

# Press Release

Inter-American Court of Human Rights

I/A Court H.R.\_PR-96/2020 English

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## I/A Court H.R. Protecting Rights

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### **ARGENTINA IS RESPONSIBLE FOR THE UNLAWFUL, ARBITRARY AND DISCRIMINATORY DETENTION OF CARLOS ALBERTO FERNÁNDEZ PRIETO AND CARLOS ALEJANDRO TUMBEIRO**

*San José, Costa Rica, October 6, 2020.* – In its Judgment in the Case of **Fernández Prieto and Tumbeiro v. Argentina**, notified today, the Inter-American Court of Human Rights declared the State of Argentina responsible for the violation of the rights to personal liberty, protection of honor and dignity, and judicial guarantees and judicial protection of Mr. Carlos Alberto Fernández Prieto and Mr. Carlos Alejandro Tumbeiro. In addition, the Court found Argentina responsible for the violation of the right to equality before the law and the prohibition of discrimination, to the detriment of Mr. Tumbeiro.

The official summary of the Judgment is available [here](#) (Only in Spanish) and the full text of the Judgment is available [here](#) (Only in Spanish).

This case concerns the violations that occurred in the course of the illegal and arbitrary arrests of Mr. Fernández Prieto and Mr. Tumbeiro by the Police of Buenos Aires Province and the Federal Police of Argentina, respectively, as well as the lack of adequate supervision on the part of the judicial authorities who heard their cases.

The State made a full acknowledgment of its international responsibility in this case.

In analyzing the case, the Court determined that Mr. Fernández Prieto's right to personal liberty was impaired, because the alleged "suspicious attitude" that prompted the police agents to intercept the vehicle in which he was traveling did not constitute lawful grounds for his arrest without a judicial order or warrant. Thus, the Court considered that by failing to comply with the requirement of legality during his arrest, the State violated Articles 7(1) and 7(2) of the Convention (right to personal liberty), in relation to Article 1(1) (obligation to respect rights) of that instrument.

With regard to Mr. Tumbeiro, the Court determined that his rights to personal liberty and to equality before the law were violated, along with the prohibition of discrimination, during his arrest and detention by police for the purpose of checking his identity. The Court considered that the lack of objective elements that prompted his arrest, together with the application of stereotypes related to his appearance, violated the requirement of legality and constituted an arbitrary and discriminatory action. The reasons that led to his detention did not comply with the provisions of Articles 7(1), 7(2), 7(3) and 24 (equality before the law) of the Convention in relation to Article 1(1) of that instrument.

In addition, the Court found that the generic and imprecise manner in which the applicable legislation defined the grounds for detaining a person without a warrant or judicial order, reflected a problem of regulatory design, since it failed to prevent arbitrary conduct and abuse of authority by the police and, on the contrary, could incentivize it. Consequently, the Court concluded that the State violated Article 7(1) and 7(2) of the Convention, in relation to Article 2 (duty to adopt domestic legal effects) of that instrument.

The Court further concluded that both the search of the vehicle in which Mr. Fernández Prieto was traveling, and the body search to which Mr. Tumbeiro was subjected by police, did not comply with the requirement of legality; in the case of Mr. Tumbeiro, the body search was also found to be arbitrary and disproportionate. These actions constituted a violation of Article 11 (the right to protection of honor and dignity) of the American Convention, in relation to Articles 1(1) and (2) of that instrument.

In consideration of these violations, the Court ordered the State to implement various measures of reparation, including: 1) adaptation of its domestic legislation in accordance with the provisions established in the Judgment, so as to prevent arbitrary actions in relation to arrests, personal body searches or searches of vehicles; 2) implementation of a training plan for officers of the Buenos Aires Police, the Federal Police of Argentina, and members of the Prosecutor's Office and the Judiciary, including information on the prohibition of applying dogmatic and stereotyped formulas as grounds for arrest or detention; and 3) the compilation of official statistics on actions taken by the Security Forces in relation to arrests, searches and inspections.

The composition of the Court for the issuance of this Judgment was as follows: Judge Elizabeth Odio Benito, President (Costa Rica); Judge Patricio Pazmiño Freire, Vice President (Ecuador); Judge Eduardo Vio Grossi (Chile); Judge Humberto Antonio Sierra Porto (Colombia); Judge Eduardo Ferrer Mac-Gregor Poisot (Mexico); and Judge Ricardo Pérez Manrique (Uruguay). Judge Eugenio Raúl Zaffaroni, an Argentine national, did not participate in the deliberation and signing of this Judgment, pursuant to Article 19(1) and 19(2) of the Court's Rules of Procedure.

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