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CASE 13.055

REPORT ON MERITS (PUBLICATION)

JULIO CÉSAR RITO DE LOS SANTOS AND OTHERS
ARGENTINA

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I. SUMMARY¹

1. On May 11, 2007 the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or “the IACHR”) received three petitions filed by Eugenio M. Spota, Alejandra Irma Vain and María Lucrecia Lambardi (hereinafter “the petitioner”) all of which claim the international responsibility of Argentina (hereinafter “the Argentine State”, “the State” or “Argentina”) to the detriment of Julio César Rito de los Santos, Hugo Daniel Ferreira and Nicasio Washington Romero Ubal.

2. By the end of the stage of admissibility, the Commission decided to accumulate the three petitions and to conduct them jointly at the merits stage, since the alleged facts are similar and their matters are substantially the same, in accordance with the set forth in article 29(5) of the IACHR’s Rules of Procedure.

3. The Commission approved the report of admissibility No. 57/16 on December 6, 2016². On December 15, 2016 the Commission notified said report to the parties and became available to the parties, in order to reach an amicable settlement³. The parties had the allotted time to submit their additional observations concerning merits. All the information received was duly transferred between the parties.

4. The petitioner claims that the Argentine State is responsible for the facts which started between 1974 and 1975, when the alleged victims of Uruguayan nationality, who were living in Argentina having escaped from their country due to the coup of 1973, were subjected to detentions for political reasons, and proceedings of expulsion were initiated against them, for which reason they needed to settle in Sweden as political refugees. Likewise, petitioner holds that Argentina is responsible for the violation of the rights of the alleged victims, within the compensation proceedings initiated domestically, in which the demands of Mr. Rito de los Santos, Mr. Ferreira and Mr. Romero were dismissed, intended to access a reparation by virtue of the referred facts.

5. The State claims, in the stage of admissibility and merits, that the denial to recognize the compensations requested by the alleged victims, is because the facts for which the claim originated, did not meet the parameters of application of the initiated Law. Likewise, holds that in the domestic legislation, there is currently another regulatory instrument by virtue of which reparation can be requested in these cases, which, although it was issued after the filing of the petition before the Commission, it should have been attempted by the alleged victims.

II. ALLEGATIONS BY THE PARTIES

A. The petitioner

6. The petitioner holds that Julio César Rito de los Santos, Hugo Daniel Ferreira and Nicasio Washington Romero Ubal, of Uruguayan nationality, settled in Argentina between 1973 and 1974, in order to run away from the Joint Uruguayan Forces, after the coup occurred in Uruguay in 1973.

7. The petitioner refers a context of illegal repression and of ideological and political persecutions in Argentina, which started during the democratic government which preceded the last military dictatorship of

¹ Pursuant to Article 17.2 of the Commission’s Rules of Procedure, Commissioner Andrea Pochak, an Argentine national, did not participate in the debate or decision in this case.

² IACHR. Report No. 57/16. Petitions 589-07, 590-07 and 591-07. Admissibility. Julio César Rito De Los Santos and others. December 6, 2016. Articles declared admissible were 8, 13, 22, 24 and 25 of the Convention; and I and VIII of the Declaration.

³ By means of a brief dated May 30, 2017, the Argentine State manifested its will to initiate a process of amicable settlement, holding that the latter should limit to the conduction of the reparatory casefiles, under the habitual channels, before the Secretariat of Human Rights and Cultural Pluralism of the Nation. Said manifestation was reiterated via briefs of September 4 and 5, 2017. In the brief received on September 26, 2017, the petitioner expressed conformity in initiating an amicable settlement process, and by means of a brief of September 29 that same year, formulated a proposal of amicable settlement, with their respective amounts for the reparation. After several requests for extension filed by Argentina, by means of a document received on March 15, 2019, the petitioner asked to conclude the process. On April 2, 2019 the IACHR notified the parties that its mediation in the amicable settlement process was concluded and decided to proceed with the conduction of the case.

the country and extended throughout it, in which detentions were carried out, most of them illegal and not recognized by authorities, which later ended with the disappearance, murder or exile of the persons who had been detained. Likewise, petitioner raises “Plan Cóndor” which established the collaboration between the repressive regimes of Argentina and Uruguay.

8. In the initial petition, it is held that on June 10, 1974, Julio César Rito de los Santos and Hugo Daniel Ferreira were arrested along with 100 other persons by the Superintendence of Federal Security in the city of Buenos Aires, while they were participating in a political assembly. Petitioner holds that after their detention, they were interrogated and sentenced to 30 days of arrest for violating the decree which prohibited political assemblies. The petitioner adds that after being released, the alleged victims went into illegality, since on repeated opportunities agents dressed in civil clothes appeared asking for their whereabouts and of their families. Subsequently, they remained in one of the shelters of the High Commissioner of United Nations for Refugees (hereinafter “ACNUR”). Petitioner asserts that after the detention, the Argentine State initiated proceedings of expulsion against the alleged victims, who were at risk of being deported back to the country from which they had ran away for having been politically persecuted. When the expulsion took place, they attained a safe-conduct pass thanks to the intervention of HCUNR which allowed them to leave the country between July 18 and 19, 1975. They were hosted by Sweden, where they were granted the status of political refugees.

9. On the other hand, holds that Nicasio Washington Romero Ubal was detained by unknown persons on September 13, 1974 in Buenos Aires, and kept incommunicado for several days along with other Uruguayans. Petitioner holds that the alleged victim and the other prisoners were transferred to different clandestine centers where they were tortured and subjected to interrogations on political matters of Uruguay, by persons with Uruguayan accent, under the custody of other individuals who seemed Argentine. The petitioner refers that on October 16, 1974, the alleged victim was released near his home. That same day, under the protection of HCUNR, he got to leave the country and obtain the status of political refugee in Sweden.

10. Petitioner claims that the alleged victims initiated domestic proceedings before the Ministry of Justice and Human Rights of the Nation, to obtain a compensation for the facts occurred, under the set forth by Law 24.043, which grants benefits to persons who were submitted to the National Executive Power (hereinafter “P.E.N.”) during the validity of the State of Siege decreed on November 6, 1974. The requests were rejected on the three cases, decisions motivated in the fact that the detentions had taken place beyond the timeframe of the Law, since they happened before the declaration of State of Siege and did not fit in the provisions of the referred law. Against said decisions, remedies were filed before judicial instances, all of which were decided counter to their pretensions. Petitioner holds that in the several proceedings they offered proofs of their status of political refugees and to order the corresponding authority to produce documents which would allow to corroborate the facts substantiated in their complaint, yet they were never provided. Also, claims that in several similar cases to theirs, the compensation foreseen in Law 24.043, was granted.

11. Due to the aforesaid, the petitioner claims the violation of the rights contemplated in articles 4, 5, 7, 8, 10, 11, 22, 24 and 25 of the IACHR, and of the provisions contained in articles I, II, V, VIII, IX, XVIII, XXV, XXVI and XXVII of the American Declaration of the Rights and Duties of Man.

12. In this sense, petitioner holds that the State violated the right to receive a fair compensation as a consequence of the violation of the rights to humane treatment, personal liberty and freedom of movement and residency of the alleged victims, due to the wrong interpretation employed, in the decisions by administrative and judicial instances, of Law 24.043. Thus, argues that the alleged victims could not access any effective remedy whatsoever, within domestic jurisdiction, which would investigate the violations of their human rights, punish those responsible, grant a proper reparation, which implies an undeniable breach, to the right of access to justice. The petitioner claims that should Law 24.043 be declared insufficient to conduct the claims of compensation of the alleged victims, the Argentine State had to provide a suitable to ensure the access to a reparation.

13. Likewise, the petitioner holds that the Argentine State breached the right to due process of the alleged victims, since within the proceedings filed to request reparation, it failed to provide informative proof that they

were requested and that they had proven the circumstances of persecution, flee and asylum (proofs which were contained in the casefile of the National Directorate of Migrations and that were not provided in the duly procedural moment), situation which put the alleged victims in a status of virtual defenselessness, by violating their right to produce the necessary evidence to enforce the rights that they claimed. Along the same line, petitioner claims that all decisions adopted at the different instances of the proceedings were arbitrary, disregarding the other evidence existing in briefs.

14. Likewise, it is raised that the fact that in similar cases to those of the alleged victims (within the same context of political persecution and identical historical and political moments), there was a determination of repairable damages, without it being recognized in the cases under study with no objective nor reasonable justification, configured a violation to the right of equality before the law. In particular, there was a reference to the precedents of the Supreme Court of Justice of the Nation in which, in similar cases, the benefit of said law was granted.

B. The State

15. During the admissibility stage, the State asserted that the origin of Argentine reparation laws is found in several cases conducted before the Commission, which implied that the National Executive Power dictated Decree No. 70/91. It holds that other norms have been sanctioned afterward, in particular Law 24.043 which foresees compensations for persons placed at the disposal of the National Executive Power within the period elapsed between November 6, 1974 (date of declaration of State of Siege in Argentina) and December 10, 1983 (date when the democratic government was reinstated). It argues that in 2009 Law 26.564, was also sanctioned by means of which the concept of "victim" was expanded, incorporating the benefits of existing laws to those who "were detained for political reasons at the disposal of federal or provincial federal courts and or subjected to detention regimes foreseen by any regulation pursuant to the set forth by international doctrine and treaties, may be defined as detention of political character".

16. In this sense, the State manifests that in Argentine law there could be a suitable and efficient remedy not used by the alleged victims, which is why the latter should be attempted. It argues that by broadening the time and material scope of the possible situations to obtain the reparation benefit, the Argentine State has intended to include the cases which, such as the present ones, found no satisfactory answer. Particularly, it claims that the fact that Law 26.564 was not issued by the time in which the petition was filed before the Commission, it does not automatically imply the impossibility to review the cases domestically, aiming to strengthen the principle of subsidiarity of international protection. It holds that: "(...) petitioners are not being blamed for the inobservance of the exhaustion of domestic remedies, since at the time of filing of the claim, there was no proper regulation which could respond their demands, but the intention is to warn the Commission that there are new [sic] domestic remedies and that, therefore, its intervention may result rushed". These arguments were reiterated by the Argentine State in the conduction of the merits of the case.

17. Likewise, Argentina claims that the rejection in applying Law 24.043 is due to the fact that, on one hand, the reported detentions took place as a consequence of a norm in force at the time "regardless of its possible questioning", with the petitioners not having been placed at the disposal of National Executive Power; and on the other hand, because they happened before November 6, 1974, date set forth by the legal regime, as the beginning, for the obtention of the benefit.

18. Finally, the State refers to the fact that the resolution of the Ministry of Justice and Human Rights N° 670 of August 19, 2016, established a series of guidelines for the granting of the benefit ruled by Law 24.043, in cases which invoke "forced exile", expressly indicating denial for those cases in which the ends set forth by the norm do not concur. On the other hand, it is highlighted that in said resolution a clear judicial doctrine was verified by the forced exile in the sense of the admission of the reparation regime foreseen in Law N° 24.043, in those duly proven cases and preceded by situations of illegal detention and/or persecution which had generated in those involved a founded fear of experimenting severe risk for their lives, physical integrity and/or personal liberty, and not cases in which it is possible to interpret the departure from the country as voluntary self-exile.

III. DETERMINATIONS OF FACT

A. Relevant Regulatory Framework

1. Regarding regime of Law 24.043 of 1991

19. Law 24.043 of 1991 provides on its first article that:

The persons whom during the validity of the State of Siege had been placed at the disposal of the National Executive Power (hereinafter “N.E.P.”), by decision of the latter, or whom while being civilians suffered detention by virtue of acts issued by military courts, whether they initiated or not trials for damages, shall be eligible for the benefits of this law, provided they did not receive any indemnity by virtue of a judicial sentence, as a result of the facts contemplated herein⁴.

20. On its second article, the referred law of compensations establishes as a requirement to access its benefits, that the persons have been placed at the disposal of the National Executive Power before December 10, 1983 (date of return of democracy in Argentina)⁵.

21. As set forth by Decree 1023 which rules Law 24.043, the request of the benefit established by it, must contain a “sworn statement signed by the beneficiary or his or her successors which manifests the deprivation of liberty as a stipulation from the NATIONAL EXECUTIVE POWER or by virtue of a judgment from Military courts during the period elapsed between November 6, 1974 and December 10, 1983”⁶.

22. Likewise, Law 24.906, amplifier of Law 24.043, provides on its second article that: “the persons who were at the disposal of the National Executive Power or that while being civilians were at the disposal of authorities military between November 6, 1974 and December 10, 1983 shall enjoy the benefit set forth in the aforesaid laws and, in both cases, even if they had judicial proceedings or sentence”⁷.

23. In Resolution No. 670 of 2016, the Ministry of Justice and Human Rights instructed guidelines for the granting of the benefit ruled by Law No. 24.043 and its amendments when invoking situations of “forced exile”, indicating that the benefit shall only be granted in cases in which “it has been credited –with due evidentiary background- the existence of situations of exile which hold substantial analogy with the doctrine established by the Supreme Court of Justice of the Nation in the case of “Yofre de Vaca Narvaja”⁸. The cited resolution was issued given the legal gap on forced exile concerning the analogous application of Law 24.043 and its amendments, particularly in regard to the need for unifying criteria of interpretation⁹.

24. In particular, the resolution holds the following:

(...) it is thus verified, a clear judicial doctrine in the sense of the admission of the reparation regime reflected in Law No. 24.043 and its amendments, in the cases of duly proven forced exile preceded by situations of illegal detention and/or persecution which generated in those involved founded fear of experimenting serious risk for their lives, physical integrity and/or personal liberty. It must be noted that the referred favorable judgments, materialized only because the claimants did not get to prove such circumstances, having their departure from the country being interpreted as voluntary self-exile¹⁰.

⁴ Annex 1. Argentine National Congress, Ley No. 24.043, November 1991. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁵ Annex 1. Argentine National Congress, Ley No. 24.043, November 1991. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁶ Annex 2. Regulatory Decree 1023 of Law No. 24.043, June 24, 1992. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁷ Argentine National Congress. Law 24.906, November 26, 1997.

⁸ Annex 3. Resolution No. 670 of the Ministry of Justice and Human Rights, August 19, 2016. Annexed to the brief of the State of Julio César Rito de los Santos of September 5, 2017.

⁹ Annex 3. Resolution No. 670 of the Ministry of Justice and Human Rights, August 19, 2016. Annexed to the brief of the State of Julio César Rito de los Santos of September 5, 2017.

¹⁰ Annex 3. Resolution No. 670 of the Ministry of Justice and Human Rights, August 19, 2016. Annexed to the brief of the State of Julio César Rito de los Santos of September 5, 2017.

2. Regarding Law 26.564 of 2009

This Law from 2009 provides on its first article to include in the benefits stipulated by Laws 24.043 and 24.411, their amplifiers and complementary, to who “were detained for political reasons placed at the disposal of federal or provincial courts and/or subjected to regimes of detention foreseen by any regulation which in accordance to the set forth by international doctrine and treaties, may be defined as detention of political nature”¹¹.

B. Information available on the alleged victims and their families

1. Regarding Julio César Rito de los Santos and his family circle

25. Mr. Rito de los Santos, of Uruguayan nationality, arrived in Argentina in 1974 running away from the persecution of Uruguayan joint forces, after the coup of 1973¹². According to the informed by the petitioner, the alleged victim and his wife, Mrs. Delma Alicia Pi Moreira -who also had to flee from the persecution in Uruguay-, resided legally in Argentina, as foreigners¹³.

26. The Commission observes that according to the information present in the casefile, Mr. Rito de los Santos and his wife, have a son born in Argentina named Pablo Gerónimo Rito Pi, whom with they traveled to Sweden as political refugees¹⁴. Likewise, in accordance with the stated in the initial petition, they have a daughter named Verónica, who was born in Sweden, after the arrival of the alleged victim and his wife in that country, and who was equally granted political asylum¹⁵.

27. From the information contained in the casefile on the migratory process of the alleged victim, we know that on March 3, 1974 by means of a resolution, Mr. Rito de los Santos was granted the temporary residency in Argentina¹⁶. The judgment from the Psycho-physical Selection Service of the National Directorate of Migrations (hereinafter “NDM”) of March 5, 1974, declared the alleged victim as suitable¹⁷, and in a report of the Bureau of Entries of the NDM it is noted that there was no information about Mr. Rito de los Santos¹⁸. Afterward, the casefile of the alleged victim was forwarded to the archive of the NDM, since the proceedings had been exhausted and he had been granted the respective residency¹⁹. According to the stated in the brief before the Supreme Court of Justice, suddenly, on November 6, 1974, the National Executive Power filed a request of inquiry before the NDM, in order to determine whether Mr. Rito de los Santos met the requirements to grant him the residency, which he had just been awarded²⁰.

2. Regarding Hugo Daniel Ferreira and his family circle

28. Mr. Hugo Daniel Ferreira, of Uruguayan nationality, arrived in Argentina on April 15, 1974, running away from the persecution of Uruguayan joint forces, after the coup of 1973²¹. Mr. Ferreira resided legally in the country, as a foreigner, along with his family²². In the Republic of Argentina, he met and got married to Mrs.

¹¹ Argentine National Congress. Law 26.564, November 25, 2009.

¹² Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

¹³ Annex 5. Initial petition of Julio César Rito de los Santos of May 11, 2007.

¹⁴ Annex 6. Record of the Intergovernmental Committee for European Migration, July 10, 1975. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

¹⁵ Annex 5. Initial petition of Julio César Rito de los Santos of May 11, 2007.

¹⁶ Annex 7. Brief which claims a new fact before the Supreme Court of Justice, September 16, 2003. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

¹⁷ Annex 8. Judgment from the Psycho-physical Selection Service, March 5, 1974. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

¹⁸ Annex 9. Report of the Bureau of Entries Division, Departures and Archive, March 4, 1974. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

¹⁹ Annex 10. Record of the Residency Division of the forwarding of the casefile of Mr. Rito de los Santos for archive, March 18, 1974. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

²⁰ Annex 7. Brief which claims a new fact before the Supreme Court of Justice, September 16, 2003. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

²¹ Annex 11. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

²² Annex 11. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

Claudia García Corona Martínez, of Argentine nationality, with whom he had three children, one born in Argentina, and the other two born in Sweden: Daniela Edith Ferreira²³, Verónica Solety Ferreira²⁴ and Amilcar Nicolás Ferreira²⁵.

29. It is noted in the migratory casefile of Mr. Ferreira, that on June 11, 1974 the National Director of Migrations granted him the temporary residency²⁶. Likewise, in the judgment from the Psycho-physical Selection Service of the NDM from May 14, 1974 which branded Mr. Ferreira as suitable²⁷, and the report of the Bureau of Entries of the NDM which states that there was no information on Mr. Hugo Daniel²⁸. According to the informed in the internal proceedings, the National Executive Power filed a request of inquiry before the NDM, in order to determine whether Mr. Ferreira met the requirements to grant him the residency which he had just been awarded²⁹.

3. Regarding Nicasio Washington Romero Ubal

30. Mr. Nicasio Washington Romero Ubal, of Uruguayan nationality, arrived in Argentina in September of 1973, running away from the repressive situation originated due to the coup of that year in Uruguay³⁰. While in Argentina, he initiated actions so as to obtain the definitive residency, which he finally received³¹.

C. REGARDING THE DETENTIONS AND PROCEEDINGS OF REPARATION INITIATED BY THE ALLEGED VICTIMS

1. Julio César Rito de los Santos

31. On June 2, 1974 Mr. Rito de los Santos was detained while he was participating in a political assembly in an establishment located in México Street of the Federal Capital, within an operation carried out by Argentine security forces³². In said operation over 100 persons were detained, most of which were Uruguayan, among whom was also the wives of Mr. Rito de los Santos and Mr. Hugo Daniel Ferreira³³.

32. As held in the brief of request of benefits of Law 24.043 addressed to the Ministry of Interior, the raided establishment belonged to the “Peronism of Base” where an assembly was being held summoned by the “Committee of Uruguayan Residents 19 de abril”, a political organization who fought to release Uruguayan and Argentine political prisoners³⁴. It was referred that according to the informed by press releases of June 4, 1974, the operation was conducted by the Superintendency of Federal Security, and of the detained persons only five were set free because they were minors³⁵. Several of the persons detained in said operation were released

²³ Annex 12. National Immigration Authority Certificate Daniela Edith Ferreira García, March 31, 1999. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

²⁴ Annex 13. National Immigration Authority Certificate Verónica Solety Ferreira, March 31, 1999. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

²⁵ Annex 14. National Immigration Authority Certificate Amilcar Nicolás Ferreira. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

²⁶ Annex 15. Temporary residency of Hugo Daniel Ferreira, June 11, 1974. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

²⁷ Annex 16. Dictamen del Psycho-physical Selection Service, May 14, 1974. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

²⁸ Annex 17. Report of the División Bureau of Entries, Departures and Archive, April 23, 1974. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

²⁹ Annex 18. Brief which claims a new fact before the Supreme Court of Justice. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

³⁰ Annex 19. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

³¹ Annex 20. Judgment of the Supreme Court of Justice of the Nation, October 31, 2006. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

³² Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

³³ Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

³⁴ Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

³⁵ Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

afterward, and others who were advocating for the liberation of those arrested on June 2, 1974, are currently missing³⁶.

33. After his detention, Mr. Rito de los Santos was transferred to the premises of the Superintendence of Federal Security, where he was interrogated on several occasions and was forced to sign under pressure, documents that would afterward be used in his proceedings of expulsion³⁷. The IACHR observes that it has not been specified in the petition nor in its annexes, what kind of documents were those which Mr. Rito de los Santos was forced to sign.

34. He was imposed a sentence of 30 -day arrest for violation of the decree which prohibited public assemblies and in pursuit of public security, he was transferred in a prisoner status to the incarceration facility of Villa Devoto and set free after 15 days³⁸.

35. After the detention and further release, Mr. Rito de los Santos and his wife had to change their domicile several times, since on repeated opportunities persons dressed in civilian clothes appeared to ask for both of their whereabouts³⁹. For this reason, they requested the protection of the High Commissioner of United Nations for Refugees and were hosted in one of their shelters, to ensure their security⁴⁰. In parallel, they tried by every means possible to avoid being expelled from the country, upon the risks on their lives if being sent back to Uruguay⁴¹.

36. On June 11, 1974, the Federal Police informed by means of a document addressed to the NDM, of the arrest of Mr. Rito for 30 days, due to the infringement committed by him and his wife of police decrees of "Public Meetings" and "Public security"⁴². The document specified that the alleged victim had participated along with other Uruguayans, in an unauthorized assembly in which political issues of Uruguay were being discussed; "being kidnapped at the place, abundant ideologic material of subversive nature (...) requesting said body, to proceed with the cancelation of the temporary residency agreed for Mr. Rito de los Santos, and to keep his wife Delma Alicia Pi of Rito, from receiving her residency; in considering them incurring in the provisions of Art. 25 subs. g) of the Migration Regulations"⁴³.

37. On June 28, 1974, ordinance 7.888 was issued, from the Juridical Affairs Department of the NDM, which recommended to "request the Secretariat of Information of the State (S.I.D.E.) to report whether the foreigners in the briefs -Mr. Rito de los Santos and his wife-, have a record which may lead to assume that they shall compromise national security or public order"⁴⁴. On July 25 that same year, the request for information was submitted to the Secretariat of Information of the State (hereinafter "S.I.D.E.")⁴⁵.

³⁶ Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

³⁷ Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

³⁸ Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

³⁹ Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁴⁰ Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁴¹ Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁴² Annex 4. Official document of the Federal Police, June 11, 1974. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁴³ Annex 21. Official document of the Federal Police, June 11, 1974. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁴⁴ Annex 22. Providencia No. 7888 del Juridical Affairs Department, June 28, 1974. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁴⁵ Annex 23. Official document of the National Directorate of Migrations addressed to the Secretariat of Information of the State, July 25, 1974. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

38. As held by the attorney of Mr. Rito de los Santos in the brief before the Supreme Court, the persons indicted for the case in which Mr. Julio César and his wife were detained, were acquitted, and it is so noted in the certification of the Judicial Power of the Nation on the acquittal of Mrs. Delma Alicia Pi⁴⁶.

39. In ordinance No. 8395 of November 20, 1974, the NDM made a request for amplification of information to the S.I.D.E. in order to determine whether “the applicant (...) denaturalized the reasons taken into account so as to grant him his temporary residency (...) to report whether the record of Rito de los Santos corresponds to a date after the concession of his temporary residency”⁴⁷.

40. In May 1975 the S.I.D.E. informed that Mr. Rito de los Santos and his wife “have an unfavorable record which qualify to place them in the ineligibility of art. 25 inc. g) on the Migration Regulations- Decree N° 4418/65, which verses: “Holding a record which may lead to assume a compromise of national security or public order” regardless of the dates to which it corresponds and of the related reports conducted by this body”⁴⁸.

41. By means of Resolution No. 3840 of July 15, 1975, the NDM decreed the expulsion from Mr. Rito de los Santos and his wife⁴⁹. The resolution held that based on the record provided by the S.I.D.E. “it is fit to order their expulsion as a public charge and to forbid them to re-enter national territory” and in said pursuit, ordered their detention⁵⁰.

42. Thanks to the HCUNR’s intercession before Argentine authorities, the alleged victim and his wife were granted a safe-guard pass for 24 hours, so they could exit the country, before being arrested and expelled toward Uruguay⁵¹.

43. On July 18, 1975, Mr. Julio César Rito de los Santos, his wife and their son Pablo left Argentina toward Sweden as political refugees⁵².

44. The prohibition to re-enter the Republic of Argentina against the alleged victim and his wife remained in force until 2007. On January 17, 2007 the attorney of Mr. Julio César petitioned the NDM and by means of NDM Note No. 161/07 informed that by virtue of the fact that the Migration Law in force provides special relevance on human rights, the integration and mobility of migrants, since February 8, 2007 withdrew the migratory restrictions of Mr. Rito de los Santos and his wife⁵³.

1.1 Regarding the reparation proceedings initiated by Mr. Rito de los Santos

45. In 1998 Mr. Julio César Rito de los Santos initiated before the Undersecretariat of Social and Human Rights of the Ministry of Interior, the proceedings to attain the compensation for his detention, persecution (“internal exile”) and external exile, based on Law 24.043 and its amplifier 24.906⁵⁴. In subsidy, a compensation for damages was claimed for the same facts⁵⁵.

⁴⁶ Annex 24. Certification of the Judicial Power of the Nation, June 14, 1994. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁴⁷ Annex 25. Providencia No. 8395 of the Juridical Affairs Department, November 20, 1974. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁴⁸ Annex 26. Official document of the Secretariat of Information of the State addressed to la National Directorate of Migrations, mayo de 1975. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁴⁹ Annex 27. Resolution No. 3840 of the National Directorate of Migrations, July 15, 1975. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁵⁰ Annex 27. Resolution No. 3840 of the National Directorate of Migrations, July 15, 1975. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁵¹ Annex 4. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁵² Annex 28. Certificate of the Office of the High Commissioner of United Nations for Refugees, May 12, 1998. Annexed to the initial petition of May 11, 2007, and Annex 29. Certificate of the National Directorate of Immigration of Sweden, November 14, 1997. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁵³ Annex 30. NDM Note No. 161/07 of the National Directorate of Migrations, March 19, 2007.

⁵⁴ Annex 31. Request form for benefits of Law No. 24.043, August 7, 1998. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁵⁵ Annex 32. Brief of amplification of demands. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

46. On January 23, 2001, the Ministry of Justice and Human Rights issued Resolution No. 098 rejecting the request for compensation. In regard to the detention of Mr. Julio César, the Ministry held that the facts did not fit within the timeframe set forth by Decree No. 1023 of 1992 which rules Law 24.043⁵⁶. Concerning the alleged political persecution and exile, it held that the situation fails to meet the requirements that Laws 24.043 and 24.906 established to receive the benefit, whose enumeration is strict and no merely enunciative. Finally, the subsidiary claim for compensation for damages was dismissed⁵⁷.

47. On February 9, 2001, the attorney of Mr. Rito de los Santos filed a direct appeal remedy against the resolution, in the terms set forth by the third article of Law 24.043⁵⁸. The remedy argued that the administration, in charge of the Ministry of Justice and Human Rights, dismissed the claim without having fully developed the evidence provided, and performed a narrow interpretation of laws 24.043 and 24.906. In particular, a reference was made for precedents of the Supreme Court of Justice of the Nation in which, on similar cases, the benefit of said law had been granted (for example in the cases of Bufano, Geuna and Quiroga)⁵⁹.

48. On June 11, 2002, the National Chamber of Federal Contentious Administrative Appeals rejected the remedy filed by the alleged victim⁶⁰. In the decision it was argued that “the claimant failed to prove having been placed at the disposal of the NEP. On the other hand, his detention and the imposed sentence of thirty-day arrest, happened within a frame of legality for having considered a violation to the decree which prohibited public assemblies, whose constitutional validity was not contested by the claimant”⁶¹. Likewise, it warned that the time period to access the benefit set forth in Law 24.043, was provided by Decree 1023 which regulates it, setting November 6, 1974, as initial date and that in the cases in which the compensation has been recognized for exile, the detentions have taken place within the timeframe of the law. Finally, it dismissed the claim in subsidy in considering it was not the proper procedural path to resolve said demand⁶².

49. Against the decision of the Chamber the alleged victim filed an extraordinary federal remedy before the Supreme Court of Justice of the Nation, in considering there were enough federal grounds, due to the breach of constitutional guarantees of defense in trial, freedom of movement, right to property and equality of treatment before the law⁶³. It was emphasized the brief of expulsion from Mr. Rito de los Santos was a decision of the National Executive Power and that there was a gross error of interpretation in considering the political persecution of the alleged victim as a single, exceptional and instantaneous fact prior to the starting date of the State of Siege, and not like a continuous fact which continued even after November 6, 1974, being expelled afterward. Likewise, a reference was made of the jurisprudential precedent on similar cases⁶⁴.

50. On October 31, 2006, the Supreme Court of Justice of the Nation issued a sentence confirming the appealed decision, taking ownership of and reproducing a judgment for the Attorney General⁶⁵. In regard to the detention of Mr. Rito, the resolution held that the sentence adhered to the law in that “there is no doubt as to the legislative

⁵⁶ Annex 33. Resolution No. 098 of the Ministry of Justice and Human Rights, January 23, 2001. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁵⁷ Annex 33. Resolution No. 098 of the Ministry of Justice and Human Rights, January 23, 2001. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁵⁸ Annex 34. Brief of filing of direct appeal, February 9, 2001. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁵⁹ Annex 34. Brief of filing of direct appeal, February 9, 2001. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁶⁰ Annex 35. Decision of the National Chamber of Federal Contentious Administrative Appeals, June 11, 2002. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁶¹ Annex 35. Decision of the National Chamber of Federal Contentious Administrative Appeals, June 11, 2002. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁶² Annex 35. Decision of the National Chamber of Federal Contentious Administrative Appeals, June 11, 2002. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁶³ Annex 36. Brief of filing of extraordinary judicial remedy. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁶⁴ Annex 36. Brief of filing of extraordinary judicial remedy. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁶⁵ Annex 37. Judgment of the Supreme Court of Justice of the Nation, October 31, 2006. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

will to clarify that the illegitimate detentions endured in the regime under study are those occurred between the date of declaration of the State of Siege and the reinstatement of the democratic system”⁶⁶.

51. Likewise, as for whether the circumstance of living in clandestinity and then in exile is understood in law as compensable, the Attorney General affirmed first of all that the preceding jurisprudential cases referred in the remedy as applicable, have in common that the detention was illegitimate and effective, which sets a difference with this case, in which the temporary residency of Mr. Rito was revoked for breaching a police decree, whose constitutionality was not duly questioned which led to the order of his expulsion to his country of origin or “to which accepts them”, and that the circumstance that the fear of being sent back to Uruguay led him to live in clandestinity or, afterward, to voluntarily continue with his exile in Sweden, is not fit so as to extend to it the monetary compensation foreseen in the norm, the purpose of which is, the reparation for those persons effectively detained and placed at the disposal of the NEP or who had to suffer such exceptional circumstances as those⁶⁷.

52. The Commission takes note that the petitioner held that, in regard to administrative and judicial proceedings, the attorney of Mr. Rito de los Santos requested multiple pieces of evidence in order for them to be included into the casefile⁶⁸. Inter alia, it was requested that the name of the alleged victim present in the National Directorate of Migrations of Argentina were included in the casefile; other casefiles filed before the Ministry of Justice and Human Rights benefits of Law 24.043 were claimed in facts connected to those suffered by Mr. Rito de los Santos; that the statements from several witnesses were heard; and that different bodies of the State were officiated, in order to obtain relevant information concerning the case of the alleged victim⁶⁹. The petitioner held that “both in the administrative and in the judicial channel, the Argentine State limited to add documentary evidence and both the documentary evidence added afterward and the informative and testimonial evidence did not earn a formal denial, to the extent that it wasn’t even mentioned by the Chamber of Appeals nor by the Supreme Court of Justice of the Nation”⁷⁰.

53. Concerning the casefile at the NDM No. 72225/74 under the name of Mr. Julio César Rito de los Santos, it is noted that by means of a brief of September 16, 2003, and thanks to the efforts of the counselor of the alleged victim himself, it was included into the casefile that same day⁷¹, but only to the extent of the extraordinary instance before the Supreme Court, the latter understanding that it was not possible to add further evidence or discussion of the facts⁷².

54. The Commission observes that in 2011, via Resolution No. 1184 of the Ministry of Justice and Human Rights⁷³, pursuant to the stipulated by the National Chamber of Federal Contentious Administrative Appeals⁷⁴, it was ordered to grant the benefit of Law 24.043 to the wife of Mr. Rito de los Santos, Delma Alicia Pi, for the same facts transpired between 1975 and December 1983⁷⁵.

⁶⁶ Annex 38. Dictamen of the Attorney General before the Supreme Court of Justice of the Nation, August 22, 2005. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁶⁷ Annex 38. Dictamen of the Attorney General before the Supreme Court of Justice of the Nation, August 22, 2005. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁶⁸ Annex 5. Initial petition of Julio César Rito de los Santos of May 11, 2007.

⁶⁹ Annex 32. Brief of amplification of demands. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁷⁰ Annex 5. Initial petition of Julio César Rito de los Santos of May 11, 2007.

⁷¹ Annex 7. Brief which claims a new fact before the Supreme Court of Justice, September 16, 2003. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

⁷² Annex 5. Initial petition of Julio César Rito de los Santos of May 11, 2007.

⁷³ Annex 39. Resolution No. 1184 of the Ministry of Justice and Human Rights, 26 de Julio de 2011. Annexed to the brief of the petitioner de Julio César Rito de los Santos received on March 20, 2012.

⁷⁴ Annex 40. Decision of the National Chamber of Federal Contentious Administrative Appeals, October 9, 2009. Annexed to the brief of the petitioner de Julio César Rito de los Santos received on June 26, 2012.

⁷⁵ In the decision of the National Chamber of Appeals which recognized the benefit of the law to Mrs. Delma Pi, it was held that according to the doctrine set by the jurisprudential precedents of the Supreme Court, the Certificate of the HCUNR was not enough proof of the permanence of the actor out of the country in the time period foreseen by the regime of Law 24.043 for the merely declarative nature of said instrument, which does not allow to corroborate whether the exile was produced before or after the term set forth in the law. However, it was held that in this case there was confirmation of: the obtention of the residency of her husband –Rito de los Santos–; the safe-guard pass obtained to leave the country for political causes; the record of the detention for infringement of a police decree concerning public assemblies which the claimant suffered, issued by the Migration Control Area of the NDM; the Resolution of the NDM which declared her permanence in the country as illegal, her expulsion was ordered as the prohibition to re-enter; and the record of the SIDE of the unfavorable

[continúa...]

2. Hugo Daniel Ferreira

55. On June 2, 1974, Mr. Hugo Daniel Ferreira was detained by Argentine security forces while he was participating in a political assembly, in the same operation where Mr. Rito de los Santos⁷⁶ was arrested. After his detention, Mr. Ferreira was transferred to the premises of the Superintendence of Federal Security, where he was interrogated on several occasions and was forced to sign under pressure, documents that would afterward be used in his proceedings of expulsion⁷⁷. The IACHR observes that the petition did not specify nor did its annexes, what kind of documents were those which Mr. Hugo Daniel was forced to sign.

56. He was imposed a sentence of 30 -day arrest for violation of the decree which prohibited public assemblies, he was transferred in a prisoner status to the incarceration facility of Villa Devoto, and set free after 15 days⁷⁸.

57. After his release, Mr. Ferreira and his family had to change their domicile several times, since on repeated opportunities persons dressed in civilian clothes appeared to ask for his whereabouts⁷⁹. Several of the homes where they lived, and which they had to abandon due to the constant surveillance of police staff, were raided in search of Mr. Ferreira right after they had left⁸⁰. In this context he learned that the National Directorate of Migrations had ordered his expulsion from Argentina, which forced him to live in complete clandestinity⁸¹.

58. Upon said situation, the HCUNR office decided to aid the Ferreira family, whom it hosted in one of its shelters to ensure their security⁸². In parallel, the alleged victim tried by every means possible to avoid being expelled from the country, upon the risks on his life if being sent back to Uruguay⁸³.

59. The Commission proceeds to expose next the acts recorded in the casefile of the NDM, and the proceedings followed since the detention of Mr. Ferreira.

60. On June 11, 1974 Mr. Hugo Daniel Ferreira was granted the temporary residency in Argentina, considering his “age and possibility to work”⁸⁴.

61. On June 14, 1974, an official document from Federal Police addressed to the NDM, informed of the detention Mr. Ferreira and his arrest for 30 days, as a result from his infringement, of the police decrees of “public assemblies” and “public security”⁸⁵. Said document specified that Mr. Ferreira was participating in an unauthorized assembly in which political issues of Uruguay were being discussed, and informed that “the claimant, is registered in his country as an element of the “Tupamaros Movement”, developing in our habitat the same subversive activities”. Finally, it was requested to the Directorate to “mediate the necessary means to prevent the settlement of the reported in our country, in considering incurred in provisions of art. 25 subsection g) of the Migration Regulations”⁸⁶.

62. It is noted in the casefile that Mr. Hugo Daniel Ferreira was acquitted of the case for contravention for which he had been detained, and he was set free⁸⁷.

background of the claimant. There is likewise corroboration of the detention narrated by the claimant in the Certificate from the Investigating Court. For these conditions, it was verified in the case of Delma Alicia Pi, an alleged analogous which was assessed by the Supreme Court in the case of Yofre de Vaca Narvaja of October 14, 2004 and in the following precedents of the High Court.

⁷⁶ Annex 11. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁷⁷ Annex 11. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁷⁸ Annex 11. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁷⁹ Annex 11. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁸⁰ Annex 52. Brief of amplification of demands. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁸¹ Annex 41. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁸² Annex 11. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁸³ Annex 11. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁸⁴ Annex 15. Temporary residency de Hugo Daniel Ferreira, June 11, 1974. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁸⁵ Annex 42. Official document of the Policía Federal, June 14, 1974. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁸⁶ Annex 42. Official document of the Policía Federal, June 14, 1974. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁸⁷ Annex 43. Certificate of the Judicial Power of the Nation, June 14, 1974. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

63. On June 19 that same year, in a judgment of the Juridical Affairs Department of the NDM, it was held that in attention to the official document of the Federal Police, the permanence of the claimant in the country was to be declared illegal, for not meeting the legal requirements which condition his residency as a tourist (he performed wage-earning tasks, as manifested by himself), and directly decreeing his expulsion⁸⁸. Thus, on June 24, 1974 Resolution No. 4058 was issued by means of which, given the informed in the official document of the Federal Police, Mr. Ferreira's permanence permit as a tourist was canceled, his permanence was declared illegal and his expulsion from the national territory was ordered as well⁸⁹.

64. Hugo Daniel Ferreira appealed the resolution before the Ministry of Interior referring that he had been acquitted of the case followed against him, and informing he was under the protection of the HCUNR⁹⁰. On September 16, 1974, via Resolution No. 6028, the NDM ordered to suspend the enforcement of the measure of expulsion and forwarded the acts to the S.I.D.E. in order to inform whether Ferreira held a record which would lead to assume he would compromise national security or public order⁹¹. The S.I.D.E. informed that the alleged victim had an unfavorable record which qualified him among the ineligibilities of article 25 subsection g) of the Migration Regulations⁹².

65. On December 16, 1974 in Resolution No. 8207, the NDM canceled the temporary permanence granted to Mr. Ferreira in considering the occurred as absolute ineligibility and forwarded the case to the discretion of the Ministry of Interior⁹³. In February 1975 the Ministry requested Mr. Ferreira to submit the original document of the certificate of acquittal for the charges held against him, and his marriage certificate⁹⁴. Upon the lack of response from Mr. Ferreira, and arguing in compliance of the required evidential burden, the Ministry of Interior declared the appeal against the resolution of expulsion as void, for not meeting the requirements which founded it⁹⁵.

66. As part of all these acts, Mr. Ferreira and his family remained under the protection of the HCUNR and this body put the alleged victim and his family on a priority listing in order to extract them from the country urgently, in a maximum time of one month⁹⁶.

67. Upon confirmation of the order of expulsion, on July 19, 1975, Hugo Daniel Ferreira and his family left Argentina toward Sweden escorted by authorities of the HCUNR and of the Swedish embassy, as political refugees⁹⁷. In this case, it was also necessary to obtain a safe-guard pass via the HCUNR so that the family would have time to leave the country before the expiration of the time set forth by authorities. According to the informed in the initial petition, Mr. Ferreira could not return to Argentina until the reinstatement of democracy on December 10, 1983⁹⁸.

2.1 Regarding the proceedings of reparation initiated by Mr. Ferreira

⁸⁸ Annex 44. Dictamen No. 56038 del Juridical Affairs Department of the National Directorate of Migrations, June 19, 1974. Initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁸⁹ Annex 45. Resolution No. 4058 of the National Directorate of Migrations, June 24, 1974. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁹⁰ Annex 46. Brief of Appeal of Resolution of expulsion before the Ministry of Interior. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁹¹ Annex 47. Resolution No. 6028 of the National Directorate of Migrations, September 16, 1974. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁹² Annex 48. Dictamen No. 46588 of the Foreigners Admission Department of the National Directorate of Migrations, January 30, 1975. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁹³ Annex 49. Resolution No. 8207 of the National Directorate of Migrations, December 16, 1974. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁹⁴ Annex 50. Memorandum from the Ministry of Interior addressed to Hugo Daniel Ferreira, February 1975. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁹⁵ Annex 51. Resolution No. 913 of the Ministry of Interior, 27 de mayo de 1975. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁹⁶ Annex 52. Brief of amplification of demands. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁹⁷ Annex 11. Brief or request of benefits of Law No. 24.043, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

⁹⁸ Annex 53. Initial petition of Hugo Daniel Ferreira of May 11, 2007.

68. On August 7, 1998 Mr. Ferreira initiated before the Undersecretariat of Social and Human rights of the Ministry of Interior, the proceedings to attain the compensation for his detention, persecution (“internal exile”) and external exile, based on Law 24.043 and its amplifier 24.906⁹⁹. In subsidy, a compensation for damages was claimed for the same facts¹⁰⁰.

69. On February 23, 2001 the Ministry of Justice and Human Rights issued Resolution No. 212 dismissing the benefit foreseen in Law 24.043, arguing that the alleged victim did not appear on the listings of detained placed at the disposal of the P.E.N. and that the period of detention invoked did not fit within the timeframe set forth by Decree N° 1023¹⁰¹. Likewise, concluded in regard to the claim for his status of exiled, the situation raised was not contemplated in the laws under study. Neither was the subsidiary claim admitted¹⁰².

70. The counselor of Mr. Ferreira filed a direct appeal remedy before the National Chamber of Federal Contentious Administrative Appeals¹⁰³. On December 11, 2001 the National Chamber of Appeals dismissed the demands of compensation and confirmed the appealed resolution, arguing that in accordance with Law 24.906, which set the period reached by the benefit between November 6, 1974 and December 10, 1983, the applicability of the regime of compensations was dismissed for situations occurred prior to the date expressly set forth in the norm as in Mr. Ferreira’s case¹⁰⁴. Likewise, concerning the allegation of exile of Mr. Ferreira and the application of precedents of similar cases before the Supreme Court, it held that “the situation of those forced to self-exile prior to the illegal detention cannot be held equivalent, constituting exile a continuity of said restriction upon liberty, with that of those who had to leave the country for circumstances other than those contemplated in the regime of laws 24.043 and 24.906”¹⁰⁵. Finally, in regard to the claim in subsidy intended by Mr. Ferreira, the Chamber decided it exceeded the scope of its competence, for which reason the claimant had to resort to first instance by means of an ordinary remedy¹⁰⁶.

71. The counselor of the alleged victim filed an extraordinary federal remedy before the Supreme Court of Justice of the Nation against the decision of the Chamber¹⁰⁷. In general terms, the remedy reproduces the held by the same counselor in the filing of the extraordinary federal remedy in the case of Mr. Rito de los Santos.

72. On October 31, 2006 the Supreme Court confirmed the appealed judgment, taking ownership of and reproducing a judgment for the Attorney General¹⁰⁸. On his resolution, the Prosecutor argued that the detention of Ferreira took place out of the timeframe set forth for the application of Law 24.043¹⁰⁹. He equally held that:

I do not forget that Law 24.043 is intended to repair unfair situations lived during a historical national time, from where derives the necessity of interpreting its provision with broad criterion, yet not neglecting that it is the legislator who defines the parameters of the redressing in cases of alleged of responsibility of the State fared or quoted, without pertaining the Judicial Power to broaden its scope of application, such as when they involve determined periods there will always be cases in which, although deserving a reparation, they shall be left out of that timeframe. Therefore, the intended compensation in the *sub lite* may only be agreed by the National Congress

⁹⁹ Annex 31. Request form for benefits of Law No. 24.043, August 7, 1998. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹⁰⁰ Annex 52. Brief of amplification of demands. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹⁰¹ Annex 54. Resolution No. 212 of the Ministry of Justice and Human Rights, February 23, 2001. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹⁰² Annex 54. Resolution No. 212 of the Ministry of Justice and Human Rights, February 23, 2001. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹⁰³ Annex 55. Decision of the National Chamber of Federal Contentious Administrative Appeals, December 11, 2001. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹⁰⁴ Annex 55. Decision of the National Chamber of Federal Contentious Administrative Appeals, December 11, 2001. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹⁰⁵ Annex 55. Decision of the National Chamber of Federal Contentious Administrative Appeals, December 11, 2001. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹⁰⁶ Annex 55. Decision of the National Chamber of Federal Contentious Administrative Appeals, December 11, 2001. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹⁰⁷ Annex 56. Brief of filing of extraordinary judicial remedy. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹⁰⁸ Annex 57. Judgment of the Supreme Court of Justice of the Nation, October 31, 2006. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹⁰⁹ Annex 58. Dictamen of the Attorney General before the Supreme Court of Justice of the Nation, July 29, 2005. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

by the sanction of a new amplifier law of the requirements which turn them applicable in the terms of Law 24.043”¹¹⁰.

73. The Commission takes note that the petitioner held that, as in the case of Mr. Rito de los Santos, in regard to the administrative and judicial proceedings, the counselor of Mr. Ferreira requested multiple pieces of evidence in order for them to be included into the casefile¹¹¹. Inter alia, it was requested that the name of the alleged victim present in the NDM of Argentina and other means of proof, to obtain relevant information to prove the political persecution suffered¹¹². However, petitioner held that the evidence was not provided by authorities, nor was his request reviewed at administrative and judicial instances¹¹³.

74. Concerning casefile No. 80658/74 present at the NDM under the name of Mr. Hugo Daniel Ferreira, it is noted that he repeatedly requested that it be annexed to the proceedings before decisions on merits were made on the matter¹¹⁴, yet in spite of said requests, it was not but until the stage before the Supreme Court of Justice of the Nation that it was added into the case, thanks to the efforts of the representatives of Mr. Ferreira¹¹⁵. However, the Supreme Court did not judge on the matter¹¹⁶.

3. Nicasio Washington Romero Ubal

75. On September 14, 1974 Mr. Nicasio Washington Romero Ubal was intercepted when leaving work in a record store in the Once neighborhood of Buenos Aires, by an undefined number of persons, who forced him into a car after repeatedly striking him. The fact was witnessed by tens of persons¹¹⁷. He had arrived to that store that day to look for his Uruguayan friend Daniel Banfi Baranzano, with whom he had lived a certain time after first arriving in the city. The one asking for Mr. Banfi addressed Romero and identified himself as a partner in the 26 (26 of March Movement – Broad Front) and asked where he could find him¹¹⁸.

76. After travelling for some time, he was made to get off the car and taken to a building where he was interrogated about his Uruguayan friend Banfi Baranzano¹¹⁹. Once again, he was driven to another place where they made him get off. There he recognized the voices of Mr. Daniel Rivera, whom he knew from the Normal Institute of Uruguay, Mr. Luis Latrónica and Mr. Guillermo Jabif¹²⁰.

77. At said place he was placed in a cell and kept incommunicado, and was tortured with a prod and strikes while being constantly interrogated¹²¹. According to the information present in the casefile, the interrogations versed about Uruguayan politics, and the interrogators had Uruguayan accent, whereas the custodians seemed Argentine¹²².

78. After several days, he was transferred once again along with other Uruguayans to another place of detention, where they were savagely struck again, due to which and also for hunger, they were continuously

¹¹⁰ Annex 58. Dictamen of the Attorney General before the Supreme Court of Justice of the Nation, July 29, 2005. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹¹¹ Annex 53. Initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹¹² Annex 52. Brief of amplification of demands. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007, Annex 59. Brief of filing of direct appeal, May 2001. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007 and Annex 56. Brief of filing of extraordinary judicial remedy. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹¹³ Annex 53. Initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹¹⁴ Annex 59. Brief of filing of direct appeal, mayo de 2001. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹¹⁵ Annex 18. Brief which claims a new fact before the Supreme Court of Justice. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹¹⁶ Annex 18. Judgment of the Supreme Court of Justice of the Nation, October 31, 2006. Annexed to the initial petition of Hugo Daniel Ferreira of May 11, 2007.

¹¹⁷ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹¹⁸ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹¹⁹ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹²⁰ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹²¹ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹²² Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

fainting¹²³. They were transferred again to what Mr. Romero believed to be a private home and remained there for many days¹²⁴.

79. On October 16, 1974, Mr. Romero Ubal along with some other detained, were put on a pick-up truck and after circulating for some time, they were forced to get off with the instruction to wait for several seconds before removing their blindfolds and that they could go home, being advised to “‘be deleted’ from Argentina as soon as possible”¹²⁵. In late October three bodies were found which corresponded to Mr. Daniel Banfi Baranzano, Mr. Guillermo Jabif and Mr. Luis Latrónica¹²⁶.

80. Mr. Romero learned, that thanks to the intercession of the HCUNR, the government of Sweden had granted him political asylum, and that very same October 16, he left toward that country, as a political refugee¹²⁷. The Commission takes note that according to the held in latter briefs filed by the State and the petitioner, the date of Mr. Romero’s departure was November 6, 1974¹²⁸.

3.1 About the proceedings of reparation initiated by Mr. Romero Ubal

81. In 1998 Mr. Romero Ubal initiated before the Undersecretariat of Social and Human rights of the Ministry of Interior, the proceedings to obtain a compensation for the facts described, based on Law 24.043 and its amplifier 24.906¹²⁹. In subsidy, a compensation for damages was claimed for the same facts¹³⁰.

82. On September 23, 1999 the Ministry of Interior issued Resolution No. 2068, holding that the demands had been rejected for failure to corroborate the requirements set forth by Law 24.043¹³¹.

83. On October 19, 1999 the counselor of Mr. Romero Ubal filed a direct appeal remedy before the National Chamber of Federal Contentious Administrative Appeals¹³². The remedy claimed that none of the evidential measures provided in the request, was developed by the administration, and the argued ends were not examined with due judgments, nor the precedents of the Supreme Court of Justice of the Nation in which, on similar cases, the benefit of the referred law (for example in the Bufano case)¹³³ had been granted.

84. On May 9, 2000 the Chamber dismissed the remedy filed asserting that the resolved in the administrative channel was in accordance with Law 24.043, its regulations, and Law 24.906, in regard to the timeframe limits that the legislator provided to access the benefit under discussion¹³⁴. The IACHR takes note that in the decision it was held that Mr. Romero Ubal had departed Argentina toward Sweden on October 16, 1974, according to what the counselor of Mr. Romero Ubal himself stated in his brief of amplification of demands.

85. An extraordinary federal remedy was filed against the decision of the National Chamber of Appeals¹³⁵. However, the I Chamber of the National Chamber of Appeals did not admit it in understanding that the issue

¹²³ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹²⁴ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹²⁵ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹²⁶ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹²⁷ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹²⁸ Annex 61. Dictamen No. 276 of the Ministry of Justice and Human Rights, December 27, 2011. Annexed to the brief of the State of Nicasio Washington Romero Ubal of February 2, 2012 and Annex 62. Brief of the petitioner of Nicasio Washington Romero Ubal received March 23, 2012.

¹²⁹ Annex 19. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹³⁰ Annex 19. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹³¹ Annex 63. Notification of the Resolution No. 2068 of the Ministry of interior, September 27, 1999. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹³² Annex 64. Brief of filing of direct appeal, October 19, 1999. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹³³ Annex 64. Brief of filing of direct appeal, October 19, 1999. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹³⁴ Annex 65. Decision of the National Chamber of Federal Contentious Administrative Appeals, May 9, 2000. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹³⁵ Annex 66. Brief of filing of extraordinary judicial remedy. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

did not fit within the so-called “sufficient federal matter”¹³⁶. For which reason, the counselor filed a complaint for rejected remedy¹³⁷.

86. On October 31, 2006 the Supreme Court issued a sentence which took the complaint and admitted the extraordinary remedy, but confirmed the appealed decision¹³⁸. In the decision of the court, it was argued that the illegitimate detention and the external exile of Nicasio Washington Romero Ubal, were prior to the coming into force of the State of Siege, due to which they are beyond the scope of Law 24.043, its regulatory decree, and Law 24.906¹³⁹.

87. The Commission takes note that the petitioner held that concerning the administrative and judicial proceedings, the counselor of Mr. Romero Ubal, requested multiple pieces of evidence in order for them to be included into the casefile¹⁴⁰. Inter alia, it was requested that the casefile of the NDM of Argentina be included, the files of the HCUNR, casefiles related to the murder of other Uruguayans detained with Mr. Romero, and other means of proof, to obtain relevant information to prove the political persecution suffered¹⁴¹. However, the petitioner held that the evidence was not provided by authorities, nor was his request reviewed at administrative and judicial instances¹⁴².

IV. ANALYSIS of LAW

A. The right to personal liberty, security and humane treatment of the person¹⁴³, the right of protection against the arbitrary detention¹⁴⁴ and the right of assembly¹⁴⁵ of the American Declaration within the scope of the detention of Mr. Julio César Rito de los Santos and Mr. Hugo Daniel Ferreira.

1. General considerations on the right to liberty, humane treatment, protection against arbitrary detention and the right of assembly

88. Article XXV of the American Declaration establishes guarantees which procure the protection of persons of from illegal or arbitrary interference of their liberty by the State. The IACHR has established on this point that “among the protections ensured are the requirements that every deprivation of liberty be made pursuant to a preexistent law, to inform the detained of the reasons of his or her detention and be rapidly notified of the charges attributed, that every person deprived of liberty have the right to a juridical remedy, to promptly obtain a determination of the legality of his or her detention and that the person be judged in a reasonable time or released while proceedings are substantiated”¹⁴⁶.

89. According to Inter-American norms on Human Rights, no one shall be subjected to detention or prison for reasons or methods that –although regarded as legal- may be incompatible with the fundamental Rights of the individual for being, inter alia, unreasonable, unforeseeable or disproportionate¹⁴⁷. Therefore, all detention,

¹³⁶ Annex 67. Brief of filing of complaint. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹³⁷ Annex 67. Brief of filing of complaint. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹³⁸ Annex 68. Judgment of the Supreme Court of Justice of the Nation, October 31, 2006. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹³⁹ Annex 68. Judgment of the Supreme Court of Justice of the Nation, October 31, 2006. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹⁴⁰ Annex 69. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹⁴¹ Annex 60. Brief of amplification of demands. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹⁴² Annex 64. Brief of filing of direct appeal, October 19, 1999. Annexed to the initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

¹⁴³ Article I establishes: “Every human being has the right to life, liberty and the security of his person.”

¹⁴⁴ Article XXV provides that: “No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character. Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.”

¹⁴⁵ Article XXI establishes: “Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature”.

¹⁴⁶ IACHR. Report on terrorism and human rights, OEA/Ser.L/V/II.116.Doc.5 rev.1, October 22, 2002. Para. 120.

¹⁴⁷ IACHR. Request before the Inter-American Court on Human Rights in the case of Juan Carlos Chaparro and Freddy Hernán Lapo. Case 12.091. Ecuador. June 23, 2006. Para. 59.

must be conducted not only in accordance with the provisions of national legislation, but it is also necessary that the domestic law, the applicable procedure and the express or implicit general principles related be compatible with Inter-American instruments and norms¹⁴⁸.

90. Likewise, according to the Body of Principles of the United Nations for the Protection of All Persons under Any Form of Detention or Imprisonment, “all form of detention or prison and all measures affecting the human rights of persons subjected to any form of detention or prison are to be ordered by a judge or other authority, or being subject to the effective inspection of a judge or other authority”¹⁴⁹. The requirement that the detention not depend on the sole discretion of the agents of the State responsible of carrying it out is so fundamental that it cannot be disregarded in any manner. The supervision and control of the detention is an essential safeguard since it grants effective guarantees that the detained are not exclusively at the mercy of the authority which detains them. In normal circumstances, the assessment of the legality of the detention is to be conducted swiftly, which in general means as soon as possible¹⁵⁰.

91. The right to personal liberty recognizes, primarily, the guarantee of the right to physical liberty: the reservation of law according to which, it is only by means of a law that the right to personal liberty may be affected¹⁵¹. This reservation of law implies, a formal guarantee, in the sense that every restriction of freedom must stem from a “juridical norm of general character, adhered to common good, issued from legislative bodies constitutionally foreseen and democratically elected, and elaborated pursuant to the procedure set forth by the constitutions of the States Parties for the formation of laws”¹⁵². But it also implies, second of all, a material aspect, the principle of criminality which obliges States to establish, as concretely as possible and “beforehand”, the “causes” and “conditions” for the deprivation of physical liberty¹⁵³.

92. According to the IACHR, the analysis of compatibility of the deprivation of liberty with the prohibition of illegal or arbitrary detention must follow three steps. The first consists of determining the legality of the detention from a material and formal viewpoint. Pursuant to this, it must be determined whether the action is compatible with domestic provisions of the State in question. The second step entails the analysis of those domestic provisions within the context of the guarantees set forth by Inter-American instruments of Human rights, so as to determine whether they are arbitrary. Finally, although the detention meets the requirements of a domestic juridical provision compatible with said instruments, it must be determined if the application of law in the specific case was arbitrary¹⁵⁴.

93. In regard to the right to humane treatment, the Court has established that “the infringement to the right to physical and psychic integrity of persons is a sort of violation which has several connotations of degree and encompasses from torture to other kind of cruel, inhumane, degrading or ill treatment, whose physical and psychological sequels vary in intensity depending on endogenous and exogenous factors which should be proven in any concrete situation”¹⁵⁵.

94. In regard to the occurrence of facts of threats and harassment, the Commission has established that said situations constitute in themselves affectations to the psychic and moral integrity of persons, which is

¹⁴⁸ See about this, IACHR. Report 129/17. Case 12.315. Merits. Carlos Alberto Fernández and Carlos Alejandro Tumbeiro. Argentina. October 25, 2017, para. 50.

¹⁴⁹ United Nations, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the General Assembly by Resolution 43/173 of December 9, 1988, Principle 4.

¹⁵⁰ IACHR. Report No. 8/16. Case 11.661. Merits (Publication). Manickavasagam Suresh. Canada. April 13, 2016, Para. 73 and IACHR. Report No. 211/20. Case 13.570. Lezmond C. Mitchell. United States. August 24, 2020.

¹⁵¹ Cfr. Case of Chaparro Álvarez and Lapo Íñiguez Vs. Ecuador, Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Serie C No. 170, para. 56, and Case Carranza Alarcón vs. Ecuador. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of February 3, 2020. Serie C No. 399, para. 61.

¹⁵² The Expression “Laws” in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of May 9, 1986. Serie A No. 6, para. 27.

¹⁵³ Cfr. IHR Court. Case of Chaparro Álvarez and Lapo Íñiguez Vs. Ecuador. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Serie C No. 170, para. 57 and IHR Court. Case Acosta Martínez and others Vs. Argentina. Merits, Reparations and Costs. Judgment of August 31, 2020.

¹⁵⁴ IACHR, Request before the Inter-American Court on Human Rights in the case of Juan Carlos Chaparro and Freddy Hernán Lapo. Case 12.091. Ecuador. June 23, 2006, para. 72.

¹⁵⁵ IHR Court. Case of Norín Catrimán and others (Leaders, members and activist of the Mapuche Indigenous People) Vs. Chile. Merits, Reparations and Costs. Judgment of May 29, 2014, para. 388.

aggravated by the absence of protection from the State¹⁵⁶. The Court has considered that the absence of response by the State upon a “campaign of threats, harassment, surveillance, detentions, raids and attacks against the life and personal integrity”, produces constant fear and anguish, constituting a violation to humane treatment of the affected persons¹⁵⁷.

95. Finally, concerning the right of assembly, it protects peaceful, intentional and temporary congregation of persons in a determined space in pursuit of a common goal. Assemblies, defined as every intentional and temporary congregation of a group of persons in a private or public space with a concrete purpose¹⁵⁸, “perform a very dynamic role in the mobilization of the population and the formulation of their demands and aspirations, since they enable the celebration of events and, most importantly, exert influence in the public policy of States”¹⁵⁹. As such, it is indispensable for the collective expression of opinions and points of view of persons¹⁶⁰. The exercise of the right of assembly has an essential importance for the consolidation of the democratic life of societies and therefore, it bears an imperative social interest¹⁶¹.

96. The IACHR has said that an integral analysis of standards concerning restrictions to the right of assembly and other Rights such as freedom of expression, allows to identify common elements in the application of the three-part “test”. First of all, every limitation must be foreseen in the law. Second of all, the aim must be to ensure the legitimate goals expressly foreseen in the American Convention. Third, restrictions must be necessary in a democratic society, criterion from which also derive the standards concerning proportionality. The authority which imposes limitations to a public manifestation shall have to demonstrate that these conditions have been met and all of them must be respected simultaneously so that the limitations imposed be legitimate according to the American Convention¹⁶².

2. Analysis of the concrete case of Mr. Julio César Rito and Mr. Hugo Daniel Ferreira

97. According to official police documents addressed to the NDM, the arrest and detention of Mr. Julio César Rito de los Santos and Mr. Hugo Daniel Ferreira, were conducted due to the of the infringement of Police decrees

¹⁵⁶ IACHR. Report No. 45/17. Case 10.455. Merits (Publication). Valentín Basto Calderón and others. Colombia. 25 de mayo de 2017. Para. 139.

¹⁵⁷ IACHR. Report No. 170/17. Case 11.227. Merits. Members and militants of the Patriotic Unity. Colombia. December 6, 2017, IHR Court. Case of Gutiérrez Soler Vs. Colombia. Merits, Reparations and Costs. Judgment of September 12, 2005. Serie C No. 132, para. 56-57, Case of Tibi Vs. Ecuador. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 7, 2004. Serie C No. 114, para. 147. See also IACHR, Second Report on the situation of Human Rights Defenders in the Americas, OEA/ser.L/V/II.Doc.66, December 31, 2011. On the right to humane treatment, the Commission has also held that “it implies the obligation of the State to adopt the necessary measures to prevent physical or psychological aggressions, threats, and harassment used in an attempt to diminish the physical and mental capability of human rights defenders. The Commission has stressed that said elements cannot only breach their right to physical integrity, but also their psychic and moral integrity. This since said facts produce feelings of anguish, fear and insecurity”. IACHR. Report No. 57/19. Case 12.380. Merits. Members of the Collective Lawyers Group José Alvear Restrepo. Colombia. May 4, 2019.

¹⁵⁸ Human Rights Council, Report of the Special Rapporteur on rights to freedom of association and peaceful assembly, Maina Kiai, May 21, 2012, A/HRC/20/27, para. 24.

¹⁵⁹ Human Rights Council, Report of the Special Rapporteur on rights to freedom of association and peaceful assembly, Maina Kiai, 21 de mayo de 2012, A/HRC/20/27, para. 24

¹⁶⁰ IACHR. Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights. Report on Protest and Human Rights. Standards on rights involved in social protest and obligations which must guide the State’s response. OEA/Ser.L/V/II. September of 2019. Para. 19. See communication N° 1948/2010, Turchenyak and others c. Belarús, judgment approved on July 24, 2013.

¹⁶¹ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, OEA/Ser.L/V/II. Doc. 66, para. 128 and 129.

¹⁶² In that same sense it was expressed that the Human Rights Committee of the UNO with amendment to article 19, paragraph 3, of the Covenant, certain restrictions are allowed for freedom of expression, yet only as long as they are set forth by law and be necessary to: a) ensure the respect to rights or the reputation of others; or b) the protection of national security, public order or public health or morale. The criteria for restrictions on rights guaranteed in articles 21 and 22 of the Covenant obey a similar logic. The very existence of objective justifications to limit said rights is not enough. The State party has to prove, also, that the prohibition is necessary to prevent a real, and not only hypothetical threat, for national security or democratic order, that the adoption of less intrusive measures would not suffice to achieve the same purpose and that the restriction imposed is proportional to the interest intended to protect (See general observation N° 34 of the Committee on freedom of opinion and freedom of expression, para. 34; communication N° 1119/2002, Jeong-Eun Lee c. the Republic of Korea, judgment approved on July 20, 2005, para. 7.2, and Belyatsky and others c. Belarús, Communication N° 1296/2004, decision of August 7, 2007, para. 7.3.). Cited in IACHR. Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights. Report on Protest and Human Rights. Standards on rights involved in social protest and obligations which must guide the State’s response. OEA/Ser.L/V/II. September of 2019.

on “public assemblies” and “public security”, having been imposed the sentence of 30 days of arrest non-redeemable through payment of bail or fine¹⁶³. From the facts of the case, it is understood that the only activity that the alleged victims were engaging in and which caused their detention, was to participate in a political assembly. The Inter-American Court on Human Rights has already studied the legality of the detentions performed in the application of these Police decrees in Argentina, the procedure of which was set forth in the Rules for Contravention Procedures elaborated by the head of the Federal Police. This prerogative of police detention for application of decrees co-existed with the detention of identity inquiry, constituting the two main conditions of police detention without judicial warrant¹⁶⁴.

98. Likewise, in other cases of application of Police decrees in Argentina, the Court has held that it pertains the contravention law, as well as criminal law, to exercise the punitive power of the State¹⁶⁵, which is evident in this case since the punishment foreseen implied the deprivation of liberty.

99. In a democratic society the punitive power of the State can only be exerted when strictly necessary to protect the fundamental juridical assets from the attacks which harm or endanger them¹⁶⁶. The Commission finds that in this case, the realization of assemblies in itself does not affect the rights of third parties, for which reason their punishment does not seek to protect individual or collective juridical assets. It must be stressed that if the realization of meetings, of whichever kind, is in itself punishable even if said behavior does not transcend the orbit of those who participate in it, that would undoubtedly be counter to the Declaration, for being an orbit precisely subtracted from the exercise of the *ius puniendi* of the State, which has as unyielding limit in the free determination and dignity of the person, which constitute the basic columns of any legal system¹⁶⁷.

100. On the contrary, the punishment with a sentence of arrest for the conduction of public assemblies as it seems worded in the Decree which concerns us, violates also the right of assembly contemplated in the American Declaration. In this sense, the Commission observes that the State offered no justification as to why the behavior performed by the alleged victims meant the perpetration of a contravention when it could have been limited to the exercise of a conventionally supported right. In fact, no reason was raised to consider the exercise of the right of assembly as a contravention worthy of being persecuted by federal authorities and sentenced to arrest, even when there was no state of exception or State of Siege declared. On this matter, the Inter-American Court has already held that penalizing, in this case by means of a contravention which imposes a sentence of arrest, an act which is essentially illegal, implies a violation to the principle of legality¹⁶⁸, thus in this case, the detentions of the alleged victims were illegal and arbitrary.

101. In addition, this Commission observes, in regard to the detention, that according to the informed by the petitioner, the alleged victims were transferred to the premises of the Superintendence of Federal Security where they were interrogated on several occasions and forced to sign documents that would afterward be used in the proceedings of expulsion, affirmation which at no time was contested by the Argentine State. Likewise, there is no evidence, nor was it proven or even addressed by the State, that the detentions had been subjected

¹⁶³ The Commission observes that although the Police Decrees based upon which a sentence of arrest was imposed on the alleged victims do not appear in the casefile, the Inter-American Court has referred to this kind of regulations, and the competencies for their issuance holding that the Argentine Constitution establishes that criminal matters concern exclusively the Congress of the Nation, but on contravention matters it has been preserved by province jurisdictions, in application of article 121 of the Constitution. Likewise, it has held that the City of Buenos Aires has “an autonomous government regime with own legislation and jurisdiction powers [...]”. IHR Court. Case of Acosta Martínez and others Vs. Argentina. Merits, Reparations and Costs. Judgment of August 31, 2020.

¹⁶⁴ IHR Court. Case Acosta Martínez and others Vs. Argentina. Merits, Reparations and Costs. Judgment of August 31, 2020.

¹⁶⁵ IHR Court. Case Acosta Martínez and others Vs. Argentina. Merits, Reparations and Costs. Judgment of August 31, 2020.

¹⁶⁶ IHR Court. Case Acosta Martínez and others Vs. Argentina. Merits, Reparations and Costs. Judgment of August 31, 2020, Case Kimel Vs. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008. Serie C No. 177, para. 76, and Case Usón Ramírez Vs. Venezuela. Preliminary Exception, Merits, Reparations and Costs. Judgment of November 20, 2009. Serie C No. 207, para. 73.

¹⁶⁷ IHR Court. Case Acosta Martínez and others Vs. Argentina. Merits, Reparations and Costs. Judgment of August 31, 2020. In the Report on Protest and Human Rights of the Inter-American Commission, it was held, summoning the Human Rights Council, Report of the Special Rapporteur on rights to freedom of association and peaceful assembly, Maina Kiai, A/HRC/20/27, para. 12, that: “High national and international Courts have interpreted that the right to peaceful and unarmed assembly shall not be interpreted in a restrictive manner, since it constitutes a fundamental element of democracy”.

¹⁶⁸ IHR Court. Case of the Cruz Flores Vs. Peru. Merits, Reparations and Costs. Judgment of November 18, 2004. Serie C No. 115, para. 102.

to control by competent authorities, so that a judge would promptly verify the legality of the measure of detention.

102. Taking into account the previous considerations, the Court concludes that the arrest and deprivation of liberty of the alleged victims was performed supported by a norm which does not meet conventional requirements, and there is also no information concerning the detention being subject to control of legality by a competent judge. For these reasons, Argentina is responsible for the violation of the right of protection against arbitrary detention and of assembly set forth in articles I, XXI and XXV of the American Declaration to the detriment of Mr. Julio César Rito de los Santos and Mr. Hugo Daniel Ferreira.

