

REPORT No. 66/12
CASE 12.324
RUBÉN LUIS GODOY
MERITS (PUBLICATION)
ARGENTINA
March 29, 2012

I. SUMMARY

1. On October 18, 1998, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," the "Commission" or "the IACHR") received a complaint filed by Mr. Rubén Luis Godoy and the "Office of the General Public Defender of the Rosario Appellate Chambers." The complaint was added to by the "Permanent Assembly on Human Rights PAHR" (hereinafter "the petitioners") and assigned case file number 12.324.

2. In their complaint, the petitioners argued that the Republic of Argentina (hereinafter "the Argentine State" or "the State") should be held internationally responsible for having condemned Mr. Rubén Luis Godoy to life in prison and the payment of 90,000 pesos in damages for the dual crimes of attempted rape and first degree murder, through a process that had violated his right to a fair trial. Among the guarantees violated, they allege that Mr. Godoy had been coerced into giving a false confession and that that confession had been decisive in the ruling convicting him. They add that although these facts were revealed to the court, the court did not launch an investigation. Additionally, they allege that Mr. Godoy did not have access to a remedy for appealing the ruling convicting him.

3. The petitioners allege that the facts in the complaint constitute a violation of several rights enshrined in the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), including humane treatment (Article 5), fair trial (Article 8), equal protection (Article 24) and judicial protection (Article 25), all in violation of the general duty to respect and guarantee human rights (Article 1.1) to the detriment of the alleged victims.

4. The State, for its part, indicated that the petition does not include facts indicating violations of rights protected under the Convention. In this sense, the State argued that there is no evidence of physical abuse to pressure Mr. Godoy, nor that such abuse has been duly denounced. The State holds that the conviction was based on many different evidentiary elements, not on the confession allegedly obtained under torture. The State says that Rubén Luis Godoy enjoyed all legal guarantees and that the remedies accessed by him were duly resolved. The State adds that there are other remedies that were not accessed.

5. In report No. 4/04, approved on February 24, 2004, the Commission concluded that the petition was admissible in keeping with that established in articles 46 and 47 of the Convention, and that it would continue to analyze the alleged violations of articles 5.1, 5.2, 8, 25, 1.1 and 2 of the Convention. It also declared the petition with regard to Article 24 of the American Convention inadmissible.

6. In light of the issues of fact and law set forth in this report, the Inter-American Commission concluded during its 140th Ordinary Period of Sessions that the State of Argentina didn't adequately investigate the torture, cruel or inhuman treatment allegation made by Mr. Godoy, and thus violated the rights enshrined in articles 8.1 and 25.1 in relation to article 5.1 of the American Convention. In addition, the Commission concludes that the confession made by Mr. Godoy under allegations of torture, cruel or inhuman treatment, was used by the court in his trial, in violation of 8.3 of the Convention. Furthermore, the Commission concludes that Mr. Godoy had no access to a judicial revision of elements of fact, law and proof and reception of proof that the tribunal considered, thus violating Article 8.2.h and Article 2, all with regard to Article 1.1 of the Convention. Likewise, the Commission concludes *iura novit curiae* that the State violated articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Rubén Luis Godoy.

II. PROCEEDINGS BEFORE THE COMMISSION FOLLOWING ADMISSIBILITY REPORT No. 04/04

7. On February 24, 2004, the IACHR approved Report No. 04/04, in which it declared petition 12.324, referent to Rubén Luis Godoy, admissible. The decision was communicated to the parties via a letter dated March 12, 2004, which initiated the time period of two months during which the petitioners could present their observations on the merits of the case. At the same time, the IACHR gave the parties the opportunity to reach a friendly settlement in the matter, in keeping with Article 48(1)(f) of the American Convention.

8. The petitioners accepted the proposal to initiate a process toward a friendly settlement in a brief dated March 25, 2004. On June 10, 2004, the petitioners indicated their desire to continue proceeding with the case, given that an agreement had not been reached with the State. On September 2 and November 1, 2004, as well as on January 6 and May 6, 2005, the petitioners sent additional information. On September 15, 2005, the petitioners requested a hearing, which was not granted. On November 7, 2005, the petitioners repeated that they did not wish to continue with the friendly settlement process and asked the IACHR to continue processing the case. The petitioners presented additional information on July 13, 2007, and May 5, 2010. All the communication mentioned in this paragraph was duly transmitted to the State.

9. The State, for its part, requested that the deadline be extended to May 24, 2004, and the request was granted. On May 12, 2005, the State proposed opening a space for dialogue in order to explore the possibilities of a friendly settlement. On February 13, 2008, it requested a deadline extension, which was granted. The communication mentioned in this paragraph was duly transmitted to the petitioner.

III. POSITIONS OF THE PARTIES

A. The petitioners

10. The petitioners indicated that on December 22, 1994, Rubén Luis Godoy was convicted of the dual crimes of attempted rape and first degree murder and sentenced to life in prison and a fine of 90,000 pesos for pain and suffering and damages by the Second Court of the Rosario Criminal Appellate Chamber, Santa Fe Province in proceeding No. 309/93, registered in that jurisdiction, under the provisions of articles 42, 55, 119 subparagraph three, and 80(7) of the Criminal Code of the Nation.

11. According to the petition, the criminal trial of Mr. Godoy began due to his confession of having attempted the rape and murder of 19-year-old Silvia Noemí Roldan in incidents that took place on February 10, 1992, during the early morning hours in the garden of a piece of property owned by Mrs. Gladys Balbuena, located at No. 2832 Almafuerte Street, Villa Gobernador Gálvez, Santa Fe Province.

12. The petitioners charge that the investigation into this crime carried out by the police was incomplete and suffered from several technical deficiencies. Among them was that the victim's body was washed before carrying out the usual examinations, for which reason important expert testimony could not be counted on for Mr. Godoy's defense. Likewise, they allege that tests for blood on the clothes of the accused were not made, nor semen tests from the victim, nor an examination for foot or finger prints at the scene of the crime.

13. They also hold that when confronted with the alleged victim, the witnesses for the prosecution could not identify him as Silvia Roldán's attacker. They also indicate that at the time it examined the evidence on Mr. Godoy's responsibility, the court ignored the fact that there were several procedural records and statements from witnesses calling into question his presence at the time and place where the crime occurred. Likewise, they allege that they were prevented from questioning a witness who supplied testimony that was important for identifying Godoy as the guilty party. They highlight that the court itself in the judgment it handed down recognized the many errors from which the investigation of the case suffered. According to the ruling, these errors were denounced not only by the

official defense attorney aiding Mr. Godoy with the procedure but also by the Public Prosecutor and the plaintiff (the mother of Silvia Roldán). They add that during the process of preparing the judgment, the magistrates did not respect the rules of procedure as provided for in the constitution, convicting Mr. Godoy on the basis of probability and not the certainty of his participation.

14. The petitioners allege that the main evidence on which the conviction was based was a confession given by the accused - in the absence of a defense attorney - before the Provincial Police, after he had been subjected to torture. They specifically denounce that after his arrest; the alleged victim was blindfolded, beaten and insulted by at least six individuals who told him to implicate himself as the person having committed the crime in order to stop the torment.

15. The complaint reveals that the coercion was made known to the Lower Court Investigative Judge for the Second Criminal District of Rosario on February 19, 1992, when Mr. Godoy appeared to give his preliminary statement. However, the judicial authority did not investigate the alleged acts of torture, nor did it dismiss the probatory validity of the statement given by the alleged victim to the police. They add that the statement given to the trial judge was divided into two parts: In the first part, Mr. Godoy confirmed the statement to the police, given that he thought he would have to return to police custody, and he denied having been beaten. But upon learning that once the preliminary statement proceeding concluded he would not be returned to police custody, he corrected his statements, declaring himself innocent. They allege that in spite of this, the court gave the status of circumstantial evidence to the confirmation of the confession, even though the confession should not have been considered because it was given in police headquarters and obtained through torture. The petitioners also allege that in other identical cases courts have ruled differently, acquitting the defendant, for which reason the ruling to convict violates the principle of equality under the law.

16. With regard to the possibility of filing a writ of *habeas corpus*, as the State indicated, they argue that that remedy is established for cases of arbitrary detention and that it would not be a suitable remedy for what Mr. Godoy is alleging. In this case, they argue that since torture is a publically actionable criminal act, whether or not Mr. Godoy denounces it is irrelevant given that it was the Trial Judge's duty to carry out an investigation in keeping with articles 180, 174 and 197 of the Criminal Procedural Code of Santa Fe. They add that the failure to comply with this duty is a publically actionable crime according to Article 274 of the Argentine Criminal Code.

17. According to the petitioners, during the trial hearing, Mr. Godoy's defense insisted, without success, on the inadmissibility of the statement given before the police and of the first part of the preliminary statement before the Trial Judge up to the point where the alleged victim declared that he was tortured.

18. The petitioners indicated that with the intent of avoiding the slowness of a written trial, being acquitted quickly and therefore released from prison, he decided to submit himself to an oral trial in keeping with the provisions of Article 447 of the Criminal Procedural Code of the Santa Fe Province. In keeping with the proceedings in force, upon submitting himself to an oral trial Mr. Godoy would not have recourse to an appeal. However, in the opinion of those who filed the complaint, this decision by the petitioner cannot be interpreted as a renunciation of his right to appeal a conviction. They argue that the lack of appeals process was a violation of Mr. Godoy's right enshrined in Article 8(2)(h) of the Convention, as well as of the principle of equality before the law, enshrined in Article 24 of the Convention - this latter violation because Mr. Godoy's situation was different from that of people under the same circumstances who opt for a written procedure, leaving them in a better position than those who opt for an oral procedure.

19. The petitioners allege that the State's assertion that the oral proceeding does not analyze the evidence in the same way as the written proceeding is not accurate, given that both proceedings must have the same guarantees.

20. The petitioners hold that the filing of a motion of inapplicability of the law against the ruling to convict would not, as the State has suggested, be appropriate, given that it is designed to

address questions of legal interpretation and not grave violations of the rights of the accused, as in this case. In addition, they argue that the remedy does not satisfy the requirements of Article 8(2)(h) of the Convention given the remedy's extraordinary nature. For this reason, the petitioners state that they filed a provincial motion of unconstitutionality and an extraordinary federal motion due to the arbitrariness of the ruling, despite the fact that they are also extraordinary.

21. On February 4, 1995, the Official Court Defender filed a provincial motion of unconstitutionality on behalf of Mr. Godoy, provided for in Article 447 of the Criminal Procedure Code of the Santa Fe Province, arguing that the ruling was based on tainted evidence, that the judges had not recognized the presumption of innocence of the accused, and that it was legally impossible to appeal the ruling to convict, ignoring the guarantee of appeal found in Article 8(2)(h) in the American Convention. This remedy was declared inadmissible by the Rosario Criminal Appeals Court on September 13, 1995, under the argument that the sole fact that the ruling judges already had an opinion on Godoy's guilt before developing the fundamentals of the ruling to convict does not constitute a violation of the constitutional guarantees of the accused.

22. The petitioners add that faced with the decision to reject the motion of unconstitutionality, the defense of the alleged victim filed a motion for admission of the denied appeal before the Supreme Court of Justice of the Santa Fe Province. The motion was rejected on December 21, 1995, on the grounds that the filers of the motion sought a new examination of the facts, the evidence and the law, which in the court's opinion had been resolved with sufficient bases in the lower court. The petitioners say Mr. Godoy was not notified of this ruling.

23. According to the petitioners, in response to the ruling denying the motion for admission of the denied appeal, they filed a motion for extraordinary federal remedies so that the matter would be heard before the Supreme Court of Justice of the Nation. However, the motion was rejected by the Provincial Supreme Court for being late, despite the arguments of Mr. Godoy's defense that there was no deadline for filing the motion because he was never notified of the December 21, 1995, ruling.

24. Finally, the petitioners report that Mr. Godoy filed a motion for admission of the denied motion for extraordinary federal remedies. In a ruling dated June 11, 1998, the Supreme Court of Justice of the Nation upheld the reasoning of the Provincial Supreme Court, finding that given the nature of the remedy in question, it was not necessary for the defendant to be notified of the ruling. It therefore found that the motion for extraordinary remedies had been filed late. Mr. Godoy's defense requested this last ruling be reverse, but that request was rejected *in limine* on August 13, 1998.

25. In sum, the petitioners allege that despite the fact that the main evidence for the prosecution in the criminal proceeding was compromised from having been obtained using torture, the alleged victim was not acquitted and ordered released by the justice system. This was due to proportional discrimination that denies the benefit of appeal to those individuals who submit themselves to an oral trial. They also maintain that the competent authorities did not carry out an adequate investigation with regard to the acts of torture, preventing those responsible from being punished and impeding the corresponding payment of damages. They state that all these facts constitute violations of the rights protected in articles 5, 8, 24 and 25 of the American Convention with regard to the general obligation to which the Republic of Argentina has submitted to respect and guarantee, in keeping with Article 1.1 of the Convention.

26. As a result of the aforementioned violations, the petitioners allege that the State should provide reparations to Mr. Rubén Luis Godoy, who has been unjustly imprisoned for more than 18 years.

B. The State

27. For its part, the State denied that the central evidence for the prosecution in the trial was the confession given by Rubén Godoy to the Santa Fe Provincial Police; on the contrary, the State holds that all the probatory elements presented during the trial adequately demonstrate the participation of the alleged victim in the attempted rape and homicide of Silvia Roldán. The Government also denies that it

failed to comply with its obligation to investigate, punish and provide reparations for the alleged torture inflicted on the alleged victim.

28. The State holds that the alleged acts of torture were made known to the trial judge at the time Mr. Godoy gave his preliminary statement, and that though the coercion could have detracted from the probatory effect of the confession at the police station, the same is not true of the first part of the preliminary statement on February 19, 1992, where the accused confirmed his original version regarding his participation in the facts, indicating that he did so without pressure of any kind. In this sense, the State emphasizes that in the court room, Godoy confirmed that except for a few details, all the rest was fine, even after denouncing the torture. Accordingly, the State argues that it is wrong for the petitioners to assert that because of the exclusionary rule or the complementary fruit of the poisonous tree doctrine "Godoy's confession to the police should be annulled, and with it the subsequent actions with incriminating results."

29. The State also indicated that the alleged victim could have made use of his constitutional right to refuse to give a statement to the police, without his silence being used to raise suspicion against him.

30. The State also said that the petition is baseless with regard to the failure to comply with the right to appeal a ruling, given that Mr. Godoy's decision to submit to a single-instance oral proceeding was a voluntary one made with the full knowledge that although the written procedure was slower, it offered the possibility of a more rigorous examination of the evidence and granted the right to appeal the ruling. They argue that consequently, all subsequent complaints regarding the benefit of an appeals process are not admissible.

31. In this sense, the State indicates that the Procedural Criminal Code provides for one instance in oral trials in Article 24, paragraph 4, under the particular requirements indicated Article 447 of the Code. The State notes that Mr. Godoy was submitted to an oral trial in accordance with these rules and that he should have considered his complicated procedural situation, given that written trials are more rigorous, for which reason defendants rarely opt for an oral proceeding. Accordingly, the State alleges that Mr. Godoy was sentenced in keeping with the procedural law in force and based on his own choices. Considering this, he cannot now request that the restrictive criteria for examining evidence typical of a written trial be applied in his case.

32. The State argues that despite this, both the written and the oral proceedings provide for a revision of the sentence, in compliance with the requirements of relevant article of the Convention. In the case of the written proceeding, the case passes from the trial judge to the ruling judge. This judge hands down a final ruling, and for an appeals process the Appellate Court becomes an appeals court. In the oral proceedings, the State adds, the trial judge sends the case file to the ruling judge, who applies the law. The defendant chooses the option of oral trial and the case is heard in a single instance by one of the Courts of the Appellate Court. In criminal trials, the Appellate Court can review the final rulings it hands down on the filing of a motion of inapplicability of legal doctrine, provided for in Article 479 of the Criminal Procedure Code. The State argues that Mr. Godoy did not use these remedies, in spite of the fact that their purpose is specifically to ensure the uniform application of the law. Therefore, they add that the accusations with regard to the alleged violation of Article 24 could have been resolved through this remedy.

33. The State responds in a similar way to the petitioners' allegation with regard to the violation of the right to equality due to the fact that in a different trial with identical circumstances the same court issued a different ruling. The State argues that Argentine case law is not a source of law unless the ruling at issue is a plenary ruling handed down by a superior court, which is not the case here. For this reason, although the two situations were similar, the court did not have the obligation to rule the same way.

34. The State adds that once the final ruling is issued in either of the two proceedings (written or oral), up to the moment of serving out the sentence in its entirety the person convicted has access to a

review process, which can reverse the final ruling. This remedy or action is established in Article 489 of the Santa Fe Criminal Procedural Code.

35. The State holds that all the remedies available domestically were resolved in a timely fashion and subject to the applicable legislation. It maintains that the petition's only motive is the alleged victim's disagreement with the ruling handed down through a standard proceeding and with full observance of the right to a fair trial. In that sense, in the State's opinion the complaint does not describe facts tending to characterize violations of rights protected by the American Convention, for which reason the Commission should dismiss the petition.

36. With regard to the petitioners' allegations of irregularities during the process that could have affected Mr. Godoy's right to defense, the State argues that Mr. Godoy's defense had all possible opportunities to question the witnesses.

37. Finally, the State maintains that the "fourth instance formula" should be applied to this case, as the central subject matter of the petition has been duly resolved by domestic authorities.

IV. ESTABLISHED FACTS

38. During the early morning hours of February 10, 1992, Silvia Noemí Roldán, 19 years old, was attacked in the front yard of 2832 Almafuerde Street and Chubut, in the Villa Gobernador Gálvez neighborhood. Due to the sharp blows she received from a blunt object, she died of head injuries. The victim's body "displayed signs of actions that undoubtedly indicated the sexual assault of the victim."¹

39. A "photo-fit," or composite sketch, was prepared using information provided by a person who witnessed the incident. According to the ruling to convict, two neighbors from the area where the incident took place, in particular Gabriela Godoy, were able to make out, through the blinds of their house, in profile and at a distance, the person who attacked and murdered Silvia Roldán. Gabriela Godoy is the person who provided the information to prepare a composite sketch. After the preparation of this drawing, as the ruling indicates, "the experienced eye of Sergeant Erballo, a veteran police officer in the area and long-time resident with extensive knowledge of its residents, picked out with guided professionalism "Puchero" Godoy as the person with the physical attributes matching the recently prepared photo-fit."² Despite the fact that this testimony is cited in the ruling to convict as the basis for the start of the "launch of a criminal pursuit"³ of Mr. Godoy, the documents in the Commission's possession do not indicate that he testified during the criminal proceeding.⁴ Despite the foregoing, the documents in the Commission's possession indicate that the aforementioned witnesses did not identify Rubén Luis Godoy in the police lineup.

40. On February 18, 1992, Mr. Godoy was arrested by Santa Fe Province police officers. During the time he was detained, he gave a preliminary statement without the presence of a defense attorney. In the statement, he admitted to being responsible for the incident. The same day he was examined by a police doctor who found him in a "Normal Mental State, No Injuries."⁵

¹ Brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the Single Instance Oral Court dated December 22, 1993, issued by the Criminal Appellate Chamber of the City of Rosario, Santa Fe Province.

² Brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the Single Instance Oral Court dated December 22, 1993, issued by the Criminal Appellate Chamber of the City of Rosario, Santa Fe Province.

³ Brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the Single Instance Oral Court dated December 22, 1993, issued by the Criminal Appellate Chamber of the City of Rosario, Santa Fe Province.

⁴ The State has not presented evidence of his appearance although in all the instances that it gave statements, both before the IACHR and from its seat, the State said that he appeared.

⁵ Brief from the petitioners, dated August 30, 2010. Annex. Copy of the statement given by Rubén Luis Godoy to the Santa Fe Province Police. Document attached to the police report containing the information about the medical examination carried out by Dr. Asenjo on Mr. Godoy on February 18 at 1920 hours.

41. The following day, February 19, 1992, Mr. Godoy appeared before the Lower Court Investigative Judge for the Second Criminal District of Rosario to give his preliminary statement. This statement is divided in two parts: during the first, Rubén Luis Godoy confirms the statement made in the police station almost in its entirety, but he states that he was beaten:

I state, maintain and affirm that my statement before law enforcement officials was correct, but I have to clarify something(...) With regard to my statement, which was read back to me in full, the only thing I would like to clarify is what I just mentioned, all the rest is fine. Here I feel fine with regard to my vulnerability, but I want to put it on the record that at the police station they hit me. After my brother left, they took down my personal information and took me inside. There, they hit me repeatedly. Q[question from the judge] What did they hit you with? A. With their hands. They blindfolded me and they hit me. Q. How many people were there in that place? A. There were like six people. Q. Do you have any way of knowing who among the six hit you? A. No, because when they blindfolded me they were in a circle. What I can say is that of the six, two hit me for sure, but I can't know for sure who it was. Q. Do you know any of the six police who you saw? A. Yes, but I didn't hear a name. Q. When did this happen? A. Yesterday, Tuesday evening. Afterward they kept hitting me. That's where I got scared because they said they had not recorded my entry, telling me they could throw me out the window. Q. Do you have any injuries due to the blows? A. Yes, my chest and my kidneys hurt. Q. Did these blows and threats make you say anything that wasn't true? A. Other than the adjustments that I mentioned, all the rest is fine.⁶

42. Next, and after signing his statement, he asked to give a new one, where he changes what he said previously, saying that it is not true, that he did not take part in the incident, and giving a new version of what happened:

(...) What I said in the previous statement does not represent the truth about everything that happened. What I said in the previous statement is worthless because they hit me to make me say it (...) But why do you, remaining calm, now say that what you said before is not true? A. Because I thought that I would be sent back there and that I couldn't change that statement (...).⁷

43. According to the trial documents a medical assessment of Mr. Godoy was ordered for February 19, 1992. Its result was that no injury was found: "removed of clothing, no clinically verifiable injuries. Other tests carried out came back negative for musculoskeletal injuries."⁸

44. On September 3, 1992, Rubén Luis Godoy gave a new preliminary statement before the trial judge in which he confirmed the second part of his statements given on February 19, 1992.⁹

45. On July 30, 1992, Mario Roberto Duera gave a statement before the trial judge, indicating that he was arrested with Mr. Godoy and was beaten while under arrest:

(...) at about 1400 hours [on February 19, 1992] they arrested the brother (Juan), the brother in law (Raúl) and three police officers with the Personal Safety Unit. They took us to the station. (...) Q. Did they treat them well? A. Yes. When we arrived to the station, deputy superintendent Ruiz and other officers were there. When they took away the brother and the brother in law, they started to take statements from me. Then a police officer came, grabbed my hair and slapped me and [told me] to think hard about what I had to say. After a while they took me out, but during all that time I

⁶ Brief from the petitioners, dated October 28, 1999. Annex 5. Preliminary Statement given by Rubén Luis Godoy before the Lower Court Investigative Judge for the Second Criminal District of Rosario.

⁷ Brief from the petitioners, dated October 28, 1999. Annex 5. Preliminary Statement given by Rubén Luis Godoy before the Lower Court Investigative Judge for the Second Criminal District of Rosario.

⁸ Brief from the petitioners, dated August 30, 2010. Annex. Report issued by Forensic Physician Dr. Víctor Figieri before the Lower Court Investigative Judge for the Second Criminal District of Rosario, on February 19, 1992; and brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the Single Instance Oral Court dated December 22, 1993, issued by the Criminal Appellate Chamber of the City of Rosario, Santa Fe Province.

⁹ Brief from the petitioners, dated October 28, 1999. Annex 6. Second Preliminary Statement given by Rubén Luis Godoy before the Lower Court Investigative Judge for the Second Criminal District of Rosario.

think they [beat] Godoy too (...) From there they took me to the station, there I saw Rubén in an armchair, handcuffed and with a fan. He was conscious but wasn't talking (...).¹⁰

46. In keeping with the rules of the Santa Fe Criminal Procedure Code, in force at the time of incidents in this case, once the investigation instance is concluded and the proceeding is moved to trial, and following the request to move to trial, the defendant could choose to be brought to trial through a single instance oral proceeding. In these cases, the competent court was the Criminal Appellate Court.¹¹ In accordance with the provisions of the former Article 447 of the Code, Mr. Godoy opted to be judged in an oral trial.¹²

47. As a consequence, Mr. Godoy was processed and brought to trial under proceeding number 309/93, before the Criminal Appellate Court of the Santa Fe Province. Following the oral trial hearings carried out on December 14, 15, 16 and 20, the court ruled to convict Rubén Luis Godoy on December 22 of that same year, condemning him to life in prison (without applying the additional punishment of prison for an indeterminate amount of time) for the dual crimes of attempted rape and first degree murder, in keeping with articles 29, 42, 55, 56, 119 subparagraph 3 and 80 subparagraph 7 of the Criminal Code. Likewise, it ruled in favor of a civil suit, ordering the payment of 90,000 pesos plus interest to the mother of Silvia Noemí Roldán.¹³

48. The ruling was based on an analysis of the available evidence. In this sense, and with relation to the probatory value assigned by the court to the confession that was allegedly given under torture, the court indicated:

I must accept the objections of the Defense with regard to using and taking advantage of the police interrogation as direct evidence, disagreeing with the Public Prosecutor. The absence of the defense attorney and his protective role in pgs89/92 is of particular importance and reduces its value to circumstantial. Despite the fact that the report from Dr. Víctor Frigueroi ruled out noticeable signs on the body of Mr. Godoy indicating illegal coercion, there remains the question without answer regarding the possibility of physical harm without solid evidence. But I would salvage as direct evidence specifically the sworn statement given before the investigative judge and according to the record we are reading in pgs. 102/103, it was read in a hearing in days prior. At that time, faced with the facts that incriminated him, of his own free will Godoy affirmed what he expressed before the police authorities, adding correlative details to his statement and doing so, no less, in the presence of his defense attorney. This participation based on knowledge of the incriminating facts forms the original and authentic preliminary statement, giving real opportunity for material defense. Godoy's responses were definitive, without any warning of formal or substantive vice weighing on the usefulness of the evidence indicating guilt. (...) The subsequent correction of pgs. 103/104 does not disqualify the value of the confession (...).¹⁴

¹⁰ Brief from the petitioners, dated October 28, 1999. Annex 7. Preliminary Statement given by Mario Roberto Duera before the Lower Court Investigative Judge for the Second Criminal District of Rosario.

¹¹ The Criminal Procedure Code in force as of the date of the facts was established by Law 6.740, today replaced by Law 12.734. It established in Article 24 that: Each Appellate Chamber, through its Courts, will hear: 1st The motions filed against the judgments and orders of the criminal, juvenile and misdemeanor judges; 2nd motions to admit appeals; 3rd disputes over jurisdiction; 4th the cases in which the trial proceeds through a single instance oral proceeding. The Chambers in Full Court will also hear motions of inapplicability of legal doctrine.

¹² The Oral Trial was established in articles 447 and 478 of the Criminal Procedure Code of Santa Fe Province, in force as of the date of the facts. Article 447: Within the period of three natural days allowed to answer the request to move to trial on a crime whose minimum punishment is at least five years in prison, the defendant may express if he or she wishes to be tried in a single instance in an oral trial. This option will not be available when there are several individuals accused and they are not all in agreement on the oral trial. Once the choice is made, the time period for answering the request will be suspended ex officio and will be renewed once it is confirmed. The choice can be appealed by the accused and the Prosecutor. If it is admitted, the option chosen cannot be changed.

¹³ Brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the Single Instance Oral Court dated December 22, 1993, issued by the Criminal Appellate Chamber of the City of Rosario, Santa Fe Province.

¹⁴ Brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the Single Instance Oral Court dated December 22, 1993, issued by the Criminal Appellate Chamber of the City of Rosario, Santa Fe Province.

49. With regard to the deficiencies in the collection of evidence and exculpatory evidence, the court adds to its analysis of the arguments of the defense the following:

(...) but the most important thing is that the confession of Rubén Luis Godoy before the Investigating Judge builds significantly on a multitude of evidence that, as we see it, combine to point to him as the culprit, removing doubt or questions on this point. (...) Regarding the investigative police work and the composite sketch, it is true that fortuity and uncertainty are issues, but these are undoubtedly commonplace at the start of an investigation, and only once the investigation is carried out is the information confirmed and turned into legally valid evidence.- There is no procedural error in the police action that would cause their actions to be dismissed.- This applies to the possibility that clues were not, which is explained by the specifics of the scene of the crime.¹⁵

50. In keeping with the Criminal Procedure Code in force at the time of the facts, in addition to the motion of unconstitutionality they responded to the ruling with motions of inapplicable legal doctrine¹⁶ and a motion to reargue.¹⁷

51. On February 4, 1994, the Chamber Public Defender's Office of the city of Rosario filed, in representation of Mr. Godoy, a motion of unconstitutionality against the ruling to convict before the Appellate Court.¹⁸ That remedy is regulated by Article 93 subparagraph 1 of the Provincial Constitution and by Provincial Law 7055.¹⁹

¹⁵ Brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the Single Instance Oral Court dated December 22, 1993, issued by the Criminal Appellate Chamber of the City of Rosario, Santa Fe Province.

¹⁶ The Criminal Procedure Code in force as of the time of the facts was established by Law 6.740, today replaced by Law 12.734. Article 479 holds: The remedy of inapplicability of legal doctrine will only be admissible against the final judgment containing interpretation of the law established by one of the Courts of the Criminal Chambers or through plenary agreement among them within five years of the date of the ruling being appealed.

¹⁷ Article 489. The review will proceed, at all times and to the benefit of the accused, toward the annulment of the final judgment: 1st. If the facts established as the basis of the conviction were not consistent with those established in another final criminal judgment; 2nd. When the judgment being contested is based on documentary or testimonial evidence whose falsehood has been declared in a prior final judgment; 3rd. If the conviction has been handed down as a result of prevarication, bribery, violence, or fraudulent plotting whose existence has been stated in a later final ruling, or if that ruling has not yet been arrived at because the case was dismissed, making it impossible to pursue the action; 4th. When after the ruling to convict, new facts or evidence come to light that, individually or together with those that have already been examined during the proceeding, make it evident that the criminal act did not take place, that the accused did not commit the crime, or that the typical aggravating circumstances that that judge or court took into account to rule on the case did not take place.

¹⁸ Brief from the petitioners, dated October 28, 1999. Annex I, Motion of unconstitutionality filed by the defense of Rubén Luis Godoy on February 4, 1994, before the Criminal Court of the Appellate Chamber.

¹⁹ Law 7055 ARTICLE 1.- A motion of unconstitutionality will proceed before the Supreme Court of Justice against final judgments handed down in trials that do not admit another recourse with regard to the same issue and against orders during the proceeding that put an end to a dispute or make its continuation impossible in the following cases:

- 1.- When the consistency of a less senior rule with the Provincial Constitution has been questioned and the ruling favors the less senior rule;
- 2.- When the wisdom of a precept in the Provincial Constitution has been questioned and the ruling has come out against the right or guarantee it is based on; and
- 3.- When the rulings or interlocutory appeals mentioned do not meet the minimum conditions necessary to satisfy the right to jurisdiction that the Provincial Constitution provides for. The motion will not proceed a ruling on it does not depend on the constitutional question raised, nor if it has not been submitted in a timely fashion and maintained at all points during the process.

ARTICLE 2.- The motion will be filed before the court that handed down the final judgment within ten days of its notification. Neither a motion for clarification of judgment nor a motion for inadmissibility filed against the judgment will interrupt the aforementioned time period.

ARTICLE 9.- The granting of the remedy, even through a motion to admit an appeal, suspends the execution of the ruling being appealed. However, in urgent cases, its compliance can be requested before the appropriate court if the first instance was upheld and monetary funds are provided that are sufficient to restore the situation to its previous state should the motion be accepted. To these effects and at the request of the beneficiary, the Court will release the necessary copies.

52. The Public Defender's Office bases its motion on the violation of the principle of assuming Mr. Godoy's innocence, as well as on the arbitrariness of the ruling, given that in the Public Defender's opinion, the judges began by assuming guilt and later justified their assumption: First, because the ruling assigns circumstantial value to a confession that was allegedly obtained through torture carried out by the police officers who arrested Mr. Godoy and was later partly confirmed due to Mr. Godoy's fear that he would be returned to their custody. They allege that the testimony was corrected when Mr. Godoy learned that he would not return to police custody. Second, the ruling to convict was based only on circumstantial evidence that did not exclusively indicate Mr. Godoy as the responsible party. Likewise, they argue that the evidence was not duly considered by the judges, and that in particular, they ignored fundamental exculpatory evidence. They also allege that during the investigation, important tests were not done, including searching for clues at the scene of the crime like shoe prints, as well as full finger prints and partial hand prints that could have been left by the murderer on walls, bricks and plastic pipes. With regard to the civil suit, they argue that the right to defense has been violated, since Mr. Godoy's opposition is disregarded. They also allege that there were no damages. Therefore, they request "the invalidation of the ruling being appealed for unconstitutionality in violation of articles 17/18/100/101 of the National Constitution and 1/2/6/7/9/95 of the Provincial Constitution, consisting in the complete omission of consideration of fundamental exculpatory evidence and petitions filed in the defense of the person I am defending. In its place we request the acquittal of the defendant for the reasons mentioned."²⁰

53. On March 15, 1994, the prosecutor representing the Public Ministry answered the copy of the motion of unconstitutionality sent it by the court. In its brief, the Public Prosecutor recommends that the motion be ruled inadmissible first because it had appealed to the constitution in error and second because "an old criteria expressed by our Hon. Supreme Court of National Justice indicating that questions of fact and evidence are not suitable subject matter for an extraordinary motion is also applicable. In addition, this means incurring other grounds for rejection, that being the lack of basis, given that it objects to facts exhaustively debated all during a process that has already been resolved. It therefore contradicts the nature and essence of the extraordinary character of the motion that has been filed, framing its argument in a conceptual error by intending to use this means – which, again, is extraordinary – as a third instance for debate, contradicting everything that has been settled in doctrine and case law."²¹

54. On July 27, 1994, the representative for the civil action replied to the motion. The representative requested the motion be rejected as it addresses a subject to be discussed during the normal appeals process.²²

55. The Criminal Appellate Court ruled on September 13, 1994, to declare the motion inadmissible, first because it found there is no arbitrariness or violation of constitutional guarantees in the ruling, and second because its allegations regarding assessment of the evidence would be the subject of

...continuación

ARTICLE 12.- When the Supreme Court finds the motion inadmissible, it will rule it so, at the cost of the individual bringing the motion. When it admits the motion under cases 1 and 2 of Article 1, it will revoke the ruling that has been the subject of the motion and return the proceeding to the court of origin for it to rule again in keeping with established constitutional doctrine. The costs will be applied to the losing party. Otherwise, it will uphold the ruling with costs to the party filing the motion. In case 3 under Article 1, if it accepts the motion, it will annul the judgment being contested and send the case to another judge or court to be heard anew. Costs will be charged to the defeated party. Otherwise, the motion will be rejected, with costs charged to the party filing the motion.

²⁰ Brief from the petitioners, dated October 28, 1999. Annex I, Motion of unconstitutionality filed by the defense of Rubén Luis Godoy on February 4, 1994, before the Criminal Court of the Appellate Chamber.

²¹ Brief from the petitioners, dated October 28, 1999. Annex I, Answer to request made by the Ministry of the Public Prosecutor before the Second Court of the Criminal Appellate Chamber, March 15, 1994.

²² Brief from the petitioners, dated October 28, 1999. Annex I, Answer to request made by the civil actor with regard to the motion of unconstitutionality.

an appeal and not a motion of unconstitutionality. It concludes, "(...) Though with the detailed documents of a traditional written full trial, the admissibility of this instance before the provincial court may be more sharply delimited, the probatory aspect is more difficult to review when the question involves oral trials where immediacy is decisively important in forming the ruling (...)." ²³

56. On September 28, 1994, Mr. Godoy's defense filed a motion for an admission of the denied appeal before the Supreme Court of Justice of the Santa Fe Province upon its failure to concede and denial of the motion of unconstitutionality. ²⁴ They base the motion on the violation of constitutional guarantees by the ruling to convict, including several violations of Article 8 of the American Convention on Human Rights, as well as other international treaties that refer to torture, all of which are incorporated into the Argentine Constitution in its Article 75. ²⁵

57. The Supreme Court of Justice of Santa Fe handed down a resolution denying the motion for admission on December 21, 1994. It based its decision on the failure to comply with the requirements of Article 8 of Law 7055, which establishes: "The motion for admission should be founded on the grounds of the court order denying the appeal." Also, with regard to the confession allegedly obtained through torture, "(...) according to this, the challenger does not give valid reasons tending to demonstrate that the confession Godoy gave in police headquarters – which was later ratified before an investigating judge – enters into the proceedings in an incorrect manner, in such a way as to make the rule of excluding those probatory elements that had been obtained in transgression of the law-doctrine known as the fruit of the poison tree applicable." The court also considers that "the question is not ideal for the channel chosen, since the applicant argues for the examination of subjects of fact, evidence and law that were resolved with sufficient basis in the same way as to allow for the dismissal of the vices of arbitrariness that are alleged." ²⁶ Mr. Godoy's defense was notified of this decision, but he was not notified personally.

58. On December 19, 1996, Mr. Godoy's defense filed an extraordinary federal motion before the Supreme Court of the Santa Fe Province, in accordance with Article 14 of national law number 48. ²⁷ It

²³ Brief from the petitioners, dated October 28, 1999. Annex I. Judgment of the Criminal Appellate Chamber in file "Godoy, R S/First Degree Murder."26/24, September 13, 1994.

²⁴ Brief from the petitioners, dated October 28, 1999. Annex I. Motion to admit appeal filed by Mr. Godoy's counsel before the Supreme Court of Justice of Santa Fe. File 651 GODOY, Rubén Luis, motion to admit appeal on denial of motion of unconstitutionality.

²⁵ Brief from the petitioners, dated October 28, 1999. Annex I. Motion to admit appeal filed by Mr. Godoy's counsel before the Supreme Court of Justice of Santa Fe. File 651 GODOY, Rubén Luis, motion to admit appeal on denial of motion of unconstitutionality.

Article 75, subparagraph 22 of the Political Constitution of the Republic of Argentina states: It is the Congress' responsibility: 22. To pass or vote down all treaties signed with other nations and with international organizations, as well as the concordats reached with the Holy See. The treaties and concordats rank higher than laws. The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Protocols; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment; the Convention on the Rights of the Child; within their scope of relevance, are at the level of the Constitution, do not replace any articles in the first part of this Constitution, and should be understood to be complimentary to the rights and guarantees recognized herein. They can only be revoked by the national Executive Branch following the approval of two thirds of the total number of members of each Chamber.

²⁶ Brief from the petitioners, dated October 28, 1999. Annex I. Judgment of the Supreme Court of Justice of Santa Fe Province, December 21, 1994, rejecting the motion to admit appeal.

²⁷ Organization and Jurisdiction of National Tribunals. Law 48: Article 14. Once a trial is brought before the Provincial Courts, it will be ruled upon and concluded in the provincial jurisdiction, and may only be appealed to the Supreme Court of final judgments handed down by superior provincial courts in the following cases: 1. When the dispute centers on an issue of the validity of a Treaty, of a law passed by Congress, or of an authority carried out in the name of the Nation and the ruling has been against its validity. 2. When the validity of a Provincial law, decree or authority has been called into question under the argument that it is counter to the National Constitution, to Treaties or to laws passed by Congress and the ruling has been in favor of the law or provincial authority. 3. When the intelligence of a clause of the Constitution, or of a Treaty or of a law passed by Congress or a charge carried out in the name of the national authority has been called into question and the decision is against the validity of the title, right, privilege or exemption that is based on the clause and the subject of the litigation.

alleges violations of the Constitution and international treaties, and argues that the ruling to convict was arbitrary. Among its arguments, it alleges that the courts did not order any kind of investigation into the facts of torture alleged and that, contrary to the provisions of international law, it recognized Mr. Godoy's confession, which was allegedly given under torture.²⁸

59. On November 26, 1997, the Supreme Court of Santa Fe denied the extraordinary federal motion on the grounds that it had been filed late. The denial states, "According to the record of proceedings, the General Court Defender was notified of this ruling in written communication [...] dated February 10, 1995 [...] and the brief of the extraordinary federal motion was presented on December 19, 1996."²⁹

60. Mr. Godoy's defense filed a direct extraordinary motion (for admission) before the Supreme Court of the Nation against the resolution denying the extraordinary motion for being late. It bases its request on the fact the Mr. Godoy had not been notified of the resolution denying the motion for admission handed down on September 28, 1994. It invokes "the established case law that in federal issues regarding criminal cases, the final provincial ruling – in our case the order being appealed today – should be notified to the accused in order to start the term for filing an extraordinary federal motion (C.S.J.N., Rulings 302:1276, case of "López Osvaldo A.", rulings 310:1797)."³⁰

61. On June 11, 1998, the Supreme Court of the Nation rejected the motion for admittance, upholding the argument that the filing of the extraordinary motion whose denial gave rise to the motion for admittance was late.³¹ Mr. Godoy's defense filed a motion for reversal of the order, which was denied on August 13, 1998.³²

²⁸ Brief from the petitioners, dated October 28, 1999. Annex I. Brief to File an Extraordinary Federal Motion, December 19, 1996.

²⁹ Brief from the petitioners, dated October 28, 1999. Annex I. Order dated November 26, 1997, of the Supreme Court of Santa Fe.

³⁰ Brief from the petitioners, dated October 28, 1999. Annex I. Brief to file an extraordinary direct motion presented by the defense counsel of Mr. Godoy before the Supreme Court of the Nation.

³¹ Brief from the petitioners, dated October 28, 1999. Annex I. Order of the Supreme Court of the Nation, June 11, 1998, in case file "Motion of *hecho deducido* filed by defense attorney of Rubén Luis Godoy in the case of Godoy, Rubén Luis, first degree murder- Case File No. 309/93."

³² Brief from the petitioners, dated October 28, 1999. Annex I. Order of the Supreme Court of the Nation, August 13, 1998.

V. ANALYSIS OF LAW

A. Right to a fair trial and judicial protection (articles 8(1) and 25(10) of the American Convention with regard to the right to humane treatment (Article 5(1)), and with the obligation to prevent and punish torture (articles 1, 6 and 8 of the Inter-American Convention for the Prevention and Punishment of Torture.))

62. Article 8(1) of the American Convention indicates:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

63. For its part, Article 25(1) of the American Convention establishes:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

64. The pertinent parts of Article 5 of the Convention holds that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

65. The petitioners allege that Rubén Luis Godoy was arrested by police officers on February 18, 1992, and that while under arrest he was tied and beaten by six police officers who sought to force him to sign a confession indicating that he was the perpetrator of the dual crimes of attempted rape and first degree murder of Silvia Noemí Roldán. They state that as a result of the aforementioned aggression, Mr. Godoy signed the statement without the presence of his attorney. They allege that later, he confirmed the confession before the investigating judge while still fearing that he would be returned to the custody of said police officers. However, once he learned that he would not be returned to police custody, he retracted his confession and pled innocent.

66. According to the petitioners, although Mr. Godoy denounced these facts before the investigating judge, they were not investigated.

67. For its part, the State argues that the facts of torture had not been proven.

68. In accordance with the aforementioned, in this chapter the IACHR is called to determine, first, if the complaint submitted by Mr. Godoy that he has been the victim of torture or cruel, inhumane or degrading treatment at the hands of police officers with the purpose of getting him to confess to being the perpetrator of the dual crimes of attempted rape and first degree murder was duly investigated; and second, if in this instance the State is responsible for the violation of his right to humane treatment.

69. The Commission has indicated repeatedly that "International Human Rights Law strictly prohibits torture and cruel, inhuman, or degrading punishment or treatment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international jus cogens. Said prohibition remains valid even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and other crimes, state of siege, or a state of emergency, civil commotion or

domestic conflict, suspension of constitutional guarantees, domestic political instability or other public emergencies or catastrophes.”³³

70. Likewise, the Court has indicated that universal and regional treaties enshrine this prohibition and the irrevocable right to not be tortured. Likewise, numerous international instruments enshrine this right and repeat the same prohibition, including under international humanitarian law.³⁴

71. The Inter-American Convention to Prevent and Punish Torture (hereinafter the “IACPPT”) forms part of the inter-American *corpus iuris* that should serve this Commission for establishing the content and reach of the general provision contained in Article 5(2) of the American Convention.³⁵ Considering that both parties have had the possibility of presenting arguments in relation to the allegation made by Mr Godoy of torture, cruel, inhuman or degrading treatment, and the subsequent investigation, the Commission will include *iura novit curiae* consideration of the State obligations under this Convention.

72. Article 1 of the IACPPT indicates:³⁶
The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

73. Article 2 of the IACPPT defines torture as follows:

[...] any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

74. Article 6 of the IACPPT indicates:

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction..

³³ Inter-American Court, *Case of Bueno Alves*. Judgment dated May 11, 2007. Series C. No. 164. Para. 76; Inter-American Court, *Case of Penal Miguel Castro Castro*. Judgment dated November 25, 2006. Series C No. 160. Para. 271; and Inter-American Court, *Case of Baldeón García*. Judgment dated April 6, 2006. Series C No. 147. Para. 117.

³⁴ Inter-American Court, *Case of Bueno Alves*. Judgment dated May 11, 2007. Series C. No. 164. Para. 77. Citing: International Covenant on Civil and Political Rights, Art. 7; Convention against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment, Art. 2; Convention on the Rights of the Child, Art. 37, and International Convention on the Protection of the Rights of All Migrant Workers and their Families, Art. 10; Inter-American Convention to Prevent and Punish Torture, Art. 2; African Charter on Human and Peoples’ Rights, Art. 5; African Charter on the Rights and Wellbeing of the Child, Art. 16; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention), Art. 4; and the European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3; Body of Principles for the Protection of All Persons Under Any Form of Detention or Prison, Principle 6; Code of conduct for officials in charge of ensuring compliance with the law, Art. 5; UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 87(a); Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, Art. 6; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 17.3; Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Art. 4, and Guidelines of the Council of Europe Human Rights and the fight against terrorism, Guideline IV; and Art. 3, which the four Geneva Conventions hold in common; Geneva Convention with regard to the proper treatment of prisoners of war (Convention III), Arts. 49, 52, 87 and 89, 97; Geneva Convention with regard to the proper protection of civilians during time of war (IV Convention), Arts. 40, 51, 95, 96, 100 and 119; Additional Protocol of the Geneva Convention, August 12, 1949, regarding the Protection of Victims of International Armed Conflicts (Protocol I), Art 75.2.ii, and additional protocol to the Geneva Convention, August 12, 1949, regarding the protection of victims of domestic armed conflicts (Protocol II), Art. 4.2.a.

³⁵ *Case of Tibi v. Ecuador*. Judgment dated September 7, 2004. Series C No. 114. Para. 145.

³⁶ The Inter-American Convention to Prevent and Punish Torture took effect in Argentina on April 30, 1989. According to Article 22 of that Convention, compliance with the obligations it contains are obligatory for States as of that date.

75. For its part, Article 8 of the treaty establishes:

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

76. These guarantees are irrevocable and should be applied under all circumstances, especially in the case of individuals under detention due to the fact that the State is responsible for guaranteeing their humane treatment.³⁷ The Inter-American Court has indicated that, "The way a detainee is treated must be subject to the closest scrutiny, taking into account the detainee's vulnerability."³⁸

77. Likewise, the Court has said that in their role as guarantors of the rights enshrined in the Convention, States are responsible for the observance of those rights with regard to all individuals in its custody.³⁹ "The role of the State as guarantor with respect to this right carries with it the obligation to prevent situations that might lead, by action or omission, to negatively affect it. Effectively, (...) the State does in fact have the responsibility to guarantee the rights of individuals under its custody as well as that of supplying information and evidence pertaining to what has happened to the detainee."⁴⁰ Similarly, the Court has indicated that when a person under custody is injured, it is the State's responsibility to provide a satisfactory and convincing explanation for what happens to individuals under its custody and to satisfy accusations of its responsibility through adequate probatory elements.⁴¹

78. It has been demonstrated that on the same day he was brought before the judge, Mr. Godoy denounced that he was beaten by several police officers on repeated occasions while he was under the custody of officers of the Santa Fe Province Police. He denounced that he was tied up and that at least two officers struck him with their hands. Likewise, he indicated that he was threatened with being thrown out the window, as his entrance to the station had not been recorded, and that afterwards they continued to hit him. He stated that he had pain in his chest and kidneys and indicated that he would be able to recognize the police officers who beat him.⁴² It is a proven fact that the judge, after receiving his testimony, ordered the same day, February 19, a medical exam that concluded there were no physical injuries.

79. His statement was confirmed during the proceeding by the statement of Mario Roberto Duera, who said that he was arrested with Mr. Godoy and that "Deputy Superintendent Ruiz" and other officers grabbed him by the hair and slapped his face while telling him to think hard about what he was going to say. He added that, in his understanding, Mr. Godoy had also been beaten, since as he left he saw him handcuffed in front of a fan, conscious but not speaking.⁴³

³⁷ Inter-American Court, *Case of Bulacio*. Judgment dated September 18, 2003. Series C No. 100, paras. 126 and 138; *Case of Hilaire, Constantine and Benjamin et. al.* Judgment dated June 21, 2002. Series C No. 94, Para. 165; and *Case of Cantoral Benavides*. Judgment dated August 18, 2000. Series C No. 69, Para. 87.

³⁸ Inter-American Court, *Case of Bulacio*, Judgment dated September 18, 2003. Series C No. 100, Para. 126, which cites Eur. Court H.R., *Iwanczuk c. Polonia* (App. 251196/94) Judgment dated November 15, 2001, Para. 53.

³⁹ Inter-American Court, *Case of López Álvarez*. Judgment dated February 1, 2006. Series C No. 141. Paras. 104 – 106.

⁴⁰ Inter-American Court., *Case of Bulacio*. Reparations Judgment, September 30, 2003. Series C N° 100, para. 138. Véase also, Inter-American Court., *Case of Cárcel de Urso Branco*, Provisional Measures, Order dated April 22, 2004, Considering paragraph 6.

⁴¹ Inter-American Court, *Case of Juan Humberto Sánchez*. Judgment dated June 7, 2003. Series C No. 99. Para. 111.

⁴² Brief from the petitioners, dated October 28, 1999. Annex 5. Preliminary Statement given by Rubén Luis Godoy before the Lower Court Investigative Judge for the Second Criminal District of Rosario.

⁴³ Brief from the petitioners, dated October 28, 1999. Annex 7. Preliminary statement given by Mario Roberto Duera before the First Instance Judge of the for the Second Criminal District of Rosario, July 30, 1992.

80. The Commission and the Inter-American Court have understood that an act constitutes torture when the mistreatment is: a) intentional; b) causes severe physical or mental suffering, and c) is committed with any goal or purpose,⁴⁴ the investigation of crimes among them.⁴⁵ The IACHR observes that Mr. Godoy denounced having been subject to blows and threats that caused him severe suffering, to the point that he chose to declare himself guilty of the dual crimes of attempted rape and first degree murder. Therefore, his complaint includes elements that would be consistent with incidents of torture or cruel, inhuman and degrading treatment.

81. Inter-American case law has indicated repeatedly that when faced with a complaint of torture or cruel, inhumane or degrading treatment,

the State has the obligation to commence immediately an effective investigation that may allow the identification, the trial and the punishment of those liable, whenever there is an accusation or well-grounded reason to believe that an act of torture has been committed in violation of Article 5 of the American Convention. Furthermore, this action is specifically regulated in Articles 1, 6 and 8 of the Inter-American Convention against Torture, which Articles bind the State Parties to take all steps that may be effective to prevent and punish all acts of torture within the scope of their jurisdiction, as well as to guarantee that all torture cases be examined impartially.⁴⁶

82. In the same sense, the Commission has established that the State has an international obligation to investigate, solve and provide reparations for, all violations of human rights of which it is aware, as well as to punish those responsible in accordance with the provisions of articles 1(1), 8 and 25 of the American Convention.⁴⁷ This obligation is particularly relevant in the case of allegations of torture and cruel, inhuman or degrading treatment that coincide in time and form with the State's custody of the alleged victims.⁴⁸

83. When a person under custody makes a claim or alleges acts of torture, or cruel, inhuman or degrading treatment, as long as it is reasonably well funded, the State must, as a guarantor carry a diligent investigation to clarify the situation. The State must adopt reasonable measures to clarify the situation, measures that must consider not only the person's condition, but also other circumstances such as place, time frame or possible witnesses among others.

84. In this regard, in order to comply with inter-American standards the State has the obligation to provide a serious and documented investigation that diligently, and with respect to the principles of independence, impartiality competence and diligence.⁴⁹

85. Petitioner in this case argued he was physically and psychologically abused during his detention. Acts of torture or cruel, inhuman or degrading treatment can be accredited, among others, through physical evidence or through a credible allegation, especially when it is corroborated by physical

⁴⁴ Inter-American Court., *Case of Bueno Alves*. Judgment dated May 11, 2007. Series C. No. 164, para. 79.

⁴⁵ IACHR. Case before the Inter-American Court of Human Rights, Case 12.124, Daniel David Tibi v. Ecuador; Inter-American Court, *Case of Bayarri v. Argentina*. Preliminary objections, Merits, Reparations and Costs. Judgment dated October 30, 2008. Series C No. 187, para. 81.

⁴⁶ Inter-American Court, *Case of Gutiérrez Soler*. Judgment dated September 12, 2005. Series C No. 132. Para. 54. Also see Inter-American Court, *Case of Bayarri v. Argentina*. Preliminary objections, Merits, Reparations and Costs. Judgment dated October 30, 2008. Series C No. 187, para. 88.

⁴⁷ IACHR, Report No. 55/97, Case 11.137, Merits, *Juan Carlos Abella*, Argentina, November 18, 1997. Para. 392.

⁴⁸ When an individual presents an "arguable claim" about torture at the hands of State agents, State's obligation to not torture and to respect and ensure the rights of those under its jurisdiction means the State must carry out an investigation "capable of identifying and punishing those responsible." Eur. Court H.R., *Assenov et al. c. Bulgaria*, Judgment dated October 28, 1998 (90/1997/874/1086), Para. 102. See IACHR. Complaint before the Inter-American Court of Human Rights, *Case of 12.449 Teodoro Cabrera García and Rodolfo Montiel Flores* against the United Mexican States, June 24, 2009.

⁴⁹ IACHR., *Bueno Alves Case*. Merits Judgement May 11 2007. C Series No. 164. Para 108.

evidence or another testimony.⁵⁰ Credibility of the testimony must be determined, in first instance by the judge that receives the allegation.

86. In this case the First Instance Judge that received Mr. Godoy's declaration in which he denounced the acts of torture, cruel, inhuman or degrading treatment found the allegation credible and ordered a medical exam for that same day.

87. According to an analysis of the documents in the IACHR's possession, and as has been indicated in the section on established facts, the only documents related to an investigation into the alleged incidents of torture recorded in the investigative proceedings are two doctor's notes: The first from 19:20 hours on February 18, prepared in police headquarters and stating: "Normal Mental Condition, No Injuries."⁵¹ The second doctor's report, prepared on the orders of the supervising judge on February 19 with the purpose of checking for injuries, indicates "with clothing removed, no clinically verifiable injuries. Other tests carried out came back negative for musculoskeletal injuries."⁵²

88. As the Commission has indicated previously, it is crucial that complete medical examinations be carried out while investigating allegations of torture.⁵³ In carrying out these examinations, it is necessary for the doctors in charge of doing expert examinations to determine the existence of torture or cruel, inhuman or degrading treatment to include in their report, among other things, the full record: That is to say, a detailed exposition of the facts related by the subject during the interview, including the alleged methods of torture or mistreatment; the time at which the torture or mistreatment took place; the time at which the torture or mistreatment took place and any physical or psychological symptom that the subject says he or she suffers; also, a description of all the results obtained in the physical and psychological examination. Likewise, an interpretation of the relationship between the physical and psychological symptoms and the possible torture or mistreatment, as well as the medical and psychological treatment with recommendations as to the need for further examinations. The report must always be signed and should clearly identify the individuals who carried out the examination. All this is also established in the United Nations' principles of effective investigation and documentation of torture and other cruel, inhuman and degrading treatment.⁵⁴

89. The IACHR observes that neither of the two examinations carried out meets these requirements. There is no description of the circumstances of the interview, nor of the medical history, nor of any kind of psychological examination. In addition, although Mr. Godoy complained of pain in his chest and kidneys, there is no indication that an expert medical examination was ordered with regard to these complaints. Had it conducted complete medical exams, the State could have had the necessary information to corroborate or to judicially dismiss Mr. Godoy's allegations.

90. Additionally, the IACHR observes that the court failed to order an investigation into the facts denounced. In this sense, among other necessary actions, there is no indication that the police officers who participated in the arrest were called on to testify, despite the fact that Mr. Duera, who was arrested along with Mr. Godoy, indicated that he had also been beaten and that he could recognize the police officers. Neither is there any indication that actions such as the identification and summoning to

⁵⁰ See ECHR. *Case of Sevtap Veznedaroglu v. Turkey (Application no. 32357/96) Judgment, Strasbourg 11 April 2000, Partly dissenting opinion of Mr. Bonello, para. 14-17.*

⁵¹ Brief from the petitioners, dated August 30, 2010. Annex. Statement given by Rubén Luis Godoy to the Santa Fe Provincial Police. Document attached to the police file containing the medical report carried out on Mr. Godoy on February 18, at 19:20 hours by Dr. Asenjo.

⁵² Brief from the petitioners, dated August 30, 2010. Annex. Report issued by Forensic Physician Dr. Víctor Frigieri to the Lower Court Investigative Judge for the Second Criminal District of Rosario, February 19, 1992; and brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the Single Instance Oral Court dated December 22, 1993, issued by the Criminal Appellate Chamber of the City of Rosario, Santa Fe Province.

⁵³ IACHR. Complaint before the Inter-American Court of Human Rights, *Case of 12.449 Teodoro Cabrera García and Rodolfo Montiel Flores* against the United Mexican States, June 24, 2009, Para. 111.

⁵⁴ Available at <http://www2.ohchr.org/spanish/law/investigacion.htm>.

testify of others arrested at that precinct were carried out that day, nor were the police officers brought before the witnesses for identification. In this regard, the court has indicated that, "The judicial authorities have the duty to guarantee the rights of the person detained, which entails obtaining and ensuring the authenticity of any evidence that can prove acts of torture."⁵⁵

91. The IACHR observes that the record of this case was important, given that Mr. Godoy denounced that the alleged acts of torture compelled him to declare himself guilty of the dual crimes of attempted rape and murder through a written confession that he later rejected. As other cases before the IACHR and the Inter-American Court have indicated, this would be consistent with the effects of certain acts of violence that when "carried out intentionally in the context of testimony could produce feelings of panic and fear for one's life."⁵⁶ Effectively, it is precisely this situation of defenselessness and vulnerability in which individuals who have just been arrested find themselves submitted to cruel, inhuman and degrading treatment, with the purpose of overcoming their psychological resistance and forcing them to incriminate themselves. This produces feelings of fear, anguish, and inferiority capable of humiliating and devastating individuals and possibly breaking down their physical and moral resistance.⁵⁷

92. Additionally, the petitioners allege that Mr. Godoy had initially confirmed his statement before the supervisory judge because he was under the effects of the fear caused by the alleged acts of torture and cruel, inhuman and degrading treatment. This fear was gradually overcome as he learned that he would not be returned to police custody. This part is also consistent with the effects of the alleged incidents. The IACHR has established that, "One of the distinctive characteristics of torture and cruel, inhuman or degrading treatment is the intimidating effect it has on the person being tortured or mistreated. It is the Commission's understanding that when the victims made their self-incriminating statements [...] they were still in the grips of fear, anguish and inferiority, since it had been only a few days since their detention and physical mistreatment."⁵⁸ It is worth noting that in this case, Mr. Godoy went before the investigating judge on the day following the alleged incidents of torture and cruel, inhuman and degrading treatment.

93. In this context, the IACHR does not have enough information to establish if Mr. Godoy was subjected to torture or to cruel, inhuman or degrading treatment by police officers. However, the IACHR notes that this lack of evidence is due to the absence of a diligent investigation by the authorities.⁵⁹ This lack of due diligence is recognized by the court that issued the ruling to convict, as it established that there will be "a question without answer over the possibility of physical harm without solid evidence."⁶⁰ This question exists precisely as a consequence of the State's violation of its obligation to duly investigate Mr. Godoy's accusation in spite of the evidence that supported it. In this sense, the IACHR observes that the judge took note of the lack of an effective investigation in his ruling, but his responsibility according to the State's obligations under the convention was to duly carry out an investigation before issuing the ruling.

⁵⁵ Inter-American Court, *Case of Bayarri v. Argentina*. Preliminary objections, Merits, Reparations and Costs. Judgment dated 30 de octubre de 2008. Series C No. 187, Para. 92.

⁵⁶ IACHR. Complaint before the Inter-American Court of Human Rights, *Case of 12.449 Teodoro Cabrera García and Rodolfo Montiel Flores* against the United Mexican States, June 24, 2009, Para. 135; and Inter-American Court, *Case of Tibi v. Ecuador*. Judgment dated September 7, 2004. Series C No. 114, Para.148.

⁵⁷ IACHR. Complaint before the Inter-American Court of Human Rights, *Case of 12.449 Teodoro Cabrera García and Rodolfo Montiel Flores* against the United Mexican States, June 24, 2009, Para. 136; and Inter-American Court, *Case of Tibi v. Ecuador*. Judgment dated September 7, 2004. Series C No. 114, Para.146.

⁵⁸ IACHR. Complaint before the Inter-American Court of Human Rights, *Case of 12.449 Teodoro Cabrera García and Rodolfo Montiel Flores* against the United Mexican States, June 24, 2009, Para. 137.

⁵⁹ Also see Eur. Court Case of *Caloc v France*. Application No. 33951/96. July 20, 2000 § 91; *Assenov and Others v. Bulgaria* (judgment of 28 October 1998, Reports 1998-VIII, p. 3290, §§ 102-03).

⁶⁰ Brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the Single Instance Oral Court dated December 22, 1993, issued by the Criminal Appellate Chamber of the City of Rosario, Santa Fe Province.

94. Consequently, the IACHR concludes that the lack of a serious and effective investigation in the complaint made by Mr. Godoy over allegations of torture and cruel, inhumane and degrading treatment constitutes a violation of his rights to a fair trial and to judicial protection (articles 8(1) and 25(1) of the American Convention) with regard to the right to humane treatment (articles 5(1) and 1(1) of the Convention). This failure to investigate is also a failure to comply with its obligation established in articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

B. Right to fair trial (articles 8(2) and 8(3) in relation to Article 1(1) of the American Convention) and Article 10 of the Inter-American Convention to Prevent and Punish Torture

95. The pertinent parts of Article 8 of the American Convention establish the following:

2. Every 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. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. the right not to be compelled to be a witness against himself or to plead guilty; and
- h. the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

96. Article 1(1) of the Convention establishes:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

97. The petitioners argue that during the criminal process against Mr. Godoy, his right to a fair trial was violated. In particular, they allege that the court did not take into consideration that the investigation was incomplete and suffered from technical failings, which, this being the case, meant that there was not enough evidence to find him guilty. They add that they were prevented from questioning a witness who provided important information identifying Mr. Godoy as the guilty party. Also, they say that the notification of the ruling rejecting the motion for admission submitted in response to the denial of the motion of unconstitutionality was not given directly to Mr. Godoy, for which reason they were not able to file an extraordinary federal motion in time. They argue that this last motion was rejected precisely because it was filed late, despite the assertion of a lack of personal notification.

98. They hold that the conviction is based largely on the confession Mr. Godoy gave in police headquarters, a confession which was allegedly given under torture and inhuman, cruel and degrading treatment, without the presence of his defense attorney.

99. The petitioners argue that Mr. Godoy had a right under the American Convention to have the ruling to convict him that was handed down by the First Court of the National Appellate Chamber reviewed. They allege that they filed the proper motion – that being the motion of unconstitutionality – given that his constitutional guarantees were violated in the ruling to convict. The petitioners argue that the rejection of this measure without analysis of its merits constituted a violation of Mr. Godoy's right to a fair trial, particularly of his right for his sentence to be reviewed. Likewise, they allege that faced with this denial of admission, they filed a motion for admission before the Supreme Court of Santa Fe, which was also denied. After this ruling they filed an extraordinary federal motion that was denied for being filed late. They filed a motion of admission in response to this ruling, but it was dismissed.

100. For its part, the State argues that there were no flaws in the investigation and that the defense had every opportunity to question the witnesses. It adds that the proceeding in which Mr. Godoy was brought to trial and convicted was in accordance with the full respect of his right to a fair trial. However, they state that the oral proceeding includes elements of evidentiary examination that are less rigorous than in the written proceeding. The State argues that the confession allegedly obtained through torture was not taken into consideration by the court at the time it issued its ruling to convict, but rather that the ruling was based on a variety of evidence.

101. The State maintains that Mr. Godoy voluntarily submitted himself to an oral process with a single instance, having had the option of a written proceeding that would have allowed for the possibility of an appeal. For this reason, the State says, the complaint before the IACHR over the lack of an appeals process is not admissible. The State indicated that despite this, Mr. Godoy had remedies available to him for having his conviction reviewed, specifically the remedy of inapplicability of the law and the motion to reargue. The State argues that all the motions filed by the petitioner were resolved in a timely fashion in accordance with the applicable law.

102. First of all, it is important to remember that it is not the IACHR's job to establish whether or not the victim is responsible for punishable conduct, nor if he deserves punishment in the form of a prison sentence, nor the amount in which he should be punished. These decisions fall to the domestic legal authorities. Rather, the IACHR will decide in this case, as it has in others, on the compatibility of the actions taking during the judicial process with the American Convention.⁶¹

103. Following, the IACHR will examine if the State of Argentina made any violations of the guarantees provided for in Article 8 of the Convention in the following order: i. Right to defense (Article 8(2)(d, e and f)); ii Right to not to incriminate himself (articles 8(2)(g) and 8(3)); and iii. Right to appeal the ruling (Article 8(2)(h)).

i. Right to defense (Article 8(2)(d), (e) y (f))

104. As the Commission has indicated, the basic purpose of all criminal trials is to find the truth of the incident under investigation. To do this, all investigations should be carried out in good faith, in a diligent, exhaustive and impartial manner, and they should be oriented toward exploring all possible investigative leads that would allow for the identification of the perpetrators of the crime.⁶² With the purpose of determining this, and as has been established repeatedly by the bodies of the inter-American

⁶¹ Inter-American Court, *Case of Juan Humberto Sánchez v. Honduras*. Judgment dated June 7, 2003. Series C No. 99, Para. 120; Inter-American Court; *Case of Bámaca Velásquez v. Guatemala*. Judgment dated November 25, 2000. Series C No. 70, Para. 189; Inter-American Court; *Case of de los "Niños de la Calle" (Villagrán Morales et. al.) v. Guatemala*. Judgment dated November 19, 1999. Series C No. 63, Para. 222.

⁶² IACHR, Application before the Inter-American Court in the case of Ramón Mauricio García Prieto Giralte. Case 11.697 Against the Republic of El Salvador, February 9, 2006.

system, the examination of whether the State in question has violated its international obligations through the actions of its judicial bodies leads the Commission or the Court to focus on examining the internal proceedings at issue.⁶³

105. In the analysis of judicial actions and with regard to the allegations in this case, the IACHR will give special consideration to the standard that all proceedings should contain the necessary elements for providing a balance between the parties for the due defense of their interests and rights. This implies, among other things, that the principle of the adversarial proceeding applies.⁶⁴ The European Court of Human Rights has established that the principle of equality of arms for criminal proceedings is one of the implications of a fair trial. This means that each party must have a reasonable opportunity to present his or her case under conditions that do not place him or her at a disadvantage compared to the opponent.⁶⁵

106. The Inter-American Court has indicated in this sense that in light of Article 8(2)(f) and as a corollary to the right to defense, among the prerogatives that should be granted to the accused is that of examining the witnesses testifying against the accused and on behalf of the accused under the same conditions.⁶⁶

107. In this case, the petitioners allege that a key witness for the ruling to convict, "Sergeant Erballo," was not called to give a statement during the criminal proceeding and therefore they did not have the opportunity to question him. In this respect, the IACHR observes that Sergeant Erballo was cited in the ruling to convict as the person who had identified Mr. Godoy through the composite sketch available to the police. As the ruling to convict itself states, this set the stage for the launch of the criminal pursuit of the "so-called Puchero." Despite this, neither the documents in the possession of the IACHR nor the submissions from the State indicate that this witness has testified during the proceeding. On the contrary, the petitioners allege that they did not have information on how to contact him.⁶⁷ In this sense, the IACHR observes that the State had the obligation to take all measures necessary to ensure the appearance in court of the witness Erballo and it did not do so.⁶⁸ Therefore, the IACHR concludes that Mr. Godoy's defense was blocked from questioning a witness who provided decisive information. Because of this, his right to defense was violated in keeping with the provisions established in Article 8(f) of the American Convention.⁶⁹

108. Also, the Commission observes that it is a proven fact that Mr. Godoy gave a statement on February 18 before the police without his attorney or a defense attorney present. With respect to this, the Inter-American Court has indicated that the absence of a defense attorney while the accused is giving

⁶³ Inter-American Court, *Case of Herrera Ulloa*. Judgment dated July 2, 2004. Series C No. 107, Para. 146; *Case of Myrna Mack Chang*. Judgment dated November 25, 2003. Series C No. 101, Para. 200; and *Case of Juan Humberto Sánchez*. Judgment dated June 7, 2003. Series C No. 99, Para. 120.

⁶⁴ See ECHR. *Laukkanen and Manninen v. Finland*, N^o. 50230/99, § 34, 3 February 2004; *Edwards and Lewis v. the United Kingdom*, nos. 39647/98 and 40461/98, § 52, 22 July 2003; *Öcalan v. Turkey*, no. 46221/99, § 146, 12 March 2003.

⁶⁵ ECHR. *Öcalan v. Turkey*. 46221/99, 12 March 2003, Para. 140.

⁶⁶ Inter-American Court, *Case of García Asto and Ramírez Rojas*. Judgment dated November 25, 2005. Series C No. 137. Para. 152; *Case of Lori Berenson Mejía*. Judgment dated November 25, 2004. Series C No. 119, Para. 184; and *Case of Castillo Petruzzi et. al.* Judgment dated May 30, 1999. Series C No. 52, Para. 154.

⁶⁷ Brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the First Instance Oral Court, December 22, 1993, issued by the Criminal Appellate Chamber of the city of Rosario, Santa Fe Province: "(...) and it is in that sketch where the experienced eye of Sergeant Erballo, a veteran police officer in the area and long-time resident with extensive knowledge of its residents, picked out with guided professionalism "Puchero" Godoy as the person with the physical attributes matching the recently prepared photo-fit (...)"

⁶⁸ Also see European Court of Human Rights, *Case of Isgro v. Italy (Application number 11339/85)*, 19 February, 1991, para.32.

⁶⁹ Also see, European Court of Human Rights, *Case of Saidi v France, (Application number 14647/89)* 20 September 1993, para. 43; *Case of A.M. v Italy (Application number 37019/97)* 14 December 1999, para 25; and *Case of Unterpertinger v. Austria (Application number 9120/80)* paragraphs 30 and 33.

a statement constitutes a violation of the accused's right to be assisted by a defense attorney, enshrined in Article 8(2)(d) of the American Convention.⁷⁰ Therefore, the IACHR concludes that in this case, the Argentine State violated Article 8(2)(d) of the Convention to the detriment of Rubén Luis Godoy.

109. Likewise, the Commission observes that in this case, the petitioners allege that Mr. Godoy was prevented from effectively filing an extraordinary motion before the Supreme Court of the Nation given that he was not personally notified of the rejection of his motion for admission, filed following the denial of his motion of unconstitutionality. Instead, only his official defense attorney was notified, and that attorney failed to make Mr. Godoy aware of it and unilaterally decided not to continue with the appeals process. Because of this, the motion was filed late and later rejected as a result.

110. The Inter-American Court has indicated that “the legal assistance provided by the State must be effective and, to this end, the State must adopt all appropriate measures” to ensure this.⁷¹ The Commission finds that both the failure to give personal notification of a ruling in the context of a criminal proceeding and the omissions that the defense granted by the State could make can have a negative effect on the accused's ability to exercise the right to defense in the different stages of the process. The Supreme Court of Justice of Argentina itself has recognized the close relationship that exists between personal notification and the right to defense with regard to a decision that could be final.⁷²

111. The State did not file arguments on these allegations, nor did it provide any documentation demonstrating that, in effect, Rubén Luis Godoy was personally notified of the ruling rejecting his motion for admission filed in response to the denial of his motion of unconstitutionality. Neither is it registered that the official defense attorney on the case informed him of that ruling in a timely manner.⁷³

112. According to the available information, the Commission finds that both circumstances resulted in preventing Mr. Godoy from being able to continue defending himself through to the final instances allowed for in domestic law. In this sense, the Commission concludes that the Argentine State also violated the right to defense enshrined in articles 8(2) (d) (e) and (f) of the American Convention, with regard to the obligations established in Article 1(1) of the Convention, to the detriment of Rubén Luis Godoy.

⁷⁰ Inter-American Court, *Case of Palamara Iribarne*. Judgment dated November 22, 2005. Series C No. 135, Para. 175.

⁷¹ Inter-American Court, *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment dated November 21, 2007. Series C No. 170, Para. 159. Citing. *Cfr. ECHR, Case of Artico v. Italy*, Judgment of 13 May 1980, Application no. 6694/74, paras. 31-37.

⁷² See ruling “Dubra” 327:3802; case proceedings C. 605, L.XXXIX, judgment dated December 23, 2004, which concludes “that the accused must be notified personally of the ruling that makes the conviction final, considering that the possibility of receiving a new ruling is a power of the accused and not a technical authority of the defender.” Also, P. 2456.XL. “Peralta, Josefa Elba, remedy to admit an appeal,” which indicates “that it is settled case law of this Supreme Court that all rulings to convict in criminal proceedings must be personally notified to the accused in order that this kind of judgment is not made final through the choice of the defense attorney.”

⁷³ The Commission recalls the case law of the Court as far as the burden of proof when it is alleged that the State neglected to grant certain guarantees under the Convention. Specifically, the Court has expressed itself in the following terms referent to guarantees provided for in Article 7 of the Convention:

In the instant case, the victim has no available means of proving this fact. His allegation is of a negative nature, and indicates the inexistence of a fact. The State declares that the information about the reasons for the arrest was provided. This is an allegation of a positive nature and, thus, susceptible to proof. Moreover, if it is recalled that, on other occasions, the Court has established that “in proceedings on human rights violations, the defense of the State cannot be based on the impossibility of the plaintiff to provide evidence that, in many cases, cannot be obtained without the cooperation of the State.” This leads to the conclusion that the burden of proof on this point corresponds to the State. See Inter-American Court. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment dated November 21, 2007. Series C No. 170, Para. 73.

ii. Right to not self-incriminate. (Articles 8(2)(g) and 8(3))

113. The IACHR observes that Mr. Godoy was arrested on February 18, 1992, by police officers and held at the police precinct until February 19. At that time he was turned over to the investigative court. During the evening of the 18th, he gave a statement to the police in which he admitted to being the perpetrator of the incidents for which he was being accused. He did so without the presence of his defense attorney. As set forth in the previous chapter, Mr. Godoy complained that he was coerced through acts of torture and cruel, inhuman and degrading treatment to confess his participation in the attempted rape and murder of Silvia Noemí Roldán. Despite this, the judicial authorities did not launch a serious investigation into the allegations. Accordingly, the IACHR concluded that the lack of certainty regarding whether acts of torture by police officers took place is attributable to the authorities for their failure to carry out a timely and effective investigation.

114. The Inter-American Commission has indicated that “in the case of a statement or testimony in which there is a well-founded suspicion or presumption that it was obtained by some type of coercion, be it physical or psychological, the courts (...) must determine whether such coercion did actually exist. In the event that a statement or testimony obtained in these circumstances is admitted and used during the trial as an element of evidence or proof, that state may incur international responsibility.”⁷⁴

115. In this sense, the Inter-American Convention to Prevent and Punish Torture establishes that no statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding.

116. The petitioners allege that the confession given by Mr. Godoy to the police was considered at the time the conviction was issued, in violation of the Argentine State’s obligations under the Convention. For its part, the State argues that the confession was not taken into account.

117. The conviction, issued in the second instance, analyzes the probatory value granted to the confession in the following way:

I must accept the objections of the Defense with regard to using and taking advantage of the police interrogation as direct evidence, disagreeing with the Public Prosecutor. The absence of the defense attorney and his protective role in pgs89/92 is of particular importance and reduces its value to circumstantial. Despite the fact that the report from Dr. Víctor Friguero ruled out noticeable signs on the body of Mr. Godoy indicating illegal coercion, there remains the question without answer regarding the possibility of physical harm without solid evidence. But I would salvage as direct evidence specifically the sworn statement given before the investigative judge and according to the record we are reading in pgs 102/103, it was read in a hearing in days prior. At that time, faced with the facts that incriminated him, of his own free will Godoy affirmed what he expressed before the police authorities, adding correlative details to his statement and doing so, no less, in the presence of his defense attorney. This participation based on knowledge of the incriminating facts forms the original and authentic preliminary statement, giving real opportunity for material defense. Godoy’s responses were definitive, without any warning of formal or substantive vice weighing on the usefulness of the evidence indicating guilt. (...) The subsequent correction of pgs 103/104 does not disqualify the value of the confession (...).⁷⁵

118. That is to say, the court values the first statement before the police as circumstantial and grants full weight to the first part of the preliminary statement given the next day before the investigating judge, on February 19, wherein Mr. Godoy states that he confirms the statement from the day before. This first part of the statement is the one to which the ruling refers.

⁷⁴ IACHR, Report on the Human Rights Situation in Mexico, Chapter IV: The right to humane treatment, OAS/Ser.L/V/II.100, Doc.7 rev. 1, September 24, 1998, para. 320.

⁷⁵ Brief from the petitioners, dated October 28, 1999. Annex I, Judgment of the Single Instance Oral Court dated December 22, 1993, issued by the Criminal Appellate Chamber of the City of Rosario, Santa Fe Province.

119. The Commission has already established in other cases that “in most cases, torture occurs during the first few days the prisoner is detained. Prisoners are particularly vulnerable during the time they are held “incomunicado,” that is, when the security forces have total control over the fate of these people, since they are denied access to family members, an attorney, or an independent physician.”⁷⁶

120. It is precisely in this situation of defenselessness and vulnerability that individuals who have been arrested are subjected to cruel, inhumane and degrading treatment with the purpose of overcoming their mental resistance and forcing them to incriminate themselves, producing “feelings of fear, anguish and inferiority capable of humiliating and devastating [an individual] and possibly breaking their physical and moral resistance.”⁷⁷ One of the unique characteristics of the commission of acts of torture and of cruel, inhumane and degrading treatment is the effect of intimidation they produce in those they are perpetrated upon.⁷⁸

121. In this sense, the Commission understands that the victim stated that after making his self-incriminating statement before the investigating judge, he was still under the effects of fear, given that it had only been a few hours since his detention and, according to his own testimony, he was afraid of returning to the police facilities.

122. In summary, the Commission finds that having not carried out a serious, exhaustive and impartial investigation of the alleged incidents of torture and cruel, inhumane and degrading treatment, the possibility of defects in the confessions given by the victims have not been ruled out. The State therefore cannot use these statements as evidence.

123. As a consequence, the Commission concludes that in giving probatory value to a confession allegedly given under the effects of cruel, inhumane or degrading treatment, the Argentine State failed to comply with its obligations as stipulated in articles 8(2)(g) and 8(3) of the American Convention, in connection with Article 1(1) of the Convention and Article 10 of the Inter-American Convention to Prevent and Punish Torture.

iii. The right to appeal a judgment (Article 8(2)(h))

124. The right to appeal a judgement before a judge or court of higher hierarchy is an essential guarantee under due process of law, which aims to prevent the consolidation of a situation of injustice. According to the Inter-American case law, the objective of this right is “to create a remedy to prevent a flawed ruling, containing errors unduly prejudicial to a person’s interests, from becoming final”⁷⁹. Due process of law would be ineffective without the right to defense at trial and the opportunity to have a judgement properly reviewed⁸⁰

125. In this case, the analysis recognizes Mr. Godoy’s right to appeal the ruling to convict issued by the Appellate Court in the single instance oral proceeding. The State argues that Mr. Godoy opted for a single instance proceeding and therefore cannot argue that the ruling should be reviewed.

⁷⁶ Report on the Human Rights Situation in Mexico, Chapter IV: The right to humane treatment, OAS/Ser.L/V/II.100, Doc.7 rev. 1, September 24, 1998, para. 307.

⁷⁷ Inter-American Court., *Case of Tibi Vs. Ecuador*. Judgment dated September 7, 2004. Series C No. 114, para.146.

⁷⁸ IACHR. Complaint before the Inter-American Court of Human Rights, *Case of 12.449 Teodoro Cabrera García and Rodolfo Montiel Flores* against the United Mexican States, June 24, 2009, Para. 136; and Inter-American Court, *Case of Tibi v. Ecuador*. Judgment dated September 7, 2004. Series C No. 114, Para.137.

⁷⁹ Inter-American Court, *Case of Herrera Ulloa Vs. Costa Rica*. Judgement dated July 2 , 2004. Series C No. 107, para. 158.

⁸⁰ IACHR, Report No. 55/97, Case 11.137, Merritts, Juan Carlos Abella (Argentina), November 18, 1997, para. 252.

They add that despite this, he had at his disposal the remedies of inapplicability of the law⁸¹ and motion to reargue.⁸²

126. In this case, as has been established in the section on established facts, according to the rules of the Criminal Procedural Code of Santa Fe in force at the time of the facts, concluded in the investigative phase and upheld during the trial proceeding and later in the request to move to trial, the accused can opt to be brought to trial through a single instance oral trial, as Mr. Godoy did, under the jurisdiction of the Criminal Appellate Court.

127. The ICIPR Committee has indicated that, "The Committee considers that the expression "according to law" In article 14 (5) of the Covenant is not intended to leave the very existence of the right of review to the discretion of the States parties, since the rights are those recognized by the Covenant, and not merely those recognized by domestic law. Rather, what is to be determined "according to law" is the modalities by which the review by a higher tribunal is to be carried out."⁸³ And that although "the highest court of a country acts as first and only instance, the absence of any right to review by a higher tribunal is not offset by the fact of being tried by the supreme tribunal of the State party concerned; rather, such a system is incompatible with the Covenant."⁸⁴

128. Accordingly, and as the right to appeal is a fundamental guarantee of criminal due process without which the right to defense during a trial would not be effective, the IACHR observes that the States must observe this right throughout the appeals process, in compliance with its obligations under Article 8(2)(h). This applies in the analysis of the combination of guarantees that make up due criminal process, in that they form the limit of the regulation of a State's power to punish in a democratic society and must be especially rigorously applied when it comes to a punishment of imprisonment.⁸⁵ Therefore, a system in which an accused individual who chooses an oral trial must waive beforehand a guarantee of this nature, especially when facing a criminal proceeding that could end, as was the case here, in a life-long prison term is against the American Convention.

129. Therefore, the IACHR concludes that Article 8(2)(h) recognizes Mr. Godoy's right to appeal the ruling of the Appellate Court that convicted him of the dual crimes of attempted rape and first degree murder.

⁸¹ The Criminal Procedure Code in force as of the time of the facts was established by law 6.740, today replaced by law 12.734. Article 479 holds: The remedy of inapplicability of legal doctrine will only be admissible against the final judgment containing interpretation of the law established by one of the Courts of the Criminal Chambers or through plenary agreement among them within five years of the date of the ruling being appealed.

⁸² Article 489. The review will proceed, at all times and to the benefit of the accused, toward the annulment of the final judgment: 1st. If the facts established as the basis of the conviction were not consistent with those established in another final criminal judgment; 2nd. When the judgment being contested is based on documentary or testimonial evidence whose falsehood has been declared in a prior final judgment; 3rd. If the conviction has been handed down as a result of prevarication, bribery, violence, or fraudulent plotting whose existence has been stated in a later final ruling, or if that ruling has not yet been arrived at because the case was dismissed, making it impossible to pursue the action; 4th. When after the ruling to convict, new facts or evidence come to light that, individually or together with those that have already been examined during the proceeding, make it evident that the criminal act did not take place, that the accused did not commit the crime, or that the typical aggravating circumstances that that judge or court took into account to rule on the case did not take place.

⁸³ Human Rights Committee, Communication No. 64/1979, Consuelo Salgar de Montejo c. Colombia, U.N. Doc. CCPR/C/OP/1 at 127 (1985), March 24, 1982, Para. 10.4.

⁸⁴ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before the courts and a fair trial, U.N. Doc. CCPR/C/GC/32 (2007), Para. 47.

⁸⁵ In a similar way, the Inter-American Court also views the body of criminal proceeding guarantees as particularly inviolable and rigorous when applied to the death penalty. In this respect, see Inter-American Court, *Case of Fermín Ramírez v. Guatemala*. Judgment dated June 20, 2005. Series C No. 126, Para.78.

130. For international human rights law, the name given to this remedy is irrelevant.⁸⁶ The important thing is that it meet certain standards. First, it must move forward before the judgment takes on the quality of *res judicata*⁸⁷ and must be resolved within a reasonable time period. That is to say, it must be *timely*. Likewise, it must be an *effective* remedy, which is to say that it must produce the results or response for which it was intended.⁸⁸ That is to say, it must prevent unjust situations from arising. Finally, it must be *accessible* and not require large number of formalities, which would make the right illusory.⁸⁹

131. The Commission highlights that the effectiveness of the remedy is closely linked to the scope of an appeal. This is because the fallibility of the legal authorities and the possibility that they make mistakes that result in an unjust situation is not limited to the application of the law: It also includes other aspects like the establishment of the facts or the standards for probatory evaluation. In this way, the remedy will be effective in accomplishing the purpose for which it was created only if it allows for a full review of these issues without limiting its proceedings to certain aspects of the legal authorities' actions.

132. With respect to this, in the *Abella* case in Argentina the Inter-American Commission indicated:

Article 8(2)(h) refers to the minimum characteristics of a remedy that serves as a check to ensure a proper ruling in both substantive and formal terms. From the formal standpoint the right to appeal the judgment to a higher court to which the American Convention refers should, in the first place, apply to every first instance judgment with the purpose of examining the unlawful application, the lack of application, or the erroneous interpretation of rules of law based on the operative part of the judgment. The Commission also considers that to guarantee the full right of defense, this remedy should include a material review of the interpretation of procedural rules that may have influenced the decision in the case when there has been an incurable nullity or where the right to defense was rendered ineffective, and also with respect to the interpretation of the rules on the weighing of evidence, whenever they have led to an erroneous application or non-application of those rules.

[...]

The remedy should also allow the higher court a relatively simple means to examine the validity of the judgment appealed in general, as well as to monitor the respect for fundamental rights of the accused, especially the right of defense and the right to due process.⁹⁰

133. For its part, the Human Rights Committee of the ICCPR has repeatedly established that:⁹¹

The right to have one's conviction and sentence reviewed by a higher tribunal established under article 14, paragraph 5, imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case. A review that is limited to the formal or legal

⁸⁶ Inter-American Court, *Case of Herrera Ulloa v. Costa Rica*. Judgment dated July 2, 2004. Series C No. 107. Para. 165; Human Rights Committee de la ONU. Communication No. 701/1996, Gómez Vázquez c. España, Resolution dated August 11, 2000. Para. 11.1.

⁸⁷ Inter-American Court, *Case of Herrera Ulloa v. Costa Rica*. Judgment dated July 2, 2004. Series C No. 107. Para. 158. In the same sense, see the Human Rights Committee of the ICCPR. Communication No. 1100/202, Bandajevsky c. Belarús, Resolution dated April 18, 2006. Para. 11.13.

⁸⁸ Inter-American Court, *Case of Herrera Ulloa v. Costa Rica*. Judgment dated July 2, 2004. Series C No. 107. Para. 161.

⁸⁹ Inter-American Court, *Case of Herrera Ulloa v. Costa Rica*. Judgment dated July 2, 2004. Series C No. 107. Para. 164.

⁹⁰ IACHR, Report No. 55/97, Case of 11.137, Merits, Juan Carlos Abella, Argentina, November 18, 1997. Paras. 261-262.

⁹¹ The text of Article 14(5) of the ICCPR is substantially similar to that of Article 8(2)(h) of the American Convention. Therefore, the interpretations that the UN Human Rights Committee makes with regard to the content and scope of that article are pertinent as a guide for interpreting Article 8(2)(h) of the American Convention.

aspects of the conviction without any consideration whatsoever of the facts is not sufficient under the Covenant.⁹²

134. Similar to what the Human Rights Committee's ICCPR has established, the IACHR holds that the right to appeal does not necessarily imply a new trial or a new "hearing" if the court that carries out the review is able to examine the facts of the proceeding.⁹³ What the rule requires is the possibility of pointing out a variety of different kinds of errors that the judge or tribunal could have made with regard to the facts, law, the evaluation of evidence, and the acceptance of evidence, as well as of getting a response. The form and means through which the review is carried out will depend on the nature of the issues under debate, as well as on the specifics of the criminal procedure system in the State in question.

135. It is worth mentioning that the American Convention "does not endorse any specific criminal procedural system. It gives the States the liberty to determine which one they prefer, as long as they respect the guarantees established in the Convention itself, the internal legislation, other applicable international treaties, the unwritten norms, and the imperative stipulations of international law."⁹⁴

136. In this sense, it is up to the States to provide the means necessary to make their specific criminal procedure system compatible with international human rights obligations, and especially with the minimum guarantees of due process established in Article 8 of the American Convention. So for example, in the case of the criminal procedure systems that primarily favor oral and immediate proceedings, as is the case in Argentina, States are obligated to ensure that those principles do not constitute limitations on the scope of appeal that the judicial authorities are authorized to carry out.

137. Also, as to the *accessibility* of the remedy, the Commission finds that, in principle, the existence of some minimum requirements for processing the remedy is not incompatible with the right contained in Article 8(2)(h) of the Convention. Some of these minimum requirements are, for example, the actual filing of the motion itself – given that Article 8(2)(h) does not require an automatic review – or the requirement of a reasonable time period within which the motion can be filed.

138. Finally, the Commission notes that the right to appeal is found within the framework of the group of guarantees comprising due process of the law, guarantees which are indissolubly linked to each other.⁹⁵ Therefore, the right to appeal a ruling should be interpreted jointly, together with the other procedural guarantees, should the characteristics of the case require it. As an example, it is worth mentioning the close relationship between the right to appeal a ruling on one hand and a properly argued judgment on the other, as well as the possibility of accessing the full case file, including the record of the trial in the case of oral systems.⁹⁶ The relationship between the guarantee provided for in Article 8(2)(h) of the American Convention and access to an adequate defense is especially relevant. In this sense, the Human Rights Committee of the ICCPR has established that, "The right to have one's conviction reviewed is also violated if defendants are not informed of the intention of their counsel not to put any arguments to the court, thereby depriving them of the opportunity to seek alternative representation, in order that their concerns may be ventilated at the appeal level."⁹⁷

⁹² Human Rights Committee de la ONU. General Comment No. 32 (2007). *Article 14. Right to equality before the courts and a fair trial* Para. 48. Also see: *Aliboev v. Tajikistan*, Communication No. 985/2001, Ruling dated October 18, 2005; *Khalilov v. Tajikistan*, Communication No. 973/2001, Ruling dated March 30, 2005; *Domukovsky et al. v. Georgia*, Communications No. 623-627/1995, Ruling dated April 6, 1998, and *Saidova v. Tajikistan*, Communication No. 964/2001, Ruling made July 8, 2004.

⁹³ Human Rights Committee de la ONU. General Comment No. 32 (2007). *Article 14. Right to equality before the courts and a fair trial*. Para. 48.

⁹⁴ Inter-American Court, *Case of Fermín Ramírez v. Guatemala*. Judgment dated June 20, 2005. Series C No. 126. Para. 66.

⁹⁵ Inter-American Court, *The Right to Information on Consular Assistance. In the Framework of the Guarantees of the due Process of Law*. Advisory Opinion OC-16/99 dated October 1, 1999. Series A No. 16, Para.120.

⁹⁶ In this sense, see Human Rights Committee de la ONU. General Comment No. 32 (2007). *Article 14. Right to equality before the courts and a fair trial*. Paras. 47,48, 49 and 50.

⁹⁷ In this sense, see Human Rights Committee de la ONU. General Comment No. 32 (2007). *Article 14. Right to equality before the courts and a fair trial*, Para. 51.

139. The determination of whether the right to appeal a ruling has been violated requires a case-by-case analysis through which the specific circumstances of the situation put before the Commission are evaluated in light of the general standards set forth in the preceding paragraphs. Following, the Commission will examine if the motion of unconstitutionality filed by Mr. Godoy, as well as the extraordinary motions of the inapplicability of legal doctrine⁹⁸ and the motion to review⁹⁹ meet the requirements of Article 8(2)(h) of the Convention.

140. As established in the established facts, on February 4, 1994, the Office of the Chamber Defender of the city of Rosario filed, on behalf of Mr. Godoy, a motion of unconstitutionality against the ruling to convict. That motion is regulated by Article 93, subparagraph 1, of the Provincial Constitution and by Provincial Law 7055, which establishes the following procedural requirements:

Law 7055 ARTICLE 1.- A motion of unconstitutionality will proceed before the Supreme Court of Justice against final judgments handed down in trials that do not admit another recourse with regard to the same issue and against orders during the proceeding that put an end to a dispute or make its continuation impossible in the following cases:

- 1.- When the consistency of a less senior rule with the Provincial Constitution has been questioned and the ruling favors the less senior rule;
- 2.- When the wisdom of a precept in the Provincial Constitution has been questioned and the ruling has come out against the right or guarantee it is based on; and
- 3.- When the rulings or interlocutory appeals mentioned do not meet the minimum conditions necessary to satisfy the right to jurisdiction that the Provincial Constitution provides for. The motion will not proceed if it does not depend on the constitutional question raised, nor if it has not been submitted in a timely fashion and maintained at all points during the process.

141. The Commission highlights that due to the applicable legal framework, there is a serious limitation as far as the potential effectiveness of any argument that is not based on the grounds of unconstitutionality and manifest arbitrariness. In this way, it is understandable that the victim's council, in seeking for the motion to be admitted and ruled upon, did not request a review of issues of fact or probatory valuation but rather formulated arguments based mainly on the unconstitutionality of the proceeding or on its manifest arbitrariness. It is not up to the Commission to determine the possible issues that could have been raised. However, as a result of the legal framework, the Commission finds that the analysis should not focus on whether the legal authorities who reviewed the motion of unconstitutionality gave a response to the arguments presented through that remedy, but rather must take into account that the victim began the appeals stage with an *a priori* limitation with regard to the arguments he could put forth. This is due to the fact that at the time of the facts, questions of fact or probatory evaluation were automatically excluded without an analysis of the importance or nature of those issues in light of the specific case. This exclusion is incompatible with the broad scope of the remedy provided for in Article 8(2)(h) of the American Convention.

142. Despite this, the defense based the motion of unconstitutionality on the violation of the presumption of innocence of Mr. Godoy, as well as the arbitrariness of the judgment because in its opinion the judges had assumed guilt and later justified that assumption: first, as the judgment granted

⁹⁸ The Criminal Procedure Code in force as of the time of the facts was established by Law 6.740, today replaced by Law 12.734. Article 479 holds: The remedy of inapplicability of legal doctrine will only be admissible against the final judgment containing interpretation of the law established by one of the Courts of the Criminal Chambers or through plenary agreement among them within five years of the date of the ruling being appealed.

⁹⁹ Article 489. The review will proceed, at all times and to the benefit of the accused, toward the annulment of the final judgment: 1st. If the facts established as the basis of the conviction were not consistent with those established in another final criminal judgment; 2nd. When the judgment being contested is based on documentary or testimonial evidence whose falsehood has been declared in a prior final judgment; 3rd. If the conviction has been handed down as a result of prevarication, bribery, violence, or fraudulent plotting whose existence has been stated in a later final ruling, or if that ruling has not yet been arrived at because the case was dismissed, making it impossible to pursue the action; 4th. When after the ruling to convict, new facts or evidence come to light that, individually or together with those that have already been examined during the proceeding, make it evident that the criminal act did not take place, that the accused did not commit the crime, or that the typical aggravating circumstances that that judge or court took into account to rule on the case did not take place.

the status of circumstantial evidence to a confession that was allegedly obtained through torture by the police officers who arrested him and later partially confirmed under the fear of being returned to police custody; and second, because the conviction was based only on circumstantial evidence that did not unequivocally indicate Mr. Godoy as the perpetrator. Likewise, the defense alleges that the evidence was not duly considered by the judges – specifically, that they ignored important evidence for the defense. The defense also argues that during the investigation, crucial tests were not carried out, including the identification of clues at the scene of the crime including footprints, as well as complete finger prints and prints from the murder's hands on walls, bricks and plastic pipes.

143. The Criminal Appellate Chamber ruled on September 13, 1994, to declare the motion inadmissible, first on finding that the judgment was not arbitrary or in violation of constitutional guarantees, and second because the arguments related to evaluation of evidence would be an issue for an appeals court and not a motion of unconstitutionality. Mr. Godoy did not have access to the remedy of an appeals process, for which reason on September 28, 1994, his council filed a motion for admission of appeal before the Supreme Court of Justice of the Santa Fe Province for the denial of the motion of unconstitutionality. The Supreme Court of Justice of Santa Fe issued an order denying the motion for admission of appeal on December 21, 1994. It based its decision on the fact that “the issue is not suitable for addressing in the sought-after manner, since the arguments of the individual filing the motion lead to the examination of issues of fact, evidence and common law that were resolved with sufficient basis to also allow for the dismissal of the errors of arbitrariness alleged.”

144. This meant that the examination that was made was restricted precisely to establishing the existence or inexistence of a violation of constitutional guarantees or of manifest arbitrariness, expressly excluding an examination of the issues of fact, evidence or law brought forward.

145. In virtue of the standards described above, conditioning the right to appeal on the existence of a violation of constitution rights or of manifest arbitrariness is not compatible with Article 8(2)(h) of the American Convention.¹⁰⁰ Aside from whether those violations or arbitrariness are present, all individuals found guilty have the right to request a review of a variety of issues, as well as the right to have those issues effectively analyzed by the higher court conducting the review, precisely with the purpose of correcting possible errors of interpretation, of evaluation of evidence or of analysis, as Mr. Godoy's council has alleged in each of the instances to which it has appealed.

146. In conclusion, due to the limitations outlined by the Appellate Chamber and the Supreme Court of Santa Fe in this case, Rubén Luis Godoy did not have access to an appeal of the ruling to convict him in order to correct possible errors made by the judge in question. Therefore, the State violated, to the detriment of Mr. Godoy, his right provided for in Article 8(2)(h) of the Convention, in relation to the obligations established in Article 1(1) of the Convention.

147. With regard to the motion of inapplicability of legal doctrine, this motion moves forward: “against the final judgment containing interpretation of the law established by one of the Courts of the Criminal Chambers or through plenary agreement among them within five years of the date of the ruling being appealed.”¹⁰¹ That is to say, this remedy is even more restricted than the remedy of unconstitutionality, for which reason it also fails to meet the aforementioned requirements. The same is true with the remedy of review, which moves forward “at all times and to the benefit of the accused, toward the annulment of the final judgment: 1st. If the facts established as the basis of the conviction were not consistent with those established in another final criminal judgment; 2nd. When the judgment being contested is based on documentary or testimonial evidence whose falsehood has been declared in

¹⁰⁰ In this same sense, see, *Human Rights Committee; Domuknovsky et al. V. Georgia, Comm 623-627, 6 April 1998*, para 18.11 which establishes that a limited review of issues of law does not meet the requirements of Article 14(5) of the Covenant.

¹⁰¹ The Criminal Procedure Code in force as of the time of the facts was established by Law 6.740, today replaced by Law 12.734. Article 479 holds: The remedy of inapplicability of legal doctrine will only be admissible against the final judgment containing interpretation of the law established by one of the Courts of the Criminal Chambers or through plenary agreement among them within five years of the date of the ruling being appealed.

a prior final judgment; 3rd. If the conviction has been handed down as a result of prevarication, bribery, violence, or fraudulent plotting whose existence has been stated in a later final ruling, or if that ruling has not yet been arrived at because the case was dismissed, making it impossible to pursue the action; 4th. When after the ruling to convict, new facts or evidence come to light that, individually or together with those that have already been examined during the proceeding, make it evident that the criminal act did not take place, that the accused did not commit the crime, or that the typical aggravating circumstances that that judge or court took into account to rule on the case did not take place.”

148. They are, in both cases, extraordinary remedies. That is to say, they move forward once the judgment becomes *res judicata*, established with a purpose other than to review a ruling to convict in full. Therefore, the IACHR concludes that despite what the State has argued, these remedies moved forward against the ruling in single instance and do not provide an appeal in keeping with the parameters recognized in Article 8(2)(h) of the Convention.

149. Based on these considerations, the Commission concludes that the criminal proceeding against Mr. Rubén Luis Godoy violated his right to a fair trial (articles 8(1), 8(2) and 8(3) in relation to Article 1(1) of the American Convention) and Article 10 of the Inter-American Convention to Prevent and Punish Torture.

C. State’s duty to take domestic legal measures to the benefit of Rubén Luis Godoy

150. Article 2 of the American Convention establishes:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

151. The Inter-American Court has indicated that in the law of nations, a customary rule holds that a State that has ratified an international treaty must make the necessary changes to domestic law in order to ensure it will comply with the obligations taken on. This rule is universally valid and case law has given it the status of an established principle.¹⁰²

152. Likewise, the Court has indicated that this principle, set forth in its Article 2, establishes that each State Party has a general obligation to adjust its domestic law to the Court’s rulings in order to guarantee the rights enshrined in the Convention.¹⁰³ This means that the domestic law measures must be effective (*effet utile* principle).¹⁰⁴

153. As the Court’s case law has consistently established, Article 2 of the Convention does not define the pertinent measures for adjusting domestic law to the Convention, obviously because that depends on the characteristics of the law in question and the circumstances of the specific situation. Therefore, the Court has found that this adjustment means adopting measures in two aspects: i) the elimination of laws and practices of any kind that entail a violation of the guarantees provided for in the Convention or that do not recognize the rights recognized therein, or that block their exercise, and ii) the passage of laws and the development of practices conducive to the effective observance of those

¹⁰² Inter-American Court, *Case of Zambrano Vélez et. al.* Judgment dated July 4, 2004. Series C No. 166, Para. 55; *Case of Garrido and Baigorria. Reparaciones* (art. 63.1 American Convention on Human Rights). Judgment dated August 27, 1998. Series C No. 39, Para. 68. Also see *Case of La Cantuta*. Judgment dated November 29, 2006. Series C No. 162, Para. 170; and *Case of Almonacid Arellano et. al.* Judgment dated September 26, 2006. Series C No. 154, Para. 117.

¹⁰³ Inter-American Court, *Case of Zambrano Vélez et. al.* Judgment dated July 4, 2004. Series C No. 166, Para. 56; *Case of La Cantuta*. Judgment dated November 29, 2006. Series C No. 162, Para. 171; and *Case of Almonacid Arellano et. al.* Judgment dated September 26, 2006. Series C No. 154, Para. 117.

¹⁰⁴ Inter-American Court, *Case of Zambrano Vélez et. al.* Judgment dated July 4, 2004. Series C No. 166, Para. 56; *Case of La Cantuta*. Judgment dated November 29, 2006. Series C No. 162, Para. 171; and *Case of “Instituto de Reeducación del Menor”*. Judgment dated September 2, 2004. Series C No. 112, Para. 205.

guarantees.¹⁰⁵ The Court has understood that States are not complying with the obligation of the first aspect as long as the law or practice that violates the Convention is kept in the legal system.¹⁰⁶ That aspect is therefore satisfied with the modification,¹⁰⁷ replacement or some kind of annulment¹⁰⁸ or reform¹⁰⁹ of the laws or practices with that effect.¹¹⁰

154. With regard to the scope of the relevant international responsibility, the Court has indicated that:

The observance by State agents or officials of a law which violates the Convention gives rise to the international liability of such State, as contemplated in International Human Rights Law, in the sense that every State is internationally responsible for the acts or omissions of any of its powers or bodies for the violation of internationally protected rights, pursuant to Article 1(1) of the American Convention.

155. The Commission is aware that the domestic judges and courts are subject to the rule of law and that they are therefore obliged to apply the provisions of the legal system in force. But when the State has ratified an international treaty like the American Convention, its judges, as part of the State, are also subject to it. This obliges them to ensure that the provisions of the Convention are not reduced in their effects by the application of laws contrary to their purpose, and that from the lack legal standing from the start. In other words, the Judicial Branch should exercise a kind of "Convention control" comparing the domestic laws that they apply in specific cases with the American Convention on Human Rights. In this task, the Judicial Branch must take into account not only the treaty, but also the interpretation that has been given it by the Inter-American Court, the final interpreter of the American Convention.¹¹¹

156. In this report, the Commission concluded that the Argentine State violated the right to appeal a judgment to the detriment of Mr. Godoy, due to the fact that the single instance oral proceeding under which he was convicted and the remedy of unconstitutionality do not meet the standards required by Article 8(2)(h).

157. Specifically, the IACHR finds that the articles of Law 6.704 and Law 7055 that enshrine the single instance oral proceeding, as well as the requirements to proceed with and the reasons for which a court can reject a motion of unconstitutionality are not compatible with the American Convention, as they block the adequate exercise of the right to appeal a judgment, as has been observed throughout this report.

158. The Commission observes that although Law 6.704 has been modified subsequent to the facts of this case, the fact that the laws that are incompatible with the Convention are being applied to the

¹⁰⁵ Inter-American Court, *Case of Zambrano Vélez et. al.* Judgment dated July 4, 2004. Series C No. 166, Para. 56; *Case of La Cantuta.* Judgment dated November 29, 2006. Series C No. 162, Para. 172; and *Case of Almonacid Arellano et. al.* Judgment dated September 26, 2006. Series C No. 154, Para. 118.

¹⁰⁶ Inter-American Court, *Case of Zambrano Vélez et. al.* Judgment dated July 4, 2004. Series C No. 166, Para. 56; *Case of "La Última Tentación de Cristo" (Olmedo Bustos et. al.)*. Judgment dated February 5, 2001. Series C No. 73, Para. 172.

¹⁰⁷ Inter-American Court, *Case of Zambrano Vélez et. al.* Judgment dated July 4, 2004. Series C No. 166, Para. 56; *Case of Fermín Ramírez.* Judgment dated June 20, 2005. Series C No. 126, paras. 97 and 130.

¹⁰⁸ Inter-American Court, *Case of Zambrano Vélez et. al.* Judgment dated July 4, 2004. Series C No. 166, Para. 56; *Case of Yatama.* Judgment dated June 23, 2005. Series C No. 127, Para. 254.

¹⁰⁹ Inter-American Court, *Case of Zambrano Vélez et. al.* Judgment dated July 4, 2004. Series C No. 166, Para. 56; *Case of Raxcacó Reyes.* Judgment dated September 15, 2005. Series C No. 133, paras. 87 and 125.

¹¹⁰ Inter-American Court, *Case of Zambrano Vélez et. al.* Judgment dated July 4, 2004. Series C No. 166, Para. 56; *Case of La Cantuta.* Judgment dated November 29, 2006. Series C No. 162, Para. 172.

¹¹¹ Inter-American Court *Case of La Cantuta.* Judgment dated November 29, 2006. Series C No. 162, Para. 173; *Case of Almonacid Arellano et. al.* Judgment dated September 26, 2006. Series C No. 154, paras. 123 a 125.

victim through the criminal proceeding carried out against him implies a violation of the duty to adopt provisions into domestic law enshrined in Article 2 of the American Convention.¹¹²

VI. CONCLUSIONS

159. In light of the issues of fact and law set forth in this report, the Inter-American Commission concluded during its 140th Ordinary Period of Sessions that the State of Argentina didn't adequately investigate the torture, cruel or inhuman treatment allegation made by Mr. Godoy, and thus violated the rights enshrined in articles 8.1 and 25.1 in relation to article 5.1 of the American Convention. In addition, the Commission concludes that the confession made by Mr. Godoy under allegations of torture, cruel or inhuman treatment, was used by the court in his trial, in violation of 8.3 of the Convention. Furthermore, the Commission concludes that Mr. Godoy had no access to a judicial revision of elements of fact, law and proof and reception of proof that the tribunal considered, thus violating Article 8.2.h and Article 2, all with regard to Article 1.1 of the Convention. Likewise, the Commission concludes *iura novit curiae* that the State violated articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Rubén Luis Godoy.

VII. RECOMMENDATIONS

160. In this sense, the Commission recommends that the Argentine State:

1. Provide the measures necessary for Rubén Luis Godoy to file a motion through which he can obtain a broad review of the ruling to convict him in compliance with Article 8(2)(h) of the American Convention, excluding any evidence obtained under coercion, as established in Article 8.3.

2. Carry out a full, impartial and effective investigation within a reasonable time period in order to resolve the allegations of torture and cruel, inhumane or degrading treatment made by Rubén Luis Godoy.

3. Provide legal and other measures to ensure effective compliance with the right enshrined in Article 8(2)(h) of the American Convention, in keeping with the standards described in this report.

4. Provide adequate reparations for the human rights violations declared in this report, both material and non-material.

VIII. PROCEEDINGS SUBSEQUENT TO REPORT No. 175/10

161. On November 2, 2010, the Commission adopted the Report on the Merits No. 175/10 and on December 1, 2010, sent it to the State. The State reported on the measures it was taking to collect information and further compliance with the recommendations. It consequently requested its first extension, which was granted until April 1, 2011. In a communication dated March 16, 2011, Argentina again reported on steps designed to foster compliance [with the recommendations] and requested a new extension, which was granted until June 1, 2011. It submitted information and requested a new extension on May 19, which was granted until July 1, 2011. In order to make headway in the process of dialogue initiated with the petitioners and the victim, the State requested an additional extension on June 22, which was granted until September 1, 2011. On August 11, the State sent information regarding compliance with the recommendations, as well as a compliance agreement signed by Mr. Godoy and his representatives.

162. The petitioners, in turn, submitted information on December 28, 2010, as well as on May 24 and August 23, 2011.

¹¹² On the violation of Article 2 of the Convention notwithstanding that the laws incompatible with the Convention had been repealed at the time of the Court's ruling, see: Inter-American Court, *Case of Montero Aranguren et. al. (Retén de Catia)*. Judgment dated July 5, 2006. Series C No. 150, Para. 135.

IX. ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS

163. On June 22, 2011, the State reported that on June 15 a meeting was held in the city of Santa Fe in which representatives of the national government, the provincial government of Santa Fe and Mr. Godoy and his legal representatives participated. It has indicated that the minutes of the meeting reflected that the “petitioning party considers that there has been initial compliance with the recommendations set forth by the IACHR in Report 175/10 and steps are being taken to reach a definitive agreement, with the parties undertaking the commitment to the petitioner to formalize said agreement as soon as possible.” It then listed such steps.

164. On August 11, 2011, the State related the results of steps taken and requested that the IACHR “consider that the recommendations contained in IACHR Report No. 175/10 have been substantially fulfilled.” For this reason, the State deemed that there were no longer grounds for the case to be heard by the adjudicatory jurisdiction of the Inter-American Court of Human Rights; this notwithstanding “the oversight authority of the IACHR as to overall compliance with this agreement.”

165. In this regard, on August 4 it was reported that a meeting was held with Mr. Rubén Luis Godoy and his defense attorneys, the Minister of Justice of the Province of Santa Fe, the Undersecretary of Criminal Affairs of said Ministry, the Assistant Prosecutor of the Office of the Santa Fe Provincial State Prosecutor [*el Fiscal Adjunto de la Fiscalía de Estado de la Provincia de Santa Fe*]. Also in attendance as observers were the Ministry of Foreign Relations’ Director for Human Rights and the advisor to this office. On this occasion the participants signed an agreement which set forth a summary of the state of compliance with the recommendations made in Report 175/10.

166. In accordance with the information the parties to this case provided, the IACHR believes that the status of compliance with the recommendations made in Report 175/10 is as follows:

167. Recommendation No. 1: Provide for the measures necessary to enable Rubén Luis Godoy to file an appeal by means of which he may obtain a comprehensive review of his conviction pursuant to Article 8.2.h of the American Convention, excluding any evidence obtained under duress, in accordance with the terms set forth in Article 8.3 thereof.

168. The Ministry of Justice and Human Rights of the Province of Santa Fe sent a note to the General Defender of the Courts [*Defensora General de Cámaras*] reporting on IACHR Report No. 175/10 and suggesting that the conviction be appealed. On June 15, 2011, Ms. De Luca, Mr. Godoy’s legal representative, filed a remedy of appeal before Section II of the Criminal Court of Appeals of Rosario [*Sala II de la Cámara de Apelaciones en lo Penal de Rosario*], under the terms provided for in Law 12,912, which sets forth a system to progressively implement the new Code of Criminal Procedure (Law 12,734 of August 2007), which is pending before the Presiding Judge of the Criminal Court of Appeals of Rosario [*Presidencia de la Cámara Penal de Apelaciones de Rosario*]. The new Procedural Code recognizes the right of appeal in Article 394 and subsequent Articles. Under different laws approved thereafter, a system has been established for its progressive implementation, which is still ongoing.

169. The IACHR has observed that the grounds for the appeal were based on the stipulations set forth in Article 4 of Law 12,912 that provides for the application of more favorable standards for the accused regarding his or her freedom, the termination of criminal prosecution and the scope of defense. Such standards shall apply to those cases which are pending provided that the accused so requests within the first 10 days after the first proceeding that took place in the case after February 14, 2009. Mr. Godoy’s defense attorneys argue that to date the case is pending before the IACHR, which means *res judicata* would not apply. Therefore, the remedy of appeal’s filing is the first proceeding before the local courts. In accordance with the foregoing, the defense argues that the requirements of Article 4 of Law 12,912 have been met.

170. The IACHR notes that the issuance of the new Procedural Code recognizing the right to appeal oral proceedings constitutes significant progress in protecting the right enshrined in Article 8.2.h of

the American Convention. In this regard, the IACHR has taken note of the remedy of appeal's filing, which confirms that initial steps have been taken to comply with the Report's first recommendation.

171. The IACHR shall monitor the handling thereof provided by Section II of the Criminal Court of Appeals of Rosario.

172. Recommendation No. 2: Conduct a complete, impartial and effective investigation as soon as possible to shed light on the charges of torture and cruel, inhumane, and degrading treatment brought by Rubén Luis Godoy.

173. The Public Prosecutor [*Procurador General*] gave instructions to go forward with the investigation of the coercive measures reported by Mr. Godoy. Pursuant thereto, on April 6, 2011, the prosecutor in charge of the Office of the Prosecutor No. 8 of Rosario requested that the case be reopened and a series of evidentiary proceedings be conducted. As a result of the foregoing, on April 15, 2011, the pertinent Criminal Examining Magistrate's Court overturned the decision to quash the case and ordered that testimony and documentary evidence be produced. In accordance with the information provided, Mr. Godoy appears as the complainant in this case, with legal representation by the Office of the Public Defender.

174. The IACHR notes that the reopening of the case and collection of different evidence represents an important step in complying with this recommendation. The IACHR will monitor the outcome of said investigation.

175. Recommendation No 3: Provide for legislative and other kinds of measures to ensure effective compliance with the right enshrined in Article 8.2.h of the American Convention, pursuant to the standards described herein.

176. This recommendation would be substantially fulfilled with the adoption of the new Code of Criminal Procedure (Law 12, 912) in the Province of Santa Fe. The IACHR will continue monitoring the implementation of said regulations.

177. Recommendation No. 4: Provide appropriate reparation, both material and moral, for the human rights' violations outlined in this report.

178. By means of Decision of July 22, 2011, the Sentence Enforcement Court No. 1 of Coronda [*Juzgado de Ejecución Penal de Coronda*] granted the petitioner parole, pursuant to the appeal filed by his representatives, the National Office of Court Defenders [*Defensoría Nacional de Cámaras*], for having served 2/3 of his sentence.

179. Regarding economic reparations, the IACHR takes note of ruling No. 51/11 in the administrative file that "establishes the framework the Province considers pertinent in addressing the reparation of the same [...] it considers that the payment of a sum of \$40,000 (pesos) is fitting as redress solely for the damages stemming from the violation of the right to have timely access to a judicial remedy for a review with the scope outlined in the IACHR report." In accordance with the information received, the petitioner accepted said redress. The State has specified that in undertaking the agreement it did not require any other economic claims to be waived, given what "may be the outcome of ongoing cases that have been reopened in accordance with recommendations 1 and 2 of the report."

180. As part of the commitment to make reparations, the province, through the Provincial Office for Post-Release Control and Assistance [*Dirección Provincia de Control y Asistencia Pos Penitenciaria*], has contacted Mr. Godoy and offered to assist him with an action plan agreed upon with him. Said plan includes the opportunity to be included in the Microenterprise Program and the Penitence Assistance Fund Program, as well as other interventions that aim to facilitate his reintegration into free society.

181. Likewise, within the framework of reparations, the State reported that the rest of Mr. Godoy's sentence is to be commuted (given that he is currently on parole). The State further reported that to this end the aforementioned administrative file is being processed pursuant to the issuance of the Governor's corresponding decree.

182. The IACHR observes that progress has been made in making reparations to Mr. Godoy and shall continue monitoring the measures that are adopted.

X. CONCLUSIONS

183. The IACHR notes the Mr. Godoy has informed to the IACHR that "he considers that there has been substantial compliance with the recommendations contained in IACHR Report 175/10, and thus believes that there is no longer any reason for this case to be heard by the adjudicatory jurisdiction of the Inter-American Court of Human Rights ..."

184. Pursuant to the provisions of Article 51(1) of the Convention, at this stage of the proceedings the IACHR must determine whether the State has complied with the recommendations issued. In this regard, and in accordance with the preceding observations, the IACHR notes and appreciates the significant progress made in complying with the recommendations of Report 175/10. Furthermore, the IACHR has concluded that there are some points that shall be complied with over time and with regard to which the IACHR shall continue monitoring.

185. Finally, the IACHR would like to highlight that in light of the specific circumstance of this case, which include substantial progress in complying with the recommendations and the position of the petitioning party, the Inter-American Commission, pursuant to the provisions set forth in its Rules of Procedure, has decided not to submit this case to the Inter-American Court to be heard.

XI. RECOMMENDATIONS

186. Based on the analysis and conclusions of this report and in order to establish the points in this report that are pending compliance, which, due to their duration over time, shall require monitoring after this report is issued, the Inter-American Human Rights Commission reiterates to the Argentine State the following recommendations:

1. Provide for the measures necessary to enable Rubén Luis Godoy to file an appeal by means of which he may obtain a comprehensive review of his conviction pursuant to Article 8.2(h) of the American Convention, excluding any evidence obtained under duress, pursuant to the terms set forth in Article 8.3 thereof. With regard to this recommendation, the IACHR has taken note of the appeals filing and shall follow up on the handling and results of the corresponding proceeding.

2. Conduct a complete, impartial and effective investigation as soon as possible to shed light on the charges of torture and cruel, inhumane, and degrading treatment brought by Rubén Luis Godoy. In this regard, the IACHR has established that the investigation was reopened and that several proceedings have been conducted. The IACHR shall therefore monitor the handling and outcome of said investigation.

3. Provide appropriate material and moral reparation for the human rights' violations outlined in this report. The IACHR has taken note that: Mr. Godoy has been granted parole for having served 2/3 of his sentence; the State has offered economic reparations in relation to the damages stemming from the lack of access to a judicial remedy that provided for a review in the terms stipulated by the Commission; and, that at the same time, there are measures pending in order to offer redress to Mr. Godoy. The IACHR shall therefore monitor the measures to be adopted.

XII. PROCEEDINGS SUBSEQUENT TO REPORT No. No. 142/11

187. On October 31, 2011, the IACHR approved Report 142/11, pursuant to Article 51 of the American Convention. On November 22, 2011, the Commission forwarded the Report to the State and the petitioners and granted the State a period of one month, as provided for in Article 51.2 of the Convention, to inform about the implementation of the recommendations issued by the Commission. On December 22, 2011, the State requested an extension of one month beyond the period initially granted by the Commission to entertain the request for information.

188. In a communication dated March 16, 2012, the State submitted a report on implementation of the recommendations of the IACHR prepared by the Government of the Province of Santa Fe, Argentina.

XIII. ANALYSIS OF IMPLEMENTATION OF RECOMMENDATIONS

189. Based on the information it received, the IACHR finds the status of fulfillment of the recommendations of Report 142/11 to be as follows:

190. Recommendation No. 1: Take the necessary measures so that Ruben Luis Godoy is able to file an appeal to obtain an extensive review of the conviction in keeping with Article 8.2.h) of the American Convention, barring any evidence obtained under coercion, as provided by Article 8.3.

191. The IACHR had already taken note of the filing of the appeal, which set into motion implementation of the first recommendation of the Report. According to information provided by the State, on January 9, 2012, the Ministry of Justice and Human Rights of the Province of Santa Fe sent a note to the General Defender of Chambers (“Defensora General de Cámaras”) notifying her of IACHR Report 175/10 and requesting that she report on the current status of: a) Case No. 0343/92 (NN in re/Coercion to force confession) before the 3rd Criminal Investigation Court of the City of Rosario; b) the current status of the appeal for review of the conviction that had been recommended in the aforementioned report of the Commission. The State forwarded a copy of the aforementioned communication and indicated that once it obtains a response, it will report on the status of the proceedings and the outcome of the cases.

192. The IACHR urges the State to furnish the requested information and continue to monitor the proceedings before Chamber II of the Criminal Court of Appeals of Rosario (“Sala II de la Cámara Penal de Apelaciones”).

193. Recommendation No. 2: Conduct a thorough, impartial and effective investigation as soon as possible, in order to clarify the complaint of torture, cruel, inhuman and degrading treatment leveled by Ruben Luis Godoy.

194. The State reported that on January 9, 2012, the Ministry of Justice and Human Rights of the Province of Santa Fe sent a note addressed to the Attorney General of the Province notifying him of Report No. 175/10 of the IACHR and requesting information from him on the status of the investigation. The State forwarded a copy of the aforementioned communication.

195. The IACHR awaits the information on the results of the investigation into Mr. Godoy’s charges of coercion to extract a confession and shall continue to monitor compliance with this recommendation.

196. Recommendation No. 3: Provide adequate reparation for the human rights violations found in the instant report with regard to both physical damage and emotional distress.

197. Based on the information that was received, it is the Governor of the Province who has the power to commute a sentence, as provided in Article 72 sub-paragraph 16 of the Provincial Constitution. In this regard, the State reported that under Decree No. 2794/11 of the Provincial Executive Branch, the life imprisonment sentence to which Ruben Luis Godoy had been condemned was commuted

to a prison term equal to the time that he had served as of the day said decree was issued, that is, on December 1, 2011.

198. As for economic reparation, the IACHR takes note of Resolution No. 163-D dated December 22, 2011, whereby the Attorney General of the Province of Santa Fe authorized payment in the amount of \$40,000 (pesos) to Mr. Ruben Luis Godoy as reparation exclusively for damages caused by the violation of the right to gain timely access to a judicial remedy of review to the extent set forth in the IACHR report. According to the information submitted, the petitioner accepted said reparation, which was effectively paid out to him on December 28, 2011, based on a copy of the receipt of payment submitted by the State.

199. The Commission notes that by means of the commutation of the life imprisonment sentence imposed on Mr. Ruben Luis Godoy and payment of monetary reparation received by him, the recommendation to provide adequate reparation to the victim has been satisfied.

XIV. CONCLUSION

200. Pursuant to the provisions of Article 51.3 of the Convention, at this stage of the process, the IACHR must decide whether or not the State has fulfilled the recommendations issued by it. In this regard, and based on the foregoing considerations, the IACHR notes that the State has substantially implemented the recommendations made in Report No. 175/10. The Commission greatly appreciates the outcome that has been fruit of the joint effort of the National State and the Province of Santa Fe, in implementing the satisfied recommendations. Additionally, the IACHR concludes that some items still need to be implemented by the Argentine administration of justice, with regard to which the IACHR shall continue to monitor.

XV. RECOMMENDATIONS

201. Based on the analysis and conclusions of the instant report, and in order to establish the items pending implementation in the instant report, which, because of their duration require monitoring subsequent to the release of the instant report, the Inter-American Commission on Human Rights reiterates the following recommendations to the Argentine State:

1. Take the necessary measures so that the appeal filed by the defense of Ruben Luis Godoy to obtain a extensive review of the conviction, is settled in keeping with Article 8.2.h of the American Convention, barring any evidence obtained under coercion, as provided for in Article 8.3 of said instrument. The IACHR will monitor the proceedings and results of the appeal.

2. Complete the criminal investigation to clarify the complaint of torture, cruel, inhuman, and degrading treatment leveled by Ruben Luis Godoy, as soon as possible and in an effective and impartial manner. The IACHR will monitor the proceedings and results of said investigation.

XVI. PUBLICATION

202. Based on the foregoing considerations and in accordance with Articles 51.3 of the American Convention and 47 of the Rules of Procedure, the Commission decides to publish this report and include it in its Annual Report to the OAS General Assembly. In fulfillment of its mandate, the IACHR shall continue to evaluate the steps taken by the State with regard to the recommendations that have been reiterated to it in this report, until they are fully implemented.

Done and signed in the city of Washington, D.C., on the 29 day of the month of March, 2012.
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rosa María Ortiz and Rose-Marie Antoine, Commissioners.