ORDER OF
THE INTER-AMERICAN COURT OF HUMAN RIGHTS[1]
OF JULY 5, 2011

CASE OF BUENO ALVES *v.* ARGENTINA

MONITORING OF COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on the merits, reparations, and costs of May 11, 2007 (hereinafter "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal"), wherein it was decided, *inter alia*, that the State must:

> 7. […] pay the amounts set in [the] Judgment as compensation for pecuniary damages, non-pecuniary damages, and reimbursement of costs and expenses within one year as from notice of [the] Judgment […].
> 8. […] conduct forthwith the necessary investigations so that those responsible for the facts of [the] case be identified and punished as provided by law […].
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> 9. […] publish once in the Official Gazette and in another nationwide daily newspaper paragraphs 1 to 8, 71 to 74, 86, 95, 113, and 117, as well as the operative paragraphs of [the] Judgment, within six months following notice of [the] Judgment […].

2. The communications of October 9, 2008; March 2, August 26, and September 22, 2009; January 6, and February 3, 2010, and June 2 and 10, 2011, as well as their annexes, wherein the Republic of Argentina (hereinafter "the State" or "Argentina") referred to compliance with the Judgment.

3. The briefs of June 23, December 10, 2008; September 16, 2009; February 8, March 15, and July 28, 2010, and June 1 and 10, 2011, and annexes, wherein the representative of the victim (hereinafter "the representative") filed observations to the information presented by the State.

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[1] Judge Alberto Pérez Pérez, for reasons of force majeure, was unable to assist the 91st Regular Period of Sessions, and as a consequence, did not participate in the deliberation and signing of this Order. Judge Leonardo A. Franco, of Argentine nationality, excused himself from this case, pursuant to Articles 19(2) of the Statute of the Court and 19 of the Rules of Procedure of the Court.

4. The communications of February 11, and September 22, 2009; August 10, 2010, June 9, 2011, wherein the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") filed its observations to the information presented by the State and the representative.

5. The notes of the Secretariat of May 4, June 24, July 8, 2010, and May 3, 2011, wherein, following the instructions of the President of the Court, information regarding the compliance with the Judgment was requested of the parties.

CONSIDERING THAT:

1. One of the inherent attributes of the judicial functions of the Court is to monitor compliance with its decisions.

2. Argentina has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 5, 1985, and it recognized the jurisdiction of the Court on the same date.

3. Article 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the decision of the Court in any case to which they are parties." To such effect, the States must ensure implementation, at the domestic level, of the requirements stated by the Court in its decisions. [2]

4. Given their final and not subject to appeal nature, and pursuant to Article 67 of the American Convention, the judgments of the Court must be promptly fulfilled by the State in all of its aspects and within the period established.

5. The obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, as supported by international jurisprudence, under which States are required to comply with their international treaty obligations in good faith *(pacta sunt servanda)* and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their domestic laws to escape their pre-established international responsibility. [3] The State Parties' obligations under the Convention bind all State branches and organs. [4]

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[2] *Cf. Case of Baena-Ricardo et al. v. Panama. Competence.* Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Radilla Pacheco V. Mexico. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of May 19, 2011, Considering fifth, and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of July 01, 2011, Considering third and fourth.

[3] *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights).* Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Castillo-Páez v. Peru. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of May 19, 2011., Considering fourth, and *Case of Radilla Pacheco V. Mexico, supra* note 2, Considering fifth.

[4] *Cf. Case of Castillo-Petruzzi et al. v. Peru. Compliance with Judgment.* Order of November 17, 1999. Series C No. 59, Considering third; *Case of Castillo Páez V. Peru, supra* note 3, Considering fourth, and *Case of Radilla Pacheco V. Mexico, supra* note 2, Considering fifth.

6. The States Parties to the American Convention are required to guarantee compliance with the provisions thereof and to secure their effects (*effet utile*) at the domestic legal level. This principle applies not only in connection with the substantive provisions of human rights treaties (that is, those dealing with provisions of the protected rights), but also in connection with procedural rules, such as those concerning compliance with the decisions of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is actually practical and effective, considering the special nature of human rights treaties. [5]

A. Obligation to pay the amounts established as compensation for pecuniary damages, non-pecuniary damages, and the reimbursement of costs and expenses (*Operative paragraph seven of the Judgment)*

7. The State reported that by way of Decree No. 1249/2009 of September 14, 2009, the payment ordered by the Court for compensation was provided. This Decree established that to the amount of the compensation, "the interest on arrears should be added for the time that has passed since the date set in the Judgment (May 11, 2008) and the date of cancelation." Specifically, the State noted:

a) with regard to Mr. Juan Francisco Bueno Alves, that on September 30, 2009, the payment order was made for SIDIF No. 215293 regarding pecuniary damage, non-pecuniary damage, and costs and expenses. On the same date, the General Treasury of the Nation made the transfer, in the HSBC Bank, "for the amount equivalent […] to U[S]$ 353,000 [three hundred and fifty-three thousand dollars of the United States of America], that is, the amount of $ 1,356,579.00 [one million, three hundred and fifty-six thousand, five hundred and seventy-nine Argentine pesos]." Moreover, in regard to the interest on arrears due to Mr. Bueno Alves, it noted that on November 18, 2009, the payment order was made for SIDIF No. 255612 for the amount of $355,355.87 (three hundred and fifty-five thousand, three hundred and fifty-five Argentine pesos and eighty-seven cents), which was transferred on November 26, 2009. It explained that for calculating the interest on arrears, it used "the nominal annual lending rate (loans) with a thirty day expiration of the National Bank of Argentina," according to that determined by the Sub-secretary of the Financial Services and General Office of Legal Matters of the Ministry of Economics and Public Finance, and calculated the time elapsed from May 11, 2008, until September 30, 2009.

b) with regard to Inés Maria del Carmen Afonso Fernandez and Verónica Inés Bueno, that on November 18, 2009, the payment orders were made for SIDF No. 255617 and SIDF No. 255618, for each, for the amount of $38,140.00 (thirty-eight thousand, one hundred and forty Argentine pesos), equivalent to US$10,000.00 (ten thousand dollars of the United States of America). These amounts were transferred to both victims on December 7, 2009. As for the interest on arrears, each of the victims was paid $11,330.76 (eleven thousand, three hundred and thirty Argentine

[5] *Cf. Case of Ivcher-Bronstein v. Peru. Competence.* Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Radilla Pacheco V. Mexico, supra* note 2, Considering sixth, and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru, supra* note 2, Considering sixth.

pesos and seventy-six cents) and 11,725.29 (eleven thousand, seven hundred and twenty-five Argentine pesos and twenty-nine cents) respectively.

c) with regard to Juan Francisco Bueno and Ivonne Miriam Bueno, that on December 23, 2009, the payment orders were made for SIDF No. 297597 and SIDF No 297598, for each, in the amount of $37,950.00 (thirty-seven thousand, nine hundred and fifty Argentine pesos) for payment of compensation for non-pecuniary damage established for them, equivalent to 10,000.00 (ten thousand dollars of the United States of America). These amounts were deposited to Mr. Bueno Alves by way of the special powers granted by Juan Francisco Bueno and Ivonne Miriam Bueno to their father, in order for him to "obtain the credit for the charge established in his name in the [J]udgment." As for interest on arrears, each victim was paid $11,725.29 (eleven thousand, seven hundred and twenty-five Argentine pesos and twenty-nine cents).

d) in regard to Ms. Tomasa Alves De Lima, deceased mother of Mr. Bueno Alves, that "until the commencement of the succession begins with the accompanying Declaration of Heirs, it will be impossible for this obligation to be complied in full."