103. Finally, the Commission notes that the alleged victims, although set free for the referred facts, were subjected to latter harassment -according to their claims before the Commission-, by State authorities; they had to change their address on several occasions due to the constant appearances of persons dressed in civil clothes who asked of their whereabouts and of their families, whose homes were later raided; and finally, had to seek the protection of the HCUNR in one of their shelters. These facts, which were not contested by the Argentine State at any moment, and which definitely must have produced feelings of anguish, fear and insecurity to the point of seeking protection of the HCUNR, constitute a violation of the right to humane treatment, contained in article I of the Declaration.

B. The right of residency and movement¹⁶⁹ and the Rights to justice¹⁷⁰ and due process¹⁷¹ of the American Declaration of Rights and Duties of Man, within the proceedings of expulsion and exile, of Mr. Julio César Rito de los Santos and Mr. Hugo Daniel Ferreira

1. General considerations on the Rights to residency and movement, Rights to justice and due process

104. In light of the aforesaid standards of interpretation of the American Declaration of Rights and Duties of Man considering the advances over time in the *corpus juris* of international law of Human rights and their current situation, it is possible to find that the right of residency and movement of the Declaration has a similar scope to the right of movement and residency foreseen in article 22 of the American Convention on Human Rights, which provides on its first number, that "Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.", which represents a more developed expression of fundamental principles enshrined in the American Declaration, by referring to those who are lawfully in the territory of a State, and not only to those who hold that State's nationality.

105. In this sense, the IACHR observes that in order to assess the application of article VIII of the American Declaration on the right of residency and movement in the concrete case, it is important to bear in mind the development in terms of protection international of migrant persons in the Inter-American and universal system of Human rights, in the sense that the States are obliged to "promote the strengthening of human rights as a central component of migration policies and practices of countries of origin, of movement and of destination, ensuring the protection of the Human rights of migrants in the legal system of each State, regardless of their migration condition, and whichever their nationality, ethnic origin, gender or age"¹⁷². Likewise, they have reiterated their commitment with persons who have the right to international protection of refugees in Latin America. The aforesaid involves the urgent need to adopt a Human rights approach

¹⁶⁹ Article VIII establishes: "Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will".

¹⁷⁰ Article XVIII establishes: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights".

¹⁷¹ Article XXVI provides that: "Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment".

¹⁷² Montevideo Commitment on Migrations and development by the Heads of State and Government of the Ibero-American community, adopted during the XVI Ibero-American Summit, held in Montevideo, Uruguay, on 4 and 5 of November, 2006, para. 25.g)

concerning migration policies and in regard to the needs of international protection¹⁷³, which undoubtedly must serve as a base of interpretation of the right of residency and movement foreseen in the Declaration, so that it is understood that its interpretation and application extensively in light of the right of movement and residency held in the IACHR. In this sense, the Inter-American Commission in the Inter-American Principles on Human Rights of all Migrants, Refugees, Stateless Persons and Victims of human trafficking, has recognized the obligation of the States to protect the Rights of all persons, regardless of their migration situation, in accordance with the Charter of the Organization of American States (OAS), the American Declaration of Rights and Duties of Man, the American Convention and other instruments of the Inter-American system¹⁷⁴.

106. On this matter, the IACHR recognizes that the States parties, as a clearly established issue of international law, have the right to control the entry, residency and expulsion of foreigners. However, in the exercise of this right to expel foreigners, the member States must consider certain protections which enshrine fundamental values of democratic societies. The Inter-American Commission recognizes that each State determines its own immigration policies, although within limits which do not breach the rights of citizens when leaving or entering the country or to settle in any part of their territory. This policy of immigration must grant legal foreigners the juridical right to not being deported without a firm decision supported by the law, and must forbid the collective expulsion of foreigners, regardless of their juridical status. Analogously, the immigration policy is to ensure everyone an individual decision with the guarantees of the due process; it must respect the right to life, to physical and mental integrity and of the family¹⁷⁵.

107. On similar cases, concerning persons who having the legal residency in a State are subjected to proceedings of deportations¹⁷⁶, the IACHR has held that “article XVIII establishes a fundamental role for the Courts of a State, of ensuring and protecting these basic rights, role which must also be effective”¹⁷⁷. In the case of Rafael Ferrer-Mazorra, the Inter-American Commission concluded that when a State does not provide a suitable and effective remedy for a violation of a fundamental right consecrated under the American Declaration, said deficiency creates a violation independent from a right to judicial protection conceived by Article XVIII of the American Declaration¹⁷⁸.

108. In regard to article XXVI of the American Declaration, the IACHR has implemented this provision on certain civil proceedings which include a possible punishment that comes from a previous criminal sentence¹⁷⁹. In the case of Andrea Mortlock, which corresponded to a victim in proceedings of deportation, the Inter-American Commission declared that “denying the protection of article XXVI to an alleged victim simply by virtue of the nature of immigration procedures would counter the very core of this provision and its purpose of examining closely the procedures through which Rights, liberties and the wellbeing of persons are established under the jurisdiction of the State”¹⁸⁰. Thus, the IACHR has referred that the protections provided by article XXVI of the American Declaration are especially relevant for the study of immigration procedures which include a sanction of deportation¹⁸¹.

109. In regard to this point, in the universal system of protection of human rights, the Human Rights Committee, when interpreting article 13 of the International Covenant on Civil and Political Rights, determined that “the rights set forth in [said] article 13 only protect foreigners found unlawfully in the territory of a State

¹⁷³ IHR Court. Rights and guarantees of children in the context of migration and/or in necessity of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Serie A No. 21.

¹⁷⁴ IACHR. Inter-American Principles on Human Rights of all Migrants, Refugees, Stateless Persons and Victims of human trafficking. Resolution 04/19. December 7, 2019.

¹⁷⁵ See, in general, IACHR, Report on the situation on Human Rights of the petitioners of asylum in the System of Determination of Canadian Refugees, OEA/Ser. L/V/II.106 Doc. 40 rev., February 28, 2000, and IACHR. Report No. 63/08. Case 12.534. Admissibility and Merits. Andrea Mortlock. United States. July 25, 2008. Para. 78.

¹⁷⁶ IACHR. Report No. 81/10. Case of 12.562. Merits. Wayne Smith, Hugo Armendariz, and others. United States. July 12, 2010.

¹⁷⁷ IACHR. Report No. 51/01. Case of 9903. Rafael Ferrer-Mazorra, and others. United States. April 4, 2001. Para. 243.

¹⁷⁸ See *Id.* On paragraph 244; See also Maya Indigenous Communities of the District of Toledo Vs. Belize, Report No. 40/04 (Report on Merits), Case No. 12.053, paragraph 175 (October 12, 2004) (declaring that “The Commission has concluded analogously that the lack of effective judicial reparation implies, not only an exception to the exhaustion of domestic remedies, but also a violation of a substantial right to judicial protection defended by the Inter-American Human Rights system.”).

¹⁷⁹ IACHR. Report No. 63/08. Case 12.534. Admissibility and Merits. Andrea Mortlock. United States. July 25, 2008. Para. 82-86.

¹⁸⁰ IACHR. Report No. 63/08. Case 12.534. Admissibility and Merits. Andrea Mortlock. United States. July 25, 2008. Para. 83.

¹⁸¹ IACHR. Report No. 63/08. Case 12.534. Admissibility and Merits. Andrea Mortlock. United States. July 25, 2008. Para. 84.

party [.] Nonetheless, if the contested subject is the legality of his or her entry or permanence, every decision on this matter which concludes with expulsion or deportation must adapt to the foreseen in article 13”¹⁸²; which means, it must comply with the following guarantees: i) a foreigner may only be expelled in compliance of a decision adopted pursuant to the law, and ii) said foreigner must be enabled to the possibility of: a) exposing the reasons which aid him or her against the expulsion; b) submitting the case to review before the competent authority, and c) having representation before them in said pursuit¹⁸³.

110. In addition, the African Commission on Human and Peoples’ Rights has considered that “(...) it is unacceptable to deport individuals without offering them the possibility to argue their case before competent national courts, since that is contrary to the spirit and text of the African Charter on Human and Peoples’ Rights and of international law”¹⁸⁴.

111. Likewise, regarding the due process which State acts must follow that may impact on the nationality of a person, the Commission and the Inter-American Court have held that said guarantees set forth in article 8.1 of the Convention, including the right to sufficient motivation as one of the due guarantees referred in such provision, they apply over the entire process of determination of rights. Also, the bodies of the system have understood that when actions have a punishing content, the guarantees contained in article 8.2 of the Convention must be respected *mutatis mutandis* as well. The IACHR therefore notes that if the aim of the process is to contest the legality of the permanence of a person in the country, and order his or her expulsion, the same guarantees are applicable¹⁸⁵.

112. In cases of expulsion of foreigners, the jurisprudence of the Court has emphasized the obligation of the States to conduct individual proceedings which assess the specific conditions of persons who are subjected to proceedings, to analyze their situation in the country where they shall be deported and that the decision not be based on a criterion of discrimination¹⁸⁶.

113. The Inter-American Court has referred that according to the set forth in the Convention on the Status of Refugees of 1951¹⁸⁷:

(...) a person is a refugee as soon as he or she fulfills the requirements enunciated in the definition, which necessarily occurs before his or her condition of refugee is formally determined. Thus, the recognition of the condition of refugee of a person is not constitutive, but declarative. He or she does not acquire the status of refugee by virtue of the recognition, but said condition is recognized for the fact of being a refugee¹⁸⁸. (...) Given the declarative character of the determination of the condition of refugee, and even with the important role granted to HCUNR in the context of international protection, it is the States Parties to the Convention of 1951, in priority,

¹⁸² Human Rights Committee. General Observation No. 15 concerning the situation of foreigners under the International Covenant on Civil and Political Rights. Approved on period 27 of sessions, 1986, para. 9.

¹⁸³ IHR Court. Case Nadege Dorzema and others vs. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Serie C No. 251.

¹⁸⁴ African Commission of Human and Peoples’ Rights, Communication No: 159/96, para. 20

¹⁸⁵ IACHR. Report No. 140/19. Case 11.691. Merits. Raghda Habbal and children. Argentina. September 28, 2019. In the Human Mobility Report, the Commission systematized the guarantees that migration procedures had to gather pursuant to Inter-American jurisprudence and previous reports of the IACHR, thus: 1. Right to receive a previous and detailed communication of the proceedings for the determination of his or her juridical situation and, should the person be detained or retained, to be informed of the reasons for the detention and promptly notified of the charge or charges formulated against him or her; 2. In case of being detained or retained, right to being taken, promptly, before a judge or other official authorized by law to exert judicial functions and shall have the right to being judged within a reasonable time or set free, although the proceedings may continue. His or her freedom may be conditioned to guarantees which ensure attendance in court; 3. Right to being heard without delay, to have reasonable time and suitable means for the preparation of defense and to meet freely and privately with his or her defense counsel; 4. Right for migration proceedings to be conducted by a competent, independent and impartial awarder; 5. Right for a translator and/or interpreter free of charge; 6. Right to legal representation; 7. Right to having a duly reasoned decision adopted; 8. Right to being notified of the decision adopted within the proceedings; 9. Right to contest the decision before a higher court or judge with suspensive effects; 10. Right to information and effective access to consular assistance.

¹⁸⁶ Case of Dominican and Haitian Persons expelled Vs. Dominican Republic. Judgment of August 28, 2014. Serie C No. 282, para. 389.

¹⁸⁷ IHR Court. Case Family Pacheco Tineo vs. Plurinational State of Bolivia. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 25, 2013. Serie C No. 272. Para. 145 and 147.

¹⁸⁸ High Commissioner of United Nations for Refugees. Manual and Guidelines on Proceedings and Criteria to Determine the Condition de Refugee by virtue of the Convention of the 1951 and the Protocol of 1967 on the Status of Refugees. Geneva reedition, December, 2011. HCR/1P/4/ENG/REV.3. Available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html>, para. 28.

who are responsible for the recognition of said condition, by means of fair and efficient procedures conducive to said purpose¹⁸⁹.

114. Finally, in accordance with the international *corpus juris* applicable for migrant persons, the Inter-American system recognizes the right of any foreign person, and not only for isolated persons or refugees, to the non-undue return when their lives, integrity and/or liberty be at risk of violation, no matter their legal status or migratory condition in the country at where they are¹⁹⁰. This way, it has referred that when a foreigner claims before a State a risk in case of returning, the competent authorities of said State shall, at least, interview the person and conduct a prior or preliminary assessment, so as to determine whether said risk exists in case of expulsion. This implies respecting the minimum guarantees referred, as part of the due opportunity to expose the reasons which aid him or her against his or her expulsion and, should said risk be confirmed, he or she should not be sent back to his or her country of origin or where said risk exists¹⁹¹.

2. Analysis of the concrete case of Mr. Julio César Rito de los Santos and Mr. Hugo Daniel Ferreira

115. In the case under study, it is observed that resolutions No. 3840 and 8207 of the National Directorate of Migrations as it shall be corroborated below, were issued without compliance of the minimum guarantees to be offered in this kind of processes so they would adhere to the of terms of the referred standards.

116. In particular, it is observed that there is no proof -nor was it addressed by the State-, that the alleged victims had received a prior and detailed communication to the procedure for the determination of their juridical situation. There is no record either of them participating in the process, having the possibility of being even heard so as to present their corresponding defenses, nor did they have legal representation or counseling. In fact, the only intervention noted in the proceedings by those being subjected to it, was after the expulsion of Mr. Hugo Daniel Ferreira had already been ordered, when he filed an appeal which was dismissed under the argument that he had failed on evidential burden to demonstrate with original documents, that he had been acquitted of the case followed against him against on account of contravention. In this sense, the Commission considers that the administrative authority failed to ensure the guarantees set forth in articles XVIII and XXVI of the American Declaration in the terms specified via the Inter-American jurisprudence and that it has systematized the Commission on the Human Mobility Report¹⁹².

117. Likewise, in this case it is observed that the decision of expulsion to the country of origin of Mr. Hugo Daniel and Mr. Julio César, was provided without analyzing his situation in Uruguay, country to which they would be deported if not received in another State, nor their special needs for protection. By not respecting the minimum guarantees referred to above on proceedings of expulsion, the IACHR sees that they were not granted the due opportunity to expose the reasons which aided them against their expulsion and their particular situation of risk of returning to the country from where they had escaped. In fact, the proceedings completely omitted the fact that the alleged victims were under the protection of the HCUNR, situation informed by Mr. Hugo Daniel in the appeal he filed against the order of expulsion, which finally remained firm without this matter being even reviewed. Also, the State should have been aware that the alleged victims were under the protection of the HCUNR, since it was by its intercession that the safe-guard passes were requested for their departure of the country and that said departure was conducted under its sponsorship and accompanying. The abovesaid, would imply that the Argentine State also breached its obligation of non-refoulement, in regard to Mr. de los Santos and Mr. Ferreira, by ordering their expulsion.

¹⁸⁹ Nonetheless, "in some cases, in an exceptional fashion, the HCUNR may determine that a person must have the status of refugee, yet this is a practice which has been present only in those countries parties to no international instrument of refugees, where national authorities have requested the HCUNR to perform said role. In the Latin-American case, for example, only in the case of Cuba has the HCUNR superseded the function of the State in the determination of the condition of refugee of the persons who so request it, being the only State of the region who is party neither to the Convention of 1951 nor its Protocol of 1969". Cfr. Written part of the expert review by Juan Carlos Murillo submitted on March 29, 2013 (casefile of proof, sheet 1368 and 1369).

¹⁹⁰ IHR Court. Case Family Pacheco Tineo vs. Plurinational State of Bolivia. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 25, 2013. Serie C No. 272. Para. 135.

¹⁹¹ IHR Court. Case Family Pacheco Tineo vs. Plurinational State of Bolivia. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 25, 2013. Serie C No. 272. Para. 136.

¹⁹² IACHR, Human Mobility, American Standards. 2015.

118. In this sense, the Commission considers that the inobservance of the guarantees of the rights to justice and to due process was especially serious in this case, since due to this, the State became unaware of the particular situation and necessity of protection of Mr. Julio César Rito de los Santos and Mr. Hugo Daniel Ferreira should they have returned to Uruguay, and there was never a possibility to analyze said situation in light of their record, which ultimately resulted in inobservance of the principle of non-refoulement with the judgements themselves, although it did not materialize thanks to the intercession of the HCUNR and to the fact that the Kingdom of Sweden received them as political refugees.

119. Consequently, the IACHR considers that the resolutions adopted by the NDM which declared the permanence of Mr. Julio César Rito de los Santos and Mr. Hugo Daniel Ferreira illegal and ordered their expulsion, are incompatible with articles VIII, XVIII and XXVI of the American Declaration.

C. The right to life, a liberty, to security and integrity of the person¹⁹³ and the right of protection against arbitrary detention of the American Declaration of Rights and Duties of Man, within the detention Mr. Nicasio Washington Romero Ubal

1. The prohibition of torture and cruel, inhumane or degrading treatment or punishment (TCID)

120. An essential aspect of the right to humane treatment is the absolute prohibition of torture as a *jus cogens* (compulsory) norm of international law¹⁹⁴. The Commission has defined torture as: 1) an intentional act which inflicts physical and mental pain and suffering; 2) committed with a purpose (inter alia, personal punishment or intimidation) or intentionally (for example, to produce certain result in the victim)¹⁹⁵; 3) committed by a public official or by a private acting at the official's instigation¹⁹⁶. Torture can then be understood as an aggravated form of inhumane treatment perpetrated with a purpose; the essential criterion to tell between torture and other TCID "derives primordially from the intensity of the suffering inflicted"¹⁹⁷.

121. In the same sense the Convention Against Torture (CAT), defines torture as:

Every act employed to intentionally inflict severe pain or suffering upon a person, either physical or mental, in order to obtain from said person or from a third party, information or a confession, to punish said person for an act committed, or suspected to have committed, or to intimidate or coerce such person or others, or for any reason based on any kind of discrimination, when said pain or suffering be inflicted by a public official or another person in the exercise of public functions, upon his or her instigation, or with said official's consent or acquiescence¹⁹⁸.

122. While no Inter-American instrument defines "cruel, inhumane or degrading treatment" nor defines it in relation to torture, the jurisprudence of the IACHR has established that "inhumane treatment is that which deliberately causes severe mental or psychological suffering, which, given the particular situation, is unjustifiable" and that "the treatment or punishment of an individual may be degrading if severely humiliated

¹⁹³ Article I stipulates: "Every human being has the right to life, liberty and the security of his person".

¹⁹⁴ IACHR. Report No. 29/20. Case 12.865. Merits. Djamel Ameziane. United States. April 22, 2020. Para. 138.

¹⁹⁵ In the case of Cantoral Benavides vs. Peru the Court underscored that among the constitutive elements of torture is "the participation of a will deliberately intended to obtain certain goals, as extracting information from a person, or intimidate or punish" (Cfr. IHR Court. Case of Cantoral Benavides. Judgment of August 18, 2000. Serie C No. 69, para. 97). Afterward, in the case of Bámaca Velásquez vs. Guatemala, the same Court concluded that "the reported acts [...] were prepared and deliberately inflicted, in order to obtain from Efraín Bámaca Velásquez relevant information for the Army. According to the testimonies collected in the present proceedings, the alleged victim was subjected to severe acts of physical and psychic violence during an extensive period of time with the aforesaid intentions and, thus, intentionally put in a context of anguish and intense physical suffering, which cannot be regarded as anything but torture, both physical and psychological" (Cfr. IHR Court. Case Bámaca Velásquez. Judgment of November 25, 2000. Serie C No. 70, para. 158). Cited in IHR Court. Case of Bueno Alves Vs. Argentina. Merits, Reparations and Costs. May 11, 2007. Serie C No. 164.

¹⁹⁶ IACHR. Report on terrorism and human rights (2002), paragraph 155 (citing IACHR, Report on Canada (2000), paragraph 118).

¹⁹⁷ IACHR, Report on terrorism and human rights (2002), paragraph 154 (citing the case of Martín de Mejía on page 185); see also for example IACHR. Report No. 33/16. Case 12.797. Merits. Linda Loayza Soto and family. Venezuela. July 29, 2016, paragraphs 225-226 and IACHR. Report No. 29/20. Case 12.865. Merits. Djamel Ameziane. United States. April 22, 2020.

¹⁹⁸ IACHR. Report on terrorism and human rights (2002), paragraph 158 (citing inter alia Case 10.832. Report No. 35/96. Luis Lizardo Cabrera (Dominican Republic) and jurisprudence of the now defunct European Commission on Human Rights).

before others or is compelled to act against his or her desires or conscience”¹⁹⁹. Additionally, “degrading treatment is characterized by fear, anxiety and inferiority caused with the purpose to humiliate and degrade the victim and break his or her physical and moral resistance”²⁰⁰, which “is enhanced by the vulnerability of the person who is illegally detained”²⁰¹. Also, a treatment must reach a minimum level of severity to be considered “inhumane or degrading”; the assessment of this “minimum level” is specific for the facts of the case, including the duration of the treatment, the physical and mental effects, and, in some cases the sex, the age and health of the victim²⁰², as well as “ethnicity, color, nationality, migratory condition, and other factors”²⁰³.

123. In the context of interrogations and detention, the Inter-American jurisprudence has considered that a variety of acts constitute at least inhumane treatment and some constitute torture, including, *inter alia*:

prolonged detention with uncommunication; keeping the detained hooded and naked in the cells and interrogating them under the effects of pentothal; submerging the head of a person in water to the point of suffocation; beatings; cuts with pieces of glass; placing a hood in the head of a person and burning them with lit up cigarettes; threats of a behavior which would constitute inhumane treatment; threats of the extirpation of parts of the body; the exposure to the torture of other victims; threats of death²⁰⁴.

2. Analysis of the concrete case of Mr. Nicasio Washington Romero

124. In the case under study, Mr. Romero Ubal claimed he was illegally and arbitrarily detained when leaving from work and kept in clandestinity for one month, time during which he was victim of torture with the intention of obtaining information on political matters of Uruguay, by agents of the Argentine State. Argentina has not contested the veracity of the petitioner’s allegations on this point nor has it specifically referred to them. In this sense, the Commission understands the lack of reference to these matters by the Argentine State as the inexistence of controversy as to the illegal and arbitrary detention and torture argued by Mr. Romero, actually happened.

125. Likewise, it is important to note that the domestic judicial decisions for the recognition of the compensation referred in Law 24.043, did not refute that the facts invoked to request the application of the law had been imputable to the Argentine State, but that the refusals of the benefit based specifically on the detention and exile occurring beyond the timeframe of the said law, yet not as to the responsibility of the State for such facts. Likewise, it must be noted that as the petitioner has held, the families of one of the persons who was detained along with Mr. Nicasio Washington Romero, and who was murdered in connection to said detention, requested before the authorities access to reparation under Law No. 24.411 on forced disappearance of persons as successors, which was granted to them by means of Resolution No. 71/03 of the Ministry of Justice and Human Rights²⁰⁵.

126. Therefore, the above suffices for the Commission to establish that the acts claimed by the petitioner occurred, at that level of severity, and that they happened under the custody of Argentina. Nonetheless, the

¹⁹⁹ Convention against torture and other cruel inhuman or degrading treatment or punishment, Art.1.

²⁰⁰ IACHR. Report No. 35/96. Luis Lizardo Cabrera. Dominican Republic. 1February 9, 1998. Paragraph 77 (citing the European Commission on Human Rights, the Greek case, 1969, 12 Annuary of the European Convention on Human Rights 12).

²⁰¹ IACHR. Report No. 64/12. Case 12.271. Merits. Benito Tide Méndez and others. Dominican Republic. March 29, 2012, paragraph 194; see also IACHR. Report on terrorism and human rights (2002), paragraph 159 (citing Loayza Tamayo vs. Peru, September 19, 1997, paragraphs 57; European Court on Human Rights, Ribitsch vs. Austria, Judgment of December 4, 1995, Series A N° 336, paragraph 36; IHR Court, Cantoral Benavides v. Peru. Méritos. Judgment of August 18, 2000, paragraph 100).

²⁰² IACHR. Report on terrorism and human rights (2002), paragraph 157 (citing IACHR, Report No. 35/96. Luis Lizardo Cabrera, Dominican Republic, 1 February 9, 1998, paragraph 78 citing Irlanda vs. Reino Unido, paragraphs 162-163).

²⁰³ IACHR. Report No. 64/12. Case 12.271. Merits. Benito Tide Méndez and others. Dominican Republic. March 29, 2012, paragraph 194 and IACHR. Report No. 29/20. Case 12.865. Merits. Djamel Ameziiane. United States. April 22, 2020.

²⁰⁴ IACHR, Report on terrorism and human rights (2002), paragraph 161 (omitted quote); the Report cites the UN Special Rapporteur on Torture (1986) on acts which imply inflicting severe suffering enough as to constitute torture, including “prolonged deprivation of rest or sleep, of food, enough hygiene or medical assistance, isolation and total sensorial deprivation, detention in constant uncertainty in terms of space and time, threats of torture death of a relative and simulated executions” and decisions of the Human Rights Committee of the UNO which understands that conducts which include “beatings, electric shocks and simulated executions, forcing the detained to remain standing for extremely long periods, and keeping them incommunicado for more than three months, blindfolded and hands tied [...] constitute torture and other inhumane treatment. Id paragraph 162.

²⁰⁵ Annex 70. Initial petition of Nicasio Washington Romero Ubal of May 11, 2007.

Commission shall assess additional elements of this case which prove the responsibility of the State for violations of the right to protection against arbitrary detentions and the right to humane treatment.

127. In concrete terms, the petitioner claimed that Mr. Romero Ubal was detained by State agents with no arrest warrant, and without meeting the standards previously referred on this report so as to ensure the right to the protection against the detention arbitrary. In fact, there is no record in the casefile, nor was it referred by the State, that the detention had taken place under the order of a judge or another authority, and much less that it underwent supervision to determine its legality, nor that the alleged victim had been informed of the reasons of his detention. The Commission takes note that these facts are especially serious since they occurred in a context of systematic practice of arbitrary detentions, tortures, executions and forced disappearances perpetrated by forces of security and intelligence of the dictatorial governments of the region of the Southern Cone, which has been even recognized by the jurisprudence of the Inter-American Court on Human Rights, as the so-called Plan Cóndor²⁰⁶, in which, among other facts, there was a parallel system of clandestine prisons and torture centers with the purpose of receiving foreign prisoners detained in connection to said plan, which were operated jointly by police and military officials of Uruguay and Argentina²⁰⁷.

128. Likewise, as claimed by the petitioner, Mr. Nicasio Washington suffered a series of acts perpetrated against him during the time when he was detained, in order to interrogate him about the location of one of his Uruguayan friends with whom he had lived in Argentina, and on the political situation of Uruguay, which meets the requirement of purpose. The Commission considers that according to the information provided by the petitioner, for the facts as a whole in the lapse of one month during which he was detained, the treatment inflicted over Mr. Romero with the purpose of interrogating him, reaches the level of torture, since it included beatings, use of instruments such as prods, keeping him incommunicado and blindfolded, constant transfers, deprivation of food, which even made him pass out on several occasions, and finally when being released he was threatened of being murdered if he did not leave Argentina. Likewise, Mr. Romero learned of the further murders of Uruguayan partners who have been kept detained with him, for which reason it is regarded that he was subjected to serious acts of physical and psychic violence during a prolonged period of time with the aforesaid purposes and, thus, put in a context of anguish and of intense physical suffering in an intentional manner, which can only be regarded as torture, both physical as psychological.

129. As a result from the above, the Commission concludes that these acts perpetrated against Mr. Nicasio Washington Romero Ubal with the purpose of interrogating him reach the level of torture in violation Articles I and XXV of the American Declaration.

D. The right to appropriate reasoning²⁰⁸, the right to judicial protection²⁰⁹ and the right to equality before the law²¹⁰ in relation to article 1.1²¹¹ of the American Convention, within reparation proceedings of Law 24.043 initiated by the alleged victims

²⁰⁶ IHR Court. Case Goiburú and others Vs. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Serie C No. 153, para. 61.5 to 61.8.

²⁰⁷ "As of 1976, and particularly after the military coup in Argentina, the number of disappearances and extrajudicial executions of exiled and refugees increased importantly in said country. In some cases, refugees were intended to be shown as terrorist invaders, and so, for example, between July and October that year there were joint operations of Argentine and Uruguayan military corps in which over 60 Uruguayans were abducted in Buenos Aires". Cfr. IHR Court. Case Gelman Vs. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Serie C. No. 221, para. 56, Never again. Final Report of the National Commission on Disappearance of Persons, Buenos Aires, Eudeba, 1984, chapter 1.D: Clandestine Detention Centers (C. C.D) Available at: <http://www.desaparecidos.org/arg/conadep/nuncamas/> (Cited in Case Gelman Vs. Uruguay. Judgment of February 24, 2011).

²⁰⁸ Article 8.1 establishes: "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".

²⁰⁹ Article 25.1 stipulates: "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".

²¹⁰ Article 24 sets forth: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law".

²¹¹ Article 1.1 establishes: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for

[continúa...]

1. Preliminary matters

130. First of all, it is important to express that, as mentioned on the previous sections, Mr. Julio César Rito de los Santos, Mr. Hugo Daniel Ferreira and Mr. Nicasio Washington Romero Ubal were victims of violations of their rights contemplated in the American Declaration.

131. In regard to Mr. Julio César Rito and Mr. Hugo Daniel Ferreira, whose circumstances of fact were similar, the violations materialized in a sequence of continuous acts attributable to the Argentine State, consisting of the detention resulted from the exercise of their right of assembly; the facts of harassment which motivated their change of domicile on several occasions due to the fear of them and their families being in danger which led them to seek shelter in the HCUNR; the proceedings brought forth by the National Directorate of Migrations of the executive power to inquire on their background, which concluded with the order of immediate expulsion to their country of origin or any other which will accept them, in breach of the principle of non-refoulement and violation of guarantees of due process and justice of the Declaration, which finally led them to self-exile as political refugees in Sweden. In the case of Mr. Nicasio Washington Romero, it was possible to observe the sequence of illegal and arbitrary detention and submission to torture -as part of the interrogation procedure in order to obtain information of the Uruguayan political situation -, and the threat that he had to leave the country, along with the homicide of other Uruguayans with whom he shared detention, which finally motivated the protection of the HCUNR and to proceed with actions for him to equally leave Argentina headed for the Kingdom of Sweden as only way to safeguard his life and integrity.

132. Said facts which implied violations of the rights to life, liberty, security and integrity of the person; of residency and movement; of justice; a due process; of assembly and of protection against arbitrary detention included in the American Declaration of Rights and Duties of Man, generate the obligation of the Argentine State to repair the victims based on the standards which, on this matter, the jurisprudence of the system has provided. Next, the analysis that the IACHR shall perform on the domestic channels tried by the victims of this case to access a reparation pursuant to the legislation in force at the time, which consisted of the request of application of Law 24.043 and, in subsidy, the claim for damages.

133. This way, in regard to the allegations from the Argentine State on the existence of Law 26.564 issued in 2009 and the necessity that the petitioner exhaust said remedy before assessing a study on the merits of the case, the IACHR must hold that the subject to address on this report is whether or not a violation to the rights contemplated in the Convention took place within the remedies employed by the alleged victims which were those valid at the time of filing of the petition. The Commission recognizes the efforts of Argentina for establishing a legal regime of measures of reparation for the victims of the dictatorship and how this policy of indemnity has been broadened and completed by other laws which have established benefits for several categories of victims of the dictatorship and their successors, as is the case of Law 26.564 in regard to the persons detained for political reasons.

134. The Commission observes that as held by the Inter-American Court with the existence of national mechanisms to determine forms of reparation, those procedures and their results must be valued, since it constitutes an effort by the State toward a collective process of reparation and social peace²¹². In addition, it highlights several documents in the international context which expressly recognize the right of the victims of Human rights violations of accessing remedies and obtaining individual reparations; such as the Declaration on fundamental principles of justice for las victims of crimes and abuse of power²¹³, the Body of principles for

reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition".

²¹² IHR Court. Case Almeida Vs. Argentina. Merits, Reparations and Costs. Judgment of November 17, 2020. Serie C No. 416, Case Gomes Lund and others ("Guerrilha do Araguaia") Vs. Brazil. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 24, 2010. Serie C No. 219, para. 303, and Case Perrone and Preckel Vs. Argentina. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of October 8, 2019. Serie C No. 384, para. 116.

²¹³ Adopted by the General Assembly of the United Nations Organization on November 29, 1985, via Resolution 40/34. On its principle 4 it holds that "the victims shall be treated with compassion and respect of their dignity. They shall have access to mechanisms of justice and to a prompt reparation for the damages suffered, as set forth by domestic legislation".

the protection and the promotion of Human rights by means of the fight against impunity²¹⁴, and the basic Principles and guidelines on the right of the victims of manifest violations of international norms of human rights and of international humanitarian law to file remedies and obtaining reparations²¹⁵. Similarly, the set forth by the Court, the European Court on Human Rights has recognized the compatibility between collective and individual measures²¹⁶. These mechanisms must satisfy the criteria of objectivity, reasonability and effectivity to properly repair the violation of rights²¹⁷.

2. General Considerations on the rights to have duly reasoned decisions, judicial protection and equality before the law

135. Regarding the right to have with duly reasoned decisions, the Inter-American Court has held that the reasoning “is the exteriorization of the reasoned justification which allows to get to a conclusion”²¹⁸. The duty to reason resolutions is a guarantee connected to with the correct administration of justice, which protects the right citizens to being judged for the reasons that provided by law, and grants credibility to the judicial decisions within a democratic society²¹⁹.

136. Therefore, the decisions adopted by domestic bodies which may affect human rights must be duly founded, since they would otherwise be arbitrary decisions²²⁰. In this sense, the foundation of a judgment and of certain administrative acts must allow to know which the facts, motives and norms were on which the authority based to take its decision, in order to discard any sign of arbitrariness. Likewise, the motivation shows to the parties that they have been heard, their allegations being duly taken into account, the body of evidence been analyzed and, in those cases in which decisions are contestable, grants them the possibility to criticize the resolution and obtain a new exam on the matter before higher instances. Therefore, the duty of motivation is one of the “due guarantees” included in article 8.1 to protect the right to due process²²¹.

137. The duty of motivation does not demand a detailed answer to each and every one of the arguments of the parties, but an answer to the main and essential arguments subject of controversy which allow to ensure the parties that they have been heard throughout the proceedings.²²²

138. Concerning article 25.1 of the Convention, the Inter-American Court has held that it provides, in broad terms, the obligation of the States to offer all persons under its jurisdiction, an effective judicial remedy against acts which violate their fundamental rights²²³.

139. Also, the Court has established that for the State to fulfill the set forth in article 25 of the Convention the formal existence of the remedies does not suffice, but it is necessary that they be effective in its own terms, which means that they yield results or answers to the violations of rights recognized, either in the Convention,

²¹⁴ Adopted by the Commission on Human Rights of the United Nations Organization, on February 8, 2005. Principle 31 states: “Every violation of a human rights provides a right of the victim or his or her successors to obtain reparation, which implies the duty of the State to repair and the right to prosecute the author”.

²¹⁵ Adopted by the General Assembly of the United Nations Organization on December 16, 2005, via Resolution 60/147. Principles 12, 13 and 14 set forth the right to access a judicial remedy for the alleged victims. Principle 18 of this document holds that the right of the victims to a “full and effective reparation”. Cfr. <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>

²¹⁶ TEDH, Case Broniowski Vs. Poland, No. 31443/96. Judgment of July 22, 2004, para. 36.

²¹⁷ IHR Court. Case Almeida Vs. Argentina. Merits, Reparations and Costs. Judgment of November 17, 2020. Serie C No. 416, Case Manuel Cepeda Vargas Vs. Colombia. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment de 26 de mayo de 2010. Serie C No. 213, para. 246, and Case Hernández Vs. Argentina. Preliminary Exception, Merits, Reparations and Costs. Judgment of November 22, de 2019. Serie C No. 395, para. 18.

²¹⁸ IHR Court. Case Chaparro Álvarez and Lapo Íñiguez Vs. Ecuador. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Serie C No. 170, para. 107.

²¹⁹ IHR Court. Case Apitz Barbera and others (“First Contentious Administrative Court”) Vs. Venezuela. Preliminary Exception, Merits, Reparations and Costs. Judgment of August 5, 2008. Serie C No. 182, para. 77.

²²⁰ IHR Court. Case Chaparro Álvarez and Lapo Íñiguez Vs. Ecuador. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Serie C No. 170, para. 107.

²²¹ IHR Court. Case Chocrón Chocrón Vs. Venezuela. Preliminary Exception, Merits, Reparations and Costs. Judgment of June 1, 2011. Serie C No. 227. Para. 117.

²²² IHR Court. Case Flor Freire Vs. Ecuador. Preliminary Exception, Merits, Reparations and Costs. Judgment of August 31, 2016. Serie C No. 315.

²²³ IHR Court. Case of Maldonado Ordóñez Vs. Guatemala. Preliminary Exception, Merits, Reparations and Costs. Judgment May 3, 2016. Serie C No. 311. Para. 108.

in the Constitution or in the law. The aforesaid implies that the remedy is to be suitable to fight against the violation and that it be effective in its implementation by the competent authority²²⁴. Likewise, an effective remedy implies that the analysis by the competent authority of a judicial remedy cannot be reduced to a mere formality, but the reasons invoked by the claimant must be examined and to expressly refer to them²²⁵. It cannot be considered as effective any remedy which, due to the general conditions of the country or even due to the particular circumstances of any given case, become illusory²²⁶. This may happen, for example, when their uselessness becomes proven by the practice, for lack of means to execute its decisions or for any other situation which configures a setting of denegation of justice. Thus, the proceedings must lead to the materialization of the protection of the right recognized in the judicial resolution via suitable application of said resolution²²⁷.

140. The Court has held that, in the terms of article 25 of the Convention, it is possible to identify two specific obligations of the State. The first, to normatively consecrate and ensure the due application of effective remedies before competent authorities, so that they safeguard all persons under its jurisdiction against acts which violate their fundamental rights or which entail the determination of their rights and obligations. The second, to ensure the means to execute the respective definitive decisions and sentences issued by said competent authorities, so that they effectively protect the declared or recognized rights. The right set forth in article 25 is closely connected to the general obligation of article 1.1 of the Convention, by attributing functions of protection to the domestic law of the States Parties. In light of the above, the State has the responsibility not only of normatively designing and enshrining an efficient remedy, but also to ensure the due application of said remedy by its judicial authorities²²⁸.

141. Finally, concerning the notion of equality the Court has held that it stems directly from the unity of nature of mankind and it is inseparable from the essential dignity of the person, upon which it is incompatible every situation that, for a determined group considering itself superior, leads to treating it with privilege; or that, on the contrary, in considering it inferior, treats it with hostility or of any form which discriminates from the enjoyment of rights which are recognized for those who are not considered incurred in said situation. The jurisprudence of the Court has indicated that in the current stage of evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of the *ius cogens*. Upon it lie the juridical framework of national and international public order and permeates every legal system²²⁹.

142. The principle of equality and non-discrimination must be understood in the sense of incorporating two conceptions: "(...) one negative conception related to the prohibition the of arbitrary differences of treatment, and one positive conception related to the obligation of the States to create conditions of true equality before groups who have been historically excluded or who are at a greater risk of being discriminated"²³⁰. The present case, falls within the first conception, pursuant to which not all different juridical treatment is essentially discriminatory, because not every distinction of treatment can be considered offensive, in itself, toward human dignity. In that sense, a distinction is discriminatory only when it "lacks objective and reasonable

²²⁴ IHR Court. Case of Usón Ramírez Vs. Venezuela. Preliminary Exception, Merits, Reparations and Costs. Judgment of November 20, 2009. Serie C No. 207, parr. 129; Case Claude Reyes and others Vs. Chile. Merits, Reparations and Costs. Judgment de of September 19, 2006. Serie C No. 151, para. 131.

²²⁵ IHR Court. Case Lagos del Campo Vs. Peru. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 31, 2017. Serie C No. 340, para. 176.

²²⁶ IHR Court. Case Lagos del Campo Vs. Peru. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 31, 2017. Serie C No. 340, para. 188 and Case Favela Nova Brazilia Vs. Brazil. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of February 15, 2017. Serie C No. 333, para. 233.

²²⁷ IHR Court. Case of Maldonado Ordóñez Vs. Guatemala. Preliminary Exception, Merits, Reparations and Costs. Judgment May 3, 2016. Serie C No. 311. Para. 109 and IACHR. IACHR. Report No. 147/18. Case 12.950. Merits. Rufino Jorge Almeida. Argentina. of December 7, 2018. Para. 50.

²²⁸ IHR Court. Case of Maldonado Ordóñez Vs. Guatemala. Preliminary Exception, Merits, Reparations and Costs. Judgment May 3, 2016. Serie C No. 311. Para. 110.

²²⁹ IHR Court. Case of Flor Freire Vs. Ecuador. Preliminary Exception, Merits, Reparations and Costs. Judgment of August 31, 2016. Serie C No. 315. Para. 109.

²³⁰ IHR Court. Case of Furlan and family Vs. Argentina. Exceptions, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 31, 2012. Serie C No. 246. Para. 267.

justification”²³¹, situation to be assessed case by case and with greater or less intensity according to the rights or interests involved, or whether it is a group historically subjected to discrimination or exclusion.

3. Analysis on whether Law 24.043 and its application in the proceedings initiated by the alleged victims violated rights contemplated in the Convention

143. In the early 1990’s, Argentina started to develop a policy of administrative measures of reparation of the victims of the last dictatorship. Among these measures, Law No. 24.043 established benefits for persons placed at the disposal of the NEP during the State of Siege, or being civilians, suffered detention by virtue of acts from military courts²³².

144. In the case of *Hanríquez* regarding Argentina (2000), the Commission already had the opportunity to resolve on Law 24.043, stating that “it is not intended to establish a substantial right to compensation for persons included in it, from which persons who are not be excluded”, since the reparation for the violation of an international obligation of the State, as for example a restriction to personal liberty, is not of optional but imperative compliance²³³. In this sense, the IACHR considered that “Law 24.043 only regulates a special procedure to be applied in the determination: a) of the existence of a right to compensation in someone’s mind, b) of its amount, c) of the form of payment”²³⁴, in exchange of which the persons who opt for it “waive certain rights, *inter alia*, the right to initiate or proceed with a trial for damages, right which they would otherwise preserve”²³⁵.

145. The IACHR observed in the referred case that Law 24.043 does not intend to encompass all human rights violations occurred during the last civil-military dictatorship in the country and, therefore, the exclusion of certain types of cases of the essences of lay which do not *per se* violate the right to equality before the law, as long as said exclusion responds to an objective and reasonable justification, and results proportional to the intended goals. This, considering the continuous existence of the civil action as an alternate channel for compensation²³⁶. Thus, this Commission has said that “Law 24.043 far from excluding any person from the right to compensation, what it establishes is a special procedure through which some persons may opt to exert their claim for compensation”²³⁷.

146. In this sense, the first juridical problem to be raised regarding the law, is apparently whether the fact of excluding situations of *facto* occurred beyond the temporary setting which recognizes the possibility of receiving a compensation under said regulatory framework, violates the principle of equality and not discrimination. On this point, this Commission considers that the reasoning provided by the State to establish the distinction, namely, that Law 24.043 sets a timeframe for the application which corresponds to the period of duration of the State of Siege declared on November 6, 1974 and that the facts taken place beyond that period do not meet the requirements to be eligible for the compensation contemplated in said norm and its amplifiers, is objective and reasonable considering that the effect of the law is to grant persons included in it the right to follow a special settlement procedure in matter of compensations for human rights violations. Likewise, it considers that there is proportionality between the means employed and intended goal. Therefore, the Commission concludes that the distinction consecrated by Law 24.043 does not violate article 24 of the Convention²³⁸.

²³¹ IHR Court. Proposal of modification to the Political Constitution of Costa Rica concerning naturalization. Advisory Opinion OC4/84 of January 19, 1984. Serie A No. 4. Para. 55 and 56. On para. 56 referring to Eur. Ct. H.R., Case “Relating to certain aspects of the laws on the use of languages in education in Belgium” (Merits), Judgment of July 23, 1968, page 34

²³² IHR Court. Case *Almeida Vs. Argentina*. Merits, Reparations and Costs. Judgment of November 17, 2020. Serie C No. 416.

²³³ IACHR. Report No. 73/00. Case 11.784. *Marcelino Hanríquez and others. Argentina*. October 3, 2000, para. 47-48.

²³⁴ IACHR. Report No. 73/00. Case 11.784. *Marcelino Hanríquez and others. Argentina*. October 3, 2000, para. 48

²³⁵ IACHR. Report No. 73/00. Case 11.784. *Marcelino Hanríquez and others. Argentina*. October 3, 2000, para. 49.

²³⁶ IACHR. Report No. 73/00. Case 11.784. *Marcelino Hanríquez and others. Argentina*. October 3, 2000, para. 48.

²³⁷ IACHR. Report No. 73/00. Case 11.784. *Marcelino Hanríquez and others. Argentina*. October 3, 2000, para. 48.

²³⁸ Likewise, the Commission takes note that this matter was subject of study by the Supreme Court of Justice of the Nation in the case of *Barrose* cited in the Judgment of the Court concerning *Hugo Daniel Ferreira* (Annex 71. Judgment of the Supreme Court of Justice of the Nation, October 31, 2006. Annexed to the initial petition of *Hugo Daniel Ferreira* of May 11, 2007), which assessed whether the regulations of Law 24.043 which established a timeframe for its application violated the guarantee of equality in that it differentiated illegal detentions occurred during the duration of the State of Siege, from those occurred beyond said period. According to the cited in the Judgment of the

[continúa...]

147. However, it must be analyzed, whether in the facts under study which involve the alleged victims, the application of Law 24.043 adhered to the standards set forth in itself and in its amplifiers, and in the decisions of the Argentine Supreme Court of Justice of the Nation, which has interpreted its application.

148. According to the information present in the casefile, at first it was understood that some alleged facts were excluded from this compensation mechanism. However, the judicial interpretations have allowed to determine some additional factual situations as encompassed in the broad spirit which drove the legislator to establish said reparatory regime, for which reason the corresponding reparation has been granted in those cases²³⁹.

149. In particular, in regard to the case of the alleged victims, the situations of forced exile have been understood as included into those which qualify for granting compensation under Law 24.043. Thus, as of year 2000, the Supreme Court of Justice in its decisions of the cases of Quiroga and Bufano, recognized that exile, as a consequence of the illegal imposition of those who held power and as affectation of liberty, is a factual situation reached by the benefits of Law 24.043²⁴⁰. Likewise, in its milestone judgment of 2004 of the Yofre de Vaca Narvaja case, it established that “detention, not only in that law but also for common sense, means different forms of misdemeanor to liberty of movement. (...) Because also, the Court has considered that, in the law’s approach, detention is comparable to ostracism, therefore there must be a record of the time spent in exile by persons illegally persecuted (...)”²⁴¹. In this sense, it established, as it had done on previous decisions, that the aim of the law was to grant an economic compensation to persons deprived of their constitutional right to liberty, regardless of the form which produced the authority’s order which led to said deprivation, but the effective impairment of liberty²⁴².

150. Concerning the application of the referred precedent, it must be noted that Resolution MJyDH N° 670 of August 19, 2016 provided by the State²⁴³, held that there was a clear judicial doctrine line for the forced exile in the sense of the admission of the reparatory regime foreseen in Law N° 24.043, “in those duly proven cases and preceded by situations of illegal detention and/or persecution which had generated in those involved a justified fear of experimenting a severe risk on their lives, physical integrity and/or personal liberty and not for cases in which it is possible to interpret the departure of the country as voluntary self-exile” upon the doctrine of the Supreme Court in the case Yofre de Vaca.

Court regarding Ferreira, at said opportunity, the Court concluded that “the exercise of regulatory power does not alter the substance of the rights granted by law 24.043 nor did it introduce restrictions beyond its spirit, but, on the contrary, it is perfectly compatible with the political will reflected in the law” which was to grant an economic compensation to persons unfairly deprived of their liberty during the applicability of the State of Siege.

²³⁹ Annex 72. Judgment of the Supreme Court of Justice of the Nation Case Yofre de Vaca Narvaja, Susana, October 14, 2004. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

²⁴⁰ Annex 73. Judgments of the Supreme Court of Justice of the Nation Casos Quiroga, Rosario Evangelina and Bufano, Alfredo Mario, ambas of June 1, 2000. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

²⁴¹ Annex 74. Judgment of the Supreme Court of Justice of the Nation Case Yofre de Vaca Narvaja, Susana, October 14, 2004. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007. In said Judgment, the Supreme Court responded the question concerning the situation of persons who had to leave Argentina as asylum seekers or political refugees for political persecution and not for being victims of illegal detentions (and who had been forced to remain as refugees in the embassy of Mexico in Buenos Aires without being able to leave the diplomatic office because their lives were in danger), find their place in the provisions of Law 24.043, holding: “(...) an affirmative answer is imposed to said question for the repairing vocation which translates the laws under study, whereas the conditions in which the claimant had to remain and then abandon the country -regarding which there is no controversy- prove that his decision to seek aid, first, under the flag of a friendly nation, and emigrate later, far from being regarded as “voluntary” or freely adopted, was the only and desperate choice he had to save his life upon the threat of the State itself or of parallel organizations or, at least, to recover his freedom since, as I explain hereunder, I consider that at the time of his decision to leave, he already suffered the shortage of said basic right”.

²⁴² Annex 74. Judgment of the Supreme Court of Justice of the Nation Case Yofre de Vaca Narvaja, Susana, October 14, 2004. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007. In the Judgment of the Noro case, the Supreme Court of Justice of the Nation provided that “(...) the aim of Law 24.043 was to grant an economic compensation to persons deprived of the constitutional right to freedom, not by virtue of an order from a competent judicial authority, but by virtue of acts -whichever its formal expression- legitimate, originated in certain circumstances from military courts or from who exerted the Executive Power of the Nation during the last de facto government. The essential is not the form which gave authority to the fact- and much less its adjustments to the demands from art. 5 of Law 21.650- but the demonstration of the effective impairment to liberty”. Annex 76. Judgment of the Supreme Court of Justice of the Nation Case Bufano, Alfredo Mario, June 1, 2000. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

²⁴³ Annex 75. Resolution No. 670 of the Ministry of Justice and Human Rights, August 19, 2016. Annexed to the brief of the State of Julio César Rito de los Santos of September 5, 2017.

151. That being said, in regard to the application of Law 24.043 in the cases under study, first of all it applies that the Commission assess the factual situation of Mr. Julio César Rito de los Santos and Mr. Hugo Daniel Ferreira for those being similar cases. On this point, the IACHR observes that indeed, as found in domestic decisions, the facts of detention occurred beyond the timeframe set by Law 24.043, this is in June of 1974. However, it is noted that there was a sequence which followed the detention by the National Executive Power, which contain the facts of persecution and harassment, the initiation of proceedings of expulsion and finally the loss of the right to remain and move throughout the country pursuant to the due exercise of the powers which had been granted to them by means of their temporary residencies. Said sequence extended beyond November 6, 1974 and persisted until July 1975 when they were expelled from Argentina and had to leave the country toward Sweden as political refugees.

152. The Commission observes that both in their appeal and extraordinary remedies, the alleged victims raised the violation to the right of equality before the law. The proven facts show that in said remedies, they referred to situations, in their view alike, in which the Supreme Court interpreted the requirements of Law 24.043 in a non-strict manner, loosening the criteria for them to apply. In particular, they referred in the remedies, inter alia, to the cases of Geuna, Quiroga, Bufano and Yofre de Vaca, whose judgments were issued before the decision of the Supreme Court on the cases in question, and in them the notion of forced exile susceptible of reparation under said norm was broadened. The Commission understands, that said precedents, and in particular the sentence of the Yofre de Vaca case, are relevant in the present case, since they have allowed to understand, in domestic proceedings, the facts of exile as the continuity of an impairment or restriction to liberty, which is preceded by situations of illegal detention and/or persecution²⁴⁴.

153. On these arguments related to the right to equality before the law and the decisions on similar cases adopted by the Supreme Court of Justice, it is noted that from right to judicial protection and to have duly reasoned decisions, stemmed the obligation of the judicial authority to take said argument seriously and resolve on its merits. On this point, from the review of the final decisions adopted by the Supreme Court of Justice of the Nation of Argentina in the cases of Mr. Hugo Daniel Ferreira and Mr. Julio César Rito, there were different argumentations to deny the access to reparation foreseen in Law 24.043, and it is by virtue of those sentences that it shall be analyzed whether the answers yielded were consistent with the right to have duly reasoned decisions, read jointly with the right to judicial protection and the right to equality before the Law of the alleged victims.

154. First of all, in regard to the case of Mr. Hugo Daniel Ferreira, it is observed that the Supreme Court in its decision concludes as argument to deny the compensation foreseen in the cited Law that “since the detention of the claimant took place beyond the legal timeframe, as proven in the briefs and even recognized by him, the appealed judgment abides by the law”.

155. On this matter, although the Commission has considered that the existence of divergent decisions between courts of different jurisdictions and even by the same court do not imply in itself a contravention to guarantees of due process, what is observed is that by bringing forth the remedies raised in this case, the jurisprudential precedents related to exile as continuity of the effective impairment to liberty, it was necessary that the judicial authority had carried out an analysis of said precedents and motivated its decision in regard to why the considerations of these latter would not apply, particularly concerning the continuity of the restriction to liberty due to the exile endured by Mr. Ferreira. This, while a possible case of violation to the right to equality before the Law was being raised and, therefore, it required a resolution on the merits with due foundation as to whether indeed a difference of treatment existed and, if so, whether it was justified. The Commission considers that the alleged victim had the right of his allegation concerning equality to be duly heard by domestic judicial authorities within the initiated remedy, and to support the reasonability of the exclusion of these cases in light of the goals intended by the respective legislation and the interpretative decisions of the Supreme Court, when it was clear that the facts for which the reparation was requested, at least fit within the temporary scope of the Law in question and which motivated the latter departure of the country of Mr. Ferreira as a political refugee, initially they should have been assimilated to the precedent cases.

²⁴⁴ Annex 75. Resolution No. 670 of the Ministry of Justice and Human Rights, August 19, 2016. Annexed to the brief of the State of Julio César Rito de los Santos of September 5, 2017.

156. The Commission finds that in regard to Mr. Ferreira, the domestic authorities that adopted decisions neglected to analyze, in light of the arguments raised by the petitioner on each instance, why the facts which followed the detention based on the decree of public assemblies, namely, the persecutions and harassment; the initiation of the proceedings of expulsion; the consequent order of expulsion by the NEP by means of the NDM, based on a pre-required criminal record even when the alleged victims had been acquitted; and the exile to which they were subjected as political refugees in Sweden (all of them facts that kept occurring within the timeframe of application of Law 24.043); they did not configure an effective impairment to liberty according to the parameters which had already been provided in judicial decisions for similar cases and why exile was not understood as the prolongation from the State of said restriction to liberty, so as to denying the request, after said analysis.

157. It is underscored that this analysis, as it was held on the Almeida case, falls into a context of recognition both by executive and judicial authorities in Argentina of the deficiency in the wording of Law 24.043 to properly protect the right to compensation for persons who must be treated in equal conditions to those persons who clearly are found within the requirements of the law, and a will in this sense of ensure “the equality of treatment that the victims or their successors deserve upon similar circumstances”²⁴⁵.

158. The Commission observes that when dealing with the right to reparation, due to the importance it has in serious cases of Human rights violations, as those occurred during the Argentine dictatorship, the guarantee of access to reparation has a special value and it is an obligation of the State to observe it.

159. On its part, in regard to Mr. Julio César Rito de los Santos, the Supreme Court divided its reasoning in two, the first being related to the facts of detention, which it understands occurred beyond the temporary setting of Law 24.043, and the second, in regard to the circumstance of living in clandestinity and then the exile, in which it was affirmed first of all, that the cases of the jurisprudential precedents of Bufano, Geuna and Quiroga cited in the remedy as applicable, have as common element that the detention was illegitimate and effective, which differentiates them from this case, and that in regard to the case of Yofre de Vaca, the factual difference was that the temporary residency Mr. Rito was revoked to him for contravention of a police decree, whose constitutionality was not timely contested resulting in his expulsion toward the country of origin or “whichever accepts him”, and that the circumstance of that the fear of being refoiled to Uruguay led him to live in clandestinity or, afterward, continue voluntarily his exile in Sweden, is not fit to extend the monetary compensation foreseen in the norm to it.

160. On this matter, the Commission observes that on this particular case, although there was a justification in reference to the exile occurring from an order by the competent authority to expel Mr. Rito de los Santos for violation of a police decree, there was no analysis or consideration whatsoever from the court as to why the decision of expulsion -which as addressed above violated guarantees of due process and of the principle of non-refoulment-, would not result, in an effective restriction or impairment of liberty, in assimilable terms to forced exile, since the detention has been understood in a flexible manner by the Supreme Court itself.

161. In fact, the IACHR notes that the jurisprudence of the Supreme Court has applied on its precedents a broad notion of the facts which constitute impairments to liberty concerning the application of Law 24.043. Thus, in the terms of the decision of the Geuna case, for example, it was held that said law “covered, then, a broad spectrum which included from the most radical impairment to liberty and to life –acts against Human rights which may cause severe injuries or death (4th art, fourth and fifth paragraphs) –to a softened impairment”²⁴⁶. Likewise, as previously referred, in the Yofre de Vaca case it was provided that “detention, not only in that law but also for common sense, means different forms of impairment of liberty of movement”.

162. In this sense, it is considered that the departure from Argentina of Mr. Rito de los Santos, who shared almost identical factual situation with Mr. Ferreira, was preceded by a detention which failed to meet Inter-American standards according to what has been exposed above; facts of harassment and persecutions on the

²⁴⁵ IACHR. Report No. 147/18. Case 12.950. Merits. Rufino Jorge Almeida. Argentina. of December 7, 2018. Para. 50.

²⁴⁶ Annex 77. Judgment of the Supreme Court of Justice of the Nation Case Geuna, Graciela Susana, June 1, 2000. Annexed to the initial petition of Julio César Rito de los Santos of May 11, 2007.

alleged victims and a their families; the initiation of migration proceedings by the NDM which concluded with an act by the national executive which ordered the expulsion of these persons, based on inexistent background –since they had been acquitted of the proceedings conducted on account of contravention- and with violation of guarantees of due process and of the principle of non-refoulment, in which should they have not received the protection of the HCUNR, they would have been expelled toward Uruguay. However, and despite being aware of these facts within the initiated proceedings of reparation, the Supreme Court did not even review, and much less justify, why said situation -with an order issued by the National Executive Power by means of the National Directorate of Migrations which disregarded the particular circumstances of the victims, their needs for protection and their right to remain in Argentine territory for being in said country fleeing from Uruguay due to the coup and the political persecution -, it was not comparable to a continuous restriction of liberty through which the reparation may have been recognized in regard to the facts occurred within the temporary setting of the law, which means that the precedents would not have been applicable in that sense.

163. Thus, it is observed that in fact, las decisions of expulsion in the present case were an act by the executive which materialized in a violation of several rights, including the principle of non-refoulment, and that this fact is also a form of violation of rights in particular concerning foreigners who are forced to leave the country in these circumstances and should remain in the country as a result from said principle, at least while it is verified if their rights were at risk in the terms protected by international law. In this sense, the Commission considers that the form in which the omissions to analyze the requests of the alleged victims have especial impact in regard to foreign persons expelled after an irregular migration proceeding and whose situation was not assessed in terms of the restrictions which could imply on their rights, giving rise to reparation. This, in contrast with national persons who are clearly not subjected to a migration process for having been previously detained nor their expulsion being ordered, and whose departure of the country as a prolongation of the restriction to liberty, appears as forced exile which is actually susceptible of being repaired pursuant to Law 24.043.

164. It is worth mentioning, that in the initiated proceedings for the reparation of Mrs. Delma Pi, wife of Julio César Rito de los Santos and with whom she shares several factual specificities, the Chamber of Appeals did conduct an analysis of the facts constituent of an impairment to liberty which extended in time within the application of the Law, in this case finding a corroborated alleged analogous which was assessed by the Supreme Court in the Yofre de Vaca case, recognizing compensation of Law 24.043 for the time elapsed between the date of departure to Stockholm informed by the Chief of the Delegation of Ezeiza and December 10, 1983, date of return to democracy. In this aim, it was reviewed as evidence “the granting of residency of her husband [Julio César Rito] the safe-guard pass obtained to leave the country for political reasons, record of the detention for infringement of the police decree concerning public assemblies suffered by the claimant, issued by the Area of Migration control of the NDM, the resolution of the NDM by means of which his permanence in the country was declared illegal, his expulsion was ordered along with the prohibition to return, record from the SIDE with unfavorable background of the claimant. Likewise, it is confirmed that the detention narrated by the claimant in the certificate of the Court of Inquiry”²⁴⁷.

165. However, the IACHR also notes that within domestic proceedings in regard to Julio César and Hugo Daniel, the requests to perform and order tests were disregarded, such as informing authorities to include into the proceedings the casefiles before the National Directorate of Migrations, records of departures from the country, reports of the HCUNR on the conditions of political refugees of the alleged victims, among others, without even a resolution on the denial to conduct them, or on the reasonable motivation to dismiss evidential requests, which kept the victims from accessing duly reasoned decisions which considered their allegations and reviewed the provided and requested evidence, or at least to define why said practices were not conducted.

166. Finally, it must be highlighted, in regard to the right to an effective judicial remedy, that apart from being dismissed at all instances, the requests to obtain a compensation under Law 24.043; according to the information obtained, the remedies filed in subsidy via an ordinary complaint for damages were dismissed. Although the Commission understands that there was no study on the merits of said remedies, by duly

²⁴⁷ Annex 40. Decision of the National Chamber of Federal Contentious Administrative Appeals, October 9, 2009. Annexed to the brief of the petitioner de Julio César Rito de los Santos received on June 26, 2012.

attempting the action pursuant to Law 24.043, it is nowhere suggested that said path should have been attempted by the alleged victims. In fact, in the decision of the Supreme Court of Justice concerning the case of Hugo Daniel Ferreira it was held that “the intended compensation in the *sub lite* could only be agreed by the National Congress by sanctioning a new amplifier law of the requirements which make them applicable in the terms of Law 24.043”, which precisely proves the allegation by the alleged victims which raised that they did not have a suitable and effective remedy whatsoever to claim the reparation for the facts of which they claimed being victims. On the other hand, the Commission has equally learned in other cases of the challenges posed by the civil action in the reparation for human rights violations, in light of the deadlines for statutory limitations of said actions²⁴⁸.

167. Consequently, the Commission concludes that the Argentine State is responsible for the violation of the right to have duly reasoned decisions set forth in article 8.1 of the American Convention, to judicial protection set forth in article 25.1 and to equality before the Law set forth in article 24, in regard to article 1.1 thereof, to the detriment of Julio César Rito de los Santos and Hugo Daniel Ferreira.

168. In regard to Mr. Nicasio Washington Romero Ubal, the IACHR observes that although there is controversy as to the date of departure from the country, what is certain is that the decisions adopted domestically, at least in the judicial scope, obey to the argued by the claimant, which states that Mr. Romero Ubal left the country on October 16, 1974. However, the petitioner held that his permanence out of the Argentine territory extended even during the State of Siege, declared less than a month later.

169. In this sense and abiding by the standards previously cited on this section, the Commission cannot but conclude that the Court did not justify why the time which the alleged victim spent abroad as a result from his expulsion, would not fit into the parameters of application of Law 24.043, despite the similarity with other matters.

170. Likewise, in this case it must be noted that in the remedies initiated domestically by the counselors of Mr. Romero, the ordinary remedy for damages was also attempted in subsidy, concerning which no resolution has been confirmed in the decisions of the National Chamber of Appeals and of the Supreme Court of Justice. In this sense, the Commission observes that as other alleged victims, it was not identified in the judicial decisions that Mr. Romero Ubal was guided as to the path through which he could attempt to obtain a reparation for the facts under study.

171. Consequently, the Commission concludes that the Argentine State is responsible for the violation of the right to have duly reasoned decisions as set forth in article 8.1 of the American Convention, to judicial protection set forth in article 25.1 in regard to the right of equality before Law set forth in article 24 and article 1.1 thereof, to the detriment of Nicasio Washington Romero Ubal.

V. ACTIONS AFTER REPORT No. 139/21

172. The Commission adopted merits report No. 139/21 on August 11, 2021 and transmitted it to the State on November 16 of the same year. In said report the Commission recommended:

1. Comprehensively repair the human rights violations declared in this report, both material and non-material damage, including fair compensation, for the violations declared in this report to the detriment of Messrs. Julio César Rito de los Santos, Hugo Daniel Ferreira and Nicasio Washington Romero Ubal.

173. In the process followed after notification of the Merits Report, the Commission received reports from the State and a letter from the petitioner on compliance with the recommendations established by the IACHR, in which the petitioner party stated that it was willing to reach to an agreement with the State. During this period, the Commission granted three extensions to the State for the suspension of the deadline provided for

²⁴⁸ IACHR, Report No. 56/19, Case 13.392 Report on Admissibility, Merits. Family Julien-Grisonas (Argentina). May 4, 2019. Para.190 and following.

in Article 51 of the American Convention. In these extension requests, the Argentine State reiterated its willingness to comply with the recommendations. Likewise, he expressly waived the possibility of filing preliminary objections for non-compliance with the aforementioned deadline in the event that the case was submitted to the Inter-American Court.

174. After evaluating the information available on the status of compliance with the recommendations, the Commission decided on August 16, 2022 by an absolute majority not to send the case to the Inter-American Court and to proceed with the publication of the merits report. In the section below, the Commission makes its determinations on compliance with its recommendations.

VI. ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS

175. In January 2022, the State reported that the victims had initiated the corresponding procedures within the framework of reparatory law No. 26,564. It explained that the granting of the benefits contemplated in said law, sanctioned after Law 24,043 in order to cover situations that had not been contemplated initially - such as those in the present case - would allow full compliance with the recommendations issued in the Merits Report. It added that these procedures include both the issues linked to the arrests suffered by the alleged victims, as well as those linked to forced exile.

176. On April 29, 2022, the State reported the issuance on April 21, 2022 of three resolutions of the Ministry of Justice through which Messrs. de los Santos, Ferreira and Romero were granted the benefits provided for by the Law No 24,043 its complementary and extensions²⁴⁹. The State considered that the granting of said benefits complied with the recommendations of the Merits Report, in order to fully compensate the three victims.

177. On July 28, 2022, the State sent the resolutions informing that the following reparations were granted:

a) Mr. RITO DE LOS SANTOS by law 24,043 was granted the benefit of 3,478 days of compensation, for the period between June 2, 1974 and December 9, 1983; that is, from the day he was arrested, covering the forced exile that he had to undertake, until the return to democracy in Argentina.

The amount corresponding to the compensable period amounts to 15,360,691.34 pesos.

b) Likewise, Mr. FERREIRA was granted the benefit of 3,478 compensable days. The amount is equivalent to 15,360,691.34 pesos.

c) Likewise, Mr. ROMERO UBAL was granted 3,375 days of compensation, which is equivalent to 14,905,788.75 pesos.

178. The State indicated that these resolutions were in the process of execution to be liquidated soon. It also indicated that said law created the possibility for victims to obtain an ex-gratia pension under Law 26,913 for people who were deprived of their liberty for political reasons. It pointed out that the victims began the legal procedures for this benefit, that it was granted to Messrs. Romero and de los Santos and that in the case of Mr. Ferreira, the process had not yet been completed. The State considers that these reparations are reasonable and adequate to compensate for the material and non-material damage in compliance with current standards on the matter and requested the IACHR to declare compliance with its recommendations.

179. The IACHR values the measures adopted by the State to comply with its recommendations and observes that there are still liquidations and procedures pending completion.

180. The Commission adopted Final Merits Report No. 357/23 on November 30, 2023 and transmitted it to the State on March 20, 2024, granting it a period of one month to inform the IACHR on the measures adopted to comply with its recommendations.

VII. ACTIONS SUBSEQUENT TO REPORT No. 357/23 AND COMPLIANCE INFORMATION

²⁴⁹ RESOL-2022-391-APN-MJ (Rito de los Santos), RESOL-2022-392-APN-MJ, (Hugo Daniel Ferreira); RESOL-2022-393-APN-MJ (Romero Ubal).

181. In the proceedings subsequent to the notification of the merits report (final), the Commission received a State report and a written submission from the petitioner regarding compliance with the recommendation. These communications were forwarded to the parties.

182. On May 3, 2024, the State informed that Resolutions 2022-391-APN-MJ (De Los Santos), 2022-392-APN-MJ (Ferreira) and 2022-393-APN-MJ (Romero Ubal), by which the benefit provided for in Law No. 26,564 “were received by the beneficiaries”. Likewise, it informed that Resolutions No. 2022-523-APN-SDDHH#MJ (De Los Santos) and 2022-497-APN-SDDHH#MJ (Romero Ubal) issued under the terms of Law No. 26.913 “were received” by Mr. De Los Santos and Mr. Romero Ubal.

183. The State reported that the administrative proceedings corresponding to Mr. Rito De Los Santos, Mr. Ferreira and Mr. Romero Ubal are being processed before the “Dr. Fernando Ulloa” Center, with respect to the benefit for injuries.

184. The State indicated that, according to the computer records of that Directorate, the claim form for Law No. 26.913 corresponding to Mr. Hugo Daniel Ferreira had not yet been received, and therefore his *ex-gratia* pension has not been granted due to his sole responsibility and requests that the IACHR declare compliance with the recommendations.

185. On October 29, 2024, the petitioner responded that the State had not complied with granting the pension despite having submitted the required form on May 17, 2022, which was attached.

186. This communication was forwarded on March 13, 2025, to the State for it to submit its observations within one month, which were not received by the IACHR at the expiration of the deadline.

VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS

187. The Commission observes that, notwithstanding the progress made initially and despite the passage of time, the State has not fully complied with the reparation indicated in the merits report, and therefore urges it to continue with the steps to make the reparation effective.

188. Based on the determinations of fact and law, the Inter-American Commission concludes that the State is responsible for the violation of the rights to have duly reasoned decisions (article 8.1), and to judicial protection (article 25.1) of the American Convention, in regard to equality before the Law (article 24) and article 1.1 thereof to the detriment of Julio César Rito de los Santos, Hugo Daniel Ferreira and Nicasio Washington Romero Ubal. Likewise, the Commission concluded that the State is responsible for the violation of articles I, VIII, XVIII, XXI, XXV and XXVI of the American Declaration.

189. Based on the above conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REITERATES THE STATE OF ARGENTINA,

1. To integrally repair the violations of human rights declared on the present report, for both material and immaterial damage, including a fair compensation, for the violations declared on the present report to the detriment of Mr. Julio César Rito de los Santos, Mr. Hugo Daniel Ferreira and Mr. Nicasio Washington Romero Ubal.

IX. PUBLICATION

190. Pursuant to the foregoing and in accordance with the provisions of Article 51(3) of the American Convention, the Inter-American Commission on Human Rights decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the norms established in the instruments that regulate its mandate, will continue to evaluate

that the State of Argentina makes full reparations to the victims with the provisions of the aforementioned recommendation, until it determines that it has been fully complied with.

Approved by the Inter-American Commission on Human Rights on the 23rd day of the month of April, 2025.
(Signed): José Luis Caballero Ochoa, Chairman, Arif Bulkan, Second Vice-Chairman, Roberta Clarke; Carlos Bernal Pulido; Edgar Stuardo Ralón Orellana, members of the Commission.