recourse can not be reduced to a mere formality, instead it must examine the reasons invoked by the claimant and make express statements regarding the same.¹³⁷ This does not imply that the effectiveness of the recourse should be evaluated on whether it produces a result favorable to the complainant.¹³⁸

109. In the instant case, the Court recalls that it has already analyzed the effects of the impossibility of submitting Resolution 1088 to a review before a competent authority, in light of the obligations of the State established in Article 8(2)(h) of the American Convention (*supra* para. 73). The Court recalls that, although the failure to notify the alleged victims of the existence of Resolution 1088 prevented them from having recourse to a competent authority, including an appeal to the courts under Article 25 of the Convention, Resolution 1088 never had any impact that materially affected the rights of the alleged victims. Moreover, since it was revoked, the rights violations produced by its existence ceased, and reparation was made. The Court also recalls that the fact that the alleged victims did not take part in the proceedings meant that it was not possible to know the scope of the violations of their rights due to the State's omissions in the proceedings and the issuance of Resolution 1088 (*supra* para. 81). Therefore, although it was impossible to lodge an appeal against the issuance of Resolution 1088, for the same reasons as mentioned above (*supra* paras. 80 to 84), and in application of the principle of complementarity, the Court holds that the State is not responsible for violating the right to judicial protection.

110. Moreover, the Court recalls that on November 2, 1994, Ms. Habbal filed a joint remedy of appeal and appeal for the declaration of nullity before the Federal Court of Appeals of Mendoza against the judgment delivered by the Acting Federal Judge on October 27, 1994. In her appeal, Ms. Habbal argued that Resolution 1088 constituted an arbitrary act that violated

¹³⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Pávez Pávez v. Chile, supra*, para. 155.

¹³⁵ Cf. *Judicial guarantees in states of emergency (Articles 27(2), 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24, and *Case of Pávez Pávez v. Chile, supra*, para. 155.

¹³⁶ Cf. Advisory Opinion OC-9/87, *supra*, para. 24, and *Case of Pávez Pávez v. Chile, supra*, para. 155.

¹³⁷ Cf. *Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 96, and *Case of Pávez Pávez v. Chile, supra*, para. 155.

¹³⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 67, and *Case of Romero Feris v. Argentina. Merits, reparations and costs*. Judgment of October 15, 2019. Series C No. 391, para. 135.

her right to nationality, and that due process had been violated.¹³⁹ One of Ms. Habbal's arguments was that notification by publication was not valid, because the summons initiating the proceedings for the revocation of citizenship should have been served at the address on file with the National Register of Voters. She also maintained that the judge should have had more evidence to demonstrate the alleged false statements made in the documents, and to prove the existence of malicious intent. Finally, Ms. Habbal contended that the Federal Judge should have waited for the Criminal Court Judge to determine whether citizenship had been obtained by fraudulent means before deciding whether it should be maintained or revoked.¹⁴⁰

111. In this regard, the Court recalls that in the judgment of June 30, 1995, the Mendoza Court of Appeals confirmed the decision of the Acting Federal Judge. The Court held that none of the questions raised by Ms. Habbal "constitutes sufficient reason to declare the nullity of the judgment challenged, because in reality most of the points are errors *in iudicando* that do not carry sufficient weight to affect the appellant's right of defense or to disqualify the judgment as a valid jurisdictional act, which can be remedied, in any case, through an appeal."¹⁴¹ Regarding the complaint related to the nullity of the summons, it stated that an appeal for the declaration of nullity "is only appropriate with respect to errors in the judgment, which does not apply in the case under review, since the error pointed out by the appellants goes back to the very beginning of the proceedings: the notification that Ms. Habbal should have received regarding the commencement of the proceedings for the revocation of citizenship at the address registered with the electoral authorities."¹⁴² For this reason, Ms. Habbal's attorneys lodged an extraordinary appeal with the Federal Court of Appeals. On October 18, 1995, the Federal Appeals Court of the Province of Mendoza rejected the extraordinary appeal because there was no evidence of the existence of a "federal case" even though the formal requirements for the appeal had been met.

112. In the instant case, the Court notes that various judicial remedies were available to Ms. Habbal to resolve her claims regarding violations of her rights to nationality and due process. These remedies were effective, inasmuch as the judicial authorities that heard them analyzed and responded to the allegations made by Ms. Habbal. The Federal Appeals Court proceeded to analyze the substantive allegations of the alleged victim on appeal, and rejected them based on legal arguments and domestic case law. No omissions of the State's obligations under Articles 8 and 25 of the Convention were observed.¹⁴³ The Court reiterates that the effectiveness of a remedy should not be evaluated based on whether it produces a favorable result for the complainant (*supra* para. 108). Therefore, in this case it is not for this Court to question alleged errors of law by the domestic courts which ruled on the appeals, since their assessment is not arbitrary or manifestly unreasonable.¹⁴⁴

¹³⁹ Cf. Note presented by Dr. Carlos Varela Álvarez, on November 2, 1994 (evidence file, folio 82), and Documentary evidence of the remedy of appeal and appeal for the declaration of nullity by attorneys Carlos Varela Álvarez and Diego Lavado, submitted in February 1995 (evidence file, folio 87).