8. In addition, the State noted that the compensation paid was credited "without deductions from possible fiscal charges." It noted that if there is any witholding, "this was due strictly to a banking norm." It added that, given the existent doubt regarding a possible interest charge, information had been requested from the Federal Administration of Public Income (AFIP for its acronym in Spanish). Lastly, it stated that, contrary to that noted by the representative (*infra* Considering clause 10), the provisions of the Civil Code which "for every payment […] first the interests were charged and then the capital, […does not follow] here," because Mr. Bueno Alves accepted and signed an "Authorization of Credit of Payment of the National Treasury Banking account."[6]

9. The representative argued that, regarding the calculation of accrued interest, "the State has frozen the calculation of interest in all cases, setting the end date as the one in which the relevant deposits were made," when in fact interest should be computed "until the moment in which the sum total of the debt is paid." Consequently, through a series of arguments on the concept of compensatory and punitive interests, the representative argued the following:

a) Regarding Mr. Juan Francisco Bueno Alves, the representative confirmed that two payments were made to him and indicated that the second sum transferred to him by the State was credited to his account on November 30, 2009. The representative observed that "in the hopes of claiming that it was already paying, on September 30, 2009, [the State] only calculated interest up until that date [without considering] the delay that it incurred

[6] In this authorization, it is noted that "the transfer of funds to the account […] indicated, […] terminates the obligation of the debtor in all regards, making all deposits effectuated there valid, until, any change is made therein, is not reported reliably to this Administrative Service. The beneficiary relieves the National [S]tate from any obligation derived from the possible delay that could take place as a consequence of the modifications regarding the bank account." Authorization of Accreditation of Payments by the National Treasury in the Bank Account (case file of monitoring of compliance with Judgment, tome I, folio 241).

[until November 30, 2009, when it proceeded] to pay on the [interest]." The representative indicated that, owing to the exchange rate applied and the manner of allocating the State's payments, it "owed at the present time a portion of the amount ordered in the [J]udgment based on the application of the amounts deposited by the State of Argentina in principal and interest." According to the foregoing, the representative indicated that as of May 31, 2011, the State owed Mr. Bueno Alves an amount corresponding to $295,967.16 (two hundred ninety-five thousand, nine hundred sixty-seven Argentine pesos and sixteen cents).

b) Regarding Inés María del Carmen Afonso Fernández and Verónica Inés Bueno Afonso, the representative confirmed that payment was made to each "in dollars of the United States of America" to their bank accounts in the National Bank of Argentina in Uruguay, "without tax implications." However, regarding these two victims, the representative observed that, even when this amount was credited to their respective accounts on December 14, 2009, this credit was not communicated to them until January 20, 2010, for which reason this latter date should be considered "the actual date of payment." The representative also pointed out that the State owed "a portion of the amount ordered in the Judgment based on the application of unforeseen interest [...] at the moment of actual payment," that on May 31, 2011, had risen to $10,704.47 (ten thousand, seven hundred and four Argentine pesos and forty-seven cents), for the benefit of each of these two victims.

c) Concerning Juan Francisco Bueno and Ivonne Miriam Bueno, the representative confirmed the State's payments to Mr. Bueno Alves's account in HSBC Bank on January 4, 2010, in accordance with the special authority granted for his benefit. The representative noted that, due to the exchange rate applied and the manner of allocating the State's payments, the State "owed at the present time a portion of the amount ordered in the [J]udgment." In accordance with the foregoing, the representative indicated that as of May 31, 2011, the State owed each of the two victims the amount of $9,920.42 (nine thousand, nine hundred twenty Argentine pesos and forty-two cents), and

d) Concerning Ms. Tomasa Alves de Lima, the representative requested "the release of the positive account balance in her favor as ordered by the Court in its Judgment." The representative indicated that "the legal processes demanded by the State belong to the jurisdiction of the [Oriental Republic of] Uruguay, and it's necessary to consider the long time periods – that is, years – that successive procedures would require, [as well as] bearing in mind that at the end of Uruguay's requested process, future ministerial and consular certifications from both Uruguay and Argentina would follow." The representative added that the brothers, Manuel Bueno Alves and Juan Francisco Bueno Alves, are the only rightful successors in interest to Ms. Alves de Lima according to "the register and identification of the relatives [that has been] provided in this case," and that both have decided to make use of the compensation owed to their mother "for the purchase of a family mausoleum." The representative indicated that the pending interest payments on this compensation as of May 31, 2011, totaled $51,652.00 (fifty-one thousand, six hundred fifty-two Argentine pesos).

10. The representative also observed that the interest rate that should have been applied to the payments made in Argentine pesos corresponded to the price of "hard currency," rather than the "dollar exchange rate" allegedly applied by the State, for which the State provided spreadsheets from the National Bank of Argentina showing the dollar's rate on the relevant dates. The representative stressed that "the market value of the dollar should only be considered in international business transactions and not in compensation of any kind that the State is obligated to pay." The representative noted that the payments made to Mr. Juan Francisco Bueno Alves, Ms. Ivonne Miriam Bueno, and Mr. Juan Francisco Bueno were subject to taxes, which were later reimbursed, but that the State was nonetheless obligated to pay interest for the period in which the taxes were withheld.[7] The representative also expressed opposition to the manner in which the State allocated its payments, arguing that "Argentine law regarding financial obligations is dealt with in its Civil Code [and] provides that the creditor is the one who charges payments, first paying out interest and then the principal." Regarding the spreadsheet showing the "Authorization of Payment Credit" mentioned by the State, the representative pointed out that Mr. Bueno Alves's signature was required by the Office of Liabilities of the Treasury "as an obligatory condition for [...] paying him the amount ordered by the Court, without mentioning [to him] the printed text at the bottom of the page." The representative also added that several victims were owed different sums due to the "transfer commissions" charged by the National Bank of Argentina's branch in Montevideo, which were not provided for in the Judgment.[8] The representative proceeded to argue that Verónica Inés Bueno and María del Carmen Afonso are owed an account maintenance fee also charged by this bank.[9] Lastly, the representative pointed out that in April 2011, Mr. Bueno Alves was asked to pay taxes on the compensation awarded to him by the Court.

11. Concerning the discussion between the parties on accrued interest and the applicable exchange rate, the Commission found that "in case of ambiguity, the interpretation most favorable to the victim of human rights violations is the one that will be applied." Moreover, the Commission noted "with concern" that "deductions

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[7] In particular, the representative indicated that the State should pay Mr. Bueno Alves $981.25 (nine hundred eighty-one Argentine pesos and twenty-five cents), for the 56-day withholding of the first payment made to his benefit, and $238.68 (two hundred thirty-eight Argentine pesos and sixty-eight cents) for the 52-day withholding of the second payment. In a later written submission, having updated the calculation to May 31, 2011, the representative indicated that the balance owed for tax withholdings on the compensation calculated by the State was $2,101.55 (two thousand one hundred and one Argentine pesos and fifty-five cents) and that the balance owed for tax withholdings from interest on compensation totaled $495.36 (four hundred ninety-five Argentine pesos and thirty-six cents). Likewise, the representative assessed the State as owing $11.67 (eleven Argentine pesos and sixty-seven cents) for the 17-day withholding of a portion of each of the payments made to Juan Francisco Bueno and Ivonne Miriam Bueno. In a later written submission, the representative indicated that the balance owed for tax withholdings on the compensation calculated by the State for the two children of Mr. Bueno Alves, updated on May 31, 2011, was $24.21 (twenty-four Argentine pesos and twenty-one cents) and that the balance owed for tax withholdings from interest on compensation was in the amount of $521.70 (five hundred twenty-one Argentine pesos and seventy cents) each. *Cf. Spreadsheet of debt calculation,* supra note 7, folios 1203 and 1204).

[8] According to the representative, as of May 31, 2011, the withholding from Verónica Inés Bueno and María del Carmen Afonso Fernández would result in an account balance for each in the amount of $100.49 (one hundred Argentine pesos and forty-nine cents). *Cf*. Spreadsheet of debt calculation, *supra* nota 7, folio 1205).

[9] According to the representative, on May 31, 2011, the account balance for this withholding was in the amount of $343.12 (three hundred forty-three Argentine pesos and twelve cents) *Cf*. Spreadsheet of debt calculation, *supra* nota 7, folio 1208).

are being applied to the amounts paid in compensation," which is contrary to the Judgment. Lastly, the Commission reminded the State that it must pay overdue interest corresponding to its delay in paying compensation.

12. The Court positively assesses the State's payments made to date in compliance with its obligation. However, it also notes that certain discrepancies exist between the parties with respect to these payments. In the next section, the Tribunal will proceed to analyze each of these discrepancies. They are: i) the applicable interest rate; ii) the allocation of the payments and the calculation of delay; iii) the alleged interest owed for tax withholdings; and, iv) the request to "release the positive account balance" as ordered by the Court for the benefit of Tomasa Alves de Lima.

i) Applicable interest rate

13. Concerning this issue, the Tribunal recalls the Judgment's provision that the State must comply with its obligations "through payment in dollars of the United States of America or in an equivalent amount of Argentine currency, with the relevant rate of exchange indicated in New York, United States of America, on the day prior to payment."[10] Therefore, the applicable exchange rate for the payments made in Argentine pesos to Mr. Juan Francisco Bueno Alves, Ms. Ivonne Miriam Bueno, and Mr. Juan Francisco Bueno should have been the one indicated on the New York Stock Exchange on the day before payment was made, and not the one offered by the representative of the National Bank of Argentina. The Court also observes that while the State utilized the applicable exchange rate at the moment in which the corresponding payment orders were effected, the representative argued that the correct rate was the one in effect at the moment in which the deposits were actually made to Mr. Bueno Alves's account. In this regard, the Tribunal considers that it is not reasonable to require the State to foresee, at the time of making the payment order, what the interest rate will be when payment is actually effected. This is true unless the difference causes prejudice to the victim for reasons attributable to the State, which has not been proven in this case.

14. The Court notes that the State issued the payment order to Mr. Bueno Alves and effectuated a transfer on September 30, 2009, in which it utilized an exchange rate of $3,843 Argentine pesos for each dollar of the United States of America. The rate in New York on the day before was $3.8432 Argentine pesos for each dollar of the United States of America.[11] Consequently, the Court regards the exchange rate used by the State to be the correct one. Regarding Ivonne Miriam Bueno and Juan Francisco Bueno, the State issued payment orders on December 23, 2009, and utilized an exchange rate of $3,795 Argentine pesos for each dollar of the United States of America. The rate in New York the day before was $3,8008 Argentine pesos for each dollar of the United States of America.[12] Accordingly, the Court finds that the difference between the two rates is negligible and does not justify ordering the State to pay another amount.

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[10] *Cf. Case of Bueno Alves v. Argentina. Merits, Reparations, and Costs.* Judgment of the Inter-American Court of Human Rights of May 11, 2007. Series C No. 164, para. 224.

[11] US dollar-Argentine peso exchange rate taken from "The Wall Street Journal." Available at: http://online.wsj.com/mdc/public/page/2_3021-forex-20090929.html?mod=mdc_pastcalendar.

[12] US dollar-Argentine peso exchange rate taken from "The Wall Street Journal." Available at: http://online.wsj.com/mdc/public/page/2_3021-forex-20091222.html?mod=mdc_pastcalendar.

ii) Method of allocating payments and the calculation of the delay

15. Regarding this matter, the Court finds that the State made several payments to Juan Francisco Bueno Alves, Inés del Carmen Afonso Fernández, Verónica Inés Bueno, Ivonne Miriam Bueno, and Juan Francisco Bueno for compensation ordered in the Judgment. In favor of Mr. Bueno Alves, the State also made a second payment that it intended to cover accrued interest on the aforementioned compensation. However, the representative objected to the State's actions, arguing that under Argentine law the payment of interest must precede the payment of the principal. This, the representative explained, was because the amounts still owed by the State form part of the principal, not the interest, and they therefore continue to accrue interest until their final satisfaction or cancellation. The State, without denying these interpretations of the provisions of its domestic law, considered that they nonetheless did not apply in this case because Mr. Bueno Alves had signed an authorization certifying the payments (*supra* Considering clause 8) in which he essentially consented to this very thing, namely, that these legal provisions did not apply. The representative argued in turn that, at the time of signing this document (*supra* Considering clause 10), Mr. Bueno Alves was not aware that he was in fact giving his consent.

16. The Court finds that the State, in addition to paying the amounts ordered by the Court, has also effectuated payment of interest totaling more than eighty thousand dollars of the United States of America (*supra* Considering clause 7). However, the Court notes that in the specific circumstances of the present case, it is not appropriate for it to insert itself into the controversy between the parties concerning how best to apply the aforementioned provisions of Argentine domestic law on the calculation of interest owed.

17. Concerning the relevant time period for the calculation of accrued interest, the Court notes that the State made this calculation from its deadline to pay until September 30, 2009, the date on which it issued the payment order. The representative observed that interest should have been calculated until November 30, 2009, when this amount was actually transferred to the victim. However, the Court finds that under the specific circumstances of the present case it is reasonable to accept the calculation of accrued interest until the date on which the payment order was issued because the amount of time that passed until the actual payment was made was not excessive. Furthermore, there is no evidence that the delay between the issuance of the payment order and the date on which presentment was made at the bank was the result of a clearly irrational act on the part of the State. Similar considerations are applicable to the payment of interests that correspond to the other victims.

iii) Alleged interest owed for tax withholdings

18. Concerning the interest allegedly owed Juan Francisco Bueno Alves, Ivonne Miriam Bueno, and Juan Francisco Bueno for tax withholdings, the Court finds that, according to information provided by their own representative, not only were these amounts returned in their entirety, but that it was HSBC Bank who made the withholdings in the first instance, thus making them not attributable to the State.

Furthermore, there is no evidence that the State would have derived any benefit from these withholdings so as to justify charging the State interest for them, in order to justify the interest for such alleged benefits claimed by the representative. Regarding recent information that shows that in April 2011 the Federal Administration of Public Revenue suggested to Mr. Bueno Alves that he might have to pay taxes on the compensation ordered in the Judgment, the Court requested that the State adopt the appropriate measures to prevent these compensatory sums from being taxed, consistent with the provisions of the Judgment.[13]

iv) The request to "release the positive account balance" as ordered by the Court in favor of Tomasa Alves de Lima

19. Finally, concerning the compensation owed to Ms. Tomasa Alves de Lima, the Tribunal recalls that, according to the Judgment, this compensation was to be distributed among her successors in interest "in accordance with applicable domestic law." [14] By reason of the foregoing, the Court finds that if, as the State reported, domestic law requires the presentation of a Declaration of Heirs, fulfillment of the present obligation is subject to the successors' satisfaction of this requirement. The Court also recalls the relevant provision of the Judgment, which provides that if "for causes attributable to the beneficiaries it were not possible for them to receive compensation within the timeframe [set out in the Judgment], the State [must] deposit these sums in dollars of the United States of America in a bank account or certificate of deposit in an Argentine financial institution in the most favorable conditions available under banking practices and the law."[15] Consequently, the State must comply with this arrangement until the beneficiaries satisfy applicable domestic law in this respect.

v) Conclusion of the Court

20. In virtue of the foregoing considerations, in the framework of the specific circumstances of this case, the Court considers that the State has fully complied with payment owed to Juan Francisco Bueno Alves, Inés María del Carmen Afonso Fernández, Verónica Inés Bueno, Ivonne Miriam Bueno, and Juan Francisco Bueno. On the other hand, compliance is pending with respect to the payment of compensation to Tomasa Alves De Lima, pursuant to Considering clause 19 of this Order.

B) Obligation to conduct forthwith the necessary investigations so that those responsible for the facts of the instant case be identified as provided by law (Operative Paragraph eight of the Judgment)

i) Arguments and information submitted by the parties

21. The State reported on the decisions in the domestic forum wherein the statute of limitations was applied in this case, and therefore, the investigation was

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13 *Cf. Case of Bueno Alves V. Argentina, supra* note 10, para. 226.

14 *Cf. Case of Bueno Alves V. Argentina, supra* note 10, para. 223.

15 *Cf. Case of Bueno Alves V. Argentina, supra* note 10, para. 225.

finalized. In this regard, it provided the decisions of the first and second instances that were issued prior to the ruling by the Inter-American Court and had not been presented to the Court. The State also submitted a third decision, issued by the Supreme Court of Argentina after the Court ruling (hereinafter "the Supreme Court" or "Supreme Court of Justice").

22. The decision of the court of first instance,[16] issued on December 17, 2003, deemed that the ability to bring criminal charges for the crime of "duress" [17] had expired, taking into account that the maximum penalty would have been of five years.[18] This instance argued that: i) it did not involve a crime against humanity; ii) it "ha[d] not mediated the interruption off the statute of limitations, and iii) "given the attack on the guarantee of reasonability regarding the duration of the process." The ruling states that "it had become inevitable to end once and for all with the state of uncertainty involved in all of the criminal investigations," noting that the right of defense includes "the right to a proceeding conducted in a reasonable time." Moreover, because "the cause of action [was] not crippled by international delays." On August 11, 2004, a decision of the second instance[19] was issued, wherein it confirmed the statute of limitation was enacted because the facts did not constitute a crime against humanity, since they did not "encompass the nature of the crimes that affect, given their generalization and serious gravity and systematization, the human condition."

23. On July 11, 2007, forty days after the issuance of the decision of the Inter-American Court, [20] the Supreme Court of Justice upheld the statute of limitations in the criminal action relating to this case, by issuing its response to an appeal made by Mr. Bueno Alves. [21] In its judgment, "the Supreme Court held that the facts alleged to have occurred in this case did not constitute a crime against humanity, therefore these crimes were not exempt from a statute of limitations." The State added that "notwithstanding, [...] it submitted a copy of the decision of the Inter-American Court to the Supreme Court's Office."

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16 Incident regarding the expiration of the statute of limitations of the criminal action on December 17, 2003, resolved by Examining Judge No. 13 (case file of monitoring of compliance with Judgment, tome I, folio 169)

17 The decision stated that "the codification of torture was discarded for duress, this on this basis of the evaluation of the quality of the available evidence." *Cf.* Incident regarding the expiration of the statute of limitations of the criminal action, *supra* note 16, folio 182.

18 Art. 144 Bis.- He or she shall be punished with imprisonment or confinement of one to five years and disqualification for double the time: [...] 2 º. the officer who performing an act of service commits against persons or will commit duress [...] *Cf.* Incident regarding the expiration of the statute of limitations of the criminal action, *supra* note 16, folio 186.

19 Judgment issued on August 11, 2004, by the National Appeals Chamber on Criminal or Correctional matters (case file of monitoring of compliance with Judgment, Tome I, folios 189).

20 The decision of the Inter-American Court, issued on May 11, 2007,was notified to the State on May 30, 2007.

21 The State noted that the ruling of the Supreme Court of Justice resolved an appeal of facts presented by Mr. Bueno Alves against the rejection of an extraordinary remedy against the decision of the second instance, which confirmed "the expiration of the statute of limitations of the criminal action of the charged." *Cf.* Note SDH-DAI No. 170/08 of October 1, 2008 (case file of monitoring of compliance with Judgment, tomo I, folio 58).

24. The decision of the Supreme Court[22] focused on determining "whether the facts under investigation [...] are subsumed in the codification of crimes against humanity," given that "the main aspect of the complaint [regards] the allegation that the crime allegedly committed against [Mr.] Bueno Alves, [...] is a crime against humanity [and therefore], it would not be subject to the statute of limitations." In particular, the Supreme Court held that:

a) "torture, as a State practice, is prohibited by customary law that existed prior to the Convention against Torture [...] of 1984." Therefore "it involves an attempt to establish that during said period, torture, as a State practice, was clearly prohibited as a crime against humanity" and that the most modern codification does not restrict the range of what is accepted as a crime against humanity, "rather, in all cases, it has expanded on it, which cannot cause any harm to the applicant";

b) "the facts that allegedly took place in this case do not constitute crimes against humanity," neither under a general definition on the legally protected interest, since "the crimes of which [Mr.] Bueno Alves had been the victim of are not in line with the international purpose that was taken into consideration at the time crimes against humanity was codified" nor under a more specific analysis on the constituent elements of such crimes. In this case, "even when the act of torture is proven in this case, it is clear that in the Republic of Argentina, throughout 1988, there was no State or organization within the State that demonstrated acquisition of basic characteristics or that evinced having become a machine that produced perverse systematic and organized persecution of a group of citizens, deviating from its main purpose which was the promotion of the common good and of a peaceful coexistence." Regarding the existence of the constituent elements of crimes against humanity, it noted that "presumably the conduct committed against [Mr.] Bueno Alves does not encompass the aspect of an attack that is part of a set of acts and, above all, of a State policy, [...] and even if it is understood that there is a widespread police practice of harming people, there is no reason to interpret this phenomenon as the execution by omission of a specific policy of the State against any group so defined by their common characteristics";

c) "the obligation to investigate does not constitute a sufficient independent basis to further prosecute for a criminal action that has expired, when the fact under investigation is a crime subject to the statute of limitations";

d) "that which is forbidden from the States by the duty to guarantee (Article 1(1) of the American Convention on Human Rights) is the enactment of laws or any other provision in order to prevent the investigation and punishment of serious violations of human rights (crimes against humanity), but by no means can this be understood as prohibiting these facts from being subject to the general rules regarding expiration or

[22] The Supreme Court "shared and took as its own the conclusions and foundations of Mr. Prosecutor General, whose terms were forwarded briefly." *Cf.* Decision of the Supreme Court of Justice of July 11, 2007 (case file of monitoring of compliance with Judgment, Tome I, folio 71)

processing of an action for the sole reason that its application could lead to the issuance of an acquittal";

e) to which, "so long as there is no suspicion that the modification of the legal code of any legal institution[, such as that of the statute of limitation in a criminal action of the State,] is due solely to the purpose of granting impunity to persons charged with serious violations of human rights, there is no reason for not applying it to specific cases";

f) while this "leaves open the issue regarding the possible international responsibility of the State if it has failed to investigate or punish due to inactivity, delay, or any other fault attributable to its bodies[,] what is not acceptable is that the criminal prosecution *contra legem* of the accused continues to avoid the State's possible international condemnation."

25. The representative said he did not know "if the legal claims that gave rise to the instant case are being investigated." The representative highlighted that the decision of the Supreme Court that upheld the statute of limitations in the criminal action was issued "after the notification of the [J]udgment of the Inter-American Court." In this regard, he observed that "[i]t is clear that with the decision of the Supreme Court [...] the State seeks to justify the decision not to investigate crimes committed by its officials," as "most involved and/or charged in the various judicial proceedings continue today in their roles as State officials." He noted that with the information provided by the State "it can be seen that a significant length of time remains from obtaining the required investigation of the charges, as well as identifying those responsible for said charges." In addition, he stressed that the impunity of the perpetrators and lack of justice, 22 years after the events, has had a "devastating" impact in the life of the victim and family members. Upon noting that the above ruling "seeks to encompass all of the initiated proceedings, as well as all of those responsible for the facts denounced given that such benefit favors the co-defendants, the police, [...] and each and every one of the judicial and administrative officials of the State who were in one way or another involved in the process of covering up the crimes they claimed to be investigating." In this regard, he indicated other proceedings, presumably initiated due to the timing of the facts of this case, for which the obligation of the State remains. Among these proceedings, he mentioned causes of action that remain open for crimes of threat committed by one of the charged police[23] and for the disappearance and destruction of evidence, including the "disappearance of original and notarized documentation."[24]

26. The Commission said that "it deeply regret[ed]" the declaration of the statute of limitations of the investigation into the torture." It noted that the obligation to investigate is linked to the right of victims, their family members, and society to know the truth of what happened and to the State's obligation to prevent and combat impunity. It stressed that the fulfillment of this obligation should not be impeded by the invocation of any norm of law, one of which is the statute of limitations. It therefore considered that "the State of Argentina must complete a real and effective investigation in order to identify and punish those responsible for violations [...] in this case." It also noted that "it expect[ed] the State to, in its next report, provide updated information on the reaction of the Supreme Court regarding

[23] The representative alluded to "case No. 25156 before the Court of Instruction [Examining Court] No. 23" and la "case No. 57144 before the Court of Instruction [Examining Court] No. 30" (case file of monitoring of compliance with Judgment, tome I, folios 275 and 276).

[24] Case No. 61720 and Case No. 6269/96 before the Court of Instruction [Examining Court] No. 13 (case file of monitoring of compliance with Judgment, tome I, folios 275 and 276).

the relevant parts of the Judgment." The Commission added that information has been filed on the administrative and disciplinary proceedings initiated in respect to those responsible for the violations.

ii) Considerations of the Court

27. The Court notes that regarding the facts of this case, the statute of limitations for the criminal action was declared on December 17, 2003, that is, approximately three and a half years before legal notice of the Judgment in this case, without this information being provided to the Court by the parties. In addition, the Court emphasizes that forty days after notification of the Judgment, the Supreme Court of Argentina confirmed the application of the statute of limitation to the benefit of a public official under investigation for acts of torture against Mr. Bueno Alves. The reasoning of the Supreme Court was based on the grounds that these facts did not constitute a crime against humanity, and for that reason, the statute of limitations could be applied.

28. In this regard, the Court has noted that the statute of limitations sets a period of time upon which its termination prevents the filing of a cause of action for punishment and, as a general rule, it sets a restriction on the punishing authority of the State to prosecute and punish defendants for unlawful conduct.[25] The Court indicated in the Judgment of the case of *Albán Cornejo* V. *Ecuador*, a standard which states that "the statute of limitations is inadmissible in connection with and inapplicable to a criminal action where gross human rights violations are involved in the terms of International Law."[26] The invalidity of the application of the statute of limitations was not declared in this case because it involved medical negligence and a failure to comply with the standards of the Court. The Court noted that:

> the accused is not responsible for the celerity of the action of the judicial authorities in its development, or for the lack of due diligence of the State authorities. The burden of the delay on the administration of justice cannot be imposed over the accused in a criminal procedure, which would inevitably represent a breach of the rights of the accused in the terms of the law. [27]

29. More recently, in the Judgment in the case of *Ibsen Cárdenas and Ibsen Peña* V. *Bolivia*, it was stated that "in some circumstances, International Law considers the statute of limitations to be inadmissible and inapplicable, as well as amnesty provisions and the establishment of exceptions to responsibility, in order to maintain the States punishing authority in force against conduct where the gravity makes repression necessary in order to avoid the repeated commission of said conduct."[28] This standard, specifically, the non-applicability of a statute of limitations, was applied in the mentioned case in regard to "the torture and murder committed during a context of massive and systematic human rights violations."[29] Now, though this did

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[25] *Cf. Case of Albán Cornejo et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of November 22, 2007. Series C No. 171, para. 111 and *Case of Ibsen-Cárdenas and Ibsen-Peña v. Bolivia. Merits, Reparations and Costs.* Judgment of September 1, 2010. Series C No. 217, para. 207

[26] *Case of Albán Cornejo* V. *Ecuador*, para. 111.

[27] *Case of Albán Cornejo* et al. *V. Ecuador*, *supra* note 25, para. 112.

[28] *Case of Ibsen Cárdenas and Ibsern Peña V. Bolivia*, supra note 25, para. 207.

[29] *Case of Ibsen Cárdenas and Ibsern Peña* V. *Bolivia*, *supra* note 25, para. 208.

not regard a case in which the criminal statute of limitations had been argued, in the Judgment also issued recently, in the case of *Gomes Lund et al. (Guerrilha do Araguaia)* V. *Brazil,* the Court reiterated that "[…] the statute of limitation provisions […] that are intended to prevent the investigation and punish those responsible for serious violations to human rights such as torture, summary, extrajudicial, or arbitrary executions, and enforced disappearance are not applicable, all of which are prohibited for contravening irrevocable rights recognized by International Law of Human Rights." [30] This jurisprudence was also maintained in the last case before the Court wherein serious violations were alleged, namely, *Gelman* V. *Uruguay.* [31]

30. Unlike these other cases, in the case of *Vera Vera et al. V. Ecuador,* the Court considers that "it is not able to determine the inapplicability of the criminal statute of limitations" to the facts of said case, in regard to the bullet-wound received by the victim which led to his death, eleven days later, while under State custody.[32] From the aforementioned line of jurisprudence, the Court notes that the inadmissibility of the statute of limitations has been declared in cases that involve serious human rights violations, such as enforced disappearance, extrajudicial killing of persons, and on occasions, torture. In some of these cases, the human rights violations occurred in a context of massive and systematic violations. [33]

31. However, this case is not related to a crime against humanity. In fact, this Court stated that "the acts of torture committed against Mr. Bueno-Alves are under the protection [...] of the [American] Convention; however, this does not mean that said acts should be classified *per se* as a crime against humanity,"[34] because such acts were not part of a context of widespread or systematic attacks against the civilian population.[35] That is, neither before the Supreme Court of Argentina nor before this Court was it proven that the acts of torture committed against Mr. Bueno Alves met the requirements of a crime against humanity.

32. Nevertheless, independent of whether or not certain conduct constitutes a crime against humanity, the Court reiterates that the obligation to investigate human rights violations is a positive measure that must be adopted by States to guarantee the rights recognized in the Convention.[36] The duty to investigate is an obligation of means, and not of results, which should be assumed by the State as a legal obligation in and of itself and not as a simple formality condemned from the onset to be unsuccessful, or a matter of particular interests, which depends on the procedural initiative of the victims or their family members or of the bearing of evidence from

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[30] *Cf. Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 24, 2010 Series C No. 219, para. 171.

[31] *Cf. Case of Gelman v. Uruguay. Merits and Reparations.* Judgment of February 24, 2011 Series C No. 221, para. 225

[32] *Cf. Case of Case of Vera-Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of May 19, 2011. Series C No. 224, para. 122.

[33] *Cf. Case of Vera Vera et al. V. Ecuador, supra* note 32, para. 117.

[34] *Cf. Case of Bueno Alves V. Argentina, supra* note 25, para. 87.

[35] *Cf. Case of Bueno Alves V. Argentina, supra* note 25, para. 86.

[36] *Cf. Case of Velásquez-Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, paras. 166 and 167; *Case of Fernández-Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of August 30, 2010. Series C No. 215, para. 191, and *Case of Rosendo-Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of August 31, 2010. Series C No. 216, para. 175.

the private sector.[37] In light of this obligation, once the State authorities have knowledge of the facts, they must initiate, *ex oficio* and without delay, a serious, impartial, and effective investigation.[38] This investigation must be carried out in all of the available legal venues and be aimed at determining the truth.

33. In addition, the obligation pursuant to international law to prosecute, and if criminal responsibility is determined, punish the perpetrators of human rights violations, stems from the obligation to guarantee rights enshrined in Article 1(1) of the American Convention. This obligation implies the obligation of States Parties to organize their governmental apparatus, and in general, all of the structures in which public power is manifested, in a way that assures individuals the free and full exercise of their human rights. [39] As a consequence of this obligation, the States must prevent, investigate, and punish all violations to the human rights enshrined in the Convention, and also, seek the reestablishment, if it is possible, of the violated right, and where applicable, the reparation of the harm produced given the violation of the human rights. [40] If the State's apparatus functions in a way that assures the matter remains in impunity, and it does not restore, in as much as is possible, the victim's rights, it can be ascertained that the State has not complied with the obligation to guarantee the free and full exercise of those persons within its jurisdiction. [41]

34. For its part, universal and regional bodies for the protection of human rights have ruled on the scope of the obligation of due diligence in the investigation of crimes related to acts of torture and the effects that this has on the analysis of the statute of limitations.

35. In this regard, the European Court of Human Rights has noted that when a State official has been accused of crimes related to torture or cruel and inhumane treatment, it is of the highest importance, in what pertains to an effective remedy, that the criminal procedures which refer to crimes, such as torture, that imply serious violations of human rights not be obstructed by limitations such as the statute of limitations or allow amnesties in this regard. [42]

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[37] *Cf. Case of Velásquez Rodríguez V. Honduras*, *supra* note 36, para. 177; *Case of Fernández Ortega et al. V. Mexico*, *supra* note 36, para. 191, and *Case of Rosendo Cantú et al. V. Mexico*, *supra* note 36, para. 175.

[38] *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs.* Judgment of January 31, 2006. Series C No. 140, para. 143*; Case of Rosendo Cantú et al. V. Mexico, supra* note 36, para. 175, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 25, para. 65.

[39] *Cf. Case of Velásquez Rodríguez V. Honduras, supra* note 36, para. 166; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brasil, supra* note 30, para. 140, and *Case of Gelman V. Uruguay*, *supra* note 31, para. 189.

[40] *Cf. Case of Velásquez Rodríguez. V. Honduras, supra* note 36, para. 166; *Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 23, 2009. Series C No. 203, para. 112, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brasil, supra* note 30, para. 140.

[41] *Cf. Case of Velásquez Rodríguez V. Honduras, supra* note 36, para. 176; *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, para. 288, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brasil, supra* note 30, para. 140.

[42] *Cfr.* ECHR, *Case of Abdülsamet Yaman v. Turkey.* Judgment of November 2, 2004, para. 55. In this ruling, the European Court noted that: "…where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance for the purposes of an "effective remedy" that

36. Likewise, the International Criminal Tribunal for the former Yugoslavia has stated that one of the consequences of a *jus cogens* nature that the international community has attributed to the prohibition on torture is the obligation to investigate and prosecute, and where applicable, punish or extradite those individuals accused of torture, as well as other consequences such as the inability of applying the statute of limitations to torture.[43]

37. On the other hand, the Human Rights Committee of the United Nations[44] has stated with regard to violations recognized as crimes under international law or domestic law, including torture and other cruel, inhumane, or degrading treatment that "the barriers to establishing criminal responsibility should be removed, including statutes of limitations [...] which are too brief, in cases where such requirements are applicable."

38. For its part, the Committee against Torture of the United Nations has expressed its reservation regarding the implementation of the statute of limitations to the crime of torture.[45] For example, in its Concluding Observations on Chile in 2004, the Committee recommended the State party "to consider the possibility of eliminating or extending the current statute of limitations period of ten [10] years established for the crime of torture, given its severity."[46] On the other hand, in its conclusions on Morocco, the Committee expressed concern about "[t]he application of the statute of limitations under common law to acts of torture, which would deprive victims of their inalienable right to bring an action of justice" [47] and recommended the State party to include "in its Criminal Procedure Code, provisions

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criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible".

43 *Cf.* I.C.T.Y., *Case of Prosecutor v. Furundžija*. Judgment of December 10, 1998. Case No. IT-95-17/1-T, para. 156.

44 Human Rights Committee, General Comment No. 31, "Nature of the General Legal Obligation Imposed on States Parties to the Covenant," May 26, 2004, U.N. Doc. CCPR/C/21/Rev.1/Add.13, para 18.

45 The Committee against Torture, upon evaluating the Constitution of Venezuela, in 2002, stated that "it positively assessed that the Constitution […] imposed upon the State the obligation to investigate and punish violations of human rights [and,] that it declare them as not subject to a statute of limitations[...]". Committee against Torture, Analysis of the reprot filed by thte State parties in virture of Article 19 of the Convention, Conclusions and recommendations, 29th Period of Sessions, December 23, 2002, CAT/C/CR/29/2 para. 6.c. On the other hand, in 2002, the Committee against Torture, recommended that the actions taken to punish this crime, should not be subject to a statute of limitations. In its observations on Lithuania, the Committee noted that it **"**regrets the lack of information provided as to whether the offence of torture, which is punishable under other provisions of the Criminal Code, may in some cases be subject to a statute of limitations. **The Committee is of the view that acts of torture cannot be subject to any statute of limitations"**. (emphasis added). The Committee emphasized that "acts of torture as well as attempts to commit torture and acts by any person which constitute complicity or participation in torture, as established by article 1 of the Convention, **can be investigated, prosecuted and punished without time limitations".** (emphasis added). *Report of the Committee against Torture*. Forty-first and Forty-second session, 2008-2009, A/64/44, para. 43(5). Availabe at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/64/44&Lang=E. In regard to Serbia, the Committee indicated that "the State party should ensure that the penalties of the Criminal Code be brought in line with the proportional gravity of the crime of torture. **The Committee urges the speedy completion of judicial reforms so that no statute of limitations will apply to torture."** (emphasis added). *Report of the Committee against Torture*, *supra* nota 45, para. 45(5).

46 Final Observations of the Committee against Torture: Chile, May 2004, UN Doc. CAT/C/CR/32/5, para. 7 (f).

47 Final Observations of the Committee against Torture: Morrocco, February 5, 2004, Document of the United Nations CAT/C/CR/31/2, paragraph 5 (f).

for the inalienable right of every person who has been the victim of an act of torture to initiate proceedings against any torturer." [48] In its conclusions on Turkey, the Committee recommended that "the statute of limitations be derogated for crimes related to torture."[49] In its conclusions on Slovenia, the Committee expressed its concern that the crime of torture is subject to a statute of limitations[50] and recommended the State party "to declare the non-applicability of the statute of limitations form the crime of torture." [51] In its conclusions on France, the Committee recommended the State party to define under their criminal law the crime of torture as a "violation not subject to a statute of limitations." [52]

39. The guidelines set by international human rights law must be considered when analyzing the application of domestic law. In this regard, the Criminal Chamber of the Supreme Court of Colombia, upon rejecting a claim for the statute of limitations in relation to a case of torture that was not related to the general pattern, noted that in cases "[...] of torture, the application of the statute of limitations does not follow common rules, but rather the guidelines set by international human rights instruments and jurisprudence of international human rights bodies [...]."[53]

40. Finally, in the possible analysis of impunity in a legal proceeding, it is important to note that certain contexts of institutional violence, as well as some obstacles in the investigation, can lead to serious impediments for the proper investigation of some human rights violations. In each case in particular, taking into account specific arguments about evidence, the non-applicability of the statute of limitations at a given time may relate to the objective of preventing the State from evading its responsibility for the injustices carried out by its officials in the framework of these contexts. In this regard, in relation to Argentina, the Committee against Torture has expressed concern over the use of "duress" in the investigation of torture, something that has even occurred in this case and which meant that the maximum penalty for the computation of the statute of limitations be of five years (*supra* Considering clause 22). This Committee stated its concern with:

> The repeated practice by judicial officials of the misclassification of events, assimilating the crime of torture with crimes of lesser severity (for example, duress), which are punishable with lesser sentences, when in fact they should have been classified as torture.[54]

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[48] Final Observations of the Committee against Torture: Morroco, *supra* note 47, para. 6 (d).

[49] Final Observations of the Committee against Torture: Turkey, May 27, 2003, Document of the United Nations CAT/C/CR/30/5, Recommendation, paragraph 7(c); Final Observations of the Committee against Torture: Slovenia, May 27, 2003, CAT/C/CR/30/4, Recommendation, paragraph 6 (b); Final Observations of the Committee against Torture: *supra* note 46, paragraph 7 (f).

[50] Final Observations of the Committee against Torture: Slovenia, May 27, 2003, CAT/C/CR/30/4, paragraph 5 (b).

[51] Final Observations of the Committee against Torture: Slovenia, *supra* note 50, para. 6 (b).

[52] Final Observations of the Committee against Torture: France, April 3, 2006, Document of the United Nations CAT/C/FRA/CO/3, paragraph 5.

[53] *Cf. Case of Gutiérrez-Soler v. Colombia. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of June 30, 2009., Considering 11 and Casation Chamber of the Supreme Court of Colombia, Judgment of September 17, 2008 (Remedy of Review).

[54] Committee against Torture, CAT/C/CR/33/1, December 10, 2004. Also, when assessing, in regard to Argentina, the factors and difficulties impeding the implementation of the Convention on Torture, the Committee against Torture noted that "the severity of the penalties for torture under Article 144 third of the Penal Code, in particular the sanctions for cases of death resulting from torture, which formally satisfy

41. Likewise, the Court recalls in its Judgment that it stated:

> in the substantiation of the claim […] the judicial authorities did not investigate the facts diligently and **the procedural burden fell for the most part on Mr. Bueno-Alves.** The role that the Public Prosecutor's Office and the Judge played was **notoriously passive**. The judge only received the requests for evidence filed by the applicant, some of which have not been upheld, and the Public Prosecutor's Office **has not made any efforts to gather all the pieces of evidence which might be useful** to establish the truth of the facts. Likewise, no investigations were conducted regarding the claims made by the victim reporting blows to the stomach and deprivation of medicines. On the other hand, those persons identified as responsible for the blows inflicted upon Mr. Bueno-Alves **were not included in the early stages of the criminal process and instead they were included long after the commencement of the process**; and despite the fact that Mr. Bueno-Alves reported the presence of a third person while he was being beaten on the ears and the stomach, **no efforts were made in order to identify such person.** In sum, the criminal proceeding did not contribute to the identification or punishment of any person, it almost entirely depended on the activities of the victim, and it did not provide reparation for the damages caused thereto. (bold added).

42. Moreover, it is necessary to recall that, in this case, the State "accept[ed] the conclusions contained in [R]eport 26/05 adopted by the […] Commission […], as well as the legal consequences deriv[ed] therefrom," " assuming [its] full responsibility in the case." [55] This is the manner in which, before the Court, the State expressly promised to "make its best efforts to conclude, as soon as possible, the investigations into the facts which caused damage to Mr. Bueno-Alves while he was held in custody." Similarly, the State also expressed that "[o]nce the circumstances [of the facts of this case] have been clearly determine[d], […] the State may adopt the appropriate measures so that the commission of the crimes does not go unpunished, submitting those responsible for the […] denial of justice to the pertinent and most effective administrative and judicial proceedings for the fulfillment of such objective." [56]

43. Given these manifestations made by the State, the Court considers that classifying the facts as "duress" and not as acts of torture is contrary to the State's acknowledgment of international responsibility and the commitment adopted by the State before the Court.

44. On the other hand, while in its Judgment the Court noted that this acknowledgment of responsibility constitutes "an important step towards the development of this process [and] the enforcement of the principles enshrined in the American Convention," [57] the Court considers that the acknowledgment supposes the prompt and effective compliance of the provisions ordered therein. If State authorities remain inactive without repairing the damage caused, the initial content

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the provisions of Article 4 of the Convention, are weakened in the practical application of these provisions by the judges, those of whom, as the Committee has proven in the examination of the background of a significant number of cases, often prefer to prosecute for crimes of lesser severity, punishable by lesser sentences, with diminished deterrent effect. […] Committee against Torture, Report on the fifty-third session, Supplement No. 44 (A/53/44), September 16, 1998.

55 *Cf. Case of Bueno Alves V. Argentina, supra* note 10, para. 22.

56 *Cf. Case of Bueno Alves V. Argentina, supra* note 10, para. 210.

57 *Cf. Case of Bueno Alves V. Argentina, supra* note 10, para. 34.

of a reparation that an intrusion may imply for the victims and their families fades as time goes on. [58] Therefore, the failure of the State regarding the implementation of this measure of reparation is not related to the acknowledgment of responsibility in this case.

45. Given the foregoing, the Court concludes that the judicial authorities, when reviewing whether to apply the statute of limitations to the crime of torture, given its severity, should declare the applicability of the statute of limitations, where applicable, only after an investigation has been carried out with due diligence. This standard does not imply that the Court is unaware of the scope and importance of the procedural institution of the statute of limitations, which in some countries in the region is recognized as a guarantee of the defendant. The Court considers that, as a general rule, the procedural institution that is the statute of limitations must be applied when it so corresponds, unless, as in this case, there is a clear lack of due diligence in the investigation and, consequently, a denial of access to justice for a victim of torture.

46. Moreover, the Court notes that in this case, Argentine courts declared the statute of limitations for the criminal action in 2003 and 2004 (*supra* Considering clause 22) and an evaluation of it was underway by the Supreme Court of Justice, without the State informing the Inter-American Court of this situation when it issued the Judgment. To the extent that this was contrary to the acknowledgment of international responsibility effectuated by the State, this information should have been provided to the Court at that time. In this regard, the Court recalls that, pursuant to international law, the State cannot invoke during the monitoring of compliance stage, a fact in its favor that it knew of and should have diligently reported to the Court. In addition, subsequent to the Judgment, in 2007, the State rendered a decision by the Supreme Court of Justice (*supra* Considering clause 23 and 24), which is unrelated to the acknowledgment of responsibility, to the commitment to investigate assumed by the State before the Court, and to the Judgment issued by this Court. All these elements, combined with the failure to investigate the torture that took place with due diligence, justify the Court's decision to maintain the order to investigate issued in the Judgment.

47. Moreover, the Court awaits more information about the processes mentioned by the representative (*supra* Considering clause 25) with respect to the obstacles in the investigation related to the alleged threats (claim No. 25156) and alleged disappearance and destruction of evidence (claim No. 61720). In this regard, a request is made for the State to provide, in the period specified in the operative paragraphs of this Order, complete and detailed information about all processes and investigations initiated in relation to the facts of this case.

C. Publication of the Judgment (*operative paragraph nine of the Judgment)*

48. The State reported that the relevant parts of the Judgment were published in the Official Bulletin No. No. 31.486 on September 10, 2008, and in the newspaper, "La Prensa" on September 25, 2008, and it provided a copy of these publications.

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[58] *Cf. Case of Molina-Theissen v. Guatemala. Monitoring Compliance with Judgments. Order of the President of the Inter-American Court of Human Rights of August 17, 2009.*, Considering 18.

49. The representative expressed that "[Mr.] Bueno Alves feels offended with the publications made," because he considers that "the Commission [made] a very serious error [in the case], being that it assessed the evidence incorrectly regarding the claim made about the violation of Article 7 of the Convention." Now, he stated that he understands that the "judgments rendered by the Court are final and not appealable, and it involved a closed case.**"**

50. The Commission took note of the publications made by the State.

51. Regarding the observations presented by the representative, the Court reiterated that "it did not find elements to modify […] that which had been resolved by the Commission," when it declared "the allegations inadmissible […] regarding the violation of Article 7 of the Convention." [59] Moreover, the Court reiterates that, as pointed out by the representative, the rulings of this Court are final and not appealable. (*supra* Considering clause **¡Error! No se encuentra el origen de la referencia.**).

52. Consequently, pursuant to the evidence provided and considering the information provided by the parties, the Court considers that the State has fully complied with its obligation to publish the Judgment, established in operative paragraph nine of the ruling of this Court.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In the exercise of its powers of monitoring of compliance with its decisions and in conformity with Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of the Statute, and Articles 31(2) and 69 of its Rules of Procedure, [60]

DECLARES THAT:

1. The State has fully complied with its obligation to publish the pertinent parts of the Judgment in the Official Gazette and in a newspaper of wide national circulation *(operative paragraph nine of the Judgment)*, pursuant to that indicated in Considering clause 52 of this Order.

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[59] *Cf. Case of Bueno Alves V. Argentina, supra* note 10, paras. 66 and 67.

[60] Rules of Procedure approved by the Court in its LXXXV Regular Period of Sessions, held on November 16 to 28, 2009.

2. In accordance with Considering clauses 7 to 20, the State has fully complied with its obligation to carry out the payment of compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses to Mr. Juan Francisco Bueno Alves and the compensation to Inés María del Carmen Afonso Fernández, Verónica Inés Bueno, Ivonne Miriam Bueno and Juan Francisco Bueno (*operative paragraph seven of the Judgment).*

3. It will keep open the process of monitoring compliance of the points pending fulfillment in this case, pursuant to that noted in Considering clause 19, 27 to 47 of this Order, namely to:

a) Carry out the payment of the quantities established in the Judgment regarding the deceased, Tomasa Alves de Lima (*operative paragraph seven of this Judgment*), and

b) Carry out, immediately, the due investigations to determine the corresponding responsibility for the facts of this case and to apply the consequences provided by the law (*operative paragraph eight of the Judgment)*.

AND DECIDED TO:

1. Require the State to adopt, as soon as possible, all of the measures necessary to effectively and promptly comply with those measures pending compliance that were ordered by the Court in the Judgment on the merits, reparations, and costs of May 11, 2007, pursuant to that provided in Article 68(1) of the American Convention on Human Rights.

2. Request that the State present the Inter-American Court of Human Rights, by no later than November 15, 2011, with a detailed report wherein it notes all of the measures adopted to comply with the reparations ordered by this Court that are pending compliance, pursuant to that noted in declarative paragraph four.

3. Request that the Inter-American Commission on Human Right and the representative of the victim file their observations to the State's report mentioned in the preceding operative paragraph, in the period of six to four weeks, respectively, as of receipt of the report.

4. Request that the Secretariat of the Court provide legal notice of this Order to the State, the Inter-American Commission on Human Rights, and the representative of the victim.

Judge Eduardo Vio Grossi presented his Concurring Opinion to the Court, that which accompanies this Order.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI REGARDING THE ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF JULY 5, 2011

CASE OF BUENO ALVES *v.* ARGENTINA

MONITORING OF COMPLIANCE WITH JUDGMENT

I concur in this opinion with the "*Order of the Inter-American Court of Human Rights, of July 5, 2011, Case of Bueno Alves* V*. Argentina, Monitoring of Compliance with Judgment,"* noting that the inadmissibility of the orders of the decisions of the first and second instance, issued in the domestic legal system of the Republic of Argentina in 2003 and 2004, that declared the statute of limitations prior to the issuance of the ruling in this case and provided by the State during the monitoring of compliance, heeds, in addition to that presented in the Order, (Considering clause 46) to the principle of International Law wherein no State may take advantage of its own negligence,[1] and therefore, such decisions contain facts that, having been recognized by the State, should have been invoked during the processing of the claim that led to the case that is now being monitored, that is, prior to its issuance.

And, the invocation of the resolution of the Supreme Court of Justice of Argentina on July 11, 2007, which in the context of an appeal against those decisions affirmed them, making them final, is also inadmissible based on the merits, specifically because it consists of and considers as final, the process where the decisions are rendered that were ratified. All of these are circumstances of which the State was presumably aware and did not report to the Court at the aforementioned time, to which, in this respect, the aforementioned principle of International Law applies.

[1] This principle is expressed, among other legal texts, in Art. 61(1) of the Statute of the International Court of Justice, which states:

"An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence."

And in Art.51(1) ICSID which states:

"(1) Either party may request revision of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence."

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

So ordered,

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary