

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF TORRES MILLACURA *ET AL.* v. ARGENTINA

JUDGMENT OF AUGUST 26, 2011 (*Merits, Reparations, and Costs*)

In the *Case of Torres Millacura et al.*,

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

Diego García-Sayán, President;
Manuel E. Ventura Robles, Judge;
Margarette May Macaulay, Judge;
Rhadys Abreu Blondet, Judge;
Alberto Pérez Pérez, Judge, and
Eduardo Vio Grossi, Judge;

also present,

Pablo Saavedra Alessandri, Secretary**,

In accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and with Articles 31, 32, 62, 64, 65, and 67 of the Rules of Procedure of the Court*** (hereinafter “the Rules of Procedure”) renders this judgment, structured as follows:

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* The Vice-president of the Court, Judge Leonardo A. Franco, Argentinean, did not participate in the present case pursuant to the Article 19(1) of the Rules of Procedure of the Court, according to “In the cases referred to in Article 44 of the Convention, a Judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case.”

** Deputy Secretary Emilia Segares Rodríguez informed the Tribunal that she would not be present during the deliberations on this Judgment for reasons of *force majeure*.

*** Rules of procedure approved by the Court in its LXXXV Regular Period of sessions held from November 16 to November 28, 2009. According to the Article 79(2), “[i]n cases in which the Commission has adopted a report under article 50 of the Convention before the these Rules of Procedure have come into force, the presentation of the case before the Court will be governed by Articles 33 and 34 of the Rules of Procedure previously in force. Statements shall be received with the aid of the Victim’s Legal Assistance Fund, and the dispositions of these Rules of Procedure shall apply.”

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I

INTRODUCTION TO THE CASE AND PURPOSE OF THE DISPUTE

1. On April 18, 2010, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) filed an application against the Republic of Argentina (hereinafter “the State” or “Argentina”) before the Court in case 12.533, in keeping with Articles 51 and 61 of the Convention. The initial petition was presented before the Commission on November 14, 2003, by María Leontina Millacura Llaipén and the *Asociación Grupo-Pro Derechos de los Niños* [Association for the Rights of the Children]. On October 13, 2005, the Commission issued its Report on Admissibility No. 69/05. Later, on October 28, 2009, it approved the Report on the Merits 114/09 under the terms of Article 50 of the Convention. In that report, the Commission found the State internationally responsible and established several recommendations. Legal notice of that report was served upon the State on November 18, 2009, and it was given two months to report on the measures taken to comply with the Commission’s recommendations. After two deadline extensions, the presentation of a report on the status of the State’s compliance with the recommendations, the “lack of substantive progress toward effective compliance with the recommendations,” and the wish expressed by the petitioners that the case be brought before the Inter-American Court, on April 18, 2010, the Commission decided to submit the case to the Tribunal’s jurisdiction. The Commission designated Mrs. Luz Patricia Mejía, Commissioner, and Mr. Santiago A. Cantón, Executive Secretary, as Delegates, with Mrs. Elizabeth Abi-Mershed, Deputy Executive Secretary, and María Claudia Pulido, Paulina Corominas, Karla I. Quintana Osuna, attorneys with the Executive Secretariat, as legal advisors.

2. The application is related to the alleged “arbitrary detention, torture, and enforced disappearance of Iván Eladio Torres [Millacura]”¹, which took place starting on October 3, 2003, in the City of Comodoro Rivadavia, Province of Chubut, and the subsequent lack of

¹ In the birth certificate of Mr. Iván Eladio Torres Millacura that was submitted to the file of the present case, it is evident that it was registered under the last names “Torres Millacura” (Case file of annexes to the application, tome X, folio 7315).

due diligence in the investigation of the facts, as well as the denial of justice to the detriment of the victim's family members.”

3. The Commission requested that the Court rule that the State of Argentina is responsible for violations of Articles 7 (Right to Personal Liberty), 5 (Right to Humane Treatment [Personal Integrity]), 4 (Right to Life), 3 (Right to Recognition of Juridical Personality), 8 (Right to a Fair Trial [Judicial Guarantees]), and 25 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter “Convention” or “American Convention”), all with regard to Article 1(1) of the American Convention (Obligation to Respect Rights), as well as the noncompliance of the obligations established in Articles I and IX of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “Convention on Forced Disappearance”), and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “Convention Against Torture”), all to the detriment of Iván Eladio Torres. Likewise, the Commission requested that the Court declare a violation of Articles 5 (Right to Humane Treatment [Personal Integrity]), 8 Right to a Fair Trial [Judicial Guarantees]), and 25 (Right to Judicial Protection) of the American Convention, with regard to Article 1(1) of the Convention (Obligation to Respect Rights), to the detriment of the family members of Iván Eladio Torres. In addition, the Commission alleged that the State failed to comply with its obligation to adapt domestic law to the Convention according to Article 2 of the Convention, with regard to Articles 3, 4, 5, 7, 8(1), 25, and 1(1) thereof. Finally, it requested the payment of certain reparations, as well as the payment of costs and expenses for the case's domestic and international litigation.

4. Legal notice of the application was provided to the representatives of the alleged victims and to the State of Argentina on July 5, 2010.

5. On September 19, 2010, Mrs. Verónica Heredia and Mrs. Silvia de los Santos, from *AMICIS, Clínica Jurídica and Social Patagónica* [AMICIS, Legal and Social Clinic of the Patagonia], the organization representing the alleged victims, filed a brief of pleadings, motions, and evidence (hereinafter, “brief of pleadings and motions”), under the terms of Article 40 of the Rules of Procedure. As of February 18, 2011, Verónica Heredia José Raúl Heredia (hereinafter, “the representatives”) have represented the alleged victims.² In general, the representatives agreed substantially with the allegations of the Commission. They also requested that the Tribunal declare violations of the rights recognized in the following Articles: 7, 5, 3, 8, and 25 of the American Convention, in relation to Article 1(1) thereof, and the noncompliance with the obligations established in Articles I, II, III, and XI of the Convention on Forced Disappearance of Persons, and 1, 6, and 8 of the Convention Against Torture, to the detriment of Iván Eladio Torres Millacura; Articles 5, 8, and 25 of the American Convention, in relation to Article 1(1) of the Convention, and Articles 1, 6, and 8 of the Convention Against Torture, to the detriment of María Leontina Millacura Llaipén, Fabiola Valeria Torres, Marcos Alejandro Torres Millacura, Evelyn Paola Caba, Ivana Valeria Torres, and Romina Marcela Torres; Articles 7, 5, 8, 25, 3, 2, 4(1), 19, and 26 of the American Convention, with regard to Article 1(1) thereof and of “the Protocol of San Salvador,” Articles 2, 6, and 8 of the Convention Against Torture, and III of the Convention on Forced Disappearance of Persons, to the detriment of Iván Eladio Torres Millacura, María Leontina Millacura Llaipén, Fabiola Valeria Torres, Marcos Alejandro Torres, Evelyn Paola Caba, Ivana Valeria Torres, and Romina Marcela Torres, and 2, in relation to Articles 3, 5, 7, 8, and 25 of the American Convention and 1(1) thereof. Finally, the representatives requested

² On that date, the Tribunal was informed that the alleged victims had revoked “the authority granted to AMICIS [...]” and therefore, to Silvia de los Santos.

certain reparations and the payment of costs and expenses, and they expressed that the alleged victims wished to access the Victims Legal Aid Fund of the Inter-American Court of Human Rights (hereinafter the “Legal Aid Fund”).

6. On January 28, 2011, the State filed its brief answering the application and provided comments on the brief of pleadings and motions (hereinafter “answer to the application”), under the terms of Article 41 of the Rules of Procedure. In that brief, the State acknowledged its international responsibility, expressing “its willingness to accept the conclusions contained in the Report [on the merits] passed by the [...] Commission,” and the “legal consequences derived from it.” In this sense, it noted that it “exclusively [acknowledged] the violations of rights established by the [...] Commission in [its] report [on the merits].” However, the State expressly opposed the Commission’s individualization of the victims in its application, the mention of the provisional measures both by the Commission and the representatives, the arguments regarding specific violations presented by them, the indication of the beneficiaries made by the representatives, and the representatives’ requests for reparations. On August 9, 2010, the State named Eduardo Acevedo Díaz as Head Agent and Alberto Javier Salgado and Andrea G. Gualde as Alternate Agents.

7. On April 6 and 11, 2011, the representative and the Commission presented, respectively, their observations on the State’s acknowledgment of international responsibility in this case, in keeping with Article 62 of the Rules of Procedure.

II PROCEEDING BEFORE THE COURT

8. Through an Order dated April 14, 2011, the President of the Court (hereinafter “the President”) granted the request put forward by the alleged victims through their representatives to have recourse to the Legal Aid Fund and approved granting the financial assistance necessary for presenting a maximum of one witness testimony and one expert witness report, and for a representative to be in attendance in the public hearing to be summoned (*infra* para. 9).

9. Through an Order dated April 29, 2011, the President ordered the receipt via sworn statements before notaries public (affidavits) of the testimonies of two alleged victims and six witnesses, as well as one expert witness report. All were proposed by the representatives. Likewise, through that Order, the President called the parties to a public hearing to hear the testimony of María Leontina Millacura Llaipén, alleged victim, and the expert witness report of Nora Cortiñas, both offered by the representatives, as well as the expert witness report of Sofía Tiscornia, ordered *ex officio* by the President of the Tribunal. The hearing was also to include the Commission’s final observations and the final oral arguments of the representatives and the State on the merits, reparations, and costs. Finally, the President ordered financial aid to be assigned to cover the travel and lodging expenses necessary for María Leontina Millacura Llaipén and Nora Cortiñas to be able to appear before the Court and give their testimony and expert witness report during the public hearing to be held in the case, and for one of the representatives of the alleged victims to be able to attend the public hearing. The President also ordered a file to be opened on expenses in which each of the outlays made in relation to the Legal Aid Fund would be documented.

10. The public hearing was held on May 18, 2011, during the 43rd Special Period of

Sessions of the Court³, held in Panama City, Panama. During this hearing, the Court requested that the State, upon presenting its final written arguments, submit certain information and documentation.

11. On June 16, 2011, Sofía Tiscornia, expert witness named *ex officio* by the Court, submitted the open presentation made during the public hearing held in this case, along with additional information that the Court had requested during the public hearing.

12. On June 17, 2011, the State presented its final written arguments, as well as part of the information the Tribunal requested during the public hearing. On June 20, 2011, the Inter-American Commission and the representatives presented their comments and final written arguments, respectively. In addition, the representatives submitted information requested by the Court during the public hearing.

13. On June 30, 2011, following the instructions of the President of the Court, the Secretariat asked the State to submit certain documentation as evidence to facilitate adjudication. Notwithstanding, following the instructions of the President of the Court, the Secretariat requested that the representatives and the State present observations to the additional information submitted by the expert witness appointed *ex officio* by the Court (*supra* para. 11), and it requested that the representatives and the Inter-American Commission on Human Rights present their observations to the documentation presented by the State in the final written arguments (*supra* para. 12)

14. On July 7, 2011, the representatives presented their observations to specific documentation submitted by the State through its final written arguments. (*supra* para. 12).

15. On July 14, 2011, following the instructions of the President of the Court, the Secretariat asked the Inter-American Commission, the representatives, and the States for clarifications on certain documents provided by the parties as evidence in this case.

16. On June 14 and 18, 2011, the State presented the remaining annexes to its final written arguments, as well as the information the Tribunal requested during the public hearing.

17. On July 18, 2011, the representatives submitted to the Court the clarifications that had been requested by the President (*supra* para. 15), as well as their observations to the additional information submitted by the expert witness Sofía Tiscona (*supra* para. 13).

18. On July 19, 2011, the State submitted to the Court some of the documents that had been requested by the President as evidence to facilitate adjudication, as well as the clarifications requested by the President (*supra* para. 15).

3 The following people attended the hearing: a) for the Inter-American Commission: Luz Patricia Mejía, delegated Commissioner, Karla Quintana Osuna, Advisor, and Silvia Serrano Guzmán, Advisor; for the representatives, Verónica Heredia, and c) for the State: Dr. Alberto Javier Salgado, Director of the International Conflicts Division of the Human Rights Directorate; representative of the Ministry of Foreign Relations, International Trade and Culture, Agent; Dra. Julia Loreto, representative of the Ministry of Foreign Relations, International Trade and Culture; Dr. Pilar Mayoral, representative of the Human Rights Secretariat of the Nation; and Dr. Ramiro Badía, representative of the Human Rights Secretariat of the Nation.

19. On July 21, 2011, the Inter-American Commission presented its comments on certain documentation submitted by the State through its final written arguments, and the clarifications requested by the President (*supra* paras. 12 and 15).

20. On July 22, 2011, following instructions of the President of the Court, the Secretariat requested that the parties present their observations to the clarifications filed by the Commission, the representatives, and the State, respectively (*supra* paras. 17, 18, and 19).

21. On August 4, 2011, the representatives presented their observations to the documentation submitted by the State through its final written arguments, on the documentation related to the information that the Court requested of the State during the public hearing, and to the evidence to facilitate adjudication and clarification requested of the State (*supra* paras. 10, 12 and 18). That same day, the State submitted its observations to the clarification requested by the Court from the Inter-American Commission and the representatives (*supra* para. 20), and the Commission indicated that it had no observations.

22. On August 11, 2011, following the instructions of the President of the Court, the Secretariat asked the State for its observations regarding the Legal Aid Fund's file on expenses. On August 18, 2011, the State indicated that it had no observations.

23. On August 21, 2011, the representatives filed a brief, by which the Court was informed about the occurrence of supervening facts.

24. On August 24, 2011, the Secretariat, following instructions of the President, requested the Inter-American Commission on Human Rights and the State to present their observations to the brief of the representatives regarding the supervening facts (*supra* para. 23).

25. On August 25 and 26, 2011, the Inter-American Commission on Human Rights and the State, respectively, filed the observations requested regarding the supervening facts reported by the representatives (*supra* para. 24).

III PROVISIONAL MEASURES

26. On June 20, 2006, the Commission asked the Court to order the State to adopt provisional measures in favor of the following individuals: María Leontina Millacura Llaipén, her children Fabiola Valeria Torres and Marcos Alejandro Torres Millacura, her son-in-law Juan Pablo Caba; Gerardo Colín; Patricio Oliva; Tamara Bolívar; Walter Mansilla; Silvia de los Santos; Verónica Heredia; Miguel Ángel Sánchez; and Viviana and Sonia Hayes. The request was related to petition in proceedings before the Commission. The following day, the President of the Tribunal ordered urgent measures in favor of those individuals and summoned the Inter-American Commission, the representatives of the beneficiaries, and the State to a public hearing.⁴

⁴ Cf. *Matter Millacura Llaipén et al.* Request of Provisional Measures regarding Argentina. Order of the President of the Inter-American Court of the Human Rights of June 21, 2006, Operative paragraphs one and seven.

27. On July 6, 2006, the public hearing was held. That same day, the Court issued an Order that, among other things, ratified the measures ordered by the President. It also broadened the provisional measures to include “the granddaughters of Mrs. María Millacura Llaipén[,] Mrs. Marcela [de Marcos Torres], Alberto and Noelia Hayes, and Luis Alberto Fajardo.” The Court declined to broaden the provisional measures in favor of Mr. Iván Eladio Torres as requested by the representatives, considering that the purpose of these was under the consideration of the Commission during its processing of the petition.⁵

28. On February 6, 2008, the Tribunal issued an Order confirming the provisional measures ordered on July 6, 2006, and denying a request brought by the representatives that they be broadened in favor of Cristian Gamín, Diego Álvarez, Luis Alberto Alcaína, Mauricio Agüero, and Iván Eladio Torres. Likewise, it requested the State to submit a report specifying the facts and circumstances that caused the death of Mr. Walter Mansilla, beneficiary of the provisional measures, in light of the fact that the information previously provided by the petitioners and the State “did not allow the Tribunal to determine whether the cause of Mr. Mansilla’s death [was] linked with the facts that gave rise to the adoption of the [...] provisional measures.”⁶

29. As of the rendering of this Judgment, the provisional measures ordered remain in force.

IV JURISDICTION

30. The Court has jurisdiction to hear this case under Article 62(3) of the American Convention on Human Rights, as Argentina has been a State Party to the Convention since September 5, 1984, and it recognized the contentious jurisdiction of the Court on that same date. Likewise, Argentina has been a Party to the Inter-American Convention to Prevent and Punish Torture since March 31, 1989, and has been party to the Inter-American Convention on Forced Disappearance of Persons since February 28, 1996.

V PARTIAL ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

31. In its answer to the application, the State accepted its international responsibility for the facts argued by the Inter-American Commission in the following terms:

[t]he Argentine State understands that, given that the relevant authorities in the Province of Chubut have not been able to eliminate the possibility that State agents participated in the enforced disappearance of Iván Eladio Torres

⁵ Cf. *Matter Millacura Llaipén et al.* Provisional Measures regarding Argentina. Order of the Inter-American Court of the Human Rights of July 6, 2006, considering clause 14 and operative paragraphs one and two.

⁶ Cf. *Matter Millacura Llaipén et al.* Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of February 6, 2008, considering clauses 13, 22, 13, 14, and operative paragraphs one and three.

[Millacura], and recognizing that their participation is presumed, in light of the applicable interpretive standards of international human rights law and the provisions of Article 38 of the Rules of Procedure of the [Inter-American Commission], this is sufficient to place objective responsibility for the facts denounced on the Province of Chubut and, therefore, upon the National State.

Taking this into account, and taking into consideration the international nature of the rights violations previously recognized and having taken place in the jurisdiction of the Province of Chubut, the Government of the Republic of Argentina expresses its willingness to accept the conclusions contained in the [R]eport [on the merits] adopted by the [Inter-American Commission] in keeping with the provisions of Article 50 of the American Convention, along with the juridical consequences derived therefrom.

32. Similarly, during the public hearing, the State indicated that, “in line with its traditional policy of cooperation with the organs of the Inter-American System of Human Rights, [...] far from litigating the case or submitting opposing legal arguments, [the State] set forth its best efforts to come to a friendly settlement [...] all throughout the proceedings before the [Inter-American] Court” and, “consistent” with its position, reiterated to the Court its responsibility as stated in the answer to the application. However, the State also clearly expressed that it rejected the statements of the Inter-American Commission in its application and of the representatives in their brief of pleadings and motions with regard to the provisional measures ordered by the Court in the matter of *Millacura Llaipén et al. regarding Argentina* (*supra* paras. 1 to 3, and 5); the Inter-American Commission’s identification of one of Iván Eladio Torres Millacura’s nieces as an alleged victim in the case; the violations alleged by the representatives of Articles 1(1), 2, 3, 4, 5, 7, 8, 19, 25, and 26 of the American Convention, 1, 2, 6, and 8 of the Convention against Torture, III of the Convention on Forced Disappearance, and the “Protocol of San Salvador” as a whole, to the detriment of Iván Eladio Torres, María Leontina Millacura Llaipén, Fabiola Valeria Torres, Marcos Alejandro Torres, Evelyn Paola Caba, Ivana Valeria Torres, and Romina Marcela Torres, in relation to the section on “[c]itizen[s] security and [h]uman [r]ights” of the brief containing pleadings and motions; the alleged existence of a practice of massive and systematic violations of human rights in Argentina alleged by the representatives; other facts not included in the Commission’s Report on the merits;⁷ and the specific claims for reparations set out by the representatives, including the identifications of the beneficiaries.

33. The Commission stated that it positively assessed the State’s acknowledgment of responsibility. It also indicated that it understood the acknowledgment to include “both the acceptance of the factual framework of the [R]eport on the merits - which is the same as that in the application - and the juridical consequences it establishes.” The representatives indicated that the State’s “acquiescence meant the legitimacy” of both the Commission’s application and the brief of pleadings and motions of the representatives.

34. In keeping with Articles 62 and 64 of the Rules of Procedure⁸ and in exercise of its powers of international judicial protection of human rights, an issue of international public

⁷ These include other detentions undergone by Mr. Torres not mentioned in the Report of the Commission, the alleged abuses suffered by Mrs. Millacura Llaipén at the hands of the police, and the alleged facts that occurred in relation to other persons not mentioned as victims in the Report on the Merits.

⁸ The pertinent parts of articles 62 and 64 of the Rules of Procedure of the Court establish the following:

order that transcends the will of the parties, it is the Court's responsibility to ensure that acts of acquiescence are acceptable for the goals sought by the Inter-American System. It is not limited in this task to verifying, registering, or taking note of the acknowledgment made by the State, nor to verifying the formal conditions of those acts of acquiescence. Rather, it must examine them in light of the nature and seriousness of the alleged violations, the demands and interests of justice, the specific circumstances of the particular case, and the attitudes and positions of the parties⁹ in such a way that, where possible and within the exercise of its competence, it can establish the truth regarding what took place. Additionally, the Court observes that the evolution of the system of human rights protection currently allows alleged victims or their family members to autonomously submit their brief of pleadings, motions, and evidence and put forward claims that may or may not coincide with those of the Commission. Therefore, when an acquiescence is presented, the State must clearly express whether it accepts the claims made by the alleged victims or their family members.¹⁰

35. The Court observes that the State's acknowledgment of responsibility refers to the Commission's Report on the merits and not to the application it presented before the Tribunal in this case. Upon comparing these documents, the Court notes that the parts corresponding to allegations of fact and law and to reparations are essentially identical, with only a few differences, such as: the specific allegation of the violation of Article I(b) of the Convention on Forced Disappearance that appears in paragraph 209 of the application but not in the corresponding paragraph of the Report on the merits; the individualization of some victims in paragraph 275 of the Report on the merits with regard to the alleged violation of Article 5 of the American Convention to the detriment of the "immediate family of Iván Eladio Torres," a reference not found in the application; and the individualization of three relatives of Iván Eladio Torres, indicated in paragraph 256 of the application with regard to the reparations requested by the Commission, an individualization that is not found in the Report on the merits. Additionally, the State expressly rejected the allegations of law that were formulated

Article 62. Acquiescence

If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects.

Article 64. Continuation of a case

Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles.

⁹ Cf. *Case of Kimel V. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177, para. 24; *Case of Vélez Loor V. Panamá. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23 of 2010. Series C No. 218, para. 63, and *Case of Abrill Alosilla et al. V. Perú. Merits Reparations and Costs*. Judgment of March 4, 2011. Series C No. 223, para. 22.

¹⁰ Cf. *Case of Myrna Mack Chang V. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 29; *Case of the "Las Dos Erres" Massacre V. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 29, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010 Series C No. 217, para. 33.

by the representatives in addition to those presented by the Inter-American Commission,¹¹ the representatives' allegation of the existence of massive and systematic violations in Argentina, and their claims for reparations and the beneficiaries thereof. (*supra* para. 5)

36. The Tribunal therefore finds that the State acknowledged the totality of the facts presented by the Commission, that is, those related to Mr. Torres's detentions carried out in September and October 2003, his enforced disappearance as of October 2003, the lack of due diligence in the investigation into the facts, and the suffering caused to some of Mr. Torres's family members. However, the State did not accept all the facts alleged by the representatives, such as other detentions not mentioned in the Merits Report as having occurred to Mr. Torres, and alleged abuses suffered by other persons that were not identified as victims in the Report on the merits. Likewise, the State did not acquiesce to the totality of the Commission's allegations of law, nor to those of the representatives, nor to the identification of the victims, "family members," or beneficiaries, nor to the representatives' pleadings on reparations. The dispute therefore continues in regards to the violation of Article 1(b) of the Convention on Forced Disappearance alleged by the Commission in its application; the violation of Articles 1(1), 2, 3, 4, 5, 7, 8, 19, 25, and 26 of the American Convention, 1, 2, 6, and 8 of the Convention against Torture, III of the Convention on Forced Disappearance, and the "Protocol of San Salvador" as alleged by the representatives; the identification of Evelyn Paola Caba, Ivana Valeria Torres, and Romina Marcela Torres as alleged victims; and regarding all of the representatives' claims for reparations. For this reason, the Court qualifies as partial the State's acknowledgment of responsibility.

37. The Court deems that the State's acquiescence to responsibility, as Argentina has done in other Cases before the Court,¹² constitutes a positive contribution to the development these proceedings and a reinforcement of the principles that inspire the American Convention.¹³ Furthermore, the Court considers, as in other cases,¹⁴ that this acquiescence has full legal effect as stipulated in Articles 62 and 64 of the Rules of the Court, and that it has a high symbolic value in the interest of keeping similar violations from happening again. However, it is necessary to specify the scope of the acquiescence, and under that framework, rule on the disputes that persist. Consequently, based on its attributes, which require it to ensure the greatest protection of human rights, the Court shall deliver a Judgment in which it

¹¹ As has already been mentioned, these refer to the violations of Articles 1(1), 2, 3, 4, 5, 7, 8, 19, 25, and 26 of the American Convention; 1, 2, 6, and 8 of the Convention Against Torture; III of the Convention on Forced Disappearance; and the "Protocol of San Salvador" as a whole alleged by the representatives to the detriment of Iván Eladio Torres Millacura, María Leontina Millacura Llaipén, Fabiola Valeria Torres, Marco Alejandro Torres, Evelyn Paola Caba, Ivana Valeria Torres, and Romina Marcela Torres, in relation to the section on "[c]itizen [s]ecurity and [h]uman [r]ights" of the brief of pleadings and motions.

¹² Cf. *Case of Garrido and Baigorria V. Argentina. Merits*. Judgment of February 2, 1996. Series C No. 26; *Case of Bulacio V. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100; *Case of Bueno Alves V. Argentina. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 164, and *Case of Kimel V. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No. 177.

¹³ Cf. *Case of Trujillo Oroza V. Bolivia. Merits*. Judgment of January 26, 2000. Series C No. 64, para. 42; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 37, and *Case of Abrill Alosilla et al. V. Perú. Merits Reparations and Costs*. Judgment of March 4, 2011. Series C No. 223, para. 26.

¹⁴ Cf. *Case of Acevedo Jaramillo et al. V. Perú. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 7, 2006. Series C No. 144, paras. 176 to 180; *Case of Kimel V. Argentina, supra* note 13, paras. 23 to 25, and *Case of Abrill Alosilla et al. V. Perú, supra* note 14, para. 26.

establishes the facts and determines the merits of the case, as well as their corresponding consequences.¹⁵

VI EVIDENCE

38. Based on Articles 46, 50, and 58 of its Rules of Procedure, as well as on its jurisprudence related to evidence and the examination thereof,¹⁶ the Court will examine and weigh the documentary evidence submitted by the parties on various occasions during the proceedings, as well as the statements of the victims and the expert witness reports rendered via affidavit and during the public hearing before the Court, along with the evidence to facilitate adjudication of the case that was requested by the Tribunal (*supra* paras. 10 and 13). In doing so, the Court will follow the rules of sound judgment, within the applicable legal framework.¹⁷

A. *Documentary, testimonial, and expert evidence.*

39. The Court received various documents presented as evidence by the Inter-American Commission, the representative, and the State along with their principal briefs (*supra* paras. 1, 5, and 6). Likewise, the Court received the testimony given before notaries public (affidavits) by the following alleged victims, witnesses, and expert witnesses¹⁸:

- a) *Fabiola Valeria Torres* and *Marcos Alejandro Torres Millacura*. Alleged victims, siblings of Iván Eladio Torres Millacura. Testimony offered by the representatives. They addressed the composition of the family prior to October 2, 2003, their brother's activity at the moment of his alleged forced disappearance, and his relationship with the police of the Province of Chubut prior to October 2, 2003; the circumstances of his alleged enforced disappearance on October 2, 2003; the various attempts made by them to discover his whereabouts in the period immediately following his alleged disappearance; the alleged responses to and attitude toward these attempts on the part of the authorities; the alleged lack of State willingness to investigate the facts and the consequences of all these situations; the alleged lack of State willingness to provide information on the judicial proceedings initiated as a consequence of the alleged enforced disappearance of Iván Eladio Torres Millacura; the supposed obstacles faced

¹⁵ Cf. *Case of the Mapiripán Massacre V. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 69; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia, supra* note 14, para. 30, and *Case of Abrill Alosilla et al. V. Perú, supra* note 14, para. 27.

¹⁶ Cf. *Case of the "White Van" (Paniagua Morales et al.) V. Guatemala. Reparations and Costs*. Judgment of May 25, 2001. Series C No. 76, para. 50; *Case of Vera Vera et al. V. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 224, para. 19, and *Case of Mejía Idrovo V. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 5, 2011. Series C No. 228, para. 36.

¹⁷ Cf. *Case of the "White Van" (Paniagua Morales et al.) V. Guatemala, supra* note 17, para. 75; *Case of Vera Vera et al. V. Ecuador, supra* note 17, para. 19, and *Case of Mejía Idrovo V. Ecuador, supra* note 17, para. 36.

¹⁸ The representatives did not present the Tribunal with the sworn statements given before notaries public (*affidavit*) by Gerardo Colín and Patricio Oliva, offered by them in the brief of pleadings and motions, ordered through an Order of the President of the Tribunal dated April 29, 2011 (*supra* para. **).

by the family since his disappearance; and the consequences for their personal and family life after October 2, 2003.

- b) *Miguel Ángel Sánchez*. Witness. Testimony offered by the representatives. Addressed the circumstances in which he met Iván Eladio Torres Millacura and the time and place in which he stayed with him; the circumstances of the alleged enforced disappearance; and the attempts made to speak with Mrs. María Leontina Millacura Llaipén, the mother of Iván Eladio Torres Millacura.
- c) *Tamara Bolívar*. Friend of Iván Eladio Torres Millacura. Witness. Testimony offered by the representatives. Addressed the circumstances under which she met Mr. Torres Millacura and the friendship that she maintained with him; the relationship that Iván Eladio Torres and his friends maintained with the police of the Province of Chubut; the circumstances of his alleged enforced disappearance on October 2, 2003; her various attempts to discover his whereabouts in the period immediately following his alleged disappearance; the alleged responses to and attitude toward these attempts on the part of the authorities; the alleged lack of State willingness to investigate the facts and the consequences of all these situations; and the alleged lack of State willingness to provide information on the judicial proceedings launched as a consequence of the alleged enforced disappearance of Iván Eladio Torres Millacura.
- d) *Alejandro Mejías Fonrouge* and *Eduardo Arizaga*. Members of the Special Investigation Unit set up to investigate the alleged disappearance of Iván Eladio Torres. Expert witness statement offered by the representatives. They referred to the investigations carried out by that Unit; the existing body of evidence; the conduct and levels of cooperation on the part of authorities during the investigations, and the conclusions reached through their investigation.
- e) *Gastón Zoroastro*. Psychologist. Expert witness statement offered by the representatives. Referred to the psychological effects of the alleged enforced disappearance of Iván Eladio Torres on his family as a group and on each of its members: María Leontina Millacura Laipén, Fabiola Valeria Torres and Marcos Alejandro Torres Millacura, Evelyn Caba, and Ivana and Romina Torres. They also addressed the questions posed by the State.¹⁹

40. With regard to the evidence given during the public hearing, the Court heard the testimony of:

¹⁹ In application of Article 50(5) of the Rules of Procedure, on May 5, 2011, the State prepared four questions to be answered by the expert witness Gastón Zoroastro when giving his statement before the notary public. The State requested that the expert witness: i) answer whether the disappearance of Iván Torres psychiatrically affected the members of his family, particularly María Leontina Millacura Llaipén and Marcos Alejandro Torres Millacura, Evelyn Caba, and Ivana and Romina Torres. In the affirmative case, that he describe the psychiatric diagnosis; ii) in the hypothetical case that psychological damage exists, differentiate between the different levels of incapacity, its range, and scales used for its determination in each of the cases; iii) describe the tests carried out on each of the individuals indicated in point i) and submit a copy of the psychological examination, graphics, etc. that provide scientific backing for his conclusions; and iv) indicate if due to the “fact on the record (the disappearance of Iván Torres),” the individuals indicated in point i) need to be submitted to some kind of treatment. Should the answer be yes, that he indicate its cost, duration, and possible prognosis.

- a) *María Leontina Millacura Llaipén*, mother of Iván Eladio Torres. Alleged victim. Testimony offered by the representatives. She addressed the composition of the family prior to October 2, 2003; her son's activity at the moment of his alleged enforced disappearance, and his relationship with the police of the Province of Chubut prior to October 2, 2003; the circumstances of his alleged enforced disappearance on October 2, 2003; the various attempts made by her to discover his whereabouts in the period immediately following his alleged disappearance; the alleged responses to and attitude toward these attempts on the part of the authorities; the alleged lack of State willingness to investigate the facts and the consequences of all these situations; the alleged lack of State willingness to provide information on the judicial proceedings launched as a consequence of the alleged enforced disappearance of Iván Eladio Torres; the alleged obstacles faced by the family since his disappearance, and the consequences for her personal and family life after October 2, 2003.
- b) *Nora Cortiñas*, Social Psychologist. Expert witness statement offered by the representatives. Addressed the causes and consequences of the alleged phenomenon of enforced disappearances in the Province of Chubut, Argentina; the socio-cultural patterns that make the alleged violations of human rights by police personnel of the Province of Chubut possible; the socio-cultural patterns that condition judicial actions with regard to the enforced disappearance of persons; the alleged needs for institutional strengthening and adoption of holistic strategies for preventing, sanctioning, and eradicating the alleged enforced disappearances in the Province of Chubut; access to justice for the victims of enforced disappearance and their families; the alleged conduct of authorities with regard to enforced disappearances, and the alleged situation of impunity that reigns in the Province of Chubut.
- c) *Sofía Tiscornia*, Anthropologist and Doctor of Philosophy and Letters with a concentration in Social Anthropology. Expert witness statement ordered *ex officio* by the Tribunal. Addressed alleged police abuse of low-income young people that took place in the Province of Chubut, as well as the alleged lack of investigation and punishment of those responsible for the violations and the alleged lack of access to justice in this regard.

B. Admission of the evidence.

41. In this case, as in others, the Court accepts the probative value of the documents presented by the parties at the proper procedural moment that were not contested or opposed, and whose authenticity was not questioned.²⁰ The documents that the Tribunal requested as evidence to facilitate adjudication (*supra* paras. 10 and 13) are incorporated into the body of evidence under Article 58 of the Rules of Procedure, when and if they are presented within the period established to do so. In this regard, the State has not submitted certain

²⁰ Cf. *Case of Velásquez Rodríguez V. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140; *Case of Vera Vera et al. V. Ecuador*, *supra* note 17, para. 22, and *Case of Mejía Idrovo V. Ecuador*, *supra* note 17, para. 38. The Court did not admit the additional report of Mrs. Nora Cortiñas and the report of the Grupo Pro Derechos de los Niños [Group Pro Children's Rights] submitted by the representatives during their written final arguments because they were not requested by the Court. Moreover, the Court does not admit the documents presented by the State in its written final arguments relative to the alleged expenditures already made in favor of Mrs. Millacura Llaipén and other family members of Iván Eladio Torres, as they were time barred.

documentation requested by the Court.²¹ Consequently, as it has done in other cases, the Court may consider facts alleged by the Commission and complemented by the representatives as established when those allegations could only be refuted with evidence that the State should have submitted and did not.²²

42. As far as the “[m]edia documents” presented by the parties, the Court finds, as it has on multiple occasions, that they can be admitted when they contain public and widely-known facts or statements from State officials, or when they corroborate certain aspects of the case.²³ Therefore, in this case, the Court will consider those documents that are complete or that at least allow for the confirmation of their source and date of publication.²⁴

43. The Tribunal admits the documentation issued by the representatives in their brief of pleadings and motions that form part of the file on the provisional measures ordered in the matter of *Millacura Llaipén et al. regarding Argentina* (*supra* para. 5) and of the case file on precautionary measures before the Inter-American Commission on the same matter. The Court admits only those documents that were duly individualized and identified,²⁵ as long as they refer to facts alleged in this contentious case that form part of its factual basis (*infra* para. 52). Those documents will be assessed in the context of the body of evidence as a whole.

44. The Court finds it appropriate to admit the testimony and expert witness reports given in this case, as they meet the objectives defined by the President in the Order to receive them (*supra* para. 9). They will be examined in the corresponding chapter, together with the other elements of the body of evidence, taking into account the comments submitted by the State.²⁶

²¹ The State did not present the copy of the daily police record of the First Police Station of Comodoro Rivadavia city, Province of Chubut, corresponding to October 3, 2003.

²² Cf. *Radilla Pacheco V. México. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 92, and *Case of Vera Vera et al. V. Ecuador, supra* note 17, para. 24.

²³ Cf. *Case of Velásquez Rodríguez, supra* note 21, para. 146; *Case of Abrill Alosilla et al. V. Perú, supra* note 14, para. 40, and *Case of Chocrón Chocrón V. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 1, 2011. Series C No. 227, para. 30.

²⁴ Cf. *Radilla Pacheco V. México, supra* note 23, para. 77; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia, supra* note 14, para. 27, and *Case of Chocrón Chocrón V. Venezuela, supra* note 24, para. 30.

²⁵ In the Secretariat's note of October 19, 2010, the representatives were told that, “in relation to the case files ‘CIDH Case of N° 12.533 and MC 9/05,’ and the case file ‘Corte IDH Millacura Llaipén, María Leontina y otros.-Medidas Provisionales-Argentina,’ they were asked to [...] submit only those documents cited in the brief of pleadings, motions, and evidence, which must be duly individualized and identified, in accordance with Article 28(3) of the Court's Rules of Procedure.” (case file on the Merits, tome I, folio 605). The representatives submitted, for example, complete or almost complete tomes of the case file already submitted by the Commission to the Court, without specifying which documents they were submitting to the Tribunal.

²⁶ The State expressed that in the statements rendered by *affidavit* by Miguel Ángel Sánchez and Tamara Elizabeth Bolívar “reference is made to facts and situations far from the specific purpose that they were asked to testify about, reason for which the State understood that considerations regarding the alleged strictly personal experiences referred to by both declarants should not be taken into account by the Court.” Moreover, it noted that the Statement of Mr. Marcos Alejandro Torres Millacura, the answer to the question regarding the work carried out by Mr. Iván Eladio Torres Millacura before October 2, 2003, lacked probative substance, a circumstance which “did not allow for its consideration as an element that could establish the reparatory claims of the petitioner.” Regarding the expert opinion rendered by Mr. Gastón Adrián Zoroastro, the State noted that he indicated that he had carried out “3 family interviews: one with the mother and daughter, with the mother and son, and another with the mother and both children,” but, nevertheless, upon continuation, made a separate reference to that stated by each one of the adults without going into detail on the situation of Fabiola Valeria

Pursuant to this Tribunal's jurisprudence, the testimony given by the alleged victims cannot be weighed in isolation. Rather, it will be examined together with the rest of the evidence in the proceeding, as it is useful because it can provide more information on the alleged violations and their consequences.²⁷

VII PRELIMINARY CONSIDERATIONS

A. *Alleged victims.*

45. In the application, the Inter-American Commission asked the Court to find a violation of Articles 5, 8, and 25 of the American Convention, to the detriment of Mr. Torres's "family members." Likewise, it "br[ought]to the Court's [...] attention that at the time the [R]eport on the merits was approved, it made a generic reference to the relatives of Iván Eladio Torres," but that in addition, "the mother, María [Leontina] Millacura Llaipén, Iván's sister, Fabiola Valeria Torres, his brother, Marcos [Alejandro] Torres [Millacura], and Ivan [Eladio Torres Millacura's] niece, Evelyn Paola Caba, were mentioned as victims." The Commission added that nevertheless, "following the approval of the [R]eport on the merits and in light of the practices existing at that time, the petitioners reported to the Commission of other relatives. Among them were his brother-in-law, Juan Pablo Caba, and two more nieces: Ivana Valeria Torres and Romina Marcela [Torres]," to which reason the Commission "add[ed]" their names to its application.

46. The representatives expressed that the Rules of Procedure of the Court "seem to limit its own capacity to interpret the [American Convention] by putting the 'identification of the alleged victims]' under the [Commission's] authority. This consequently limits [the alleged victims] in their right to access the [Court's] jurisdiction [in keeping with the Rules of Procedure], as it is not therefore a full right to present issues of fact and law before [the Court]." They indicated that "the complaint was filed, the facts denounced were continually added to, [and] the Argentine State fully exercised its defense, all under the framework of this proceeding before the [Inter-American System for the Protection of Human Rights; however,] despite all this, contrary to all predictions, in this case the [Inter-American Commission] has not included in its Report on the merits all the facts denounced, nor all the individuals that [the representatives] have identified as other victims of the enforced disappearance of Iván [Eladio Torres Millacura], some of which are covered by the provisional measures." Therefore, they requested that when the Court rules on the alleged violations of Articles 8 and 25 of the American Convention, it "convict [the State], taking into consideration that to date it has not provided adequate protection to the rights to life and physical integrity of the persons related to the enforced disappearance of Iván Eladio Torres [Millacura]."

Torres "given her advanced stage of pregnancy," without specifying anything regarding the three nieces of Iván Eladio Torres Millacura.

²⁷ Cf. *Case of Loayza Tamayo V. Perú. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43; *Case of Vera Vera et al. V. Ecuador, supra* note 17, para. 24, and *Case of Chocrón Chocrón V. Venezuela, supra* note 24, para. 34.

47. The State argued that the Commission explicitly indicated in paragraph 74 of its Report on the merits, in the subsection on the “position of the petitioners,” that the representatives had held that the facts of the case constituted “violations to mental and moral integrity and a denial of justice, to the detriment of María Leontina Millacura Llaipén, Valeria Fabiola Torres, and Marcos [Alejandro] Torres [Millacura, that is, the mother, sister, and brother of Mr. Torres Millacura], direct relatives of the disappeared victim.” Likewise, in that Report, in its analysis of the violation of Article 5 of the American Convention, the Commission specified only those individuals. However, the State highlighted that in its conclusions, the Inter-American Commission also indicated one of Iván Eladio Torres's nieces as a victim, as the Commission “accept[ed] the statements of the petitioning party with regard to [Mr.] Torres Millacura's having been the financial supporter of the family prior to his disappearance,” even though this “was not proven by the representatives [...] or corroborated by the [...] Commission.” Therefore, the State argued that based on this and on the elements proven in the case, and on the Court’s jurisprudence, only Mr. Torres Millacura’s mother and two siblings should be considered “immediate family.” Finally, the State indicated that in the brief of pleadings and motions, the representatives “limit[ed] themselves to listing those persons who formed part of or had formed part of [Iván Eladio Torres’s] immediate family and to making affirmations with regard to the afflictions allegedly suffered, without providing documentary evidence to support these statements.” Those relatives included three of Iván Eladio Torres Millacura’s nieces. Therefore, the State argued that the claim could not “be addressed by the [Court,] given that it was not considered by the Commission during the proceeding before it.” The State reiterated that those who should be “considered Iván Torres Millacura's family members for the purposes of reparations are his mother, his sister, and his brother.”

48. The Court recalls that in its settled jurisprudence since 2007²⁸, it has established that alleged victims must be indicated in the Commission’s report issued in accordance with Article 50 of the Convention, as well as in the application before this Court. In addition, in keeping with Article 35 of the Rules of Procedure, it is the responsibility of the Commission, and not of this Tribunal, to identify the alleged victims in a case before the Court with precision and at the proper procedural moment. The Tribunal finds that the Report on admissibility and on the merits indicated by the Commission dates from the year 2009, which is to say, subsequent to the mentioned standard on the identification of victims.

49. The Tribunal observes that throughout the Report on the merits and the application, the Inter-American Commission refers generally to Iván Eladio Torres Millacura’s “family members” as victims in this case, and that the specification of who these persons are is minimal and even variable at times. In particular, while referring to the alleged violations of Articles 8 and 25 of the American Convention, both in its Report on the merits and in the application, the Commission indicated that the State “ha[d] not complied with its obligation to provide the victim and his family members with an effective judicial remedy geared toward bringing the facts to light [...]” The Commission did not specify the identities of these “family members.” Likewise, with regard to the allegations regarding the violation of Article 5 of the American Convention “with respect to the relatives of Iván Eladio Torres,” in its

²⁸ Since the *Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, paras. 65 to 68, and *Case of Chaparro Álvarez and Lapo Ñíiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, paras. 224 to 225. These judgments were made by the Tribunal during the same period of sessions. See also, *Case of Vera Vera et al. V. Ecuador, supra* note 17, para. 28.

Report on the merits, the Commission indicated that it found that the State had violated that provision to the detriment of Torres Millacura's "closest relatives," that is, "his mother[, María Leontina Millacura Llaipén,] his sister[, Fabiola Valeria Torres], and his brother[, Marcos Alejandro Torres Millacura]." However, in the application presented before the Court, the Commission made the same allegation, but to the detriment of "Iván Eladio Torres [Millacura]'s closest relatives," without specifying who those relatives were. Additionally, the Tribunal notes that in its "conclusions" in the Report on the merits, the Commission indicated that the State had violated Articles 5, 8, and 25 of the Convention "to the detriment of the relatives of the victim: specifically, his mother, brother, sister and[, in addition, his] niece." However, in its conclusions in the application, the Commission indicated that the State had violated the same provisions "to the detriment of the relatives of the victim," without specifying who those individuals were. Finally, in the application, the Inter-American Commission explicitly requested the measures of reparation "corresponding" "in the case of Iván Eladio Torres and his relatives, to wit, his mother, María[Leontina] Millacura Llaipén, his sister, Fabiola Valeria Torres, and his brother, Marcos [Alejandro] Torres [Millacura]." At this point, the Commission did not indicate any other family members; the Tribunal notes, in particular, that it did not mention Mr. Torres Millacura's niece.

50. In light of the foregoing, in this Judgment the Tribunal considers, in addition to Mr. Iván Eladio Torres Millacura, Mrs. María Leontina Millacura Llaipén, Mrs. Fabiola Valeria Torres, and Mr. Marcos Alejandro Torres Millacura as alleged victims, due to the fact that they are the only family members specified by the Inter-American Commission with regard to whom reparations were requested for the violations alleged in the application. Therefore, Ivan Eladio Torres Millacura's niece mentioned by the Commission, Evelyn Paola Caba, will not be considered as an alleged victim. Nor will his nieces Ivana Valeria Torres and Romina Marcela Torres, mentioned by the representatives, be considered alleged victims (*supra* para 5).

B. Factual framework of the case.

B.1. Other facts alleged by the representatives.

51. The Court notes that in the brief of pleadings and motions, the representatives referred to multiple facts²⁹ that did not form part of the factual framework presented by the Inter-American Commission in the application. Indeed, in this document, the Commission formulated pleadings of fact and law with regard to the alleged detentions of Mr. Iván Eladio Torres Millacura carried out in September and October 2003, respectively, to his alleged

²⁹ Stated generally, these facts are: the alleged detention and "beating" suffered by Iván Eladio Torres Millacura on 30 August 1998; the alleged police brutality suffered by María Leontina Millacura Llaipén; Mr. Torres's alleged detention on September 17, 2003, of Mr. Torres Millacura; the alleged forced entry into Mrs. Millacura Llaipén's home and the threats made against her on 1 October 2003; the alleged discrimination due to nationality; Mrs. Millacura Llaipén's visits to the First Precinct of the city of Comodoro Rivadavia, Province of Chubut; alleged threats against Mrs. Millacura Llaipén's attorneys and allegations that they were being followed; alleged phone tapping against Mrs. Millacura Llaipén; the "petitions" before "political authorities and before organized civil society; the "claims made before the universal human rights system"; the "claims before the Republic of Chile"; the "Report on Citizen Security and Human Rights" of the Inter-American Commission; as well as the events alleged with respect to Walter Marcos Mansilla, Diego Armando Álvarez, Dante Andrés Caamaño, Luis Gajardo, Miguel Ángel Sánchez, and David Hayes.

detention and enforced disappearance as of October 3, 2003, to the alleged lack of an investigation, prosecution, and punishment of those responsible for his disappearance, and to the alleged physical and psychological effects on his family members as a consequence of the facts (*supra* para. 2 and 3).

52. According to the reiterated jurisprudence of the Tribunal, the alleged victims and their representatives may invoke the violation of other rights distinct from the ones covered in the application as long as the alleged violations relate to facts already contained in that document, as the alleged victims are the bearers of all the rights enshrined in the Convention. Indeed, the application constitutes the factual framework of the proceeding before the Court. For this reason, the representatives may not allege new facts other than those alleged in the application, without prejudice to those facts which allow for the explanation, clarification, or dismissal of facts that have been stated in the application or in response to the claims set forth by the applicant.³⁰ The exceptions to this principle are classified as supervening and can be submitted before the Tribunal at any stage of the proceedings prior to the rendering of the judgment. In sum, it falls to the Court to safeguard procedural balance by deciding in each case whether to admit pleadings of that nature.³¹ Therefore, the Tribunal will not rule on facts alleged by the representatives that are not contained in the application presented by the Commission, nor on facts that do not explain, clarify, or invalidate those presented by the Commission. Consequently, neither will the Court rule on allegations of law formulated by the representatives based on such facts. Therefore, the Court will not rule on the allegations raised by the representatives in relation to “Citizen Security and Human Rights” and, by extension, the alleged violations of Articles 1(1), 2, 3, 4, 5, 7, 8, 19, 25, and 26 of the American Convention; 1, 2, 6, and 8 of the Convention Against Torture; III of the Convention on Forced Disappearance, and the “Protocol of San Salvador.”

B.2. Provisional Measures.

53. In addition, in its response to the application, the State expressly indicated that the statements of the Inter-American Commission and the representatives on the provisional measures ordered by the Court in the matter of *Millacura Llaipén et al. regarding Argentina* “should not be taken into consideration for the purpose of ruling on this case, because although the facts of both proceedings are related, at issue are two different proceedings that cannot be taken into consideration jointly.” It also argued that “issues related to the processing of provisional measures cannot be taken under consideration in the context of an adversarial case.” The State explicitly rejected “all reference to the beneficiaries of the [measures] and [to] the [representatives’] submission of documentation made under the framework of those measures.”

54. The Court notes that upon referring, in its application, to the proceedings on provisional and precautionary measures, the Commission did not formulate allegations of fact and law in that respect. It may be inferred from the pertinent paragraphs that the mention of those proceedings serves only to place into context the facts that form part of the factual

³⁰ Cf. *Case of the Mapiripán Massacre V. Colombia. Preliminary Objections*. Judgment of March 7, 2005. Series C No. 122, para. 59; *Case of Vera Vera et al. V. Ecuador*, *supra* note 17, para. 32, and *Case of Chocrón Chocrón V. Venezuela*, *supra* note 24, para. 42.

³¹ Cf. *Case of the Mapiripán Massacre V. Colombia*, *supra* note 16, para. 58; *Case of Case of Vélez Loor V. Panamá. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2010. Series C No. 218, para. 43, and *Case of Vera Vera et al. V. Ecuador*, *supra* note 17, para. 32.

framework of the case, with respect to which the Commission did allege certain human rights violations. However, this does not occur with respect to some allegations made by the representatives in their brief of pleadings and motions, particularly in the narration of events presented in relation to the violation of Articles 8(1) and 25 of the American Convention.³²

55. In this respect, first, the Tribunal observes that in this case, the purpose of the proceedings on provisional measures is different from the purpose of the contentious case in its procedural aspects, in the evaluation of evidence, and in the scope of the decisions issued.³³ Additionally, the Court highlights that even though the alleged victims in this case are also beneficiaries of provisional measures, there are more beneficiaries than there are alleged victims. Furthermore, the proceedings on provisional measures have been carried out parallel to, but autonomously from, the proceedings on the case before the Commission and the Court, with a factual framework that is broader than that of this latter proceeding. Therefore, the Court notes that in this judgment, only the findings of fact, the evidence, and legal arguments aired in the context of this contentious case will be considered.

VIII

RIGHTS TO RECOGNITION OF JURIDICAL PERSONALITY, TO LIFE, TO HUMANE TREATMENT [PERSONAL INTEGRITY, AND TO PERSONAL LIBERTY WITH REGARD TO THE DUTY TO RESPECT THE RIGHTS OF IVÁN ELADIO TORRES MILLACURA

56. As indicated in this Judgment (*supra* para. 37), the Court accepted the State's acknowledgment of international responsibility with regard to the detentions and subsequent enforced disappearance of Mr. Iván Eladio Torres that took place between September and October of 2003 in the city of Comodoro Rivadavia, Province of Chubut, and the subsequent human rights violations of Articles 3,³⁴ 4,³⁵ 5,³⁶ and 7³⁷ of the American Convention, in

³² Among other things, allegations related to alleged threats against witnesses of the events occurred to Mr. Torres.

³³ *Case of Ríos et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194, para. 58, and *Case of Perozo et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195, para. 69.

³⁴ The Article 3 of the American Convention on Human Rights establish that: "Every person has the right to recognition as a person before the law."

³⁵ The Article 4(1) of the American Convention on Human Rights stipulate that: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

³⁶ The Article 5 establish 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.

[...]

³⁷ The Article 7 establish that:

1. Every person has the right to personal liberty and security.

relation to Article 1(1)³⁸ of the Convention, along with the failure to comply with the obligation established in Article 2 of the Convention³⁹, all as alleged by the Commission. In order to determine the scope of those violations, the Court will first set forth the non-disputed facts related to this chapter and later specify the human rights violations derived therefrom.

A) *Non-disputed facts.*

57. The facts in this Chapter cover: 1) Mr. Iván Eladio Torres Millacura's personal and family information; 2) the pattern of police abuse in the Province of Chubut; 3) Mr. Torres Millacura's detentions in September 2003; and 4) the detention and subsequent enforced disappearance of Mr. Torres starting on October 3, 2003.

A.1. *Personal and family information on Iván Eladio Torres Millacura.*

58. According to the facts acknowledged by the State, Mr. Iván Eladio Torres Millacura was born in Castro, Chile, on November 24, 1976. At the time the facts in this case took place, he was living with his mother, María Leontina Millacura Llaipén, his sister, Fabiola Valeria Torres, and his sister's daughter, Evelyn Paola Caba, in the city of Comodoro Rivadavia, Province of Chubut, Argentina. Mr. Torres Millacura was the bread winner for his mother, sister, and niece. He worked in construction, sometimes together with his brother, Marcos Alejandro Torres Millacura, although at the time of his disappearance, he was unemployed.

59. Mr. Torres Millacura met with his friends on streets and in plazas in Comodoro Rivadavia's downtown. He was frequently detained, threatened, and beaten by city police. On several occasions, the detentions were carried out based on Law 815, the "Organic Policing Law" of the Province of Chubut, which regulates inquiries into individuals' criminal records and means of living. At the time of his enforced disappearance, Mr. Torres Millacura was 26 years old.

A.2. *Practice of police abuse in the Province of Chubut.*

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

[...]

³⁸ This Article states that:

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.

³⁹ This Article establish that:

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.

60. The State acknowledged that in the Province of Chubut, police abuse occurred to the detriment of poor young people. It was in the context of these abuses that the detentions of Mr. Torres Millacura by the police took place in September 2003, as did his detention and subsequent enforced disappearance starting in October 3, 2003, in the city of Comodoro Rivadavia, located in the aforementioned Province. The Tribunal observes that in her expert witness statement during the public hearing (*supra* para. 40), Mrs. Sofía Tiscornia referred extensively to the “permanent harassment” perpetrated by the Chubut Provincial police under the protection of misdemeanor laws or for inquires into criminal records or identity. The expert witness stated that “the laws empowering police to repeatedly detain people can many times result in death, torture, or, as in this case, a disappearance,” impacting “the least protected segments of society.” Thus, she indicated that:

young people from poor neighborhoods [meet] in central parts of the city[, and it is] there where these territorial [...] security policies appear. [T]he police detain them for several reasons, in some cases due to complaints from neighbors or [...] individuals who do not want to look at poor people, in other cases because they are recruited to commit crimes by the police themselves [...] The young people who refuse [...] are generally tortured, harassed, and many times killed. And also because the police have to prove to the higher-ups that they are working, and in many cases one way to measure this in a precinct is the number of people detained for identity checks. The police themselves have said in [their] investigations [that they have] to “get the statistics.” “Get the statistics” means detaining individuals to be able to hit the monthly number of detainees that the supervisors require. For this reason, [she argues that what is at issue is] a problem that is deeper than the willingness [...] or bad intentions of a group of [...] police officer[s and] is part of the structure of the police force itself[...]

61. This can also be corroborated with the internal report prepared by the Human Rights Secretariat of the Ministry of Justice, Security, and Human Rights of Argentina issued in 2003 following an investigation on the domestic processing of the Torres Millacura case. That report indicates that, “[y]oung people from a poor background suffer constant abuses by the local [...] police.”⁴⁰

62. Regarding the pleading of the representatives to the effect that there is a practice of enforced disappearances in the Province of Chubut, the expert witness Tiscornia specified that no such practice existed. Rather, she said, police abuses take place in the Province of Chubut that occasionally, such as in this case, lead to the disappearance of a person.

A.3. Detentions of Mr. Torres Millacura in September of 2003.

63. The State acknowledged that on September 26, 2003, Mr. Torres was detained by the Comodoro Rivadavia police and transported to the First Precinct of that city. This detention was not registered in the corresponding daily police log. The case file before the Tribunal indicates that the Comodoro Rivadavia Radio Command registration corresponding to September 25 and 26, 2003, shows that at 3:12 on September 26, 2003, in response to a

⁴⁰ Cf. Internal report drafted by the personal Secretary of Human Rights of the Justice, Security and Human rights Ministry of Argentina (Case file of annexes to the application, tome I, folio 225).

telephone call reporting the presence of two individuals with a “suspicious attitude,” unit 479 of Comodoro Rivadavia’s first precinct (hereinafter “First Precinct”) was dispatched and that “[Iván Eladio Torres Millacura’s] arrest was carried out.”⁴¹ It may be inferred from the testimony of police chief Fabián Alcides Tillería that given that Mr. Torres Millacura was already known in that precinct, and “[as] there wasn't anything pertinent against him or any motives or merit for his detention, he was released from the station” without that detention having been registered in the daily police log.⁴² Another police officer who was working in the First Precinct on September 26, 2003, testified to the same effect.⁴³

64. Also, the State acknowledged that in "September" of 2003, Mr. Torres Millacura was detained by Comodoro Rivadavia police and taken to a place known as “Km. 8,” when he was supposedly subjected to “an execution by firing squad.”

A.4. Detention and subsequent disappearance of Mr. Torres Millacura as of October 3, 2003.

65. Finally, the State acknowledged that on October 2, 2003, near midnight, Mr. Torres Millacura was with two friends in Bitto Plaza in Comodoro Rivadavia. His friends entered an ice cream shop and from there they saw patrol car 469 with three police officers inside pass close by Mr. Torres Millacura. Several minutes later, when they returned to the Plaza, they did not find Mr. Torres Millacura. Since then, they did not see him again.⁴⁴

66. Mr. Torres Millacura was seen on October 3, 2003, in the Comodoro Rivadavia First Precinct by Mr. David Hayes who, in a letter sent to Mrs. María Leontina Millacura Llaipén, stated that during the early morning hours he saw through a bathroom window how several police officers beat Mr. Torres Millacura. He saw him faint and how they “dragged” him to

⁴¹ Cf. Police report of September 25 and 26, 2003 of the Radioelectrical Command of Comodoro Rivadavia (case file of annexes to the application, tome I, folio 400). See also, the Testimony of Fabián Alcides Tillería, Chief of the First Section of the Police Department, rendered before Examining Judge no. 2 on December 11, 2003 (case file of annexes to the application, tome X, folio 7667), and the Testimony of Omar Rubén Calfu submitted before the Administrative Preliminary Investigation Area of the Regional Unit of the Comodoro Rivadavia Police on March 1, 2004 (case file annexes to the written final allegation of the State, folio 25667).

⁴² Cf. Testimony of Fabián Alcides Tillería, Chief of the First Section of the Police Department, presented to the Examining Judge no. 2 on December 11, 2003 (case file of annexes to the application, tome X, folios 7668 to 7669).

⁴³ He indicated that "once in the station, [the detained persons] are identified, one as Iván Torres and the other by the surname Álvarez[.] The first, [that is, Mr. Torres,] was known and his background and means of living were also known. He was identified and left the station[. With regard to] the other one[,] as he had no documentation and there was no reliable [knowledge] of who he was, where he was living, his prior record, he remained under arrest pending an inquiry into his priors and legitimate means of living under [L]aw 815.” Cf. testimony of Juan Sandro Montecino given before the Administrative Preliminary Investigation Area of the Regional Unit of the Comodoro Rivadavia Police, March 6, 2004 (case file of annexes to the final written arguments of the State, folio 25674). See also, testimony of Sergio Omar Thiers given before the Administrative Preliminary Investigation Area of the Regional Unit of the Comodoro Rivadavia Police, March 23, 2004 (case file of annexes to the final written arguments of the State, folio 25684).

⁴⁴ Cf. Testimony of Gerardo Atilio Colin rendered before Examining Judge no. 2 on October 23, 2003 (case file of annexes to the application, tome X, folio 7273), and Testimony of Luis Patricio Oliva rendered before Examining Judge no. 2 on October 23, 2003 (case file of annexes to the application, tome X, folio 7277).

stairway leading to the regional unit.⁴⁵ Miguel Ángel Sánchez, who at first refused to testify because he was “threatened,” was also there that same day.⁴⁶ However, in testimony given before a notary public (*supra* para. 39), he stated, in keeping with the testimony of David Hayes, that Iván Eladio Torres Millacura was beaten and “dragged” from the police station.⁴⁷ This was the last day on which the whereabouts of Mr. Torres Millacura were known.

67. Consequently, the State acknowledged that Mr. Torres Millacura was “the victim of an enforced disappearance at the hands of State agents.”

B. Considerations of the Court.

B.1. Illegality and arbitrariness of the detentions of Mr. Torres Millacura in September 2003.

68. The Tribunal finds it pertinent to indicate, as a preliminary issue, that the Inter-American Commission's application made its pleadings in this section based on Article 10, subparagraph b), of Law 815 of the Province of Chubut. On this point, the Court finds it necessary to clarify that, according to the information requested from the parties while processing this case (*supra* para. 15), the provision cited by the Inter-American Commission was not in force at the time of the facts. Indeed, the Commission cited a version of the aforementioned Law 815 dated October 13, 1970, and sent this version to the Court.⁴⁸ However, according to the clarifications, principally from the representatives and the State, the law that was applied was modified by Law 4123, dated September 14, 1995. This version was later submitted to the Court. Therefore, the Court will examine the pleadings regarding this chapter based on Article 10, subsection b), of the version of Law 815 that was modified by Law 4123 and is applicable in this case. The Court also finds it appropriate to note that, according to the clarification submitted by the State, that Law is no longer currently in force.⁴⁹

⁴⁵ Cf. Letter written by David Hayes (case file of annexes to the application, tome I, folio 448).

⁴⁶ Cf. Testimony of Miguel Ángel Sánchez rendered before Examining Judge no. 2 on November 27, 2003 (case file of annexes to the application, tome X, folio 7509 to 7511), and Testimony of Miguel Ángel Sánchez rendered before the Subrogant Examining Judge No. 2 on January 28, 2004 (case file of annexes to the application, tome X, folios 7933 to 7935).

⁴⁷ Cf. Testimony rendered before the notary public by Miguel Ángel Sánchez, of May 5, 2011 (case file on the merits, tome II, folios 1159 to 1161).

⁴⁸ Cf. Law 815 "Organic Policing Law," Chapter 3, "Powers," Article 10.- For the exercise of the police security functions established in this chapter, police may: [...] b) Detain all individuals whose criminal record and means of living must be ascertained under circumstances that justify the detentions or when identification is refused. The delay or detention of the party shall not last longer than the time necessary for identifying the party and establishing domicile, conduct and means of living, without exceeding to period of 24 hours”

⁴⁹ Currently the “Law XIX – N° 5 is applicable (before Law 815).” This is evident a result of the clarifications presented by the State. That provision indicates the following in Article 10:

For the exercise of the function of security police established in this chapter, they shall:[...]

b) Hold the individual as necessary to obtain prior record under justifiable circumstances, when identification is refused, when identification is missing, or when the identification presented is not a certified identification document, providing an immediate account to the Public Prosecutor.

In all cases the order shall come from the institution’s highest authorities and shall not exceed six (6) hours. It must be recorded in the police registries set up for that purpose. The

69. The Convention has enshrined the prohibition of illegal or arbitrary detention or imprisonment as a principal guarantee of liberty and individual security. The Court has expressed, with regard to the detention, “that even though [...] the State has the right and obligation to guarantee its security and maintain public order, its power is not unlimited, since it has the duty, at all times, to apply procedures pursuant to Law and respectful of the fundamental rights of all individuals under its jurisdiction.”⁵⁰

70. Thus, with the purpose of maintaining security and public order, the State legislates and adopts various measures of a different nature to prevent and regulate certain conduct of its citizens. One of those measures is to establish the presence of police personnel in public spaces. Nevertheless, the Court notes that improper action taken by State agents in their interaction with the individuals they should be protecting represents one of the principal threats to the right to personal liberty, which, when violated, risks also causing the violation of other rights, such as the rights to humane treatment and, in some cases, to life.⁵¹

71. Article 7 of the Convention enshrines guarantees that represent limits to State agents' exercise of authority. Those limits are applied to instruments of State control, one of which is detention. This measure is in compliance with the guarantees enshrined in the Convention only as long as its application is exceptional and respects the principle of the presumption of innocence, as well as the principles of legality, necessity, and proportionality, all of which are indispensable in a democratic society.⁵²

72. The Tribunal observes that Article 10, subparagraph b) of Law 815, which was in force at the time, established the following for the police of the Province of Chubut:

For the exercise of the function of security police established in this chapter, they shall have the ability to:

[...]

b) Detain the individual as necessary to obtain the individual's prior record under justifiable circumstances, when identification is refused, when identification is missing, or when the identification presented is not a certified identification document, immediately informing the investigative judge on duty.

detention shall not last longer than the amount of time necessary to meet the measure's objective. The detainee shall be informed of his or her right to notify a relative or trusted individual and inform that person of his or her situation.

Cf. “Annex 59. List of laws on public security in force in the Province of Chubut” (case file of annexes to the brief of pleadings and motions, tome XIX, folio 13342), and annex “LAW XIX - N° 5 (Before. Law 815)”, submitted in the State's brief of July 19, 2011 (case file on the Merits, tome II, folio 5068).

⁵⁰ Cf. *Case of Velásquez Rodríguez V. Honduras*, supra note 21, para. 154; *Case of Servellón García et al. V. Honduras. Merits, Reparations and Costs*. Judgment of September 21, 2006. Series C No. 152, para. 86, and *Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 87.

⁵¹ Cf. *Case of Servellón García et al. V. Honduras*, supra note 51, para. 87.

⁵² Cf. *Case of the “Juvenile Reeducation Institute” V. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 2, 2004. Series C No. 112, para. 228; *Case of López Álvarez V. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141, para. 67, and *Case of Servellón García et al. V. Honduras*, supra note 51, para. 88.

In all cases, the order shall come from the institution's highest authorities and shall not exceed TEN (10) hours. It must be recorded in the police registries established for that purpose. The detention shall not last longer than the amount of time necessary to meet the measure's objective. The detainee shall be informed of his or her right to notify a relative or trusted individual and inform that person of his or her situation [...].”

73. In this regard, the Court has already established that Article 7 of the Convention provides for two types of regulations that are clearly differentiated from each other, one of a general nature and one specific. The general one is found in the first subparagraph: “Every person has the right to personal liberty and security.” The specific one is comprised of a series of guarantees that protect the rights to not be illegally (Art. 7(2)) or arbitrarily (Art. 7(3)) deprived of liberty, to know the reasons for the detention and the charges brought against the person being detained (Art. 7(4)), to judicial oversight of the deprivation of liberty and the reasonableness of the time period of preventive detention (Art. 7(5)) and to appeal the legality of the detention (Art. 7(6)).⁵³ Any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily leads to a violation of Article 7(1) of the Convention.⁵⁴

74. Specifically, Article 7(2) of the Convention establishes that, “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.” This principle of legality must forcibly be accompanied by the principle of codification [definition of the crime], which requires States to establish “beforehand” the “causes” and “conditions” of deprivation of physical liberty as specifically as possible. In this way, Article 7(2) of the Convention refers automatically to domestic law. For this reason, any requirement established in domestic law that has not been complied with upon depriving a person of liberty results in that detention being illegal and against the American Convention.⁵⁵

75. It is evident from the facts acknowledged by the State that the detention of Mr. Torres Millacura carried out on September 26, 2003, by Comodoro Rivadavia police was not “recorded in the police registries set up for that purpose,” as required in Article 10, subparagraph b), of Law 815. In this regard, from the testimony given internally by police officers of the First Precinct, it can be deduced that on the date on which the facts of this case took place, Law 815 was being applied inconsistently by the police with the effect of restricting the physical liberty of persons. According to the testimony of Sergio Omar Thiers, who was assistant sergeant of the First Precinct, “in the cases in which the subject brought to the station [based on Law 815 was] already known, the person was not signed in and not

⁵³ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez V. Ecuador*, supra note 29, para. 51; *Case of Usón Ramírez V. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207, para. 143, and *Case of Cabrera García and Montiel Flores V. México*, supra note 51, para. 79.

⁵⁴ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez V. Ecuador*, supra note 29, para. 54; *Case of Usón Ramírez V. Venezuela*, supra note 54, para. 143, and *Case of Cabrera García and Montiel Flores V. México*, supra note 51, para. 79.

⁵⁵ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez V. Ecuador*, supra note 29, para. 57; *Case of Yvon Neptune V. Haití. Merits, Reparations and Costs*. Judgment of May 6, 2008. Series C No. 180, para. 96, and *Case of Usón Ramírez V. Venezuela*, supra note 54, para. 145.

registered because the person was already identified [...].”⁵⁶ This was corroborated by Fabián Alcides Tilleria, the police chief at the time, who stated that it was possible for an individual to be transported to the police station for identification purposes without this being entered into the log book if the person was not “held” or “detained,” that is, if the person did not enter the Station or if the person’s entry was “circumstantial.” The Police Chief noted that “a detention is recorded when the person enters the jail cell.”⁵⁷

76. In this regard, the Court considers it appropriate to recall that Article 7 of the American Convention protects against all illegal or arbitrary interference with physical liberty.⁵⁸ In that sense, for the purposes of Article 7 of the Convention, a “hold,” even with the mere purpose of identifying the person, constitutes a deprivation of the person’s physical liberty, and therefore all restrictions of that liberty must strictly adhere to what the American Convention and domestic legislation establish in this regard, so long as the latter is compatible with the Convention. Thus, even if it was carried out for identification purposes, Mr. Torres Millacura’s detention should have been duly registered in the pertinent record, indicating clearly, at a minimum, the reasons for the detention, who carried out the detention, the time of the detention, and the time of release, as well as recording that the investigative judge with jurisdiction had been informed. The Court finds that, upon failing to record the detention of Mr. Torres Millacura, the police failed to comply with one of the requirements established in Law 815 and that therefore, the State violated Article 7(1) and 7(2) of the American Convention, with regard to Article 1(1) of that instrument.

77. In addition, Article 7(3) of the American Convention establishes that, “no one shall be subject to arbitrary arrest or imprisonment.” On this provision, the Court has established on other occasions that:

no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable, or lacking in proportionality.⁵⁹

78. Together with what was indicated with regard to the principle of legality (*supra* para. 74), from this it can be derived that any restriction to liberty that is not based on a specific cause or motive can be arbitrary and, therefore, in violation of Article 7(3) of the Convention.⁶⁰

⁵⁶ Cf. Declaration of Assistant Sergeant Sergio Omar Thiers rendered before Examining Judge no. 2 on November 11, 2003 (case file of annexes to the application, tome X, folio 7401).

⁵⁷ Cf. Testimony of the Chief of the First Section of the Police Department Fabián Alcides Tilleria rendered before Examining Judge no. 2 on December 11, 2003 (case file of annexes to the application, tome X, folio 7669).

⁵⁸ Cf. *Case of Chaparro Álvarez and Lapo Ñiñez V. Ecuador*, *supra* note 29, para. 53, and *Case of Cabrera García and Montiel Flores V. México*, *supra* note 51, para. 80.

⁵⁹ Cf. *Case of Gangaram Panday V. Suriname. Merits, Reparations and Costs*. Judgment of January 21, 1994. Series C No. 16, para. 47; *Case of Chaparro Álvarez and Lapo Ñiñez V. Ecuador*, *supra* note 29, para. 90, and *Case of Usón Ramírez V. Venezuela*, *supra* note 54, para. 146.

⁶⁰ Cf. *Case of García Asto and Ramírez Rojas V. Perú. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 25, 2005. Series C No. 137, paras. 128 and 143; *Case of Barreto Leiva V. Venezuela. Merits, Reparations and Costs*. Judgment of November 17, 2009. Series C No. 206, para. 116, and *Case of Vélez Loor V. Panamá*, *supra* note 32, para. 116.

79. In addition, the Tribunal notes that Article 10, subparagraph b) of Law 815, in force as of the date the events took place, authorized the police of the Province of Chubut to “hold” - that is, to restrict the physical liberty - of any individual whose criminal record “[may need] to be known [...] under circumstances that justify this.” Therefore, this provision did not specify the reasons for which the police could “hold” an individual in order to identify him or her or check his or her criminal record. On this point, expert witness Sofía Tiscornia stated that the existence of laws in both the organic police codes and in misdemeanor codes “imprecisely legitimize police authority to detain individuals for purposes of identification only because they were loitering in a place, acting suspiciously, wandering the streets, [not well dressed, looking into places of commerce in a suspicious manner, walking among cars or looking away when the police call them,] all imprecise standards.” She also indicated that in this way, “police discretion [becomes] very broad,” and the reasons for which they make detentions are often “minimal and absurd.”

80. For the Court, having failed to establish concrete reasons for which a person can be deprived of liberty, Article 10, subparagraph b) of Law 815 allows the police of the Province of Chubut to interfere with the physical liberty of persons in a way that is unpredictable and therefore arbitrary. Thus, the Court finds that this provision was contrary to Articles 7(3) and 2 of the American Convention.

81. Now, given that Article 10, subparagraph b) of Law 815 was applied to Mr. Iván Eladio Torres in the detention of September 26, 2003, the Court finds that the State violated Article 7(1) and 7(3) of the American Convention with regard to Articles 1(1) and 2 of the Convention, to the detriment of Mr. Torres Millacura, as his detention was not carried out based on specific grounds, but rather in an unpredictable manner.

82. In addition, there is no indication in the case file that the detention of Mr. Torres Millacura in September 2003, during which he was taken to “Km. 8,” was carried out in keeping with Law 815 of Province of Chubut. However, given that the Commission alleged that this law has been applied, and given that this was acknowledged by the State, the Tribunal assumes that the detention was not legal and was arbitrary, and that therefore the State violated Article 7(1), 7(2), and 7(3) of the American Convention, with regard Articles 1(1) and 2 of thereof, to the detriment of Iván Eladio Torres Millacura.

B.2. Categorization of the events experienced by Mr. Torres Millacura at “Km. 8.”

83. The Court notes that in the application, the Commission made a general reference to alleged police abuse suffered by Iván Eladio Torres Millacura during the detentions that took place prior to his enforced disappearance. However, the only specific allegation on this point is with regard to the execution by firing squad of Mr. Torres Millacura at the place known as “Km. 8” (*supra* para. 63). In this regard, the Court notes that the Commission alleged violations of Articles 1, 6, and 8 of the Convention Against Torture, but did not categorize what happened at “Km. 8” in accordance with the provisions of that instrument. Indeed, the Commission did not submit arguments of law in that regard. For their part, the representatives expressed in general terms that Iván Eladio Torres Millacura was beaten and tortured during the aforementioned detentions. However, they did not make any specific arguments to the effect that what happened to Mr. Torres Millacura at “Km. 8” was “torture”

under the terms of the aforementioned Convention. Taking this into account, the Court will proceed to analyze this point.

84. The American Convention expressly recognizes the right to humane treatment [personal integrity], a legal right whose protection includes the principal goal of the absolute prohibition of torture and cruel, inhumane, or degrading punishment or treatment.⁶¹ This Tribunal has consistently found in its jurisprudence that this prohibition today belongs under the domain of *jus cogens*.⁶² The right to humane treatment cannot be suspended under any circumstance.⁶³

85. In this way, an international juridical regime absolutely prohibiting all forms of torture, both physical and psychological, has been established, and it has recognized that the threats and the real danger of submitting a person to serious physical harm produces, under certain circumstances, moral anguish to such a degree that it can be considered "psychological torture."⁶⁴

86. The Court has already established that, "[the] infringement of the right to physical and psychological integrity of the human person is a type of violation which has varying connotations and which encompasses torture and other types of mistreatment or cruel, inhumane, or degrading treatment whose physical and psychological consequences may have different degrees of intensity according to the extrinsic and intrinsic factors which should be proven in each specific situation."⁶⁵ That is to say, the personal characteristics of an alleged victim of torture or of cruel, inhumane, or degrading treatment must be taken into account when determining if personal integrity has been violated, as those characteristics can change the individual's perception of reality, thereby increasing the suffering and the sense of humiliation when the individual is subjected to certain treatment.⁶⁶

87. The Court notes that the testimony of the relatives and friends of Mr. Iván Eladio Torres Millacura given before this Tribunal and before the First Precinct agree in that he was detained by members of the provincial police, taken to the so-called "Km. 8," had his clothing and shoes removed, and was beaten. After this, the police warned him that he had to "run" to save his life and proceeded to fire at him as he threw himself into the brush to save

⁶¹ Cf. *Case of Ximenes Lopes V. Brazil. Merits, Reparations and Costs*. Judgment of July 4, 2006. Series C No. 149, para. 126.

⁶² Cf. *Case of Cantoral Benavides V. Perú. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 95; *Case of Bueno Alves V. Argentina*, *supra* note 13, para. 76, and *Case of Bayarri V. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 30, 2008. Series C No. 187, para. 81.

⁶³ Cf. *Case of the "Juvenile Reeducation Institute" V. Paraguay*, *supra* note 53, para. 157; *Case of Ximenes Lopes V. Brazil*, *supra* note 62, para. 126, and *Case of Servellón García et al. V. Honduras*, *supra* note 51, para. 97.

⁶⁴ Cf. *Case of Cantoral Benavides V. Perú*, *supra* note 63, para. 102; *Case of Baldeón García V. Perú. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147, para. 119, and *Case of del Penal Miguel Castro Castro V. Perú. Merits, Reparations and Costs*. Judgment of November 25, 2006. Series C No. 160, para. 272.

⁶⁵ Cf. *Case of Loayza Tamayo V. Perú*, *supra* note 28, para. 57; *Case of Caesar V. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of March 11, 2005. Series C No. 123, para. 69, and *Case of Cabrera García and Montiel Flores V. México*, *supra* note 51, para. 133.

⁶⁶ Cf. *Case of Ximenes Lopes V. Brazil*, *supra* note 62, para. 127.

himself from the bullets.⁶⁷

88. For the Court, it is evident that the fact that police authorities forced Mr. Torres Millacura to undress and subjected him to beatings and threats to his life with firearms, forcing him to run into the brush to avoid an apparent execution by firing squad while he was under detention, necessarily caused feelings of anguish and vulnerability and constituted an act of torture.

89. Therefore, the Court finds that what happened to Mr. Iván Eladio Torres Millacura at “Km. 8” at the hands of police officers was a violation of Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof.

90. Now, the Court finds that the alleged failure to comply with Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture due to a lack of investigation of this act of torture must be analyzed in the chapter on the investigations into the facts of this case (*infra* paras. 109).

B.3. Detention and subsequent disappearance of Mr. Iván Eladio Torres Millacura as of October 3, 2003.

91. The Court finds it appropriate to reiterate its reiterated jurisprudence in the sense that in analyzing an alleged enforced disappearance, its permanent nature and the fact that it constitutes a plurality of violations must be taken into account.⁶⁸

92. The Court notes that the international community's attention to this phenomenon is not recent. The United Nations Working Group on Enforced or Involuntary Disappearances has, since the start of the 80s, developed a working definition of the phenomenon, highlighting with it illegal detentions by agents, governmental departments, or groups organized by individuals acting in the name of the State or with its support, authorization, or consent.⁶⁹

⁶⁷ Cf. Testimony rendered by María Leontina Millacura Llaipén during a public hearing; Testimony rendered before the notary public (affidávit) by Tamara Elizabeth Bolívar (case file on the merits, tome II, folio 1120); Testimony rendered before notary public (affidávit) by Marcos Alejandro Torres Millacura (case file on the merits, tome II, folio 1174); Testimony of Walter Marcos Mansilla rendered before the first precinct of Comodoro Rivadavia's on October 16, 2003 (case file of annexes to the application, tome X, folio 7214); Testimony of Tamara Elizabeth Bolívar rendered before the First Precinct of Comodoro Rivadavia on October 21, 2003 (case file of annexes to the application, tome X, folio 7241), and Testimony of Cristian Eduardo Gamin rendered before the First Precinct of Comodoro Rivadavia on October 22, 2003 (case file of annexes to the application, tome X, folio 7249).

⁶⁸ Cf. *Case of Heliodoro Portugal V. Panamá. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C No. 186, para. 112; *Case of Ticona Estrada et al. V. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 54, and *Case of Chitay Nech et al. V. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010. Series C No. 212, para. 81.

⁶⁹ Cf. *Case of Chitay Nech et al. V. Guatemala, supra* note 69, para. 82; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia, supra* note 15, para. 58, and *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. 102. See also, the Working Group on Enforced and Involuntary Disappearances, Human Rights Commission, 37^o period of sessions, U.N. Doc. E/CN.4/1435, of January 22, 1981, para. 4, and Report of Working Group on Enforced and Involuntary Disappearances, Human Rights Commission, 39^o period of sessions, U.N. Doc. E/CN.4/1983/14, of January 21, 1983, paras. 130 to 132.

93. For their part, Articles II and III of the Inter-American Convention on Forced Disappearance, to which Argentina is Party (*supra* para. 30), define enforced disappearance as:

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

[...]

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

94. In international law, the jurisprudence of this Tribunal has been at the vanguard of the consolidation of a comprehensive understanding of the seriousness and continuous or permanent nature of the enforced disappearance of persons, in which the act of disappearance and its execution start with depriving the person of liberty and continue with the lack of information on that person's location. The enforced disappearance is ongoing for as long as the whereabouts of the disappeared person are not known and the person's identity has not been determined with certainty. In keeping with all this, the Court has reiterated that enforced disappearance constitutes a multi-faceted violation of several rights protected by the American Convention that places the victim in a state of complete defenselessness, leading to other related violations.⁷⁰

95. The characterization of enforced disappearance as a multi-offensive and continuous or permanent offense, as expressed in the jurisprudence of this Tribunal,⁷¹ is derived not only from its definition in Article II of the Inter-American Convention on Forced Disappearance of Persons, its *travaux préparatoires*,⁷² its preamble, and its provisions,⁷³ but also two other

Moreover, the definition in the Declaration on the Protection of All Persons from Enforced Disappearance of 1992, establishes that enforced disappearances occur when:

persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

This Declaration was passed by the General Assembly in Resolution 47/133 dated December 18, 1992, A/RES/47/133.

⁷⁰ Cf. *Case of Anzualdo Castro V. Perú. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 59; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 59, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 103.

⁷¹ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 21, para. 155; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 60, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 104.

definitions contained in different international instruments⁷⁴ that, likewise, indicate the following as concurrent elements constituting enforced disappearance: a) the deprivation of liberty; b) the direct involvement of State agents or their acquiescence; and c) the refusal to recognize the detention and reveal the fate or whereabouts of the person in question.⁷⁵ On previous opportunities, this Tribunal has also indicated that the jurisprudence of the European Human Rights System,⁷⁶ the rulings of the different instances of the United Nations,⁷⁷ and the

⁷² Cf. Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime "is permanent in the sense that it is not consummated instantaneously but rather permanently and extends throughout the time in which the individual remains disappeared" (OEA/CP-CAJP, Report of the President of the Working Group in Charge of Analyzing the IACFDP Project, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, dated 01.25.1994, p. 10).

⁷³ The preamble of the Convention on Forced Disappearance establishes that "that the forced disappearance of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights."

⁷⁴ Cf. Economic and Social Council of the United Nations, Working Group on Enforced and Involuntary Disappearance of Persons, General Comment to 4 of the Declaration on the Protection of All Persons from Enforced Disappearance of January 15, 1996. (E/CN.4/1996/38), para. 55; 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, Document of the United Nations E/CN.4/2005/WG.22/WP.1/REV.4, 23 of September of 2005, and 7, numeral 2, section i) of the Rome Statute of the International Criminal Court, Document of the United Nations A/CONF.183/9, July 17, 1998.

⁷⁵ Cf. *Case of Gómez Palomino V. Perú. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136, para. 97; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 104, and *Case of Gelman V. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, para. 65.

⁷⁶ In this regard, the following cases can be seen regarding enforced disappearance of persons: E.C.H.R. *Case of Kurt V. Turquía*. Judgment of May 25, 1998, paras. 124 to 128; *Case of Çakici V. Turquía*. Judgment of July 8, 1999, paras. 104 to 106; *Case of Timurtas V. Turquía*. Judgment of June 13, 2000, paras. 102 to 105; *Case of Tas V. Turquía*. Judgment of November 14, 2000, paras. 84 to 87, and *Case of Chipre V. Turquía*. Judgment of May 10, 2001, paras. 132 to 134 and 147 to 148.

⁷⁷ About the competence of the Human Rights Committee of the United Nations to verify continuing violations, see, the case of *Ivan Somers v. Hungría*, Communication No. 566/1993, 57 period of sessions, CCPR/C/57/D/566/1993 (1996), July 23, 1996, para. 6(3), and the case of *E. and A.K. v. Hungría*, Communication No. 520/1992, 50 period of sessions, CCPR/C/50/D/520/1992 (1994), May 5, 1994, para. 6(4).

rulings of various Constitutional courts and other high tribunals of the American States⁷⁸ coincide with the abovementioned definition.⁷⁹

96. The Court has verified international consensus in the analysis of this crime, which constitutes a grave violation of human rights given the particular relevance of the infractions comprising it and the nature of the rights damaged, implying a clear abandonment of the essential principles on which the Inter-American Human Rights System is based⁸⁰ and whose prohibition has attained the character of *jus cogens*.⁸¹

97. The analysis of enforced disappearance must address all of the facts brought for the consideration of the Court in this case.⁸² Only in this manner is the legal analysis of enforced disappearance consistent with the complex violation of human rights entailed,⁸³ with its permanent or continuous character, and with the need to consider the pattern of police abuse within which the facts took place, in order to analyze their prolonged effects over time and focus fully on their consequences.⁸⁴

98. Now, in keeping with Article I, subparagraphs a) and b) of the Inter-American Convention on Forced Disappearance of Persons, States Parties commit to not practicing and not tolerating the enforced disappearance of persons under any circumstance, and to

⁷⁸ Supreme Court of Justice of the Bolivarian Republic of Venezuela, *Case of Marco Antonio Monasterios Pérez*, Judgment of August 10, 2007, (declaring the pluri-offensive and permanent nature of the crime of enforced disappearance); Supreme Court of Justice of the Nation of Mexico, Thesis: P./J. 87/2004, “Enforced disappearance of persons. The period of the statute of limitation initiates [when] the victim appears or fate is known” (affirming that the enforced disappearances are permanent crimes and that the statute of limitation should be calculated as of the date of the perpetration of the act has ceased); Criminal Chamber of the Supreme Court of Chile, *Case of Caravana*, Judgment of July 20, 1999; Plenary of the Supreme Court of Chile, *Case of removal of immunity of Pinochet (Caso de desafuero de Pinochet)*, Judgment of August 8, 2000; Court of Appeals of Santiago de Chile, *Case of Sandoval*, Judgment of January 4, 2004 (all declaring that the crime of enforced disappearance is continuous, against humanity, non expiring and not subject to amnesty); Federal Chambers of Appeals of Criminal and Correctional Matters of Argentina, *Case of Videla et al.*, Judgment of September 9, 1999 (declaring that the enforced disappearances are continuous crimes against humanity); Constitutional Court of Bolivia, *Case of José Carlos Trujillo*, Judgment of November 12, 2001; Constitutional Court of Peru, *Case of Castillo Páez*, Judgment of March 18, 2004 (declaring, for purposes of that ordered by the Inter-American Court in the same case, that enforced disappearances is a permanent crime until the whereabouts of the victim are known), and the Supreme Court of Justice of Uruguay, *Case of Juan Carlos Blanco* and *Case of Gavasso et al.*, Judgments of October 18 and 17, 2002, respectively

⁷⁹ Cf. *Case of Goiburú et al. V. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153, para. 83; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 104, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 65.

⁸⁰ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 21, para. 158; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 105, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 75.

⁸¹ Cf. *Case of Goiburú et al. V. Paraguay*, *supra* note 80, para. 84; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 105, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 75.

⁸² Cf. *Case of Radilla Pacheco V. México*, *supra* note 23, para. 146; *Case of Chitay Nech et al. V. Guatemala*, *supra* note 69, para. 87; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 68.

⁸³ Cf. *Case of Heliodoro Portugal V. Panamá*, *supra* note 69, para. 150; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 111, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 78.

⁸⁴ Cf. *Case of Goiburú et al. V. Paraguay*, *supra* note 80, para. 85; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 111, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 78.

punishing those responsible under their jurisdiction. This is consistent with the State's obligation to respect and guarantee the rights contained in Article 1(1) of the American Convention, which, as has been established by this Court, can be complied with in different ways depending on the specific right that the State must guarantee and on the specific needs for protection.⁸⁵ This obligation implies a duty for States Parties to organize all the structures through which the public power is governed, in such a way as to be capable of legally ensuring the free and full exercise of human rights.⁸⁶ As part of this obligation, the State has the juridical duty to “[r]easonably prevent human rights violations and to seriously investigate, with the means within its reach, the violations committed within its jurisdiction in order to identify those responsible, impose upon them the appropriate punishments, and guarantee the victim an appropriate reparation.”⁸⁷

99. The duty to prevent covers all juridical, political, administrative, and cultural measures that promote the safeguarding of human rights.⁸⁸ With regard to individuals deprived of liberty, the State is in a special position for guaranteeing the rights of the detained.⁸⁹ Thus, deprivation of liberty in legally recognized centers and the existence of a registry of detainees constitute fundamental safeguards, *inter alia*, against enforced disappearance.⁹⁰

100. As one of the goals of enforced disappearance is to prevent the exercise of legal remedies and the appropriate procedural guarantees, when a person has been subjected to kidnapping, detention, or any form of deprivation of liberty in which the victim cannot access the remedies available, it is crucial for relatives or other associated persons to be able to access judicial proceedings or remedies that are fast and effective as a means of establishing the detainee's whereabouts or the detainee's state of health, or to identify the authority that ordered the deprivation of liberty or carried it out.⁹¹

⁸⁵ Cf. *Case of the Mapiripán Massacre V. Colombia*, *supra* note 16, paras. 111 and 113; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 17, para. 62, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 76.

⁸⁶ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 21, para. 166; *Case of Radilla Pacheco V. México*, *supra* note 23, para. 142, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 17, para. 62.

⁸⁷ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 21, para. 174; *Case of Radilla Pacheco V. México*, *supra* note 23, para. 142, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 17, para. 62.

⁸⁸ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 21, para. 175; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 106, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 77.

⁸⁹ Cf. *Case of Neira Alegría et al. V. Perú. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60; *Case of Vélez Loor V. Panamá*, *supra* note 32, para. 198, and *Case of Vera Vera et al. V. Ecuador*, *supra* note 17, para. 42.

⁹⁰ Cf. *Case of Anzualdo Castro V. Perú*, *supra* note 71, para. 63; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 17, para. 63, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 77.

⁹¹ Cf. *Case of Anzualdo Castro V. Perú*, *supra* note 71, *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 107, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 185. The Article X of the Convention on Forced Disappearance makes reference to this obligation.

101. In consideration of the foregoing and of the acknowledgment of responsibility made by the State and the evidence brought before the Tribunal, the Court will categorize the facts of the detention and later disappearance of Iván Eladio Torres Millacura.

102. The case file does not indicate that the detention of Mr. Torres Millacura that took place in the late hours of October 2, 2003, and the early hours of October 3, 2002, was carried out under Law 815 of the Province of Chubut, nor that it was carried out for reasons based on Article 10, subparagraph b) of that law. However, given that the Commission alleged that this law had been applied and that the State acknowledged this, the Tribunal assumes that the detention was not legal and that it was carried out in an arbitrary fashion.

103. Therefore, the Court considers it reasonable to affirm that Iván Eladio Torres Millacura was detained based on Article 10.b) of Law 815 and that he was forcibly disappeared by agents of the State, which was not only contrary to his right to personal liberty but, due to the nature of enforced disappearance, also placed him in a grave situation of vulnerability and at risk of suffering irreparable damage to his personal integrity⁹² and to his life.⁹³ This Court has held that enforced disappearance is a violation of the right to humane treatment because “the mere fact of prolonged isolation and coercive lack of communication represents cruel and inhumane treatment, [...] in contravention of paragraphs 1 and 2 of [Article 5 of the Convention].”⁹⁴

104. As such, the Court considers that the content itself of the right to juridical personality is that, specifically, a person be recognized,

[e]verywhere as a subject of rights and obligations, and [who has the right to] enjoy fundamental civil rights[, which] implies the capacity of being the bearer of rights (capacity and enjoyment) and duties; the violation of that acknowledgment presumes disregarding in absolute terms the possibility to be a bearer of [civil and fundamental] rights and duties.⁹⁵

105. This right represents a parameter for determining whether an individual is a bearer or not of the rights at issue and whether the individual can exercise those rights,⁹⁶ for which reason the violation of that recognition makes the individual vulnerable to the State and to private individuals.⁹⁷ In this way, the content of the right to recognition of juridical

⁹² Cf. *Case of Radilla Pacheco V. México*, *supra* note 23, para. 152, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 94.

⁹³ Cf. *Case of Radilla Pacheco V. México*, *supra* note 23, para. 152.

⁹⁴ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 21, para. 187; *Case of Chitay Nech et al. V. Guatemala*, *supra* note 69, para. 94, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 94.

⁹⁵ Cf. *Case of Bámaca Velásquez V. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 179; *Case of the Xákmok Kásek Indigenous Community. v. Paraguay. Merits, Reparations and Costs*. Judgment of August 24, 2010. Series C No. 214, para. 248, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 96.

⁹⁶ Cf. *Case of the Sawhoyamaxa Indigenous Community V. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, para. 188; *Case of The Xákmok Kásek Indigenous Community. V. Paraguay*, *supra* note 96, para. 249, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 97.

⁹⁷ Cf. *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 179, *Case of The Xákmok*

personality refers to the correlative general duty of the State to establish the juridical means and conditions under which this right can be freely and fully exercised by its bearers⁹⁸ or, should it be the case, the obligation to not violate that right.⁹⁹ This Tribunal has found that, in cases of enforced disappearance, due to the multifaceted and complex character of this grave violation of human rights, its execution can entail the specific violation of the right to recognition of juridical personality. Beyond the fact that the disappeared individual cannot continue enjoying and exercising other - and possibly all - the rights borne by the individual, disappearing the individual is not only one of the most serious ways of placing a person outside the reach of the law, but also denies that person's existence itself, leaving the individual in a type of limbo or situation of juridical uncertainty before society and the State.¹⁰⁰

106. In this case, Mr. Torres Millacura was placed in a situation of juridical uncertainty that quashed his opportunity to be a bearer of rights or exercise those rights effectively in general, this constituting one of the most serious forms of State noncompliance with the obligation to respect and guarantee human rights.¹⁰¹ This translated into a violation of this individual's right to recognition of juridical personality established in Article 3 of the American Convention.

107. Therefore, given the foregoing, the Court finds that the State violated the rights recognized in Articles 3, 4(1), 5(1), 5(2) and 7(1), and 7(3) of the American Convention, in relation to Articles 1(1) and 2 thereof, all in relation to the obligations established in Articles I.a)¹⁰², II¹⁰³ and XI¹⁰⁴ of the Inter-American Convention on Forced Disappearance of

Kásek Indigenous Community. V. Paraguay, *supra* note 96, para. 249, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 97.

⁹⁸ Cf. *Case of Radilla Pacheco V. México*, *supra* note 23, para. 156; *Case of The Xákmok Kásek Indigenous Community. V. Paraguay*, *supra* note 96, para. 249, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 97.

⁹⁹ Cf. *Case of Radilla Pacheco V. México*, *supra* note 23, para. 156, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 97.

¹⁰⁰ Cf. *Case of Anzualdo Castro V. Perú*, *supra* note 71, para. 57; *Case of Chitay Nech et al. V. Guatemala*, *supra* note 69, para. 98, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 98.

¹⁰¹ Cf. *Case of Anzualdo Castro V. Perú*, *supra* note 71, para. 101; *Case of Chitay Nech et al. V. Guatemala*, *supra* note 69, para. 102, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 102.

¹⁰² This Article states that:

The States Parties to this Convention undertake:

a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;

[...]

¹⁰³ This provision establishes that:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

¹⁰⁴ This Article notes that:

Persons, to the detriment of Mr. Iván Eladio Torres Millacura.

B.4. Final Considerations.

108. Therefore, the Tribunal concludes that Argentina incurred international responsibility for the detentions of Mr. Iván Eladio Torres Millacura carried out on September 26, 2003, in “September” of that year, and on October 2, 2003, after which he was forcibly disappeared, in violation of the rights recognized in Articles 3, 4(1), 5(1), 5(2), 7(1), 7(2), and 7(3) of the American Convention, in relation to Articles 1(1) and 2 of the Convention, to the detriment of Iván Eladio Torres Millacura. Likewise, the Court finds that these facts also comprise international State responsibility for failure to comply with the obligations established in Articles I.a) and XI of the Inter-American Convention on Forced Disappearance of Persons.

IX FAIR TRIAL [JUDICIAL GUARANTEES] AND JUDICIAL PROTECTION WITH REGARD TO MARÍA LEONTINA MILLACURA LLAIPÉN, FABIOLA VALERIA TORRES AND MARCOS ALEJANDRO TORRES MILLACURA

109. This Judgment has already indicated that the Court accepted the acknowledgment of international responsibility made by the State in relation to the investigation and processing of the facts that took place with regard to Mr. Torres Millacura and the subsequent violations of the rights recognized in Articles 8(1) and 25¹⁰⁵ of the American Convention in relation to Article 1(1) thereof (*supra* para. 35). In order to determine the scope of those violations and establish whether the failure to comply with the obligations established in Articles 1, 6, and 8 of the Convention Against Torture¹⁰⁶ (*supra* para. 90) also took place, as well as to resolve

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

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

¹⁰⁵ Article 8(1) of American Convention on Human Rights establishes that:

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.

Article 25 of the American Convention on Human Rights establishes that:

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.

¹⁰⁶ The Convention Against Torture establishes the following:

Article 1

The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

the dispute over the violation of Article I.b)¹⁰⁷ of the Convention on Forced Disappearance alleged by the Commission in the application (*supra* para. 3), the Court will now address the relevant non-disputed facts in order to later rule on the human rights violations committed by the State.

A. *Non-disputed facts.*

110. The State recognized that the detention and disappearance of Mr. Torres Millacura by State agents required authorities to make every effort to carry out an immediate search, making all urgent and necessary queries. However, this did not take place despite the demands of the mother, siblings, and friends of the victim starting in the initial hours of his disappearance. The State failed to duly investigate the circumstances of the incident in those initial moments, as the complaint of Mrs. Millacura Llaipén was formally received 10 days after the first time she went to the First Precinct of Comodoro Rivadavia to inquire as to the whereabouts of her son.¹⁰⁸ The State did not promptly and effectively seek the evidence that would've allowed for the identification of those responsible, even though it had information provided by the relatives of the victim, his friends, and his acquaintances. The police officers who were initially assigned to the investigation into Mr. Torres's disappearance were the ones accused of having committed it. The State also recognized that the Comodoro Rivadavia investigative judge in charge of the investigation when it was launched delayed the

Article 6

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.

Article 8

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.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

¹⁰⁷ Article 1.b) of the Convention on Forced Disappearance states that:

The States Parties to this Convention undertake:

[...]

b) To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories;

[...]

¹⁰⁸ Cf. Complaint filed by Mrs. María Leontina Millacura Llaipén on October 14, 2003 before the First Precinct of Comodoro Rivadavia (case file of annexes to the application, tome X, folios 7199 to 7203).

investigation into the case; that the Daily Police Log of the First Precinct was tampered with, and that several witnesses were "in one way or another" threatened by the same police personnel accused of having committed Mr. Torres Millacura's disappearance. In addition, State authorities caused delays in taking evidentiary measures and collecting evidence, as well as in generally building the case, given that as of the date on which it was denounced, they have taken more than four years to hand down a judgment in the lower court. Additionally, Argentina recognized that investigations pursued by the State's judicial branch showed signs of manipulation in the collection of evidence, obstruction of justice, and procedural delay."

B. Considerations of the Court.

111. For a better understanding of the case, the Court will address the actions taken by provincial and federal authorities separately. The Court will also analyze the administrative actions registered in the case file, particularly those of the police. In order to do so, the Court will refer only to the main actions within the corresponding case files.

112. The Tribunal has already indicated that the obligation to investigate, bring to trial, and, where appropriate, punish those responsible for human rights violations is one of the positive measures that States must adopt in order to guarantee the rights recognized in the Convention,¹⁰⁹ in keeping with Article 1(1) thereof. This duty is an obligation of means and not ends that must be assumed by the State as its own juridical duty and not a simple formality condemned beforehand to failure, nor as a process with merely private interests that depends on the procedural initiative of the victims and their relatives, or on the provision of evidentiary elements from private parties.¹¹⁰

113. Additionally, it can be derived from Article 8 of the Convention that the victims of human rights violations or their relatives must have ample opportunity to be heard and to take action in the corresponding proceedings, both in the clearing up of the facts and punishment of those responsible, as well as in the search for due redress. Likewise, the Court has found that the States have the obligation to provide effective judicial remedies to individuals who allege having been the victims of human rights violations (Article 25), remedies that must be established in keeping with the rules of due process (Article 8(1)), all within States' general obligation to guarantee the free and full exercise of the rights granted by the Convention to all individuals under its jurisdiction (Article 1(1)).¹¹¹

114. In addition, when an enforced disappearance is at issue, and as one of its objectives is to prevent the exercise of legal remedies and the pertinent procedural guarantees, if the victim cannot access the available remedies, it is crucial for family members or other individuals close to the victim to be able to access prompt and efficient judicial proceedings or remedies

¹⁰⁹ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 21, para. 167; *Case of Rosendo Cantú et al. V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216, para. 175, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 184.

¹¹⁰ Cf. *Case of Velásquez Rodríguez V. Honduras*, *supra* note 21, para. 177; *Case of Rosendo Cantú et al. V. México*, *supra* note 110, para. 175, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 184.

¹¹¹ Cf. *Case of Vera Vera et al. V. Ecuador*, *supra* note 17, para. 86.

as a means for determining the victim's whereabouts or state of health or to identify the authority that ordered the deprivation of liberty or carried it out.¹¹²

115. Consequently, the Court has found that whenever there is enough reason to suspect that a person has been subjected to an enforced disappearance, a criminal investigation must be launched.¹¹³ This obligation is independent of a complaint being brought, as in cases of enforced disappearance, international law and the general duty to guarantee impose an obligation to investigate the case *ex officio*, without delay, and in a serious, impartial and effective manner.¹¹⁴ The investigation must therefore be carried out using all legal means available and oriented toward determining the truth, as well as toward pursuing, capturing, prosecution, and possibly punishing all the perpetrators of and masterminds behind the facts, especially when agents of the State are or could be involved.¹¹⁵ All State authorities, public officials, or private parties who have learned about actions taken to forcibly disappear persons must in every case report them immediately.¹¹⁶

116. The right to access to justice requires that the determination of the facts under investigation be made effective - along with the corresponding criminal liabilities, where appropriate - in a reasonable period of time. For this reason, attending to the need to guarantee the rights of injured individuals, an extended delay can end up in itself constituting a violation of judicial guarantees.¹¹⁷ In addition, when an enforced disappearance is at issue, the right to access to justice includes the right to have the investigation into the facts determine the fate or whereabouts of the victims.¹¹⁸

B.1. Actions taken by the Chubut provincial authorities.

117. Mrs. Millacura Llaipén testified that she went to the First Precinct on October 4, 2003, to file her first complaint over the disappearance of her son. She repeated the visit on October 6 and October 8, but was turned away there.¹¹⁹ In this regard, the Tribunal notes that Mrs.

¹¹² Cf. *Case of Anzualdo Castro V. Perú*, *supra* note 71, para. 64; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 64, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 185.

¹¹³ Cf. *Case of Radilla Pacheco V. México*, *supra* note 23, para. 143; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 108, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 186.

¹¹⁴ 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 Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 108, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 186.

¹¹⁵ Cf. *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 155.

¹¹⁶ Cf. *Case of Anzualdo Castro V. Perú*, *supra* note 71, para. 65; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 65, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 186.

¹¹⁷ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 145; *Case of Chitay Nech et al. V. Guatemala*, *supra* note 69, para. 196, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 152.

¹¹⁸ Cf. *Radilla Pacheco V. México*, *supra* note 23, para. 191, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 152.

¹¹⁹ Cf. brief filed by Mrs. María Leontina Millacura Llaipén of November 5, 2003, before the Examining Judge No. 2 of the Province of Chubut, wherein "established as plaintiff," among others (case file of annexes to the application, tome X, folio 7309). This is also clear from the complaint filed on October 14, 2003 by Mrs. María Leontina Millacura Llaipén before the First Precinct of Comodoro Rivadavia (case file of annexes to the application, tome X, folio 7202).

Millacura Llaipén's complaint was formally received by the First Precinct on October 14, 2003.¹²⁰ That complaint opened the case file "Millacura Llaipén María Leontina S./ dcia. Pta. Desaparición Personas C. Rivadavia 2003" and brought in the participation of Examining Judge No. 2 of the city of Comodoro Rivadavia.¹²¹

118. In this regard, from the start of the actions carried out by the First Precinct, these were directed not toward investigating the disappearance of Mr. Iván Eladio Torres, but rather toward the search for him as a "missing person,"¹²² even though Mrs. Millacura Llaipén's complaint had expressed her suspicion that the police were involved in his disappearance. Thus, on October 15, 2003, a police officer from that institution was assigned to "conduct inquiries toward locating the current whereabouts of Mr. Iván Eladio Torres [Millacura]."¹²³ Starting on that day, the First Precinct carried out several "preliminary actions."¹²⁴ On this point, the representatives alleged that the police of the First Precinct carried out those actions on their own without having been ordered or authorized to do so by the corresponding investigative judge. However, the representatives did not present arguments in this regard.

119. The Court also notes that in testimony given by Mrs. Millacura Llaipén on November 6, 2003, before Examining Judge No. 2, she stated that in the complaint of October 14, 2003, received by the personnel of the First Precinct (*supra* para. 117), she had not referred to some facts contained therein, had not answered some questions in the ways in which her answers were recorded by those receiving her complaint, and that those persons had not included some facts she had mentioned.¹²⁵ In this regard, it should be noted that despite this testimony given by Mrs. Millacura Llaipén before Examining Judge No. 2, the case file does not evidence any actions taken by that judge in order to investigate this irregularity.

120. The case file indicates that on October 27, 2003, the First Precinct brought the preliminary actions before Examining Judge No. 2. Starting on that date, the investigations

¹²⁰ Cf. Complaint filed by la señora María Leontina Millacura Llaipén on October 14, 2003 before the First Precinct of Comodoro Rivadavia (case file of annexes to the application, tome X, folio 7199).

¹²¹ Cf. Official letter No. 831./03Jud of the First Section of the Police Department of Comodoro Rivadavia on October 14, 2003 (case file of annexes to the application, tome X, folio 7204).

¹²² Cf. Agreement of the Chief of the First Section of the Police Department of Comodoro Rivadavia, Province of Chubut, on October 15, 2003 (case file of annexes to the application, tome X, folio 7205).

¹²³ Cf. Legal Notice of the Official Inspector of the First Section of the Police Department of Comodoro Rivadavia, Province of Chubut, on October 15, 2003 (case file of annexes to the application, tome X, folio 7206).

¹²⁴ Among other things, they ordered and received testimony from: Walter Marcos Mansilla, Mauricio David Agüero, Tamara Elizabeth Bolívar, Cristian Eduardo Gamin. Likewise, they interviewed Juan Javier Villalba, Oscar Alberto Vera, and Luis Alberto Bolívar. They also called on several provincial and federal authorities to request their support for locating Iván Eladio Torres Millacura, including outside of Argentina. Those authorities included the Argentine Naval Command, the National Gendarmerie, and the Argentine Federal Police. The police also carried out "sweeps" in different areas of the city of Comodoro Rivadavia (file annexes to the application, volume X, annex 3, pages 7205 to 7266).

¹²⁵ Among other things, for example, Mrs. Millacura Llaipén stated that she never said that her son took drugs, that she had given the name of the police officer driving the unit that transported her son to the place known as Km. 8, and that she had indicated that the day before her son's disappearance, two police officers had entered her home, beaten a person that they found there, and threatened her daughter, telling her to "shut her mouth," because if not the same thing would happen to her as happened to her brother (case file of the annexes to the application, tome X, annex 3, pages 7376 to 7377).

were conducted by that judge under case number 1138/03.¹²⁶ In this regard, the representatives alleged that there was "a delay by police personnel in submitting the actions before the Court." However, they did not present any arguments or grounds with respect to why that lapse of time should be considered a delay and how it constitutes a violation of due process.

121. In the judicial case file, it can be observed that from the start, Examining Judge No. 2 ordered and took several steps mostly towards locating the whereabouts of Mr. Iván Eladio Torres Millacura.¹²⁷ The actions toward determining who was responsible for his arrests and disappearance were minimal. On this point, the Court highlights that the majority of the steps initially ordered were carried out by the personnel of the First Precinct itself. Those steps included taking testimony from witnesses on what happened to Mr. Torres Millacura. In this regard, Mrs. Millacura Llaipén requested that the evidence gathering procedures be carried out by security forces personnel that did not belong to the Province of Chubut.¹²⁸ However, her request was considered "extravagant" and without juridical basis, and thus it was denied.¹²⁹ The Court finds that, taking into account what Mrs. Millacura Llaipén denounced with regard to what happened to her son, it was clear that the investigation should not have been carried out by the very officers being accused of having committed Mr. Torres Millacura's enforced disappearance. For the Tribunal, this constituted a lack of due diligence in initial evidence collection. Nevertheless, the Court observes that subsequently, on January 12, 2004, the Office of the Public Prosecutor requested the participation of the National Gendarmerie to gather forensic evidence.¹³⁰ From that point on, the National Gendarmerie participated in gathering various evidentiary elements, such as fingerprints, DNA, visual inspections, etc.

122. The Court also notes that the gathering of the testimony of police officers who were possibly involved in the facts was tardily ordered by Examining Judge No. 2. The case file indicates that approximately six months later, all the police officers still had not been called to testify. Likewise, the taking of testimony from other individuals, particularly those who had been working in the Plaza Bitto ice cream shop when Mr. Torres Millacura disappeared was ordered almost one year after the complaint was filed. In this regard, the Tribunal has

¹²⁶ Cf. Official letter of the Chief of the Police Department of the city of Comodoro Rivadavia, Province of Chubut, on October 27, 2003 (case file of annexes to the application, tome X, folio 7269).

¹²⁷ Among other things, the judge carried out a visual inspection in the First Police Precinct of Comodoro Rivadavia of the precinct's log book corresponding to September 15, 2003, as well as of the area behind the Bitto ice cream shop where Mr. Iván Eladio Torres Millacura disappeared; he received testimony from Gerardo Atilio Colin and Luis Patricio Oliva; the judge ordered the phone tapping of the "Torres family," the deadline for which was later extended; he added a report to the record on a traffic control operation carried out on October 2-3, 2003; he ordered the Federal Radio Broadcasting Committee to distribute the photograph of Iván Eladio Torres Millacura for his identification, and ordered some television channels to broadcast information on Mr. Torres Millacura; he asked INTERPOL of the Argentine Federal Police to establish whether Mr. Torres Millacura had entered a bordering country and to conduct inquiries on whether Mr. Torres Millacura was in any hospitals, aid centers, or police facilities; he ordered reports on the search for Mr. Torres Millacura that were prepared by different Argentine provincial authorities added to the record.

¹²⁸ Cf. Brief of María Leontina Millacura Llaipén on December 1, 2003 filed before the Examining Judge No. 2 of Comodoro Rivadavia (case file of annexes to the application, tome X, folios 7525 to 7526).

¹²⁹ Cf. Decision of the Examining Judge No. 2 of Comodoro Rivadavia on December 12, 2003 (case file of annexes to the application, tome X, folio 7674).

¹³⁰ Cf. Resolution of the Fiscal Public Ministry on January 12, 2004 (case file of annexes to the application, tome X, folios 7806 and 7807).

already established that the passage of time has a directly proportional relationship to the limits on - in some cases the impossibility of - obtaining the evidence and/or testimony, even making evidence gathering toward establishing the facts at issue in the investigation difficult or ineffective, in attempts at identifying the possible authors and participants and determining possible criminal liability.¹³¹ The Court has also warned that the State bodies in charge of investigating the enforced disappearance of persons - investigations whose purpose is to determine the whereabouts of those persons and verify what happened, identify those responsible, and punish them - must carry out that work in a diligent and exhaustive manner. The legal rights that the investigation concerns itself with require that the measures that must be taken for the investigation to reach its goal be redoubled.¹³² Therefore, for the Tribunal it is clear that these initial actions were not ordered in a timely fashion.

123. The State acknowledged that the Daily Logbook of the first precinct had been "tampered with." (*supra* para. 110). The Tribunal notes from the domestic judicial case file that on August 18, 2004, the Office of the Public Prosecutor of the Province of Chubut ordered, among other things, that a handwriting test be carried out on "daily logbook No. 10" in order to determine whether it contained falsifications, corrections, crossing outs, or overwriting, and to verify whether the text corresponding to October 1, 2, and 3, 2003, correspond to "the same style of handwriting."¹³³ The changes in the aforementioned logbook were determined internally. In effect, the handwriting test was carried out by the National Gendarmerie. That institution concluded that "'Daily Logbook' number 10/03 of the First Precinct of Comodoro Rivadavia, displayed changes in its binding, along with non-sequential pagination [...]. The aforementioned book [...] had changes made to it with correction fluid [...] making the operations carried out to deduce the writing underneath unsuccessful."¹³⁴

124. With regard to the foregoing, the Court notes that the irregularities committed during that stage of the investigation had been established internally since 2004, following a visit made to the city of Comodoro Rivadavia, Chubut, by the Human Rights Secretariat of the Nation in order to investigate the actions being taken with regard to the disappearance of Mr. Torres. In a report, that body established that "the pretrial examination of the case [was] plagued with errors and material sloppiness." Likewise, that report places on the record that "the actions [of the local police] were protected by the Judge pursuing the preliminary investigation [...]," and that "the local young people from poor backgrounds suffer[ed] permanently from abuse at the hands of police and the local magistrates." Among other things, the report recommended "the intervention of another body (Federal Police, Gendarmerie, Prefecture, etc.) to carry out an investigation," and that this body be "agreed upon by the provincial government." In addition, it recommended "a political trial of the

¹³¹ Cf. *Case of Heliodoro Portugal V. Panamá*, *supra* note 69, para. 150; *Case of Radilla Pacheco V. México*, *supra* note 23, para. 215, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 167.

¹³² Cf. *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 173.

¹³³ Resolution of the Fiscal Public Ministry of the Province of Chubut on August 18, 2004 (case file of annexes to the application, tome XI, folios 8508 and 8509).

¹³⁴ Expert Report no. 34.269 carried out by Office of Cientific Police la Dirección of Policía Científica of the Nacional Police on December 10, 2004 (case file of annexes to answer to the application, annex 1, tome V, folio 17397).

judge in charge of Examining Judge No. 2[...].”¹³⁵ At the same time, the “Aide-Mémoire on the Investigation of the Iván Eladio Torres Case” prepared by the Ministry of Justice, Security, and Human Rights, based on the report previously indicated, suggested among other things that one of the measures that should be taken was the intervention of an independent judge who “was not contaminated by the case” and the creation of a Specialized Unit of the Office of the Public Prosecutor to exhaustively investigate the case.¹³⁶

125. In addition, although neither the Commission nor the State submitted evidence on this, the Court notes that they both indicated that on May 26, 2004, the governor of the Province of Chubut and the State Prosecutor brought a request for a “jury trial” before the Council of Magistrates in that province against Examining Judge No. 2. Moreover, the State noted that the Superior Tribunal of Justice of the Province of Chubut decided to submit to the Council of Magistrates the case file of said judge, due to the “alleged” poor performance of duties, qualified as a formal complaint. According to what the Commission has indicated, that Judge was accused of, among other things, poor performance of his duties on having for quite some time entrusted the investigation of the facts that took place with regard to Mr. Torres to the personnel of the First Precinct. He was also accused of causing the delay in the resolution of the court cases. According to that noted by the State, prior to the requests for the respective political trial, the judge presented his resignation, which was accepted by the Council of Magistrates.

126. The reports of the Secretariat on Human Rights of the Nation was used by the State Prosecutor of Province of Chubut on July 6, 2004, to set up a special unit to investigate the enforced disappearance of Mr. Torres Millacura. The State Prosecutor instructed that special unit to be assigned case 1138/03 in proceedings before Examining Judge No. 2, among others.¹³⁷ Following that assignment, the investigation was largely directed by the Special Unit.

B.2. Actions taken by the federal authorities.

127. As a result of the motion to contest provincial jurisdiction in favor of federal jurisdiction filed on September 16, 2004, by Mrs. Millacura Llaipén,¹³⁸ in 2007, the Supreme Court of Justice of the Nation ruled that “taking as a basis that the fact of the proceeding is considered in the context of the crime of enforced disappearance of persons provided for in the Inter-American Convention [on Forced Disappearance of Persons], incorporated by law [...] into the National Constitution,” federal courts have jurisdiction

¹³⁵ Cf. Report of the Verification Mission of the Alleged Enforced Disappearance of Iván Eladio Torres based on the mission carried out on February 24, 25, and 26, 2004 at Comodoro Rivadavia, Chubut (case file of annexes to the application, tome I, folio 228).

¹³⁶ Cf. Memory Aid on the Investigation of the case of Iván Eladio Torres on July 1, 2004, (case file of annexes to the application, tome I, folios 231 and 232).

¹³⁷ Cf. Resolution 47/04 of the Attorney General of the Province of Chubut, July 6, 2004 (case file of annexes to the brief of pleadings and motions, tome of footnotes to the brief of pleadings and motions, folios 17827 to 17828).

¹³⁸ Cf. brief of María Leontina Millacura Llaipén of September 16, 2004 (case file of annexes to the application, tome XI, folios 8647 to 8662).

over the investigation into what happened to Iván Eladio Torres Millacura.¹³⁹ As a consequence, the action was moved before a federal judge in the city of Comodoro Rivadavia, Province of Chubut, given case file 7020, titled “Millacura Llaipén, María Leontina s/ Dcia. Desaparición Forzada de Persona.”

128. On October 15, 2007, the Federal Judge issued an interlocutory judgment concluding that there was not sufficient evidence to allow the absence of Iván Eladio Torres Millacura to be classified as an enforced disappearance of persons. The judge ordered two of the agents to be processed while released on their own recognizance for the crime of illegal deprivation of liberty. The judge also ordered one more to be processed for the crime of intrusion into the home in relation to one of the detentions to which Iván Eladio Torres Millacura was allegedly the subject of in September 2003. However, the processing of all of the agents for both enforced disappearance and for other crimes related to the facts was dismissed. Likewise, the Federal Judge ruled that the action would continue in order to "deepen the search for Iván Eladio Torres Millacura along with the inquiries with regard to the reasons for his unexplained absence [...]."¹⁴⁰

129. Mrs. María Leontina Llaipén did not appeal the ruling. However, the Federal Public Prosecutor of first instance appealed the judgment on October 23, 2007, arguing, among other things, that “the circumstances of Mr. Torres Millacura’s disappearance are still not sufficiently established,” for which reason the participation of all the police officials accused should not be discarded, especially when the pretrial examination "was in the middle of measures intended to locate the whereabouts [of Mr. Torres]."¹⁴¹

130. In a judgment dated February 28, 2008, the Federal Appeals Chamber of Comodoro Rivadavia overturned the judgment handed down by the Federal Judge, partially annulling the dismissals and indicating that, in general, there was no lack of merit, for which reason it ordered that the investigations in the action continue.¹⁴² The action was returned to the same federal court.

131. The federal judge in charge of the action had ordered that several evidentiary steps be taken, among them the investigation of the whereabouts of Mr. Torres through INTERPOL and the offering of a reward, as well as the gathering of several testimonies, phone tapping, and home searches. On January 20, 2011, the judge issued a new order for the 15 police officers belonging to the Chubut Police to be tried without preventive detention “as criminally liable perpetrators of the crime of enforced disappearance of persons against victim Iván Eladio Torres Millacura on October 3, 2003, in the city of Comodoro Rivadavia.” Likewise, the judge ordered "an embargo be placed on the property

¹³⁹ Cf. Judgment ordered by the Supreme Court of Justice of the Nation of March 13, 2007 (case file of annexes to the answer to the application, annex 1, body XVII, folio 21028).

¹⁴⁰ Cf. Judgment ordered by the Federal Judge of Comodoro Rivadavia in case file 7020 of October 15, 2007 (case file of annexes to the answer to the application, annex 1, body XXIV, folios 22766 to 22769).

¹⁴¹ Cf. appeal filed by the Federal Prosecutor in charge of the Federal Prosecutor’s Office of Comodoro Rivadavia on October 23, 2007 (case file of annexes to the answer to the application, annex 1, body XXV, folios 22879 to 22880).

¹⁴² Cf. Judgment ordered by the Federal Appeals Chamber of Comodoro Rivadavia of February 28, 2008 (case file of annexes to the answer to the application, annex 1, body XXV, folios 23041 to 23057).

of [those] agents [...] in order to guarantee the pecuniary penalty of criminal and civil liability that could be applied to them.”¹⁴³ This judgment was appealed by all those accused.

132. On May 26, 2001, the Comodoro Rivadavia Federal Appeals Chamber annulled the January 20, 2011, judgment based, among other things, on the reasoning that "the structure of the interlocutory ruling, aside from its length, is highly confusing and imprecise, as [...] it does not differentiate the actions it reproaches of each of the accused and does not evidence a logical structure and construction.”¹⁴⁴ The judgment also indicates that "the magistrate has not specifically described the action brought against each one of the accused, concluding [...] that they all contributed to impunity [but] without indicating what their contribution consisted of in each case, much less why that 'conviction of impunity' [...] would be subsumed in the crime of enforced disappearance of persons.”¹⁴⁵ According to the Federal Chamber of Appeals, this prevented the accused from learning with exactitude which facts were being used to accuse them and the specific reasons for which their intervention and participation in the disappearance of Mr. Torres Millacura was ruled proven. Specifically, that Chamber found that the central offense of the ruling consisted of a lack of basis and in an infraction of the right to defense.¹⁴⁶ In its final written arguments, the State clarified that this ruling had annulled the proceedings, but had not acquitted the accused, for which reason the investigations continue.

133. Regarding the foregoing, the Court notes that on the domestic level, federal authorities are currently in charge of the investigation and processing of those likely responsible for the detentions and the enforced disappearance of Mr. Iván Eladio Torres Millacura. In this regard, the Court has already indicated that Article 8(1) of the Convention enshrines the guidelines of so-called "legal due process" that entail, among other things, the right of every individual to a hearing within a reasonable period of time.¹⁴⁷ In consideration of the actions taken from the time Mrs. Millacura Llaipén denounced the disappearance of her son, the Tribunal highlights that approximately eight years have passed since Mr. Torres disappeared, and responsibility has still not been determined, meaning that this case remains in impunity. Impunity has been defined by this Court as the total lack of investigation, persecution, capture, prosecution, and conviction of those responsible for violations of the rights protected by the American Convention.¹⁴⁸

C. *Habeas corpus presented by Fabiola Valeria Torres.*

¹⁴³ Cf. Judgment ordered by the Federal Judge of Comodoro Rivadavia in the case file 7020 of January 20, 2011 (case file of annexes to the answer to the application, annex 2, folios 23958 to 23959).

¹⁴⁴ Cf. Judgment ordered by the Federal Appeals Chamber of Comodoro Rivadavia of May 26, 2011 (case file of annexes to the answer to the application, annex 1, body XXVIII, folio 23755).

¹⁴⁵ Cf. Judgment ordered by the Federal Appeals Chamber of Comodoro Rivadavia on May 26, 2011 (case file of annexes to the answer to the application, annex 1, body XXVIII, folio 23755).

¹⁴⁶ Cf. Judgment ordered by the Federal Appeals Chamber of Comodoro Rivadavia on May 26, 2011 (case file of annexes to the answer to the application, annex 1, cuerpo XXVIII, folio 23756).

¹⁴⁷ Cf. *Case of Genie Lacayo V. Nicaragua. Merits, Reparations and Costs*. Judgment of January 29, 1997. Series C No. 30, para. 74; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 291, and *Case of Cabrera and Montiel V. México*, *supra* note 51, para. 140.

¹⁴⁸ Cf. *Case of the "White Van" (Paniagua Morales et al.) V. Guatemala. Preliminary Objections*. Judgment of January 25, 1996. Series C No. 23, para. 173; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 172, and *Case of Vera Vera et al. V. Ecuador*, *supra* note 17, para. 97.

134. Both the Commission and the representatives indicated that October 27, 2003, Valeria Torres filed a writ of *habeas corpus* in favor of her brother, Mr. Iván Eladio Torres, with Examining Judge No. 2, who was hearing the case. In this regard, the Court notes that the Commission did not make any arguments of law on this point. Indeed, the Commission limited itself to referring to the filing of the writ without indicating the course the writ took. The representatives indicated that on June 30, 2004, the aforementioned Investigative Judge ordered the “stay” of the writ. However, they did not provide any evidence to support this allegation. Therefore, given the lack of evidence for analyzing this point, the Court will not rule thereon.

D. *Dossier on the search for Iván Eladio Torres Millacura.*

135. It can be noted from the case file that parallel to the main legal action, the Federal Judge is processing a "dossier with records on the search" for Mr. Torres Millacura, showing that multiple steps have been ordered exclusively toward establishing the whereabouts of Mr. Iván Eladio Torres Millacura. Among other measures, they highlight the offer of rewards to those who provide information on the whereabouts of Mr. Torres Millacura, the request for support from INTERPOL to verify the whereabouts of Mr. Torres Millacura even if he is not in Argentine territory, and the setting up of a 24-hour telephone number and an e-mail address for collecting information on his whereabouts.¹⁴⁹

136. The Court has established that as part of its obligation to investigate, the State must carry out a serious investigation in which it makes all efforts possible to determine quickly the whereabouts of the victim, as the family members’ right to learn the fate or whereabouts of the disappeared victim¹⁵⁰ constitutes a measure of reparation and therefore an expectation that the State must satisfy.¹⁵¹ It is highly important to the family members of the disappeared victim that his whereabouts or final destination be established, as this alleviates the anguish and suffering caused by the uncertainty surrounding the whereabouts and fate of their disappeared family member.¹⁵²

137. Regarding this, the Court notes that the State has made several efforts toward locating the whereabouts of Mr. Torres Millacura as part of its duty to investigate what happened. However, Mr. Torres Millacura is still disappeared.

E. *Administrative actions.*

¹⁴⁹ Cf. case file with proof of the search of Iván Eladio Torres Millacura (case file of annexes to answer to the judgment, annex III, tomes I, II, III, IV and V).

¹⁵⁰ Cf. *Case of Castillo Páez V. Perú. Reparations and Costs*. Judgment of November 27, 1998. Series C No. 43, para. 90; *Case of Ticona Estrada V. Bolivia*, *supra* note 69, para. 155, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 214.

¹⁵¹ Cf. *Case of Neira Alegría et al. V. Perú. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 69; *Case of Ticona Estrada V. Bolivia*, *supra* note 69, para. 155, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 214.

¹⁵² Cf. *Case of Ticona Estrada V. Bolivia*, *supra* note 69, para. 155, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 214.

138. On January 12, 2004, the Police of the Province of Chubut launched an *ex officio* administrative preliminary investigation in order to carry out the corresponding inquiries to establish and/or demarcate police officers' responsibility.¹⁵³ Among the measures taken as part of this investigation are dragnets and searches in different areas of Comodoro Rivadavia, Province of Chubut, as well as in other provinces of Argentina; the request for documents and information from provincial and federal authorities among others; the submission of testimony given by police personnel before the Investigating Judge No. 2, and the carrying out of interviews and gathering of statements from various individuals. However, as can be deduced from the title of the case file of the investigation, this preliminary investigation was put on hold, "subordinated to the judicial action."¹⁵⁴ Therefore, as of this date, no police agent has been administratively punished for the events that took place with regard to Mr. Iván Eladio Torres Millacura.

F. Final conclusions.

139. The Court concludes that the investigation of the detentions, the acts of torture suffered by Mr. Torres Millacura, and his later enforced disappearance - considered as a whole - has not been carried out in a diligent manner and within a reasonable period of time. Therefore, the Court finds that the State violated the rights established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of María Leontina Millacura Llaipén, Fabiola Valeria Torres, and Marcos Alejandro Torres Millacura, relatives of Mr. Iván Eladio Torres Millacura. Likewise, the Tribunal finds that the lack of investigation into the enforced disappearance of Mr. Torres Millacura and of the acts of torture to which he was subjected also constitute a failure to comply with the obligations enshrined in Article I.b) of the Convention on Forced Disappearance, as well as Articles 1, 6, and 8 of the Inter-American Convention Against Torture, to the detriment of the victims. Those Articles impose on States Parties the obligation to investigate conduct that is prohibited by those treaties and to punish those responsible. (*supra* paras. 90 and 109).

X

RIGHT TO HUMANE TREATMENT [PERSONAL INTEGRITY] WITH REGARD TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS WITH RESPECT TO MARÍA LEONTINA MILLACURA LLAIPÉN, FABIOLA VALERIA TORRES, AND MARCOS ALEJANDRO TORRES MILLACURA

140. The Court also accepts the acknowledgment of responsibility made by the State with regard to the suffering caused to Mrs. María Leontina Millacura Llaipén and Mrs. Fabiola Valeria Torres, as well as Mr. Marcos Alejandro Torres Millacura, as a consequence of the enforced disappearance of Mr. Torres Millacura. This constitutes a violation of Article 5 of the American Convention (*supra* para. 36). The Tribunal will now refer to the proven facts in order to later specify the scope of this violation.

¹⁵³ Cf. decision of the Police Inspector of the Police Department of Chubut of January 12, 2004 (case file of annexes to the final written arguments of the State, drafted on July 18, 2011).

¹⁵⁴ Case file of the claim "Área URCR S/Inv. Fin Establecer y/o Deslindar Responsabilidades Administrativas [*ilegible*] y Personal Policial Sec[c]ional Primera Respecto Desaparición Ciudadano Iván Eladio Torres 2004" (case file of annexes to the final written arguments of the State, folio 25510).

A. *Non-disputed facts.*

141. The State recognized that “the suffering experienced by the relatives of Iván [Eladio Torres Millacura] due to [his] illegal and arbitrary deprivation of liberty [...], the lack of information on his whereabouts, his disappearance, and the lack of investigation into what happened, as well as the powerlessness and anguish suffered during years of inactivity by State authorities toward bringing the facts to light and punishing those responsible, despite repeated requests and complaints to authorities over more than six years,” constituted the basis for which the family members should be considered victims of cruel, inhumane, and degrading treatment.

B. *Considerations of the Court.*

142. The Court has found, in numerous cases, that the family members of the victims of human rights violations can themselves be victims.¹⁵⁵ Particularly, in cases involving the enforced disappearance of persons, it is possible to understand the violation of the right to psychological and moral integrity of the family members of the victims as a direct consequence of this phenomenon, as the fact itself of the enforced disappearance causes them severe suffering. This suffering increases due to, among other factors, State authorities’ consistent refusal to provide information on the whereabouts of the victim or to initiate an effective investigation to establish what occurred.¹⁵⁶ Also, this Court has established that the deprivation of truth with regard to the whereabouts of the victim of enforced disappearance entails a form of cruel and inhumane treatment for close family members.¹⁵⁷

143. In this case, in addition to the acknowledgment of international responsibility made by the State the Court observes that Mrs. Millacura Llaipén complained repeatedly of the enforced disappearance of her son before State authorities, without receiving answers in regard to his whereabouts in a reasonable period of time (*supra* para. 139). Likewise, in her testimony given in the hearing before this Court, Mrs. Millacura Llaipén stated that:

Apologies or requests for forgiveness are useless to [her] because that's not enough for a mother. They've destroyed [her] life. They destroyed it completely, [she] is a woman who lives superficially, [she's] dead inside, they destroyed [her] family [...]. If [her] son is not with [her], it's not enough for [her], it's nothing, the only thing that will be enough and allow [her] to continue living is to have [her] son, Iván [Eladio Torres Millacura at her] side[.]

¹⁵⁵ Cf. *Case of Castillo Páez V. Perú. Merits*. Judgment of November 3, 1997. Series C No. 34, Operative Paragraph 4; *Case of Chitay Nech et al. V. Guatemala*, *supra* note 69, para. 220, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 126.

¹⁵⁶ Cf. *Case of Blake V. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114; *Case of Radilla Pacheco V. México*, *supra* note 23, para. 161, and *Case of Chitay Nech et al. V. Guatemala*, *supra* note 69, para. 220.

¹⁵⁷ Cf. *Case of Trujillo Oroza V. Bolivia*, *supra* note 14, para. 114; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 240, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 133.

144. Likewise, the testimony given before this Tribunal indicates that Marcos Alejandro Torres Millacura and Fabiola Valeria Torres suffered deep pain given the absence of their brother, and that both of them took actions toward discovering his whereabouts.¹⁵⁸ Regarding this latter individual, the case file before the Court indicates that Fabiola Valeria Torres was living with her mother and brother, Mr. Iván Eladio Torres Millacura, at the time he was disappeared and that she brought a writ of *habeas corpus* in favor of her brother that same month. (*supra* para. 134).

145. Based on the foregoing considerations, the Tribunal concludes that the State violated the right to humane treatment [personal integrity] recognized in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of thereof, to the detriment of María Leontina Millacura Llaipén, Fabiola Valeria Torres, and Marcos Alejandro Torres Millacura.

XI DUTY TO ADOPT DOMESTIC LEGAL PROVISIONS

A. *Arguments of the parties.*

146. The Inter-American Commission indicated that on October 11, 1995, Law 24.556 was promulgated in Argentina. Through this law, the State approved the Inter-American Convention on Forced Disappearance of Persons on the federal level. Likewise, it alleged that the judicial authorities hearing this case have carried out the investigation of the facts and the processing of those allegedly responsible in keeping with a definition of the crime of enforced disappearance of persons based on the Convention on Forced Disappearance, as in Argentina, such activity "is not codified" as a crime. Therefore, the Commission indicated that "as of the drafting of the application, the State had not definitively complied" with the provisions of Article III of the Convention on Forced Disappearance. Based on this, the Commission indicated that the State failed to comply with the obligation established in Article 2 of the American Convention, in relation to Articles 3, 4, 5, 7, 8(1), 25, and 1(1) thereof. In general terms, the representatives agreed with this argument.

147. In its response to the application, the State did not put forward any specific arguments on this point. However, it accepted the conclusions contained in the Report on the merits, as well as the juridical consequences derived thereof. (*supra* paras. 6 and 31).

B. *Considerations of the Court.*

148. The Court has already referred to States' general obligation to adjust their domestic laws to the provisions of the American Convention, under the terms of Article 2 of the American Convention.¹⁵⁹ This same obligation is applicable to the States adhering to the

¹⁵⁸ Cf. Testimony rendered before notary public by Marcos Alejandro Torres Millacura (case file on the merits, tome II, folios 1172 to 1179), and Testimony rendered before notary public by Fabiola Valeria Torres (case file on the merits, tome II, folios 1109 to 1115).

¹⁵⁹ Article 2 of the Convention establishes the following:

Inter-American Convention on Forced Disappearance of Persons, as that obligation derives from a customary norm according to which a State that has signed an international convention must introduce the necessary modifications to its domestic laws to ensure compliance with the obligations it assumes.¹⁶⁰

149. On October 31, 1995, Argentina ratified the Inter-American Convention on Forced Disappearance of Persons. The Convention entered into force for that State on February 28, 1996, the date on which it deposited the ratification instrument with the Secretariat of the Organization of American States. Therefore, since that moment Argentina has had a specific obligation to define that crime in keeping with Article III of that instrument.¹⁶¹ However, in this case, the Inter-American Commission did not allege that the failure to codify the crime of enforced disappearance of persons has constituted an impediment or obstacle to the investigation into what happened to Mr. Torres. Therefore, the Court cannot rule abstractly on this point.

150. Nevertheless, the Tribunal highlights that during the public hearing, the State indicated that "Law 26.679 had just been approved. This law modifies the Criminal Code of the Nation and includes the codification" of the crime of enforced disappearance of persons. At the President's request for evidence to facilitate adjudication (*supra* para. 13), the State submitted a copy of the aforementioned law to the Court, in which it can be noted that the law was passed on April 13, 2011, and promulgated on May 5, 2011.¹⁶² Likewise, the Court highlights, as already indicated in this Ruling (*supra* para. 127), that the Supreme Court of Justice of the Nation of Argentina ordered, among other things, that the investigation into what happened to Mr. Torres be carried out in keeping with the provisions of the Convention on Forced Disappearance. (*supra* para. 3).

151. The Commission also requested that the Court to declare a violation of Article 2 of the American Convention, in relation to Articles 3, 4, 5, 7, 8(1) and 25 of the American Convention. However, it did not present arguments relating Article 2 with these Articles. For this reason, the Tribunal will not rule on this request.

XII OBLIGATION TO RESPECT RIGHTS

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.

¹⁶⁰ Cf. *Case of Garrido and Baigorria V. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 68; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia, supra note 14*, para. 193, and *Case of Vélez Loor V. Panamá, supra note 9*, para. 290.

¹⁶¹ This provision establishes that States "undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose[...]" Likewise, in accordance with article I.d) of this instrument, States Parties commit to "tak[ing] legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention."

¹⁶² Cf. Law 26.679 sanctioned by Argentinian Congress on April 13, 2011 (case file of annexes to the final written arguments of the State, folio 25360).

A. Arguments of the parties.

152. The Inter-American Commission argued that, in this case, the State has not complied with the obligation contained in Article 1(1) of the American Convention to respect and guarantee the rights established in that instrument, given that the State violated the rights established in Articles 5, 7, 8, and 25 of the Convention. The Commission also alleged that, independent of the domestic distribution of jurisdiction, the State "must make the Province of Chubut adopt measures to ensure compliance with the rights established in the Convention, particularly regarding due diligence in the investigation of the facts denounced by the family members of Iván Eladio Torres Millacura." Moreover, the Commission also indicated that "the goal of safeguarding the human rights established generally in the American Convention- and the aforementioned provisions in particular - takes precedence over any reference to the domestic distribution of jurisdiction or organization of the entities comprising a federation."

153. The representatives did not submit arguments specifically on this point. However, they "supported" the Commission's application. (*supra* para. 5).

154. The State did not refer to this point. However, it accepted the conclusions contained in the Report on the merits, as well as the juridical consequences derived therefrom, which includes the arguments formulated by the Commission with regard to this point (*supra* paras. 6 and 31).

B. Considerations of the Court.

155. The Tribunal has already established a failure to comply with the obligation established in Article 1(1) of the American Convention with regard to each of the rights declared to have been violated in this Judgment (*supra* paras. 76, 80 to 82, 89, 107 to 108, 139, and 145). Therefore, the Court does not find it necessary to rule on this argument separately.

156. Nevertheless, the Court notes that the Commission also argued that Argentina did not adopt the necessary measures on the federal level to make the Province of Chubut investigate what happened to Iván Eladio Torres Millacura. In this regard, at different times, similar pleadings have been analyzed by the Court in the context of the obligations imposed upon States by Article 28 of the American Convention. With regard to this Article, the Tribunal has held that a pleading on an alleged failure to observe the obligations established in Article 28 of the Convention must refer to a fact of sufficient weight in order to be ruled true noncompliance.¹⁶³ In this case, the Commission's arguments are not sufficient for the Court to declare noncompliance. For this reason, the Court will not rule on this request.

XIII
REPARATIONS
(Application of Article 63(1) of the American Convention)

¹⁶³ Cf. *Case of Escher et al. V. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200, para. 220, and *Case of Garibaldi V. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 23, 2009. Series C No. 203, para. 148.

157. Based on the provisions of Article 63(1) of the American Convention,¹⁶⁴ the Court has established that any violation of an international obligation which has caused harm carries with it the duty to provide adequate reparations.¹⁶⁵ This provision “reflects a customary norm that is one of the fundamental principles of contemporary international law regarding the responsibility of the States.”¹⁶⁶

158. This Tribunal has established that reparations must have a causal link to the facts of the case, the violations declared, and the damage attributed to those violations, as well as to the measures requested in reparation of the corresponding damages. Therefore, the Court must examine that concurrence in order to duly rule in keeping with the law.¹⁶⁷

159. In consideration of the violations of the American Convention, the Convention on Forced Disappearance, and the Convention Against Torture declared in the prior chapters, the Tribunal will proceed to examine the requests presented by the Commission and the representatives, as well as the arguments of the State. It will do so according to the standards set in the Court’s jurisprudence with regard to the nature and scope of the obligation to provide reparations,¹⁶⁸ with the purpose of stipulating measures aimed at providing reparations for the damages caused to the victims.

A. *Injured Party.*

160. The Tribunal reiterates that under Article 63(1) of the American Convention, those who have been declared victims of a violation of a right enshrined in the Convention are considered injured parties. The victims in this case are Iván Eladio Torres Millacura, María Leontina Millacura Llaipén, Fabiola Valeria Torres, and Marcos Alejandro Torres Millacura, and thus, they will be considered the beneficiaries of the reparations that this Court orders.

B. *Obligation to investigate the facts and determine the whereabouts of Iván Eladio Torres Millacura.*

¹⁶⁴ Article 63(1) holds that: “If the Court finds that there has been to violation of a right or freedom protected by [the] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”

¹⁶⁵ Cf. *Case of Velásquez Rodríguez V. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Chocrón Chocrón V. Venezuela*, *supra* note 24, para. 143, and *Case of Mejía Idrovo V. Ecuador*, *supra* note 17, para. 126.

¹⁶⁶ Cf. *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 62; *Case of Chocrón Chocrón V. Venezuela*, *supra* note 24, para. 143, and *Case of Mejía Idrovo V. Ecuador*, *supra* note 17, para. 126.

¹⁶⁷ Cf. *Case of Ticona Estrada et al. V. Bolivia*, *supra* note 69, para 110; *Case of Chocrón Chocrón V. Venezuela*, *supra* note 24, para. 146, and *Case of Mejía Idrovo V. Ecuador*, *supra* note 17, para. 129.

¹⁶⁸ Cf. *Case of Velásquez Rodríguez V. Honduras. Reparations and Costs*, *supra* note 165, paras. 25 to 27; *Case of Chocrón Chocrón V. Venezuela*, *supra* note 24, para. 144, and *Case of Mejía Idrovo V. Ecuador*, *supra* note 17, para. 127.

B.1. Arguments of the parties.

161. The Commission asked the Court to order the State to "carry out a full, impartial, effective, and prompt investigation of the facts, with the purpose of identifying all the masterminds and perpetrators who participated in the facts related to the arbitrary detention, torture, and enforced disappearance of Iván Eladio Torres Millacura, establishing their responsibility, and punishing them." Likewise, it requested that the Court order the State "to fully, impartially, and effectively investigate the fate or whereabouts of Iván Eladio Torres Millacura," and that "in the event it is established that the victim is no longer alive, [that the State be ordered] to take the necessary measures to turn over his remains to [his] family members."

162. The representatives agreed with the Commission. Moreover, they held that "not a single person in Argentina has been accused of the crime of forcibly disappearing Iván Eladio Torres Millacura[, and that] the State remains inactive[,] guaranteeing impunity in this case." In this way, they requested that the Court order the State to "denounce the facts of this case [...] before the International Criminal Court [...] for investigation." Also, the representatives expressed that "the expectations [of the relatives of Iván Eladio Torres Millacura] do not lie in the Court ordering the State to 'look for Iván,' but rather that the Court order [...] the State to return him alive, exactly how they took him [*sic*]."

163. The State rejected the representatives' claims "as they do not meet international standards on reparations." In addition, it stated that "the facts of this case are being investigated currently by domestic judicial authorities." (*supra* paras. 132 and 133). Likewise, the State expressed that "parallel to the judicial action toward establishing the facts [and] identifying and punishing those responsible, a 'Search Dossier' is being processed in which several investigative measures have been taken." (*supra* paras. 135 and 137).

B.2. Considerations of the Court.

164. Taking this into account, the Court orders the State to remove all obstacles, *de facto* and *de jure*, that keep this case in impunity,¹⁶⁹ and orders that all those investigations that may be necessary be launched in order to identify and, where appropriate, punish those responsible for the facts that took place with regard to Mr. Torres Millacura. The State shall direct and complete the pertinent investigations and proceedings within a reasonable period of time in order to establish the truth of the facts. In particular, the State shall:

- a) start and/or conclude the pertinent investigations with regard to the facts to which Mr. Iván Eladio Torres Millacura was a victim, taking into account the systematic pattern of police abuse that exists in the Province of Chubut, with the goal that the proceeding and the pertinent investigations be conducted in consideration of these facts, avoiding omissions in the collection of evidence and the pursuit of logical lines

¹⁶⁹ Cf. *Case of Myrna Mack Chang V. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 277; *Case of Manuel Cepeda Vargas V. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 216, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia, supra* note 14, para. 273.

of investigation. Those investigations must be directed toward determining the masterminds and perpetrators behind the facts of this case, and

b) ensure that the competent authorities carry out the corresponding investigations *ex officio* and that for doing so, they have and use all the logistical and scientific resources necessary to collect and process evidence and, in particular, that they have the means to access documentation and information that is pertinent to the investigation of the facts denounced and to promptly carrying out the actions and inquiries that are essential for bringing what happened to Iván Eladio Torres Millacura to light; and that the individuals who participate in the investigation - among them, the family members of the victims and witnesses - have all due guarantees for their security.

165. The Court finds that, based on its jurisprudence,¹⁷⁰ the State must ensure both full access for family members of victims and their capacity to take action at all stages of the investigation and trial of those responsible, in accordance with domestic law and the provisions of the American Convention. In addition, the results of the corresponding proceedings must be made public so that Argentine society can learn about the facts that are the subject of this case, as well as who is responsible for them.¹⁷¹

166. In addition, the Court notes that the State has launched actions toward establishing the whereabouts of Mr. Iván Eladio Torres Millacura. Thus, taking into account the jurisprudence of this Court,¹⁷² the Tribunal orders the State to continue with this search, and in doing so to make all efforts possible as quickly as possible. The Tribunal highlights that Mr. Torres Millacura disappeared almost eight years ago, and thus it is a fair expectation of his family members that the State take all effective actions to determine his whereabouts, and to adopt the measures necessary.

167. In addition, the Court notes that in the application's list of petitions, the Commission asked the Court to order the State to carry out an investigation "with regard to the individuals who are part of the various State bodies that have been involved in the investigations and proceedings carried out with regard to the facts of this case," in order to determine responsibility for deficiencies "that have resulted in impunity" (*supra* paras. 110, 117 to 119, 121 to 125, and 132 to 133). However, in the considerations of fact and law in the application, the Commission did not make any arguments on this point. For this reason, the Court will not rule on this request.

168. Finally, with regard to the representatives' request that the Court order the State to denounce the facts of this case before the International Criminal Court, this Tribunal does not have jurisdiction to order a State to bring a complaint against itself before any Tribunal

¹⁷⁰ Cf. *Case of the Caracazo V. Venezuela. Reparations and Costs*. Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 257, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 256.

¹⁷¹ Cf. *Case of the Caracazo V. Venezuela. Reparations and Costs*, *supra* note 170, para. 118; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 257, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 256.

¹⁷² Cf. *Case of Velásquez Rodríguez V. Honduras. Merits*, *supra* note 21, para. 181; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil*, *supra* note 70, para. 262, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 259.

or Court, whether national or international. Therefore, the representatives' request is clearly inadmissible.

C. Measures of satisfaction and non-repetition guarantees.

C.1. Public acknowledgment of international responsibility, naming of a plaza or street after Iván Torres Millacura, and publication of the Judgment.

169. The Commission asked the Court to order the State "to carry out a public act of recognition of its [international] responsibility with regard to the facts of this case and the redress of the victim and his relatives, as well as officially name a plaza or street in the city of Comodoro Rivadavia after Iván Eladio Torres Millacura as a way of preserving historic memory." They also requested "that certain acts of symbolic importance be held to guarantee the non-repetition of the crimes committed in this case."

170. The representatives expressly indicated that Mrs. Millacura Llaipén and her family "do not agree that the Argentine State should offer a public apology, publish the Judgment, erect a monument or name a street or plaza after Iván Eladio T[orres Millacura] as reparatory measures of satisfaction."

171. The State did not make any specific reference to this point, however it held that it understands "that the acknowledgment of responsibility made [before the Court] as a sovereign and unilateral act constitutes in itself reparations for the damages caused in this case."

172. The Tribunal notes that Mrs. Millacura Llaipén has expressly rejected that the State be ordered to carry out specific measures of reparation (*supra* para. 170). Therefore, as the Court has proceeded in previous cases with respect to statements such as this,¹⁷³ and given that these are measures of satisfaction for the victims, the Tribunal will not order these types of measures as reparation.

C.2. Training of police officials.

173. The Court has concluded in this Judgment that police abuses like the ones suffered by Mr. Torres Millacura are committed frequently in the Province of Chubut (*supra* para. 60 and 62). Thus, in order to guarantee the non-repetition of human rights violations, the Court finds it important to strengthen the institutional capacities of the police personnel of the Province of Chubut by training them on principles and rules of human rights protection, including the rights to life, humane treatment, and personal liberty, as well as on the limits to which they are subjected when they detain a person.¹⁷⁴ For this, the State must, within a reasonable

¹⁷³ Cf. *Case of Manuel Cepeda Vargas V. Colombia*, *supra* note 169, para. 213, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 286. Véase, además, el *Case of Fernández Ortega et al. V. México. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 30, 2010. Series C No. 215, para. 247, and el *Case of Fernández Ortega et al. V. México. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 25, 2010, Considering 6.

¹⁷⁴ Cf. *Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163, para. 303; *Case of Rosendo Cantú et al. V. México*, *supra* note 110, para. 249, and *Case of Cabrera García and Montiel Flores V. México*, *supra* note 51, para. 245.

period of time, implement a permanent and obligatory program or course on human rights directed toward all levels of the Chubut provincial police hierarchy and addressing the above-indicated points. As part of this training, reference must be made to this Judgment, to the jurisprudence of the Inter-American Court with regard to enforced disappearance of persons, inhumane and degrading treatment, torture, and personal liberty, and to Argentina's international human rights obligations derived from the treaties to which it is Party.¹⁷⁵

C.3. Legislative measures.

174. The Commission requested that the Court order the State "to take all corresponding legislative measures in order for Law 815[,] the 'Organic Policing Law' of the Province of Chubut[,] to be adjusted to meet the standards enshrined in the American Convention." Likewise, it asked the Court to order "the legislative measures that may be needed to codify enforced disappearance of persons as an offense."

175. The representatives asked the Court to "establish whether the crime of enforced disappearance is truly codified in Argentina and if, therefore, an individual can be processed and brought to trial in a timely fashion for [this] criminal offense."

176. During the public hearing, the State indicated, as already noted in this Judgment (*supra* para. 150), that the offense of enforced disappearance of persons has already been codified as an offense in Argentina.

177. In this regard, the Tribunal positively assesses that the Argentine State has codified the offense of enforced disappearance of persons in the Criminal Code of the Nation through Law 26.679, passed on April 13, 2011, and promulgated on May 15, 2011 (*supra* para. 150). Therefore, ordering this codification, as initially requested by the Inter-American Commission, is no longer appropriate.

178. In addition, as referred to in Chapter VIII of this Judgment, Law 815 modified by Law 4123, which was applied to the facts of this case, is no longer currently in force, replaced by Law XIX - No. 5. (*supra* para. 68). As this law was not analyzed by the Tribunal in this case, ordering changes to that law is not appropriate.

179. The Commission also requested in its final written arguments that the Court order the State to "[t]ake the necessary measures to modify any legislation that treats children or young adults as criminals or suspects [...] because they are poor or are on the streets." This reparatory claim was not made at the appropriate procedural moment - that is, in the application - and thus the Tribunal will not consider it for being time-barred.

D. Compensation.

D.1 Pecuniary damages.

¹⁷⁵ Cf. *Case of The Caracazo V. Venezuela. Reparations and Costs*, *supra* note 170, para. 127; *Case of Cabrera García and Montiel Flores V. México*, *supra* note 51, para. 245, and *Case of Gelman V. Uruguay*, *supra* note 76, para. 278.

180. This Tribunal has developed the concept of pecuniary damages in its jurisprudence and has established that they assume “the loss of or detriment to the victim’s income, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the case under review.”¹⁷⁶

D.1.1 Arguments of the parties.

181. The Commission asked the Court to order the State "to grant full reparations to the family members of Iván Eladio Torres Millacura, including [...] pecuniary damages."

182. The representatives asked the Court to order the State to pay, to the benefit of Iván Eladio Torres Millacura, the amount of US \$695,000.00 (six hundred and ninety-five thousand dollars of the United States of America) for pecuniary damages, as well as an additional monthly sum, starting October 2010, of US \$8,225.00 (eight thousand, two hundred and twenty-five dollars of the United States of America), “plus support and contributions for health insurance and Social Security from October 2003,” until he appears.¹⁷⁷ Likewise, for pecuniary damages, they requested US \$506,970.00 (five hundred and six thousand nine hundred and seventy dollars of the United States of America) plus US \$5,955.00 (five thousand nine hundred and fifty-five dollars of the United States of America) monthly, starting October 30, 2010, until Iván Eladio Torres Millacura appears, in favor of María Leontina Millacura Llaipén, Fabiola Valeria Torres, and Marcos Alejandro Torres Millacura.¹⁷⁸

183. For its part, the State asserted that the representatives "have not used any of the rational, prudent, or measured parameters available to them for calculating a legally viable and morally just compensatory claim according to applicable domestic and international standards" on the issue of reparations. In addition, the State holds that the representatives "did not include any valid evidence to even minimally justify the source [or] the amounts of the requested pecuniary reparations." Consequently, the State asked the Court to reject the claims of the representatives and "in keeping with the circumstances of the case, establish the reparations due to the family members of Iván Eladio Torres Millacura based on the principle of equity and in keeping with applicable international standards on the subject."

D.1.2. Considerations of the Court.

¹⁷⁶ Cf. *Case of Bámaca Velásquez V. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Chocrón Chocrón V. Venezuela, supra* note 24, para. 146, and *Case of Mejía Idrovo V. Ecuador, supra* note 17, para. 129.

¹⁷⁷ They argued that “[g]iven the deprivation of [Mr. Torres Millacura’s] right to work and to plan his future, [...] the Collective Work Agreement N° 605/10, should be used as reference, approved on September 10, 2010, in the highest branch of production,” in order to calculate the amount corresponding to this.

¹⁷⁸ In this regard, they held that Mr. Torres Millacura “was the breadwinner,” and that Mrs. Millacura Llaipén now “[d]edicates her life to the search for her son.” According to the representatives, Mrs. Millacura Llaipén has suffered much harm to her health “since [...] the moment of the enforced disappearance” of her son; Fabiola Valeria Torres “[I]ives marked by [...] the desperation of finding Iván [Eladio...]”, and neither her nor Marcos Alejandro Torres Millacura find work given that they are his siblings..

D.1.2.1. Iván Eladio Torres Millacura

184. The Court notes that as can be deduced from the case file, particularly the testimony given by Mrs. Leontina Millacura Llaipén and Mr. Marcos Alejandro Torres Millacura, at the time of his disappearance, Mr. Torres Millacura was unemployed. Nevertheless, it can also be deduced from that testimony that Mr. Torres Millacura often did different construction work.¹⁷⁹ The representatives did not submit pleadings or evidence allowing the Court to verify Mr. Torres Millacura's income for the different activities that he carried out. Consequently, the Court rules to establish, in equity, the amount of US \$40,000.00 (Forty thousand US dollars of the United States of America) or its equivalent in Argentine currency. This amount must be paid by the deadline that the Court establishes for doing so (*infra* para. 207).

D.1.2.2. María Leontina Millacura Llaipén, Fabiola Valeria Torres, and Marcos Alejandro Torres Millacura.

185. The Court notes that the representatives did not provide any evidence justifying the request for the total amount of US \$506,970.00 (five hundred and six thousand, nine hundred and seventy dollars of the United States of America), and US \$5,955.00 (five thousand, nine hundred and fifty-five dollars of the United States of America) monthly as of October 30, 2010, until Ivan Eladio Torres Millacura appears, for Mrs. Millacura Llaipén and her children, Fabiola Valeria Torres and Marcos Alejandro Torres Millacura, for pecuniary damages. In addition, it can be deduced from the case file that Mrs. Millacura Llaipén was unemployed at the time of the facts.¹⁸⁰ Nevertheless, it is reasonable to assume that Mrs. Millacura Llaipén made certain expenditures while looking for her son, given that as she told it, she lived in the First Precinct for more than one year in protest. This was not refuted by the State.¹⁸¹ Therefore, the Court rules to set, in equity, the amount of US \$10,000.00 (Ten thousand US dollars of the United States of America) in pecuniary damages in favor of Mrs. María Leontina Millacura Llaipén. This amount must be paid by the deadline that the Court establishes for doing so (*infra* para. 206).

186. With regard to Fabiola Valeria Torres and Marcos Alejandro Torres Millacura, the Tribunal finds that the representatives did not sufficiently establish the causal relationship between the fact that they could not find work and that they were Iván Eladio Torres' siblings. Nevertheless, with regard to Fabiola Valeria Torres, the Court finds it reasonable that she incurred certain costs due to the steps she took towards finding Mr. Torres Millacura,

¹⁷⁹ Cf. Testimony of María Leontina Millacura Llaipén rendered at the public hearing before this Court; Testimony rendered before notary public by Marcos Alejandro Torres Millacura on May 9, 2011 (case file on the merits, tome II, folio 1173). See also, the testimony rendered before notary public by Fabiola Valeria Torres on May 12, 2011 (case file on the merits, tome II, folio 1110).

¹⁸⁰ Cf. Testimony of María Leontina Millacura Llaipén rendered at the public hearing before this Court. Moreover, in the complaint filed by Mrs. Millacura Llaipén on October 14, 2003, before the First precinct of Comodoro Rivadavia, she testified that she was "unoccupied" (case file of annexes to the application, tome X, f. 7199). Moreover, in testimony rendered by Mrs. Millacura Llaipén before Examining Judge no. 2 on November 6, 2003, she notes she is "a housewife" (case file of annexes to the application, tome X, folio 7375).

¹⁸¹ Cf. Testimony of María Leontina Millacura Llaipén rendered at the public hearing before this Court.

such as bringing claims before the Precinct and sleeping there together with her mother,¹⁸² in addition to filing a writ of habeas corpus on behalf of her brother. (*supra* para. 134). Therefore, the Court rules to establish, in equity, the amount of US \$5,000.00 (five thousand US dollars of the United States of America) in pecuniary damages to her benefit. This amount must be paid by the deadline that the Court establishes for doing so (*infra* para. 206). Finally, with regard to Marcos Alejandro Torres Millacura, the Court takes into account that, as can be deduced from his testimony given before the Tribunal, he requested permission from his job to accompany his mother in the search for Iván Eladio Torres Millacura,¹⁸³ which reasonably enough meant a decline in his income. Therefore, the Court rules to establish, in equity, the amount of US \$2,000.00 (two thousand US dollars of the United States of America) in pecuniary damages to the benefit of Marcos Alejandro Torres Millacura. This amount must be paid by the deadline that the Court establishes for doing so (*infra* para. 206).

D.2. Non-pecuniary damages.

187. The Court has developed in its jurisprudence the concept of non-pecuniary damages and has established that it “can include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other harm that cannot be assessed in financial terms to the conditions of the victims or family.”¹⁸⁴

D.2.1 Arguments of the parties.

188. The Commission asked the Court “to grant full reparation to the family members of Iván Eladio Torres Millacura, including compensation for [...] moral damages.”

189. The representatives expressed that “there is no way to erase the other damaging consequences of a crime that is still being committed on a daily basis, even less so through a sum of money.” Nevertheless, they requested that the Court establish the amount of US\$80,000.00 (eighty thousand US dollars of the United States of America) for non-pecuniary damages to the benefit of Iván Eladio Torres.¹⁸⁵ In addition, they requested that the Court set “a monthly periodical amount [to be paid] until [Mr. Torres Millacura] appears.” Additionally, the representatives requested that the Court order the amount of US\$75,000.00

¹⁸² Cf. Testimony rendered before notary public by Fabiola Valeria Torres on May 12, 2011 (case file on the merits, tome II, folio 1112).

¹⁸³ Cf. Testimony rendered before notary public by Marcos Alejandro Torres Millacura of May 9, 2011 (case file on the merits, tome II, folio 1176). See, also, the Testimony rendered before notary public by Fabiola Valeria Torres of May 12, 2011 (case file on the merits, tome II, folio 1111).

¹⁸⁴ Cf. *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs*, *supra* note 166, para. 84; *Case of Chocrón Chocrón V. Venezuela*, *supra* note 24, para. 185, and *Case of Mejía Idrovo V. Ecuador*, *supra* note 17, para. 150.

¹⁸⁵ In this regard, they requested that the Court use as a basis the amounts ordered as non-pecuniary damage in the *Case of Radilla Pacheco V. México*, *supra* note 23.

(seventy-five thousand dollars of the United States of America) for María Leontina Millacura Llaipén and Fabiola Valeria Torres and Marcos Alejandro Torres Millacura.¹⁸⁶

190. The State expressed that the amount requested by the representatives "exceeds, by a wide margin, the international standards on reparations."

D.2.2. Considerations of the Court.

191. International jurisprudence has repeatedly established that the Judgment can constitute *per se* a form of reparation.¹⁸⁷ However, considering the circumstances of the case *sub judice*, the Court finds it pertinent to establish an amount as compensation for non-pecuniary damages.¹⁸⁸

192. Attending to the compensation ordered by the Tribunal in other cases on enforced disappearance of persons, in consideration of the circumstances of this case, the significance, character, and seriousness of the violations committed, the pattern of police abuse in which the disappearance took place, the suffering experienced by the victim, the time that has passed since the disappearance began, the denial of justice, the Court finds it pertinent to establish, in equity, the amount of US \$50,000.00 (fifty thousand dollars of the United States of America) to the benefit of Iván Eladio Torres Millacura as compensation for non-pecuniary damages. At the same time and for the same purpose, the Tribunal establish, in equity, compensation of US \$35,000.00 (thirty-five thousand dollars of the United States of America) to the benefit of Mrs. María Leontina Millacura Llaipén, as well as compensation of US \$10,000.00 (ten thousand dollars of the United States of America) to the benefit of Fabiola Valeria Torres and US \$5,000.00 (five thousand dollars of the United States of America) to the benefit of Marcos Alejandro Torres, given that the effects to personal integrity suffered by them as a consequence of the facts in this case have been proven, as have their efforts to locate the whereabouts of their son and brother, respectively. (*supra* paras. 141 to 145). These amounts must be paid in the period set by the Court (*infra* para. 206).

E. Costs and expenses.

193. As previously indicated by the Court on other occasions, costs and expenses are included in the concept of reparations enshrined in Article 63(1) of the American Convention.¹⁸⁹

¹⁸⁶ For this rubric, the representatives requested the Court to consider the *Case of Garrido and Baigorria V. Argentina. Reparations and Costs*, *supra* note 160.

¹⁸⁷ *Cf. Case of Vera Vera et al. V. Ecuador*, para. 135.

¹⁸⁸ *Cf. Case of Neira Alegría et al. V. Perú. Reparations and Costs*, *supra* note 152, para. 56; *Case of Chocrón Chocrón V. Venezuela*, *supra* note 24, paras. 149 and 191, and *Case of Mejía Idrovo V. Ecuador*, *supra* note 17, paras. 134 and 156.

¹⁸⁹ *Cf. Case of Garrido and Baigorria V. Argentina. Reparations and Costs*, *supra* note 160, para. 79; *Case of Chocrón Chocrón V. Venezuela*, *supra* note 24, para. 192, and *Case of Mejía Idrovo V. Ecuador*, *supra* note 17, para. 157.

E.1. Arguments of the parties.

194. The Commission asked the Court "to grant full reparations to the family members of Iván Eladio Torres Millacura, including [...] costs from litigating on the domestic and international levels."

195. The representatives did not request a specific amount for costs and expenses, however they stated that "the trips that [Mrs. Millacura Llaipén] made to search for her son have mostly been planned [...] and paid for [...] by [them]." Likewise, they asked the Court to take into account the expenses incurred¹⁹⁰ Likewise, they requested that the Court consider the other types of additional expenses to the litigation of this case. Also, they indicated that "the percentages of the fixed, indirect, [and] direct costs corresponding to this case [that were incurred...] to maintain a minimum structure for carrying out" the work must be taken into account. They also asked the Court to consider "the 'future costs' for the monitoring of compliance and litigation before the [International Criminal Court]." To arrive at an amount for costs and expenses, the representatives argued that the time spent on defense activities, the time invested in drafting the briefs, or the number of pages drafted by them could be counted up. In addition, they indicated that "the costs [...] of the Association Group for the Rights of the Children should [be paid]," estimating an amount "for the year 2006" of US\$35,000.00 (thirty-five thousand dollars of the United States of America).

196. The State held that the representatives' claims on expenses and costs "do not head to any sort of evidentiary rigor, abandoning the principles of reasonableness and necessity that apply to the subject according to international standards applicable to the case."

E.2. Considerations of the Court.

197. Expenses and costs include both those generated before domestic jurisdictional authorities and those incurred during the adversarial proceeding before the Inter-American System. In this regard, the Tribunal reiterates that the claims of the victims or their representatives as to costs and expenses and the supporting evidence must be offered at the first procedural occasion granted to them - that is, in the brief of pleadings and motions - notwithstanding that such claims may be updated later on according to new costs and expenses incurred during this proceeding.¹⁹¹ Likewise, it is not sufficient to simply submit evidentiary documentation. Rather, the parties are required to make an argument connecting

¹⁹⁰ The representatives requested the reimbursement of the expenses for the "mobilizations, marches, press conferences, trips to congress, forums, meetings, seminars, interviews [and] trips of dates of Ivan [sic], the grand majority of which are reflected in newspaper clippings." They also argued that "[o]f the documentary evidence it arises that the amount that [they have] invested in lobbying activities, notwithstanding the expenses to which they did not hold on to receipts, due to the time elapsed and the change of work that [...] they experienced [which ...] included moving."

¹⁹¹ Cf. *Case of Chaparro Álvarez and Lapo Iñiquez V. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C. No. 170, para. 275; *Case of Vera Vera et al. V. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011 Series C No. 224, para. 142, and *Case of Mejía Idrovo V. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 5, 2011 Series C No. 228, para. 162.

the evidence with the fact it is considered to represent and, with regard to alleged financial expenditures, to clearly establish the purposes and justification for them.¹⁹²

198. The Tribunal reiterates that it falls to the Court to prudently estimate those expenses, taking into account the circumstances of the specific case and the nature of the jurisdiction of international human rights protection. This estimate may be made based on the principle of equity and taking into account the expenses reported by the parties, provided their amount be reasonable,¹⁹³ ordering that the victims or their representatives be reimbursed by the State in the amounts that the Tribunal deems reasonable and duly supported.

199. This Court notes that the representatives did not specify an amount for costs and expenses. Moreover, the representatives did not offer any evidence to support the claim in of the amount of US \$35,000.00 (thirty-five thousand dollars of the United States of America) in favor of the Association for the Rights of Children, and thus it finds that request inadmissible. Likewise, the Court finds that some of the receipts supplied by the representatives are in support of expenses with no relation to the litigation in this case¹⁹⁴ or that were not solely incurred for this case.¹⁹⁵ Other receipts submitted by the representatives do not include the purpose for which the expenses were incurred, preventing verification of

¹⁹² Cf. *Case of Chaparro Álvarez and Lapo Iñiquez V. Ecuador*, *supra* note 29, para. 277; *Case of Salvador Chiriboga V. Ecuador. Reparations and Costs*. Judgment of March 3, 2011 Series C No. 222, para. 138, and *Case of Vera Vera et al. V. Ecuador*, *supra* note 17, para. 142.

¹⁹³ Cf. *Case of Garrido and Baigorria V. Argentina. Reparations and Costs*, *supra* note 160, para. 82; *Case of Chocrón Chocrón V. Venezuela*, *supra* note 24, para. 196, and *Case of Mejía Idrovo V. Ecuador*, *supra* note 17, para. 161.

¹⁹⁴ Cf. Reciept of “Cd. Latin Jazz; Cd. Tango Around the World; Pendant Butterfly-Heart Sun #5 Silver With Flow”, of August 27, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folios 12305 and 12398); Reciept of two “Orchid[s]”, of August 27, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folio 12398); Reciept of “Choc Art”, of August 27, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, *Merits*, folio 12398); reciept of lodging expenses, Jade Hotel Boutique in Costa Rica, August 22 to 26, 2010, (case file of annexes to the brief of pleadings and motions, annex 44, folios 12316 and 12414 to 12415); Reciept of exit tax from the República of Costa Rica, of August 27, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folios 12319 and 12419); receipt of airplan ticket, of August 20, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folios 12317 and 12416); receipt of purchases in the market Terra Verde, of August 27, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folio 12422); receipt of food expenses in the restaurant “Spoon”, of August 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folio 12422); receipt of food expenses, of September 9, 2009 (case file of annexes to the brief of pleadings and motions, annex 44, folio 12410), and receipt of purchase of two “adaptors” in Interbaires, S.A. (case file of annexes to the brief of pleadings and motions, annex 44, folio 12422). In this regard, it is necessary to mention that within the litigation of this case, there was no need for the representatives to visit Costa Rica, as this hearing was held in the Panama City, Panama.

¹⁹⁵ Cf. Reciept of an HP printer, of September 14, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folio 12303); receipt of telephone expenses of June 2 and 10, May 3, April 5, January 6, May 10, April 12, March 10, January 11, and February 10, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folios 12321 to 12373); receipt of telephone expenses of July 21, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folio 12383); receipt of telephone expenses of April 21, June 21, and May 21, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folios 12387 to 12389), and receipt of telephone expenses of April 5, May 10, and April 12, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folios 12424 to 12427). Moreover, the representatives presented a lease contract for a period of 24 months (case file of annexes to the brief of pleadings and motions, annex 44, folios 12374 to 12379).

whether those purposes were related with this case.¹⁹⁶ Thus, the Court finds that the expenses incurred during the domestic litigation and the litigation before the Inter-American System that are duly supported by the representatives equal approximately US\$4,614.00 (four thousand, six hundred AND fourteen dollars of the United States of America).¹⁹⁷ However, the Tribunal has previously indicated that, “[t]he quantum for this item may be established [...], based on the principle of fairness, even in the absence of elements of evidence regarding the precise amount of the expenses in which the parties have incurred, provided that the amounts respond to standards of reasonableness and proportionality.”¹⁹⁸ On the other hand, the Court considers it relevant to recall that the victims in this case, specifically Mrs. Millacura Llaipén, benefited from the Victim’s Legal Aid Fund in order to participate in the public hearing held before the Court in Panama City, Panamá (*supra* para. 5 and *infra* paras. 201 to 203).

200. Taking this into account and as a consequence, the Tribunal rules to establish, in equity, the amount of US\$ 15,000.00 (fifteen thousand dollars of the United States of America) for expenses incurred while processing this case before domestic bodies and the Inter-American System. This amount must be paid in the period set by the Court (*infra* para. 206) to Mrs. Millacura Llaipén, who herself must pay the corresponding amount to the individuals or organizations who have represented her domestically and before the Inter-American System. Subsequently, Mrs. Millacura Llaipén must present before the Court the receipts of this delivery. In the proceeding of monitoring of compliance with this Judgment, the Tribunal may order the State to reimburse the victim or her representatives for the duly demonstrated reasonable expenses during that procedural stage.

F. Reimbursement of expenses to the Victim’s Legal Aid Fund.

201. In 2008, the General Assembly of the Organization of American States (hereinafter the “OAS”) created the Legal Aid Fund of the Inter-American System of Human Rights. The fund was created “to facilitate access to the Inter-American Human Rights System by persons who currently lack the resources needed to bring their cases before the system.”¹⁹⁹ In this case, the victims were granted the financial assistance necessary from the Legal Aid Fund for Mrs. Millacura Llaipén and one of her representatives to appear at the public hearing held in

¹⁹⁶ Cf. Reciept of VISA Debit, of August 27, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folio 12304); receipt of payment with MAESTRO card, of August 22, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folio 12304); Receipt of cash withdrawal, of August 27, 2010 (case file of annexes to the brief of pleadings and motions, annex 44, folios 12305 and 12398), and Reciept with MAESTRO card, of December 7, 2009 (case file of annexes to the brief of pleadings and motions, annex 44, folio 12309).

¹⁹⁷ The Court observes that the representatives offered receipts for payment both in Argentine currency in US dollars. With regard to the former, the Court indicates that they did not make any reference to the exchange rate in force at the moment expenditures were made.

¹⁹⁸ Cf. *Case of the “White Van” (Paniagua Morales et al.) V. Guatemala. Reparations and Costs*, *supra* note 17, para. 213; *Case of Chitay Nech et al. V. Guatemala*, *supra* note 69, para. 53, and *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia*, *supra* note 14, para. 298.

¹⁹⁹ AG/RES. 2426 (XXXVIII-O/08) Resolution adopted by the General Assembly during the XXXVIII Regular Period of Sessions of the OAS, in the fourth plenary session, held on June 3, 2008, “*Creation of the Fund for Legal Aid of the Inter-American System of Human Rights*,” paragraph 2.a, and Order CP/RES. 963 (1728/09), 1.1.

Panama, as well as to submit the testimony of expert witness Nora Cortiñas (*supra* paras.10 and 40.b).²⁰⁰

202. The State had the opportunity to submit observations on the expenditures made in this case, which equaled US \$10,043.02 (ten thousand and forty-three dollars of the United States of America and two cents). Therefore, in application of Article 5 of the Rules of the Fund, it corresponds to the Court to evaluate whether to order the respondent State to reimburse the Legal Aid Fund for the expenditures made. The State did not present observations on this point.

203. Because of the violations declared in this judgment, the Court ordered the State to reimburse the Fund in the amount of \$ 10,043.02 (ten thousand and forty-three dollars of the United States of America with two cents) for the abovementioned costs incurred for the public hearing (*supra* para. 10). This amount shall be reimbursed within ninety days, as of legal notice this Judgment

G. Other claims of reparation.

204. The representatives requested other measures of reparation in their brief of pleadings and motions.²⁰¹ In its response to the application, the State expressed that "these reparations

²⁰⁰ Through an Order of the President of the Inter-American Court dated April 14, 2011, and in exercise of its attributes with relation to the Victims Legal Aid Fund of the Court and in keeping with Article 31 of the Rules of Procedure of the Tribunal and Article 3 of the Rules of Procedure of the Legal Aid Fund, the President of the Court ruled to grant the request submitted by the alleged victims through their representatives to have recourse to the Victims Legal Aid Fund of the Inter-American Court of Human Rights, such that it would grant the financial assistance necessary for the presentation of a maximum of one witness, one expert witness report, and the appearance of a representative during the public hearing. He ordered that the specific amount, recipients and purpose of the aid would be specified at the moment the ruling is made on the adduction of the evidence from experts and witnesses and, should it be the case, the opening of the oral procedure, under the terms of Article 50 of the Rules of Procedure of the Tribunal, in keeping with what has been established in Considering paragraph 13 of that Order. (*supra* para. 8)

²⁰¹ The representatives asked the Court to order the State: i) "to set up an 'executive working group' to design and implement measures toward protecting the life and physical integrity of the individuals covered by the provisional measures;" ii) "cease use of the building out of which the Comodoro Rivadavia First Precinct and Regional Unit of the Chubut Province Police operate as a 'place of temporary detention and clandestine detention center' [...and] transfer the property to Maria Leontina Millacura Llaipén and Iván Eladio Torres [Millacura, in order to transform it into] an open shelter for adolescents [...] 'living on the street,' an evangelical Christian church, and the seat of AMICIS - Patagonia Legal Clinic;" iii) "implement the general and specific recommendations of the Citizen Security and Human Rights Report of the [Commission] in all the provinces;" audit the implementation of the Plan to Guarantee the Quality of Medical Care in all the provinces;" iv) "set up the judicial investigation body under the Judicial Branch that is autonomous with regard to the judiciary, public defenders, and attorneys general;" v) "adhere to the Inter-American Pact on Education in Human Rights in all the provinces;" vi) "implement the reports on Human Rights Education of the [Inter-American Human Rights Institute];" vii) "include human rights material in all university degrees [and] include criminal studies in law degrees;" viii) "implement the provisions of the friendly settlement signed ['IACHR N° 1231/04 Inmates of Mendoza Penitentiaries['] throughout the country;" ix) pay the monthly amount of US\$482 (four hundred and eighty-two dollars of the United States of America) for a student scholarship for Fabiola Valeira Torres and her daughters until the latter reaches the age of 18, as well as US\$1900 (one thousand nine hundred dollars of the United States of America) after they turn 18, for as long as they continue their studies; x) authorize María Leontina Millacura Llaipén to "enter without restriction all places of detention and/or health facilities where she considers Iván Eladio Torres might be located;" xi) create to fund to guarantee the monthly payment of US\$1,915 (one thousand nine hundred and fifteen US dollars of the United States of America) to continue the search for Iván; and xii) pay the necessary funds in order for the Association Group for the Rights of Children to

[...] exceed the purpose of this case, and thus [it] expressly contest[ed] to them [...] and asked the Court to reject them] as they are not in keeping with the international standards on reparations.”

205. The Court notes that the representatives did not provide grounds for the specific need of several of the measures of reparation requested (*supra* para. 204). Therefore, and given that there is no apparent causal link between those measures and the violations declared in this case, the Tribunal rules them inadmissible.

H. Method of compliance with the payments ordered

206. The State shall pay the compensation for pecuniary and non-pecuniary damages directly to Mrs. María Leontina Millacura Llaipén, Fabiola Valeria Torres, and Marcos Alejandro Torres Millacura, as appropriate, and make the payment for costs and expenses directly to Mrs. María Leontina Millacura Llaipén, all within one year as of legal notice of this Judgment and according to the terms of the following clauses.

207. The payments corresponding to compensation for pecuniary and non-pecuniary damage in favor of Mr. Iván Eladio Torres should be delivered directly to Mrs. María Leontina Millacura Llaipén, within one year as of legal notice of this ruling.

208. In the event that the beneficiaries pass away before the corresponding compensation is paid, the compensation shall be paid directly to their successors in keeping with applicable domestic law.

209. The State shall comply with its obligations through the payment of dollars of the United States of America or Argentine currency, using for the corresponding calculation the currency exchange rate in force in New York, United States of America, on the day prior to the payment.

210. If for reasons attributable to the beneficiaries of the compensation, these have not been able to collect them within the period indicated, the State shall deposit those amounts in an account held in the beneficiaries' name or draw a certificate of deposit from an Argentine financial institution in dollars of the United States of America and under the most favorable financial terms allowed by the legislation in force and customary banking practice. If after 10 years the compensation is still unclaimed, the corresponding amount, plus any accrued interest, shall be returned to the State.

211. The amounts assigned in this Judgment for compensation and reimbursement of costs and expenses shall be paid to the individuals indicated in full and in keeping with the provisions of this Ruling, without reductions for future tax obligations.

212. Should the State fall into arrears with its payments, it shall pay interest on the amount owed corresponding to Argentine banking default interest rates.

be able to "install high security alarm systems in their headquarters with monitoring and direct communication to specialized bodyguard personnel."

CHAPTER XIV
OPERATIVE PARAGRAPHS

213. Therefore,

THE COURT,

DECLARES:

Unanimously, that:

1. It accepts the partial acknowledgment of international responsibility made by the Republic of Argentina, in the terms of paragraphs 30 to 31 and 34 to 36 of this Judgment.

2. The State is responsible for the violation of the right to personal liberty established in Article 7(1), 7(2) and 7(3) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 thereof, to the detriment of Iván Eladio Torres Millacura, in the terms of paragraphs 75, 79 to 81 and 107 of this Judgment.

3. The State is responsible for the violation of the right to humane treatment [personal integrity] established in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Iván Eladio Torres Millacura, in the terms of paragraphs 88 and 107 of this Judgment.

4. The State is responsible for the violation of the right to juridical personality, to life, to humane treatment [personal integrity], and personal liberty established in Articles 3, 4(1), 5(1), 5(2) and 7(1), 7(2), and 7(3) of the American Convention on Human Rights, with regard to Articles 1(1) and 2 of the Convention, as well as with regard to Articles I.a) and XI of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Iván Eladio Torres Millacura, in the terms of paragraphs 106 and 107 of this Judgment.

5. The State is responsible for the violation of the rights to fair trial [judicial guarantees] and judicial protection, established in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, as well as for its failure to comply with the obligations enshrined in Article I.b) of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1, 6, and 8 of the Inter-American Convention Against Torture, to the detriment of María Leontina Millacura Llaipén, Fabiola Valeria and Marcos Alejandro Torres Millacura, in the terms of paragraph 138 of this Judgment.

6. The State is responsible for the violation of the right to humane treatment [personal integrity] established in Articles 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) of thereof, to the detriment of María Leontina Millacura Llaipén, Fabiola Valeria Torres, and Marcos Alejandro Torres Millacura, in the terms of clauses 144 of this Judgment.

7. Issuing a ruling on the alleged failure to comply with the obligation established in Article 2 of the American Convention on Human Rights with regard to Articles 3, 4, 5, 7, 8(1), 25, and 1(1) of the Convention is not appropriate, nor is issuing a ruling on the

provisions of Article III of the Inter-American Convention on Forced Disappearance of Persons, with regard to the alleged lack of definition of the crime of enforced disappearance of persons, in keeping with paragraphs 148 to 151 of this Judgment.

8. Issuing a ruling on the alleged autonomous violation of Article 1(1) of the American Convention on Human Rights in relation to Articles 5, 7, 8, and 25 of the Convention is not appropriate, nor is it appropriate with regard to the arguments of the Commission on the State's alleged failure to comply on the federal level by adopting the measures necessary for Province of Chubut to investigate what happened to Iván Eladio Torres Millacura, in the terms of paragraph 155 of the Judgment.

AND ORDERS:

Unanimously, that:

1. This Judgment is in and of itself a form of reparation.
2. The State shall initiate, direct, and complete the necessary investigations and proceedings within a reasonable period of time toward establishing the truth of the facts, as well as toward identifying and, where applicable, punishing all those responsible for what happened to Iván Eladio Torres Millacura, in the terms of paragraphs 164 to 168 of this Judgment.
3. The State shall continue an effective search for the whereabouts of Mr. Iván Eladio Torres Millacura, in the terms of paragraphs 166 of this Ruling.
4. The State must implement a permanent and obligatory program or course on human rights directed toward all levels of the Chubut provincial police hierarchy, in the terms of paragraph 173 of this Ruling.
5. The State shall pay, within one year, the amounts set in clauses 184 to 186, 192 and 200 of this Judgment for compensation of pecuniary and non-pecuniary damages and for the reimbursement of the corresponding costs and expenses, according to the terms of paragraphs 184 to 187, 191 to 192, 197 to 200, and 206 to 212 of the Judgment.
6. The State must reimburse the Victim's Legal Aid Fund of the Inter-American Court of Human Rights, the sum spent during the processing of this case, in the terms established in paragraphs 201 to 203 of this Ruling.
7. Within one year as of the date this Judgment is served, the State shall submit a report to the Tribunal on the measures adopted toward compliance.
8. The Court shall monitor full compliance with this Judgment in keeping with the provisions of the American Convention on Human Rights. It will consider this case closed once the State has fully complied with this Judgment's provisions.

Judge Eduardo Vio Grossi rendered his concurring opinion before the Court, that which accompanies this Judgment.

Written in Spanish and English, the Spanish text being authentic, in Bogota, Colombia, on August 26, 2011.

Diego García-Sayán
President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretariat

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretariat

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI,
CASE OF TORRES MILLACURA ET AL. v. ARGENTINA,
OF AUGUST 26, 2011
(Merits, Reparations, and Costs)**

I concur in my opinion with regard to the approval of the aforementioned Judgment, stating for the record that I do so given the understanding that what has been expressed in paragraphs 29 and 55 of this judgment does not contradict the position I held in both the Dissenting Opinion, along the same lines, rendered on July 15, 2011, regarding the Orders of the Court in “*Provisional Measures regarding the Republic of Colombia, Case of Gutiérrez Soler V. Colombia,*” of June 30, 2011, “*Provisional Measures regarding the United Mexican States, Case of Rosendo Cantú et al. V. Mexico,*” of July 1, 2011, and “*Provisional Measures regarding the Republic of Honduras, Case of Kawas Fernández V. Honduras,*” of July 5, 2011, as well as in the brief that, regarding these Orders, I presented on August 17, 2011; a position which I reiterate in this act and instrument.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretariat

[Concurring opinion of Eduardo Vio Grossi is in Spanish only.]

**VOTO CONCURRENTE DEL JUEZ EDUARDO VIO GROSSI,
CASO TORRES MILLACURA Y OTROS VS. ARGENTINA,
DE FECHA 26 DE AGOSTO DE 2011
(Fondo, Reparaciones y Costas)**

Concurro con mi voto a la aprobación de la Sentencia del rótulo, dejando constancia que lo hago en el entendido que lo expresado en los párrafos 29 y 55 de la misma en nada contradicen la posición que expuse tanto en los Votos Disidentes, del mismo tenor, que emití, el 15 de julio de 2011, respecto de la Resoluciones de la Corte relativas a “*Medidas Provisionales respecto de la República de Colombia, Caso Gutiérrez Soler Vs. Colombia*”, de 30 de junio de 2011, “*Medidas Provisionales respecto de los Estados Unidos Mexicanos, Caso Rosendo Cantú y Otra Vs. México*”, de 1 de julio de 2011 y “*Medidas Provisionales respecto de la República de Honduras, Caso Kawas Fernández Vs. Honduras*”, de 5 de julio de 2011, como en parte del escrito que, relacionado con las mismas Resoluciones, presenté el 17 de agosto de 2011, posición que en este acto e instrumento reitero.

Eduardo Vio Grossi
Juez

Pablo Saavedra Alessandri
Secretario