¹⁴⁰ Cf. Documentary evidence for the remedy of appeal and appeal for the declaration of nullity prepared by attorneys Carlos Varela Álvarez and Diego Lavado, submitted in February 1995 (evidence file, folio 96).

¹⁴¹ Cf. Judgment of Court 8 of the Federal Court of Appeals of Mendoza of June 30, 1995 (evidence file, folio 107).

¹⁴² Cf. Judgment of Court 8 of the Federal Court of Appeals of Mendoza of June 30, 1995 (evidence file, folio 109).

¹⁴³ Cf. Judgment of Court 8 of the Federal Court of Appeals of Mendoza of June 30, 1995 (evidence file, folio 109 to 111).

¹⁴⁴ Cf. *inter alia*, ECHR [Grand Chamber], *S., V. and A. v. Denmark*, Nos. 35553/12, 36678/12 and 36711/12, judgment of October 22, 2018, para. 148.

113. Accordingly, this Court holds that the State has not violated the right to judicial protection enshrined in Article 25(1) of the Convention, read in conjunction with Article 1(1) thereof, to the detriment of Ms. Raghda Habbal and her daughters.

VIII OPERATIVE PARAGRAPHS

115. Therefore,

THE COURT

DECIDES,

unanimously:

1. To reject the preliminary objection concerning the fact that the alleged victims did not take part in the proceedings, pursuant to paragraphs 21 to 24 of this judgment.
2. To reject the preliminary objection concerning the abstract, hypothetical-conjectural and/or groundless nature of the alleged violations of rights, pursuant to paragraphs 21 and 25 of this judgment.

DECLARES,

unanimously, that:

3. The State is not responsible for violating the rights to freedom of movement and residence, and judicial guarantees, in relation to the obligation to respect rights, established in Articles 22(5), 8(1), 8(2)(b), (c), (d) and (h) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Raghda Habbal, pursuant to paragraphs 58 to 84 of this judgment.
4. The State is not responsible for violating the rights to freedom of movement and residence and judicial guarantees, or the rights of the child, in relation to the obligation to respect rights, established in Articles 22(6), 8(1), 8(2)(b), (c), (d) and (h), and 19 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Monnawar Al Kassar, Hifaa Al Kassar and Natasha Al Kassar, pursuant to paragraphs 58 to 84 of this judgment.
5. The State is not responsible for violating the rights of the child and judicial guarantees, in relation to the obligation to respect rights, established in Articles 19 and 8(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Mohamed Al Kassar, pursuant to paragraphs 58 to 84 of this judgment.
6. The State is not responsible for violating the right to personal liberty, in relation to the obligation to respect rights, established in Article 7 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Raghda Habbal, Monnawar Al Kassar, Hifaa Al Kassar and Natasha Al Kassar, pursuant to paragraphs 58 to 84 of this judgment.

7. The State is not responsible for violating the right to nationality, in relation to the obligation to respect rights, established in Article 20 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Raghda Habbal, pursuant to paragraphs 90 to 104 of this judgment.

8. The State is not responsible for violating the right to judicial guarantees and the principle of legality, in relation to the obligation to respect rights, established in Articles 8(1), 8(2) and 9 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Raghda Habbal, pursuant to paragraphs 90 to 104 of this judgment.

9. The State is not responsible for violating the right to judicial protection, in relation to the obligation to respect rights, established in Article 25(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Raghda Habbal, Monnawar Al Kassar, Hifaa Al Kassar and Natasha Al Kassar, pursuant to paragraphs 108 to 113 of this Judgment.

AND ESTABLISHES,

unanimously, that:

10. The Secretariat of the Court shall notify the Republic of Argentina, the representatives of Raghda Habbal, Monnawar Al Kassar, Hifaa Al Kassar, Natasha Al Kassar, and Monzer Al Kassar, and the Inter-American Commission on Human Rights of this judgment.

11. The case be closed.

DONE San Jose, Costa Rica, on August 31, 2022, in the Spanish language.

I/A Court H.R., *Case of Habbal et al. v. Argentina*. Preliminary objections and merits. Judgment of August 31, 2022. Judgment adopted in San Jose, Costa Rica.

Ricardo C. Pérez Manrique
President

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Nancy Hernández López

Patricia Pérez Goldberg

Rodrigo de Bittencourt Mudrovitsch

Pablo Saavedra Alessandri
Registrar

So ordered,

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar