INTER-AMERICAN COURT OF HUMAN RIGHTS[*]

OMAR HUMBERTO MALDONADO VARGAS *ET AL. V.* CHILE

JUDGMENT OF SEPTEMBER 2, 2015
(Merits, reparations and costs)

In the *Case of Omar Humberto Maldonado Vargas et al.,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:

Humberto Antonio Sierra Porto, President
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Alberto Pérez Pérez, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge

also present,[**]

Emilia Segares Rodríguez, Deputy Secretary

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention") and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter also "the Rules of Procedure"), delivers this judgment.

---

[*] In accordance with Article 19(1) of the Rules of Procedure of the Inter-American Court applicable in this case, Judge Eduardo Vio Grossi, a Chilean national, did not take part in the deliberation of this judgment. For reasons beyond his control, Judge Roberto F. Caldas, did not take part in the deliberation and signature of this judgment.

[**] The Court's Secretary, Pablo Saavedra Alessandri, excused himself from participating in this case. The Court accepted his excuses.

TABLE OF CONTENTS

I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On April 12, 2014, the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court the case of *Omar Humberto Maldonado Vargas et al.* against the Republic of Chile (hereinafter "the State" or "Chile"). According to the Commission, the case relates to the presumed international responsibility of Chile for the alleged denial of justice to the detriment of Omar Humberto Maldonado Vargas, Álvaro Yañez del Villar, Mario Antonio Cornejo Barahona, Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel, Ernesto Augusto Galaz Guzmán, Mario González Rifo, Jaime Donoso Parra, Alberto Salustio Bustamante Rojas, Gustavo Raúl Lastra Saavedra, Víctor Hugo Adriazola Meza and Ivar Onoldo Rojas Ravanal, owing to the supposed failure to investigate, *ex officio* and diligently, acts of torture suffered by the presumed victims during the military dictatorship.[1] The case also relates to the supposed continuing failure to comply with the obligation to investigate, and also the alleged denial of justice arising from the State's response to the appeals to review the case and to reconsider the rulings filed on September 10, 2001, and September 7, 2002, and by supposedly not having provided the presumed victims with an effective remedy to invalidate criminal proceedings that had taken into account evidence obtained through torture.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

i. Petition. On April 15, 2003, the Inter-American Commission received a complaint lodged by the Corporación de Promoción de Defensa de los Derechos del Pueblo (CODEPU) and the International Federation for Human Rights (FIDH) (hereinafter CODEPU and FIDH are referred to as "the petitioners").

ii. Admissibility Report. On March 9, 2005, the Commission adopted Admissibility Report No. 6/05.[2]

iii. Merits Report. On November 8, 2013, the Commission issued Merits Report No. 119/13 under Article 50 of the Convention (hereinafter "the Merits Report"), in which it reached a series of conclusions and made several recommendations to the State:

i. Conclusions. The Commission concluded that the State was allegedly responsible for the violation of the following human rights established in the American Convention:

- The obligation to investigate torture in accordance with the provisions of Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the presumed victims and their next of kin. And also, in application of the principle of *iura novit curiae,* Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and the obligation to adopt domestic legislative measures established in Article 2 of the Convention, to the detriment of the presumed victims and their next of kin.

- The obligation to adopt the domestic legislative provisions to ensure the existence of an effective remedy to enforce the exclusionary rule with regard to confessions made under torture, pursuant to the provisions of Article 25 and, in application of the principle of *iura*

[1] In its brief submitting the case, the Commission indicated that the State had ratified the American Convention and accepted the contentious jurisdiction of the Court on August 21, 1990, and had ratified the Inter-American Convention to Prevent and Punish Torture on September 30, 1988. It affirmed that "[t]he instant case is circumscribed to the [presumed] continuing failure to comply with the obligation to investigate, and also to the [alleged] denial of justice arising from the State's response to the application for judicial review filed on September 10, 2001," and that "[a]ccordingly, all the facts of the case fall within the Court's temporal jurisdiction."

[2] In this report, the Commission declared that the petition was admissible based on the presumed violation of Articles 8(1), 8(2)(h), 9, 11(1), 24, 25 and 27(2), in relation to Article 1(1), of the American Convention.

novit curiae, Article 2 of the American Convention read in conjunction with its Article 1(1) and Article 10 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the presumed victims and their next of kin.

ii. Recommendations. The Commission recommended that the State:

- Investigate, prosecute and punish the alleged torture committed against the presumed victims in this case;
- Establish any criminal and/or administrative responsibilities, as applicable, for the failure to investigate the torture suffered by the presumed victims in this case, which have been brought to the attention of the Chilean judicial authorities;
- Adopt the measures necessary to provide an effective judicial remedy to protect the violated rights of the victims and their next of kin, particularly as regards the evidentiary value given to the confessions made under torture;
- Make full reparations to the presumed victims and their next of kin, including pecuniary and non-pecuniary compensation for the human rights violations established in the Merits Report;
- Adopt the legislative, administrative and other measures necessary to adapt Chile's laws and practices to the inter-American standards on torture and judicial protection, and
- Take measures to prevent a repetition of acts similar to those at issue in the present case.

iv. Notification to the State. The Merits Report was notified to the State on November 13, 2013, granting it two months to report on compliance with the recommendations. On January 7, 2014, the State requested a two-month extension and this was granted. On March 27 and April 11, 2014, the State sent reports on compliance with the recommendations.

v. Submission to the Court. On April 12, 2014, the Commission submitted the case to the jurisdiction of the Inter-American Court "[o]wing to the need to obtain justice for the presumed victims in this case" and considering that, based on the two reports sent by the State, "no substantive progress had been made to comply with the recommendations [in the Merits Report]."[3]

vi. Request of the Inter-American Commission. Based on the foregoing, the Commission asked the Court to declare the international responsibility of Chile for the alleged violation of the rights previously indicated in the conclusions to the Merits Report. In addition, the Commission asked the Court to order the State to adopt various measures of reparation and these will be described and analyzed in the corresponding chapter.

II
PROCEEDINGS BEFORE THE COURT

3. *Notification of the State and the representatives.*[4] The Commission's submission of the case was notified to the representatives and the State on June 3, 2014, and the notifications were received on June 6 and 9, 2014, respectively.

4. *Brief with motions, pleadings and evidence.* On August 6, 2014, the representatives presented their brief with motions, pleadings and evidence[5] (hereinafter "motions and pleadings brief"), pursuant to Articles 25 and 40 of the Court's Rules of Procedure.

---

[3] The Commission decided to deny an extension requested by the State in its brief of April 11, 2014.

[4] The representatives in this case are Ciro Colombara López, appointed common intervener by the presumed victims in this case under Article 25(2) of the Rules of Procedure, and Branislav Marelic Rokov.

[5] The representatives forwarded their motions and pleadings brief by email. The Court received the original brief and its attachments in a communication received on August 18, 2014.

5. *Answering brief.* On November 7, 2014, the State submitted to the Court its brief answering the submission of the case, and the motions and pleadings brief (hereinafter "the answering brief"), pursuant to Article 41 of the Court's Rules of Procedure.[6]

6. *Public hearing.* The President of the Court, in an order of March 10, 2015, called the parties and the Commission to a public hearing to receive their final oral arguments and observations on the merits and eventual reparations and costs, as well as to receive the statements of one presumed victim proposed by the representatives, one expert witness proposed by the State and one expert witness proposed by the Commission. In addition, in this order, the President required nine presumed victims, two witnesses and one expert witness proposed by the representatives, three witnesses and one expert witness, proposed by the State, and one expert witness proposed by the Commission to submit their testimony by affidavit. The public hearing took place on April 22 and 23, 2015, during the fifty-second special session of the Court held in Cartagena, Colombia.[7]

7. *Amicus curiae*. The Court received an *amicus curiae* brief presented by Bridget Arimond on behalf of the Center for International Human Rights of the Law School of Northwestern University.

8. *Final written arguments and observations.* On May 25, 2015, the representatives and the State presented their final written arguments and the Inter-American Commission forwarded its final written observations.

9. *Deliberation of the case.* The Court began to deliberate this judgment on September 1, 2015.

III
JURISDICTION

10. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention, because Chile has been a State Party to the Convention since August 21, 1990, and accepted the Court's contentious jurisdiction on that date.

IV
EVIDENCE

A. Documentary, testimonial and expert evidence

11. The Court received various documents presented as evidence by the Commission, the representatives and the State, attached to their principal briefs. In addition, the Court

---

[6] The State remitted its answering brief by email. In a communication received on November 19, 2014, the State sent the Court the original brief and its attachments. In a brief of November 7, 2014, it appointed Patricio Utreras Díaz as its Agent; also Claudio Troncoso Repetto, Rodrigo Quintana Meléndez and Jaime Madariaga de la Barra as Co-Agents, and Jaime Cortés-Monroy Rojas, Beatriz Contreras Reyes and Boriana Benev Ode as Deputy Agents.

[7] There appeared at this hearing: (a) for the Inter-American Commission: Rose-Marie Belle Antoine, Commissioner, Silvia Serrano Guzmán and Jorge H. Meza Flores, Executive Secretariat lawyers; (b) for the representatives of the presumed victims: Ciro Colombara, Branislav Marelic Rokov and Hunter T. Carter, and (c) for the State of Chile: Patricio Utreras Díaz, Agent, Claudio Troncoso Repetto, Jaime Madariaga De la Barra, Rodrigo Quintana Meléndez, Co-Agents, and Jaime Cortés-Monroy Rojas, Boriana Benev Ode, and Beatriz Contreras Reyes, Deputy Agents.

received the affidavits provided by nine presumed victims,[8] five witnesses,[9] and three expert witnesses.[10] As regards the evidence provided during the public hearing, the Court received the statements of presumed victim Ernesto Galaz Guzmán, witness Jorge Correa Sutil, and expert witnesses Jonatan Valenzuela Saldías and Juan Méndez.

B. Admission of the evidence

12. The Court admits the documents presented at the appropriate procedural moment by the parties and the Commission the admissibility of which was not contested or refuted.[11] Regarding some documents indicated by electronic links, the Court has established that if a party or the Commission provides at least the direct electronic link to the document cited as evidence and this can be accessed up until the date that the judgment is delivered, neither legal certainty nor procedural balance is affected because it can be located immediately by the Court, the other party or the Commission.[12] In this case, neither the parties nor the Commission contested or made observations on the admissibility of the documents submitted. In the case of any newspaper articles presented, the Court has considered that they may be assessed when they refer to well-known public facts, or statements made by State officials, or when they corroborate certain aspects of the case.[13]

13. Regarding the statement signed by Jaime Donoso and presented by the presumed victims' representatives, which was not provided by affidavit or within the time limits established to receive this statement, the Court notes that the State did not contest either its admissibility or its authenticity and that, subsequently, the representatives forwarded a notarized version of this document. Therefore, in keeping with Article 58(a) of the Rules of Procedure, the Court finds it appropriate to admit it because it is relevant for the examination of this case.

14. With regard to the document supplementing the expert opinion of Jonatan Valenzuela, sent on May 26, 2015, this was sent to the representatives and the Commission, and they were accorded a time limit for presenting their comments; the representatives contested its admissibility within this time limit.[14] Although on other occasions the Court has admitted the presentation of documents supplementing the expert

---

[8] Mario González Rifo, Álvaro Yañez del Villar, Omar Maldonado Vargas, Víctor Hugo Adriazola Meza, Ivar Rojas Ravanal, Jaime Donoso Parra, Alberto Bustamante Rojas, Mario Cornejo Barahona and Manuel López Oyanedel.

[9] Fernando Villagrán, Jorge Dixon, Constanza Collarte Pindar, Isidro Solís Palma and Alejandro Salinas Rivera.

[10] Danny Mosalvez Araneda, Francisco Zúñiga Urbina and Manfred Nowak.

[11] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of June 22, 2015. Series C No. 293, para. 33.

[12] *Cf. Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs,* para. 35.

[13] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 146, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs,* para. 34.

[14] The representatives considered that: (a) the supplementary document had not been notarized so that it did not comply with the admissibility requirements for written evidence; (b) the Rules of Procedure did not allow an expert opinion to be provided in two different forms; (c) if Professor Valenzuela's written opinion was understood as a "supplement" to the opinion provided during the hearing, it should have been presented before or during the expert's appearance, and (d) as a subsidiary argument if the document sent by Professor Valenzuela was ultimately considered to be supplementary to his opinion provided at the public hearing, they indicated that it should have been submitted by May 25 at the latest together with the State's final written arguments.

opinions provided during a hearing,[15] in this case the said document was presented after the date set for the presentation of the final written arguments, and it is therefore inadmissible.

15. The Court also finds it pertinent to admit the statements made during the public hearing and in affidavits (*supra* para. 6), insofar as they are in keeping with the purpose defined by the President in the order requiring them[16] and the purpose of this case.

C. Assessment of the evidence

16. Based on Articles 46, 47, 48, 50, 51, 52, 57 of the Rules of Procedure, as well as on its consistent case law concerning evidence and its appraisal, the Court will examine and assess the documentary probative elements forwarded by the parties and the Commission at the appropriate procedural moments, and the statements and expert opinions provided by affidavit and during the public hearing. To this end, it will abide by the principles of sound judicial discretion within the corresponding legal framework, taking into account the whole body of evidence and the arguments made during the proceedings.[17] In addition, the statements made by the presumed victims will be assessed together with all the evidence in the proceedings insofar as it can provide further information on the supposed violations and their consequences.[18] Regarding articles or texts referring to facts relating to this case, their assessment is not subject to the formalities required of testimonial evidence. However, their probative value will depend on whether they corroborate or refer to aspects related to this specific case.[19]

V
FACTS

17. In this chapter, the facts of the case are described in the following order: (a) background information; (b) request to review the guilty verdicts handed down in FACH case 1-73, and (c) investigations and proceedings concerning the acts of torture perpetrated against the presumed victims.

18. Any facts prior to the date that Chile accepted the contentious jurisdiction of the Court (August 21, 1990) will only be mentioned as part of the contextual information on the case submitted to the Court.

---

[15] *Cf. Case of the Afro-descendant Communities displaced from the Río Cacarica Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2013. Series C No. 270, para. 59; *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*, Judgment of November 20, 2014. Series C No. 289, para. 45; *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 282, para. 119; *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of April 17, 2015. Series C No. 292, para. 114, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, para. 37.

[16] The purposes of the statements were established in the order of the President of the Court of March 10, 2015.

[17] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 76, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*. *Preliminary objections, merits, reparations and costs*, para. 44.

[18] *Cf. Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 44.

[19] *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 72, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 44.

A. Background information

19. The facts relating to the background information to the case have not been contested by the State. To the contrary, during the public hearing, the State indicated that it had "acknowledged that the petitioners in this case are victims of egregious human rights violations committed during the dictatorship. They were court-martialed for defending the Constitution and the law because they were loyal to the democratic system and, on those grounds, they were tortured and convicted of treason, and this is not at issue in the instant case." Nevertheless, the Court will refer to the body of evidence in order to clarify some facts described by the parties and the Commission.

A.1. The coup d'état and the human rights violations that occurred during the military dictatorship

20. On September 11, 1973, a military regime that had overthrown the government of President Salvador Allende was installed in Chile. At the outset, a military governing junta took over executive powers under Decree-Law No. 1 of 1973 and, subsequently, both constituent and legislative powers under Decree-Law No. 128 that same year.[20]

21. Widespread repression against alleged opponents of the regime was used as a State policy from start to end of military rule on March 10, 1990, although with varying degrees of intensity and different levels of selectivity in the choice of its victims.[21] This repression was implemented in almost all regions of the country and was characterized by a massive and systematic practice of summary executions and shootings, torture (including rape, mainly of women), arbitrary deprivation of liberty in clandestine facilities, enforced disappearances, and other human rights violations committed by State agents, at times assisted by civilians.[22]

22. The first months of the *de facto* government were the most violent phase of this repressive period. As the Court indicated in the case of *García Lucero et al. v. Chile*, of the 3,197 identified victims of the executions and forced disappearances that took place during the military government, 1,823 were killed or disappeared in 1973.[23] The victims of all these violations were distinguished officials of the deposed regime and prominent left-wing figures, as well as "ordinary" militants; political, trade union, community and student (high

---

[20] *Cf.* Report of the National Truth and Reconciliation Commission (hereinafter, "the Rettig Report"), Volume I, re-edition, December 1996, p. 35 (evidence file, folio 3314). By Supreme Decree No. 355 of April 25, 1990, the State created the National Truth and Reconciliation Commission, also known as the "Rettig Commission." Its main purpose was to contribute to complete clarification of the truth concerning the most egregious human rights violations committed between September 11, 1973, and March 11, 1990. These included disappearances, executions, torture resulting in death, "in which the moral responsibility of the State was engaged owing to the acts of its agents or of persons at its service, as well as the kidnappings and assassination attempts committed by private individuals using political pretexts." *Cf. Case of García Lucero et al. v. Chile. Preliminary objections, merits and reparations.* Judgment of August 28, 2013. Series C No. 267, para. 66.

[21] *Cf.* Report of the National Commission on Political Prisoners and Torture, November 2004 (hereinafter "the Valech Report"), p. 191 (evidence file, folio 4436). The Valech Commission was created by Supreme Decree No. 1,040 published in the Official Gazette of November 11, 2003, to identify those who had suffered imprisonment and torture for political reasons. Its report was delivered to the President of the Republic on November 10, 2004, and has been public since November 28 that year. An annex to the report entitled "List of political prisoners and those tortured" included the names of 27,153 individuals. Those recognized as victims of "imprisonment for political reasons" and torture included "García Lucero, Leopoldo Guillermo." *Cf. García Lucero et al. v. Chile*, para. 72.

[22] *Cf.* The Rettig Report, Volume I, pp. 18 to 21 (evidence file, folios 3297 to 3300). See also, *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 82.4.

[23] Meanwhile, 61% of the 33,221 detentions identified by the National Commission on Political Prisoners and Torture corresponded to detentions carried out in 1973. The same Commission indicated that more that 94% of the political prisoners asserted that they had been tortured by state agents. *Cf. Case of García Lucero et al. v. Chile*, para. 58.

school and university) and indigenous leaders, and representative of grass-roots organizations who participated in social protest movements.[24]

23. According to the final report of the National Commission on Political Prisoners and Torture, torture was a frequent practice during the military dictatorship. During the first years, the methods used were characterized by their cruelty and by leaving evident effects, which often seriously endangered the life of the victims; however, "subsequently, greater specialization was used in the type of physical pressure applied to detainees." Some detainees were tried by courts-martial while others were never tried but were interned for different lengths of time in stadiums, detention camps, army barracks, police stations or prisons.[25]

A.2. The trials by courts-martial

24. Decree Law No. 3 of September 11, 1973, declared a state of siege throughout the territory of the Republic and granted the Governing Junta the attributes of "Commander in Chief of the Security Forces that will operate during the emergency." Subsequently, Decree-Law No. 5 of September 12, 1973, was issued interpreting article 418 of the Code of Military Justice to the effect that the state of siege that had been declared "due to internal unrest in the circumstances that the country is experiencing," should be understood as "a state or time of war" for the effects of the application of the criminal norms pursuant to the Code of Military Justice and other criminal laws.[26]

25. Under this decree, the courts-martial or military tribunals became operational; they were responsible for trying crimes under military jurisdiction using brief and summary proceedings,[27] by a single instance, that were characterized by numerous irregularities and violations of due process. This situation was reported by the National Truth and Reconciliation Commission[28] and also by the National Commission on Political Prisoners and

---

[24] Frequently, an individual's political inclinations were inferred on the basis of their participation and conflictive conduct in strikes, stoppages, land seizures and street protests, among other activities. The execution of such individuals was part of a context of "cleansing" elements considered pernicious owing to their beliefs and actions, and to instill fear in their companions who could constitute an eventual threat. *Cf.* The Rettig Report, Volume I, p. 101 (evidence file, folio 3380).

[25] On numerous occasions, the arrests – particularly those conducted immediately after September 11, 1973 – occurred during raids that began in the very early morning and lasted several hours, where people were obliged to remain lying face down on the ground with their hands behind their heads while they were beaten. The treatment of prisoners varied according to the place where they were detained but, in general, the food was inadequate, the coverings insufficient, there was overcrowding, and prisoners were constantly threatened and repeatedly beaten. *Cf.* Valech Report, pp. 229, 232 and 236 (evidence file, folios 4472, 4475 and 4479).

[26] *Cf.* The Rettig Report, Volume I, p. 71 (evidence file, folio 3350).

[27] The proceedings began when the corresponding superior military authority was informed that a crime under military jurisdiction had been committed. He then ordered the prosecutor to open an investigation, which should be both brief and summary and last no more than 48 hours, unless the person ordering the investigation indicated another time frame. When the prosecutor had concluded the investigation, he had to forward the case to the Commander with the respective probative elements and a report in which he had to include a brief description of the investigation, indicating those responsible, their degree of guilt, and the punishment that he considered appropriate or, when applicable, a request to dismiss the case. If the Commander found it appropriate to go to trial, he issued a resolution establishing the offenses that had been revealed by the investigation and, in the same resolution, convened a court-martial to try the accused. The Military Code of Justice did not establish a minimum time frame for the accused's lawyer to prepare his defense, and this remained at the discretion of the Commander who had convened the court-martial. During the trial, the court-martial was installed and the prosecutor presented the case and the charges; then, the lawyer presented the defense and any evidence was received. Subsequently, the court-martial deliberated in secret, assessed the evidence and delivered judgment, which was immediately notified to the accused and to the prosecutor, and the case file was forwarded to the corresponding General or Commander for his approval or amendment. *Cf.* Code of Military Justice of the Republic of Chile, articles 180, 181, 183, 184, and 191 to 195 (evidence file, folios 6149 to 6151).

[28] The Rettig Commission's report indicated that the military tribunals that acted as such to punish acts perpetrated before September 11, 1973, did so contrary to the law in force and contravening fundamental legal

Torture of Chile, which also referred to the practice of torture in the context of the proceedings held before the courts-martial at the time of the coup d'état.

26. The final report of the National Commission on Political Prisoners and Torture indicates that the analysis of the trials revealed that "acting with systematic disregard for the impartiality of due process, the prosecutors permitted and even encouraged torture as a valid method of interrogation."[29] The report indicated that those charged before the wartime military tribunals almost never enjoyed the rights to be clearly and specifically informed of the charges against them; to be assisted by counsel from the very start of the investigation; to ask that an investigation be undertaken and to know its contents; to request the dismissal of the case; to remain silent or provide an unsworn statement, and not to be subjected to torture or cruel, inhuman or degrading treatment. The report also indicated that the violation of the said rights and guarantees was the norm in those military tribunals.[30]

27. During the public hearing in this case, the Chilean State indicated that it had "condemned and reiterate[d] the condemnation […] of the courts-martial, […] which represented a paradigm of the violations of due process and fundamental guarantees committed by State agents within the framework of gross, massive and systematic violations […] during the dictatorship experienced by Chile between September 11, 1973, […] and March 10, 1990."

28. Between 1973 and 1975, in the city of Santiago alone, at least 46 courts-marital were held that tried 218 individuals.[31]

A.3. Circumstances of the detention of the twelve presumed victims and of the ill-treatment and torture

29. According to the representatives, and uncontested by the State, the presumed victims in this case are twelve individuals who, at the time of their arrest and subjection to trial by court-martial in case 1-73 were members of the Chilean Air Force (hereinafter "the FACH").[32] One of them was a civilian employee of the FACH. The representatives indicated, and the State did not contest, that all those accused and convicted in case 1-73 were collaborators of President Allende's democratic government and, regarding the presumed victims in this case, some occupied public office in the government, others were tried

---

provisions. In addition, the report indicated that the judgments included affirmations or assessments that the offenses have been proved without describing the acts that constitute the offense or the probative evidence, thus leaving its existence in doubt. Regarding the legal grounds, most of the judgments do not include them. In addition, the report also states that, in some proceedings, it was established that the offenses had been committed owing to the confession of the prisoners, without any prior action that would prove the existence of a punishable fact. *Cf.* The Rettig Report, Volume I, p. 83 (evidence file, folio 3362).

[29] *Cf.* Valech Report, p. 177 (evidence file, folio 4422).

[30] According to the same report, in these proceedings, it was not possible to be sure about the charges, or the reasons for the detention; in many cases, the facts and the offenses were deemed established without any grounds; the defense put forward by the accused was briefly indicated and rapidly rejected because it contradicted the preceding conclusions. Generally, no legal analysis was made of the conducts established and these were easily found to be consistent with pre-selected criminal offenses. Even acts never defined by law as offenses were declared punishable, constituting instrumental offenses for the prosecutors. Often, it was just the confession that was used to prove the crimes, and an indiscriminate use was made of presumptions. Some judgments merely endorsed the conclusions of the prosecutor who, in turn, simply+ accepted the military or police report; in other cases, the facts for which the accused was being tried were not even mentioned, or only recorded in general terms. *Cf.* Valech Report, pp. 176 to 178 (evidence file, folios 4421 to 4423).

[31] *Cf.* The Rettig Report, Volume I, p. 80 (evidence file, folio 3359).

[32] According to the representatives, two of the presumed victims, Belarmino Constanzo Merino and Gustavo Raúl Lastra Saavedra, were recently deceased (on April 17, 2011, and January 4, 2015, respectively). *Cf.* Civil Register, death certificates dated July 7, 2014 (evidence file, folio 2011), and February 10, 2015 (evidence file, folio 735).

because they had declared their loyalty to President Allende, and others because they had opposed the coup d'état, or because they were connected to individuals classified as enemies by the Military Junta.[33]

30. Regarding the circumstances of the detention of each of them, the evidence reveals that they suffered ill-treatment and torture in order to extract their confessions. This was also acknowledged by the State. Additionally, in the Valech Commission's final report, the 12 presumed victims in this case are included on the list of political prisoners tortured during the Chilean military dictatorship.[34]

31. In particular, it emerges that, although each of the presumed victims was arrested individually, in different places and on different dates, there was always a common pattern: they were arrested by armed FACH officials; they were obliged to hand over their weapon; they were blindfolded and, at a certain moment, taken to the Naval War Academy (AGA) to be tortured. Following the torture sessions, which might last weeks, most of them were transferred to the Aeronautical Polytechnic Academy (APA) which functioned as a collection point for detainees and, at times, they were taken from the APA back to the AGA to be tortured. While in the AGA and the APA, the detainees had no contact with the exterior, they were blindfolded and kept in forced positions, guarded by armed soldiers, and provided with

---

[33] Ernesto Galaz Guzmán was a Group Commander, working in the FACH General Staff and, on numerous occasions, he had manifested his support for the Government of Salvador Allende, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 1113, August 17, 2000 (evidence file, folio 6582); Alvaro Yañez del Villar was a Group Commander and doctor in the FACH Health Directorate; he had been a member of the Socialist Party and also, while working in the State's hospital networks, he refused to obey a strike against the Government, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 16, February 5, 1974 (evidence file, folio 6602); Jaime Donoso Parra was a Captain; together with other officers he formed part of a "Constitutionalist" group within the FACH in order to avoid the occurrence of the coup d'état, so that he was fully identified by the counterintelligence agency that functioned within the institution, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 0522, August 2, 2001 (evidence file, folio 6650); Alberto Bustamante Rojas was a civilian employee of the FACH with a rank equivalent to Officer; in the context of discussions with other officers within his unit he had indicated his support for the policies that the Government was implementing, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 0684, November 9, 2005 (evidence file, folio 6627); Belarmino Constanzo Merino was a Staff Sergeant and was in contact with the Revolutionary Left Movement (MIR) political group, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 0458, July 9, 2009 (evidence file, folio 6588); Ivar Rojas Ravanal was a Corporal; he openly expressed his support for the Government, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 1773, November 28, 2000 (evidence file, folio 6711); Manuel López Oyanedel was a Corporal; he openly entered into discussions with opponents of the Government in his military unit, defending President Allende in those discussions, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 1712, November 16, 2000 (evidence file, folio 6688); Mario Cornejo Barahona was a Corporal; he opposed the strikes and protests against the Government by other FACH officers. In addition, he was a student at the Universidad Católica de Valparaíso where his companions included students from leftist groups, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 1710, November 16, 2000 (evidence file, folio 6637); Mario González Rifo was a Staff Sergeant; he opposed the idea of overturning the Government of President Allende, and even submitted his resignation from the institution on September 10, 1973, to protest the imminent coup; however, it was not accepted, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 326, October 4, 1974 (evidence file, folio 6662); Omar Maldonado Vargas was a Corporal (2nd class); within his unit he supported the authority of Salvador Allende over the Armed Forces, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 0418, June 13, 2001 (evidence file, folio 6698); Gustavo Lastra Saavedra was a non-commissioned officer; he had contacts with political groups close to the Government, *cf.* Ministry of Defense, Aviation Under-Secretariat, Resolution No. 0798, November 24, 2009 (evidence file, folio 6675) and Víctor Hugo Adriazola Meza was a Corporal; he identified himself not only with the Government but also with the program proposed by the Unidad Popular [People's Unity]. He was also a student at the Universidad Técnica del Estado, and had contacts with students from different political parties, including those that supported Salvador Allende, *cf.* Armed Forces Under-Secretariat, Resolution No. 2459, July 26, 2012 (evidence file, folio 6618). This information is contained in a document forwarded by the representatives, the probative value of which was not contested by the State, *cf.* Court-martial, Case No. 1-73 (evidence file, folios 77 to 308 and 381 to 475). Also, VILLAGRÁN, Fernando, *Disparen a la Bandera: Crónica secreto de los crímenes en la FACH contra Bachelet y otros,* Santiago of Chile, Catalonia, 2013 (evidence file, folios 2245 and *ff*.).

[34] *Cf.* Valech Report, Annex containing a list of individuals recognized as political prisoners and those who were tortured (evidence file, folios 4886, 4966, 5023, 5029, 5055, 5097, 5125, 5179 5204, 5381, 5508 and 5617 respectively).

inadequate food. The detention and torture of most of the presumed victims occurred mainly from September to December 1973, when the victims began to be transferred to the Santiago Public Prison where they were assembled for FACH proceeding 1-73 which started in April 1974 and ended in April 1975.

32. Regarding the acts of torture suffered by the presumed victims, the representatives indicated, and the State did not contest, that: (a) detainees were always blindfolded, standing up against a wall without moving, or sitting in a chair, usually tied up, and left without food or water for long periods of time; (b) some of them could sleep on mattresses but they were constantly interrupted to be questioned or merely to prevent them from sleeping; (c) they were not always given access to the bathroom and restricted from being able to relieve themselves; (d) at times they were handcuffed to a metal cot and subjected to extremely loud music or to a low-calorie diet; (e) they were beaten and mistreated, insulted and threatened, including with death threats against themselves and also members of their families; (f) electric current was applied to different parts of the body, such as the ears, mouth, ankles, testicles, penis, tongue and temples; (g) they were made to listen to other individuals being tortured; (h) in some cases, needles were introduced under their nails, and (i) some were subjected to mock executions. Some of the presumed victims in this case have suffered from different types of physical and psychological effects as a result of the torture they endured.[35]

33. The above matches the information contained in the final report of the Valech Commission, which states that, in general, the former prisoners were frequently drugged with sodium pentothal and that they endured beatings, the application of electric current, and sexual abuse. They experienced threats and being strung up; they were made to remain in forced positions; they endured needles inserted under their nails, "*pau de arara*" (parrot's perch) [Translator's note: being hung from a pole by the knees], mock firing squads, "the submarine," and they were made to listen to and witness the torture of other detainees. Some witnesses reported that they had been tortured in front of their partners or that their children were brought in order to exert pressure on them to provide information.[36]

A.4. The courts-martial of the presumed victims

34. According to the evidence, the twelve presumed victims were tried by courts-martial[37] in case 1-73, instituted as the result of a complaint filed on September 14, 1973, with the Aviation Prosecution Service by the then President of the Banco del Estado of Chile, Air Force Brigadier General E.G.B.[38] The complaint referred to a series of political meetings that had been held in the offices of the former Vice President of the Bank, C.L.F., with the participation of civilians and FACH personnel, and misuse of that institution's funds.[39]

---

[35] In particular, the State has not contested the following: Ernesto Galaz Guzmán has damage to the cerebellum manifested by recurring periods during which he suffers loss of balance, sometimes with a fleeting loss of consciousness. González Rifo was left with partial blindness in the right eye, diagnosed as irreversible and incurable, and suffers from stress-related schizophrenia. Alberto Bustamante Rojas has indicated that, as a result of the torture, he is deaf in one ear with constant tinnitus, sexual impotence, bodily aches, fear, insecurity and lack of confidence. Onoldo Ivar Rojas Ravanal suffers from partial blindness, dizziness, loss of balance, and memory lapses. Omar Humberto Maldonado Vargas suffers from a loss of feeling in his right hand as a result being tied up by his wrists and pulling to get free. For 15 years, Manuel Osvaldo López Oyanedel had difficulty falling asleep as a result of the torture.

[36] *Cf.* Valech Report, pp. 255 to 299 (evidence file, folios 4496 to 4530).

[37] *Cf.* Court-martial, Case No. 1-73 (Part I), July 30, 1974 (evidence file, folios 77 to 308), and Court-martial, Case No. 1-73 (Part II), January 27, 1975 (evidence file, folios 381 to 433).

[38] *Cf.* Court-martial, Case No. 1-73 (Part I), July 30, 1974 (evidence file, folio 133).

[39] *Cf.* Court-martial, Case No. 1-73 (Part I), July 30, 1974 (evidence file, folio 85 and 133).

35. Based on the said complaint, an investigation was opened and courts-martial were convened that tried and subsequently sentenced the presumed victims, among others, to terms of imprisonment[40] and the death penalty[41] for a series of criminal offenses of which they had been accused.

36. The said case 1-73 was divided into two parts.[42] In each part, trials were held before various courts-martial for crimes presumably perpetrated by the different defendants.[43]

37. Two judgments were delivered in the said case: one on July 30, 1974,[44] and the other on January 27, 1975.[45] These judgments, in which the accused were sentenced, corresponded to Part I and Part II of the case, respectively. The rulings were referred to the Commanders-in-Chief who, on September 26, 1974,[46] and April 10, 1975,[47] ratified the judgments handed down by the courts-martial with some amendments, particularly as regards the sentences imposed.

38. The twelve presumed victims were convicted in this case. The crimes for which they were convicted, the punishments imposed by the court-martial and the subsequent amendments made by the Commanders-in-Chief are different in each case.[48]

---

[40] *Cf.* Court-martial, Case No. 1-73 (Part I), July 30, 1974 (evidence file, folios 77 to 308), and Court-martial, Case No. 1-73 (Part II), January 27, 1975 (evidence file, folios 381 to 433).

[41] *Cf.* Court-martial, Case No. 1-73 (Part I), July 30, 1974 (evidence file, folio 308).

[42] Regarding Part I, the events that were the purpose of the case related to: "a group of Chilean Air Force personnel, leaders of the former Socialist and Communist Parties and the People's Unitary Action Movement (MAPU) and members of the Revolutionary Left Movement (MIR), who began proselytizing and introducing Marxist ideas within the ranks of the Institution, concealing their true intentions beneath the pretext of defending the Marxist government from a presumed coup d'état. This action formed part of a broader objective, which was to effect the same penetration in the other branches of the Armed and the Police Forces, all with the true intent of destroying their existing structure and creating a People's Armed Force to achieve their ultimate goal revealed by the history of all the countries in which Marxism has sought to dominate; namely, absolute power based on the dictatorship of the proletariat." *Cf.* Court-martial, Case No. 1-73 (Part I), p. 57 (evidence file, folio 133). Regarding Part II, the purpose of the case was: "the responsibility of these persons in relation to the infiltration of units of the Chilean Air Force, Quintero Air Base, Aviation Group No. 7, Specializations School, Maintenance Wing, Aviation Group No. 10, and the General Staff of the Armed Forces, by extremist political elements who supported the Popular Unity Government. To that end, they formed secret cells within the bases, obtained maps, documents, information and data regarding the security of the different air units mentioned above from infiltrated military personnel. Plans to abscond from the units with weapons and to sabotage institutional aircraft by creating mechanical defects were organized and their design and implementation planned." *Cf.* Court-martial, Case No. 1-73 (Part II), January 27, 1975, p. 3 (evidence file, folio 384).

[43] *Cf.* Court-martial, Case No. 1-73 (Part I), July 30, 1974 (evidence file, folios 78 to 85 and 308), and Court-martial, Case No. 1-73 (Part II), January 27, 1975 (evidence file, folios 382, 383 and 433).

[44] *Cf.* Court-martial, Case No. 1-73 (Part I), July 30, 1974 (evidence file, folios 78 to 308).

[45] *Cf.* Court-martial, Case No. 1-73 (Part II), January 27, 1975 (evidence file, folios 382 to 433).

[46] *Cf.* Court-martial, Case No. 1-73 (Part I), September 26, 1974 (evidence file, folios 434 to 452).

[47] *Cf.* Court-martial, Case No. 1-73 (Part II), April 10, 1975 (evidence file, folios 453 to 475).

[48] Mario González Rifo: Convicted by court-martial of the offense of dereliction of military duty to two years' military imprisonment. The sentence was increased by the Commander-in-Chief to three years' military imprisonment. Manuel Osvaldo López Oyanedel: convicted of the offense of dereliction of military duty to less rigorous military imprisonment. The sentence was approved by the Commander-in-Chief. Mario Antonio Cornejo Barahona: Convicted of the offense of dereliction of military duty to eight years of rigorous imprisonment (medium intensity). The sentence was increased by the Commander-in-Chief to 15 years and one day of rigorous military imprisonment (maximum intensity). Álvaro Federico Yáñez del Villar: Convicted of the offense of dereliction of military duty to 541 days of medium intensity ordinary military imprisonment. The sentence was confirmed. Omar Humberto Maldonado Vargas: Convicted of the crime of conspiracy to commit sedition to four years of ordinary maximum intensity military imprisonment. The sentence was confirmed. Víctor Hugo Adriazola Meza: Convicted of the crime of conspiracy to commit sedition to ten years and one day of rigorous medium intensity military imprisonment. The sentence was amended to eight years rigorous minimum intensity military imprisonment. Ivar Onoldo Rojas Ravanal: Convicted of the crime of conspiracy to commit sedition to seven years rigorous minimum intensity military imprisonment. The sentence was confirmed by the Commander-in-Chief. Jaime Arturo Donoso Parra: Convicted of the offense of dereliction of military duty to 15 years of rigorous medium intensity military

39. The State has not contested the fact that the presumed victims remained imprisoned for periods of time that, for some of them, lasted up to five years[49] and, subsequently, their punishment was commuted for deportation or exile;[50] that under Supreme Decree 504, they were allowed to request the President to grant this commutation,[51] except in the case of Álvaro Federico Yáñez del Villar who was released on October 8, 1974,[52] and did not go into exile.

A.5. Actions taken by the State with regard to the victims of the dictatorship following the restoration of democracy

40. As noted in the case of *García Lucero et al. v. Chile*, following the restoration of democracy on March 11, 1990, the Chilean State implemented a series of public policies addressed at making reparation to the victims of the military dictatorship, at revealing the truth of what happened during the *de facto* period, and to achieve national reconciliation:

i. By Supreme Decree No. 355 of April 25, 1990, the State created the National Truth and Reconciliation Commission, also known as the "Rettig Commission." Its main purpose was to assist in the overall clarification of the truth about the most egregious human rights violations committed between September 11, 1973, and March 11, 1990. It examined disappearances, executions and torture resulting in death, "in which the State's moral responsibility was engaged owing to the acts of its agents or of individuals in its service, as well

---

imprisonment and the ancillary penalties of permanent and absolute forfeiture of political rights and disqualification from public posts and office. The sentence was confirmed. Gustavo Raúl Lastra Saavedra: Convicted of the offense of dereliction of military duty to ten years and one day of rigorous medium intensity military imprisonment. The sentence was confirmed. Alberto Salustio Bustamante Rojas: Convicted of treason by the judgment of the court-martial to five years and one day of rigorous minimum intensity military imprisonment. The sentence was amended to seven years minimum intensity imprisonment. Ernesto Augusto Galaz Guzmán: Convicted of the crimes of treason and promoting sedition to the death penalty. The penalty was subsequently commuted to 30 years' imprisonment. Belarmino Constanzo Merino: Convicted of the crimes of treason and promoting sedition to the death penalty. The penalty was subsequently commuted to 30 years' imprisonment. *Cf.* Court-martial, Case No. 1-73 (Part I), July 30, 1974 (evidence file, folio 308); Court-martial, Case No. 1-73 (Part II), January 27, 1975 (evidence file, folios 382 a 433); Court-martial, Case No. 1-73 (Part I), September 26, 1974 (evidence file, folios 434 to 452), and Court-martial, Case No. 1-73 (Part II), April 10, 1975 (evidence file, folios 453 to 475).

[49] Ernesto Augusto Galaz Guzmán remained in prison until April 18, 1978; Álvaro Yáñez Del Villar spent 11 months in prison and was released on October 8, 1974; Jaime Donoso Parra was in prison until August 1975; Mario Antonio Cornejo Barahona remained in prison for 3 years and 6 months; Belarmino Constanzo Merino was in prison for 5 years; Mario González Rifo was deprived of his liberty until 1974; Alberto Salustio Bustamante Rojas was in prison until 1974; Raúl Gustavo Lastra Saavedra was in prison until 1974; Víctor Hugo Adriazola Meza was deprived of his liberty until April 1976; Onoldo Ivar Rojas Ravanal was released on October 30, 1975; Omar Humberto Maldonado Vargas was in prison until November 25, 1975, and Manuel Osvaldo Oyanedel López was detained until April 1974.

[50] Omar Maldonado Vargas went into exile in England on November 25, 1975; Víctor Hugo Adriazola Meza went into exile in Europe in 1976; Ivar Onoldo Rojas Ravanal went into exile in England on October 30, 1975; Jaime Donoso Parra went into exile in England at the end of August 1975; Gustavo Lastra Saavedra went into exile in England on December 28, 1975; Alberto Bustamante Rojas went into exile in England; Ernesto Galaz Guzmán went into exile in Belgium in 1978; Belarmino Constanzo Merino went into exile in the United States in 1978; Mario Cornejo Barahona went into exile in the United States in 1974; Manuel López Oyanedel went into exile in the United States in November 1975, and Mario González Rifo went into exile in England in 1974. *Cf.* VILLAGRÁN, Fernando, *Disparen a la Bandera: Crónica secreta de los crímenes en la FACH contra Bachelet y otros,* Santiago of Chile, Catalonia, 2013 (evidence file, folios 2389 to 2405).

[51] *Cf.* Supreme Decree No. 504 of the Republic of Chile regulating requests for commutation of sentences imposed by military tribunals. Article published in the newspaper, *El Mercurio*, on September 11, 1984 (evidence file, folios 2844 to 2854).

[52] *Cf.* Appeal for review, subsidiarily with annulment and cassation *ex officio* filed before the Supreme Court in favor of the presumed victims in this case, p. 30 (evidence file, folio 356).

as kidnappings and attempts on people's life committed by private individuals for political reasons";[53]

ii. By Law No. 19,123, published in the Official Gazette on February 8, 1992, the State created the National Compensation and Reconciliation Board, "in order to decide on cases that the [Rettig Commission] was unable to examine in depth, as well as any new cases that may arise and to provide social and legal assistance to the next of kin of victims";[54]

iii. In December 1996, the National Compensation and Reconciliation Board concluded its work and, subsequently, some of its functions were carried out by the so-called Program for the Continuation of Law 19,123. The benefits established by Law No. 19,123 included the Program of Reparation and Comprehensive Health Care (PRAIS), designed to provide "free and preferential treatment in all medical disciplines in the area of mental and physical health, tests and specialized treatment, in all the country's health care centers [to the] next of kin of detainees who disappeared [and] of those executed for political reasons, [and to] those who returned, and […] to those who had been dismissed for political reasons (*exonerados políticos*) and their direct family groups." Subsequently, Law No. 19,980 of November 9, 2004, amended Law No. 19,123 to expand medical reparation benefits and to establish new ones. Furthermore, Law No. 19,992 promulgated on December 17, 2004, expanded care for those persons "whose names appear on the list of persons recognized as victims that forms part of the Report of the National Commission on Political Imprisonment and Torture";[55]

iv. On August 21, 1990, the State also adopted or kept in force a series of laws that benefited those who had been exiled during the military regime: (a) Law No. 18,994, creating the National Office for Returnees (ONR) – which concluded its functions in 1994 – in order to facilitate the return of those in exile by adopting different measures related to reintegration into the job market and the economy, health care, education, housing, legal assistance, as well as international cooperation with several countries to ensure the continuity of social security or to facilitate the transfer of funds; (b) Law No. 19,128 establishing certain duty-free and customs tariffs arrangements, and (c) Law No. 19,740, which also granted certain financial benefits to those in debt to the *Banco del Estado* who had obtained loans under the loan program to enable Chileans who returned to set up their own businesses;[56]

v. With regard to those whose employment situation was adversely affected for political reasons during the military dictatorship ("*exonerados políticos*"), the State adopted several laws: Law No. 19,234 promulgated on August 5, and published on August 12, 1993, and the laws amending it: Law No. 19,582, and Law No. 19,881 promulgated on June 11, 2003, and published on June 27 that year, which was adopted in order to extend the time frame for registering "the politically exonerated." These laws resulted in the creation of the Program to Recognize those Dismissed from their Employment for Political Reasons, under which these individuals were granted pensions and other benefits. Law No. 20,134 promulgated on November 8, 2006, and published on November 22 that year, established a bonus payment of approximately US$3,009.90 (three

---

53 *Case of García Lucero et al. v. Chile*, para. 66.

54 *Case of García Lucero et al. v. Chile*, para. 67.

55 *Case of García Lucero et al. v. Chile*, paras. 67 and 68.

56 *Case of García Lucero et al. v. Chile*, para. 70.

thousand and nine United States dollars and ninety cents) or more for those "dismissed for political reasons";[57]

vi. Furthermore, regarding reparations for victims of human rights violations during the military regime, several laws were enacted under the human rights program entitled "*No hay Mañana sin Ayer*" of the Government of President Ricardo Lagos, which was announced on August 12, 2003: (a) Law No. 19,980, and (b) Law No. 19,962, providing for the elimination of criminal records "relating to sentences imposed by military courts" for facts that occurred during the military dictatorship relating to crimes against "State security," "weapons control" and "terrorist conduct," which were punished by laws enacted at that time;[58]

vii. The Valech Commission was created by Supreme Decree No. 1,040, published in the Official Gazette on November 11, 2003, in order to determine those who had suffered imprisonment and torture for political reasons (*supra* nota 21);

viii. Law No. 19,992, promulgated on December 17, 2004, and published on December 24 that year, established a reparation pension and granted other benefits in the area of education, health and housing.[59]

41. In addition, regarding the general context of investigations into the crimes committed during the dictatorship, the State indicated, and neither the representatives nor the Commission contested, the fact that "once institutional normality had been restored, the Judiciary prepared a list of all the proceedings in that regard and implemented a policy to investigate 100% of the cases of individuals who had been executed or disappeared."[60] The State also advised, and this was also uncontested, that "today, 1,065 cases are being processed." It indicated that various judgments have been handed down "in recent years and that, in 2013 alone, 22 judgments in first instance were delivered, 19 on appeal, and four by the Supreme Court. Currently, 85 individuals are serving sentences as a result of these proceedings, 63 in prison and 22 under house arrest following an objective report." The State also referred to the Ministry of the Interior's Human Rights Program, "the purpose of which is to intervene in the trials for egregious human rights violations committed during the dictatorship […] either directly as plaintiff, complainant and/or intervener, or indirectly, by providing information requested by the courts of justice." In addition, the State presented a table with the proceedings held on human rights violations in crimes other than execution or enforced disappearance committed during the dictatorship.

42. The State also referred, without this being contested, to the adoption of norms and practices addressed at the prevention, investigation and punishment of torture.[61]

---

[57] *Case of García Lucero et al. v. Chile*, para. 69.

[58] *Case of García Lucero et al. v. Chile*, para. 71.

[59] *Case of García Lucero et al. v. Chile*, para. 73.

[60] The State added that "[t]he importance assigned to these cases led the Supreme Court to appoint 32 Special Inspection Judges to investigate the facts and a justice of that court as National Coordinator to support this work."

[61] It indicated that it had signed the Rome Statute and created Law No. 20,357 criminalizing war crimes and crimes against humanity. It had also ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, created the National Human Rights Institute, carried out a reform of criminal procedure to incorporate elements to investigate the crime of torture more credibly, eliminated arrests based on suspicion, and established detainees' rights (Law No. 19,567), eliminated the death penalty, amended the rules concerning states of emergency and, currently, bills were being discussed to amend the Criminal Code in relation to the crime of torture, adapting it to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and others that amend the definition of the crime of torture increasing the punishment and establishing the non-applicability of statutory limitations. In addition, it had created a unit of the Chilean investigation police for special matters and human rights.

43. Lastly, it is on record that the following presumed victims in this case have benefitted from monthly reparation pensions in Chilean pesos, established by Law No. 19,992: Víctor Hugo Adriazola Meza,[62] Ernesto Augusto Galaz Guzmán,[63] Belarmino Constanzo Merino[64] and Álvaro Federico Yáñez del Villar.[65] In addition, a group of them had the CAPREDENA pension that allowed them to receive a compensatory voucher for $3,000,000: Víctor Hugo Adriazola Meza,[66] Alberto Salustio Bustamante Rojas,[67], Belarmino Constanzo Merino,[68] Mario Antonio Cornejo Barahona.[69] Jaime Arturo Donoso Parra,[70] Mario Gonzalez Rifo,[71] Gustavo Raúl Lastra Saavedra,[72] Manuel Osvaldo López Oyanedel,[73] Omar Humberto Maldonado Vargas[74] and Ivar Onoldo Rojas Ravanal.[75]

B. Request to review the guilty verdicts handed down in FACH case 1-73

B.1. The request submitted in 2001

44. On September 10, 2001, the Corporación de Promoción and Defensa de los Derechos Humanos (CODEPU) filed an appeal with the Supreme Court of Chile requesting the review, and a subsidiary request to obtain a declaration of nullity and/or the application of the

---

62 The amount of the reparation pension was $2,192,519 Chilean pesos, the Valech voucher was $949,629 Chilean pesos, for a total of $3,142,148 Chilean pesos. *Cf.* Ministry of Defense, Certified by Víctor Hugo Adriazola Meza, October 2014 (evidence file, folio 6572).

63 In total, he received $18,451,018 Chilean pesos. *Cf.* Ministry of Defense, Certified by Ernesto Augusto Galaz Guzmán, October 2014 (evidence file, folio 6575).

64 In total, he received $5,168,270 Chilean pesos. *Cf.* Ministry of Defense, Certified by Belarmino Constanzo Merino (evidence file, folio 6574).

65 In total, he received $19,233,331 Chilean pesos. *Cf.* Ministry of Defense, Certified by Álvaro Federico Yáñez del Villar (evidence file, folio 6576).

66 In total, he received a gross monthly pension to December of $368,263 Chilean pesos. *Cf.* Ministry of Defense, email, October 28, 2014 (evidence file, folio 6731), and Comparative table of social security and health benefits received from the Armed Forces by the claimants at October 2014 (evidence file, folio 9112).

67 In total, he received a gross monthly pension to December of $396,894 Chilean pesos. *Cf.* Ministry of Defense, Email, October 28, 2014 (evidence file, folio 6731), and Comparative table of social security and health benefits received from the Armed Forces by the claimants at October 2014 (evidence file, folio 9112).

68 In total, he received a gross monthly pension to December of $629,007 Chilean pesos. *Cf.* Comparative table of social security and health benefits received from the Armed Forces by the claimants at October 2014 (evidence file, folio 9112).

69 In total, he received a gross monthly pension to December of $456,055 Chilean pesos. *Cf.* Comparative table of social security and health benefits received from the Armed Forces by the claimants at October 2014 (evidence file, folio 9112).

70 In total, he received a gross monthly pension to December of $1,117,576 Chilean pesos. *Cf.* Ministry of Defense, Email, October 28, 2014 (evidence file, folio 6731), and Comparative table of social security and health benefits received from the Armed Forces by the claimants at October 2014 (evidence file, folio 9112).

71 In total, he received a gross monthly pension to December of $623,891 Chilean pesos. *Cf.* Ministry of Defense, Email, October 28, 2014 (evidence file, folio 6731), and Comparative table of social security and health benefits received from the Armed Forces by the claimants at October 2014 (evidence file, folio 9112).

72 In total, he received a gross monthly pension to December of $730,007 Chilean pesos. *Cf.* Ministry of Defense, Email, October 28, 2014 (evidence file, folio 6731), and Comparative table of social security and health benefits received from the Armed Forces by the claimants at October 2014 (evidence file, folio 9112).

73 In total, he received a gross monthly pension to December of $489,143 Chilean pesos. *Cf.* Ministry of Defense, Email, October 28, 2014 (evidence file, folio 6731), and Comparative table of social security and health benefits received from the Armed Forces by the claimants at October 2014 (evidence file, folio 9112).

74 In total, he received a gross monthly pension to December of $349,947 Chilean pesos. *Cf.* Ministry of Defense, Email, October 28, 2014 (evidence file, folio 6731), and Comparative table of social security and health benefits received from the Armed Forces by the claimants at October 2014 (evidence file, folio 9112).

75 In total, he received a gross monthly pension to December of $397,653 Chilean pesos. *Cf.* Ministry of Defense, Email, October 28, 2014 (evidence file, folio 6731), and Comparative table of social security and health benefits received from the Armed Forces by the claimants at October 2014 (evidence file, folio 9112).

general powers to set aside *ex officio* a judicial ruling, against the aforementioned judgments handed down in the case before the wartime military justice, on behalf of a group of individuals sentenced and convicted in those judgments, among whom were the twelve presumed victims in the instant case.[76] The brief filing the appeal for review expressly indicated: "We are filing this appeal in order to vindicate our reputation, and that of those already deceased who were tried and convicted in this proceeding that, as we will show, was legally flawed, invalid and groundless, because it stemmed from the conspiracy that perpetrated an unlawful association to victimize a group of Chileans […]."[77]

45. The presumed victims argued in the said brief that the appropriate circumstances existed to review the convictions,[78] pursuant to article 657 of the Chilean Code of Criminal Procedure, which established that "[t]he Supreme Court may, in exceptional circumstances, review final judgments in which a person had been convicted of a crime or simple misdemeanor in order to annul them in the following cases: […] (4) When, following the judgment, a new fact occurs or is discovered or a document appears that was not examined during the proceedings that is of such importance that it is sufficient to establish the innocence of the person convicted."[79]

46. In this same brief filing the appeal against the judgments delivered by the courts-martial, the presumed victims indicated that they were "[…] a group of officers, non-commissioned officers, and civilians with an extensive record in the ranks of the Chilean Air Force, which [they had] served with pride and honoring [their] oaths of loyalty to the Constitution and the law, and that [they had] all been the object of cruel coercion, torture and ill-treatment that signified a violation of [their] fundamental rights"[80] in the context of the processing of case 1-73.

47. On September 2, 2002, the Supreme Court of Chile ruled that the appeal for review, subsidiarily with annulment and cassation, was inadmissible.[81] As grounds for rejecting the appeal, that court determined that, based on article 70-A.2) of the Code of Military Justice (which granted the Supreme Court competence in matters relating to the military jurisdiction only with regard to judgments delivered in times of peace)[82] and articles 6 and 7 of the Constitution of the Republic of Chile (which established that the organs of the State of Chile shall subject their actions to domestic laws and that those actions must always be within the framework of their legal competence),[83] the appeal was inadmissible.

48. On September 7, 2002, the presumed victims filed an appeal to reconsider the ruling that had declared their initial appeal inadmissible. The latter was rejected as inappropriate in a ruling of the Supreme Court of Chile of December 9, 2002.[84]

49. The Rettig Commission's report also indicates that "in judgments of November 13, 1973, and August 21, 1974, among others, the Supreme Court officially declared that the

---

[76] *Cf.* Appeal for review, subsidiarily with annulment and cassation *ex officio* filed with the Supreme Court on behalf of the presumed victims in this case (evidence file, folios 327 to 380).

[77] Appeal for review subsidiarily with annulment and cassation *ex officio* filed with the Supreme Court on behalf of the presumed victims in this case, p. 2 (evidence file, folio 328).

[78] *Cf.* Appeal for review subsidiarily with annulment and cassation *ex officio* filed with the Supreme Court on behalf of the presumed victims in this case, p. 12 (evidence file, folio 338).

[79] Former Code of Criminal Procedure of the Republic of Chile, article 657 (evidence file, folios 6102 and 6103).

[80] Appeal for review, subsidiarily with annulment and cassation *ex officio* filed with the Supreme Court on behalf of the presumed victims in this case, p. 4 (evidence file, folio 330).

[81] *Cf.* Supreme Court of Chile, Ruling 13522, case 3503/2001, September 2, 2002 (evidence file, folio 647).

[82] *Cf.* Code of Military Justice of the Republic of Chile, article 70-A.2) (evidence file, folio 6127).

[83] *Cf.* Constitution of the Republic of Chile, September 17, 2005, articles 6 and 7 (evidence file, folio 5835).

[84] *Cf.* Supreme Court of Chile, Ruling 19789, case 3503/2001, December 9, 2002 (evidence file, folio 649).

wartime military tribunals are not subject to its oversight […]. By not exercising that authority over the wartime military tribunals as it could be understood was required by the 1925 Constitution, the Supreme Court could not ensure that those tribunals truly complied with the norms that regulate the wartime criminal procedure established by the Code of Military Justice. The situation described prevented the Supreme Court from requiring that the actions of the wartime military tribunals conformed to the law."[85]

B.2. The 2005 constitutional reform

50. In 2005, by Law No. 20,050, Chile introduced a constitutional reform which granted the Supreme Court jurisdiction over matters aired before the courts-martial. As a result of this reform, the former article 79 of the Constitution which established that "[t]he Supreme Court has directive, correctional and economic oversight of all the courts of the Nation. Exceptions to this rule are the Constitutional Court, the Election Control Court, and the regional electoral courts and wartime military tribunals," was amended, and the reference to wartime military tribunals was eliminated.

51. The text of article 82 of the Constitution now establishes the following: "The Supreme Court has directive, correctional and economic oversight of all the courts of the Nation. Exceptions to this rule are the Constitutional Court, the Election Control Court, and the regional electoral courts. The higher courts of justice, in exercise of their disciplinary powers may only invalidate jurisdictional decisions in the cases and manner established by the respective constitutional organic law."

52. In 2011, persons other than the presumed victims, who had also been tried and convicted by courts-martial in case 1-73, filed an appeal for review, which the Supreme Court rejected arguing that since no new fact or discovery or appearance of a document had been verified, the appeal for review could not be admitted pursuant to article 657 (4) of the Code of Criminal Procedure.[86]

C. The investigations and proceedings for the acts of torture and cruel, inhuman and degrading treatment endured by the presumed victims

C.1. Case 1058-2001

53. This case was opened based on complaints filed at different times: namely, on April 2 and 3, 2001, and August 28, 2002, and refers to the acts of torture and cruel and inhuman treatment suffered, among others, by the following presumed victims: Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel, Gustavo Raúl Lastra Saavedra, Víctor Hugo Adriazola Meza, Jaime Arturo Donoso Parra, Mario Antonio Cornejo Barahona, Mario González Rifo and Ernesto Augusto Galaz Guzmán.

54. According to the evidence, between 2001 and 2004: (i) several procedures were conducted to take the complainants' statements; (ii) confrontations with the accused were carried out; (iii) the record of a site visit from a case of the Aviation Wartime Prosecution Service was received in which violations of the Arms Control Act and the State Security Act were investigated; (iv) eight copies of applications for amparo made by the Vicaría de la Solidaridad on behalf of some of the victims of the facts were received; (v) communications were sent out by the General Staff of the Chilean Army; (vi) reports were received from the Chilean Institute of Forensic Medicine in order to establish the victims' injuries and aftereffects, both physical and psychological, and (vii) police reports were received, among

---

85 *Cf.* The Rettig Report, Volume I, p. 93 (evidence file, folio 3372).

86 Supreme Court of Chile, Ruling, December 21, 2011 (evidence file, folio 6472).

several other activities.[87] Also, in the context of the investigations into the complaints that had been filed, on October 1, 2002, it was decided to joinder cases 3,378-2002 and 1,058-2001.[88] On October 3, 2002, the complainants asked that the indictment be issued.[89]

55. On December 17, 2004, the 9th Criminal Court of Santiago (hereinafter "the 9th Court") asked the Valech Commission for information on several individuals who had been included on the list of victims in the final report (*supra* para. 30) and on January 3, 2005, that request for information was denied by the Executive President of the Valech Commission citing article 15 of Law No. 19,992 of December 17, 2004, which established that the documents, testimony and information provided by the victims to the National Commission on Political Prisoners and Torture were confidential.[90]

56. On July 19, 2006, the 9th Court partially and provisionally dismissed case 1,058-2001 in relation to the wrongful acts presumably committed against Víctor Hugo Adriazola Meza, Jaime Arturo Donoso Parra, Mario Antonio Cornejo Barahona, Mario González Rifo and Ernesto Augusto Galaz Guzmán because "in these proceedings, it has not been found that the perpetration of the crimes denounced by the complainants has been fully validated." The dismissal was decreed "until new and further information has been submitted to the investigation."[91]

57. The indictments were presented on July 24, 2006, and, in its judgment of April 30, 2007, the 9th Court convicted Édgar Benjamín Cevallos Jones and Ramón Pedro Cáceres Jorquera of the crime of torture or unnecessary force causing severe injuries.[92] In this judgment, the authors of the acts were convicted of the torture inflicted, among others, on Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel and Gustavo Raúl Lastra Saavedra.

58. The judgment was appealed and reviewed by the Santiago Appellate Court, which confirmed the first instance verdict in a ruling of November 6, 2008, which increased the punishment.[93] Those convicted in this matter filed an appeal in cassation against that ruling, and this was rejected by the Second Chamber of the Supreme Court in a judgment of September 24, 2009.[94]

C.2. Case 179-2013

59. On August 28, 2013, based on a complaint filed by the Agrupación de Familiares de Ejecutados Políticos,[95] case 179-2013 was opened against several presumed perpetrators of

---

87 *Cf.* Defense Council of the State of Chile, Report on case 1058-2001 (evidence file, folio 6554).

88 *Cf.* Defense Council of the State of Chile, Report on case 1058-2001 (evidence file, folio 6554).

89 *Cf.* Complainants in the case 1058-2001, communication requesting a writ of indictment, October 3, 2002 (evidence file, folios 6993 and 6994).

90 This communication also repeated the contents of paragraph 3 of the said article which expressly states that while the confidentiality established in that article is in effect, "no person, group of persons, authority or judge shall have access to the aforementioned […], without prejudice to the personal right of the owners of those documents and reports, and the statements and testimony included in them, to disclose them or to provide them to third parties of their own free will." National Commission on Political Prisoners and Torture, Communication 221-2005, January 3, 2005 (evidence file, folio 7133).

91 *Cf.* 9th Criminal Court of Santiago, Ruling, case 1058-2001, July 19, 2006 (evidence file, folio 507).

92 *Cf.* 9th Criminal Court of Santiago, Judgment, case 1058-MEV, April 30, 2007 (evidence file, folios 508 to 618).

93 *Cf.* Second Chamber of the Supreme Court of Chile, Ruling, September 24, 2009 (evidence file, folio 621).

94 *Cf.* Second Chamber of the Supreme Court of Chile, Ruling, September 24, 2009 (evidence file, folios 619 to 645).

95 *Cf.* Agrupación de Familiares de Ejecutados Políticos (AFEP), Complaint filed with the Appellate Court, August 20, 2013 (evidence file, folios 8560 to 8574). See also, Defense Council of the State of Chile, Report on case 179-2013 (evidence file, folios 6556 and *ff.*).

the crimes of torture, unlawful physical and mental coercion, and unlawful association, acts that had been committed between September 1, 1973, and December 1974 against several individuals, including the presumed victims in this case.[96]

60. On the same date, a complaint filed with the Santiago Appellate Court was forwarded by the Supreme Court to the 34th Criminal Court of Santiago (hereinafter "the 34th Court"),[97] which accepted it for processing on the same day, opened the preliminary investigation and, among other actions, asked the National Police Intelligence Headquarters of the Chilean Investigation Police (hereinafter "the National Police Intelligence Headquarters"), to conduct the necessary procedures to authenticate the facts that had been denounced and, in particular, to establish whether there were proceedings that had been opened previously that were still in effect or concluded related to the accused and the victims.[98]

61. In addition, that same day, communications were sent to the Documentation and Archive Foundation of the Vicaría de la Solidaridad and to the Museum of Memory and Human Rights requesting a copy of any information they possessed on the victims identified in the complaint,[99] and to the Forensic Medicine Service requesting it to send copies of the reports on the examinations of injuries and psychological sequelae performed on the victims identified in the complaint.[100] On September 26, 2013, the Santiago Archbishopric's Documentation and Archive Foundation of the Vicaria de la Solidaridad forwarded the information requested.[101]

62. On October 7, 2013, the 34th Court asked the National Police Intelligence Headquarters to comply with the investigation order issued in relation to case 1058-2001 for the crime of torture in the FACH War Academy.[102] On October 16, 2013, the Forensic Medicine Service sent a copy of the plaintiffs' medical records and reports that, at one time, had been requested in case 1058-2001 before the 9th Criminal Court.[103]

63. On November 19, 2013, the 34th Court required the National Police Intelligence Headquarters to provide a progress report on the investigation and also repeated and expanded the request for information sent to the Forensic Medicine Service.[104] On November 22, 2013, the National Police Intelligence Headquarters sent the Appellate Court

---

96 *Cf.* Defense Council of the State of Chile, Report on case 179-2013 (evidence file, folios 6556 to 6559).

97 *Cf.* 34th Criminal Court of Santiago, Special Inspecting Judge, Ruling, August 28, 2013 (evidence file, folios 8576 and 8577). See also, Defense Council of the State of Chile, Report on case 179-2013 (evidence file, folios 6556 to 6559).

98 *Cf.* 34th Criminal Court of Santiago, Special Inspecting Judge, Communication No. 3044-2013, August 28, 2013 (evidence file, folio 8308).

99 *Cf.* 34th Criminal Court of Santiago, Special Inspecting Judge, Communication No. 3046-2013, August 28, 2013 (evidence file, folio 8580); Letter No. 894 of September 30, 2013, signed by the Executive Director of the Museum of Memory and Human Rights (evidence file, folio 8579), and communication of the Executive Secretary of the Santiago Archbishopric, Documentation and Archive Foundation of the Vicaría de la Solidaridad, September 26, 2013 (evidence file, folios 8634 and 8635). See also, Defense Council of the State of Chile, Report on case 179-2013 (evidence file, folios 6556 and *ff*.).

100 *Cf.* Forensic Medicine Service, Ord. No. 19031, Communication with copies of Forensic Medicine Service reports Nos. 3289-01, 3108-08, 1082-04 and 2117-03, October 16, 2013 (evidence file, folios 8582 to 8622). See also, Defense Council of the State of Chile, Report on case 179-2013 (evidence file, folios 6556 and *ff*.).

101 *Cf.* Santiago Archbishopric, Fundación Documentation and Archive Foundation of the Vicaria de la Solidaridad, Communication of September 26, 2013 (evidence file, folios 8623 and *ff*.).

102 *Cf.* 34th Criminal Court of Santiago, Special Inspecting Judge, Communication No. 3517-2013, October 7, 2013 (evidence file, folios 8309 and 8581.

103 *Cf.* Forensic Medicine Service, Ord. No. 19031, Communication with copies of Forensic Medicine Service reports Nos. 3289-01, 3108-08, 1082-04 and 2117-03, October 16, 2013 (evidence file, folios 8582 and *ff*.).

104 *Cf.* 34th Criminal Court of Santiago, Special Inspecting Judge, Communication No. 4082-2013, November 19, 2013 (evidence file, folios 8310 and 9026).

a police report prepared by the investigating team.[105] On December 13, 2013, the 34th Court issued a decision to send a new investigation order to the Investigation Police working group.[106] On February 3, 2014, the Investigation Police forwarded a police report containing information on the police interviews with some of the defendants.[107]

64. On February 21, 2014, the 34th Court acknowledged that it had received information with regard to various interviews conducted abroad and ordered the Police Intelligence Brigade to continue the procedures to "conduct police interviews."[108] On March 3, 2014, further statements were taken from complainants and copies of a sworn statement provided in 2004 by another complainant was forwarded.[109] On March 12, 2014, the Forensic Medicine Service forwarded information that expanded the previous report that had been requested in relation to the complainants.[110] On March 21, 2014, the 34th Criminal Court of Santiago took other statements from some complainants.

65. On April 14, 2014, the 34th Court decided to expand the order to investigate in order to individualize, locate and interview the defendants. In addition, it sent a communication to the Ministry of Foreign Affairs requiring precise information on the foreign domiciles of the complainants in order to take the pertinent measures to obtain their statement.[111] On May 19, 2014, the 34th Court requested that the necessary procedures be carried out to validate the effective nature of the facts that had been denounced and to establish whether other proceedings had been opened previously that were underway or concluded.[112] On the same day, it decided to expand the investigation into the crime of torture committed against various who had been convicted in the proceedings in case 1-73.

66. On June 18, 2014, the judicial prosecutor of the Supreme Court required the prosecutor of the Appellate Court to re-open the investigation in case 1058-2001, that had been provisionally dismissed, and the joinder of the cases concerning petitioners Víctor Hugo Adriazola Meza, Jaime Arturo Donoso Parra, Mario Antonio Cornejo Barahona, Mario González Rifo and Ernesto Augusto Galaz Guzmán.[113] On June 19, 2014, the Forensic Medicine Service forwarded other reports relating to the case.[114] On June 20, 2014, the Legal Affairs Directorate of the Ministry of Foreign Affairs forwarded information on the latest foreign domiciles that had been registered and information on "index cards" of some

---

105 *Cf.* Chilean Investigation Police, National Police Intelligence Headquarters, Communication with police report on the procedures requested in Communication No. 3044-2013, Res. No. 472, November 22, 2013 (evidence file, folios 8243 and *ff*.).

106 *Cf.* 34th Criminal Court of Santiago, Special Inspecting Judge, Ruling, December 13, 2013 (evidence file, folio 8316).

107 *Cf.* Chilean Investigation Police, National Police Intelligence Headquarters, Communication with police report corresponding to Communication No. 4418-2013, Res. 59, February 3, 2014 (evidence file, folios 8339 and *ff*.).

108 *Cf.* Chilean Investigation Police, National Police Intelligence Headquarters, Communication with police report corresponding to Communication No. 4418-2013, RES. 59, February 3, 2014 (evidence file, folio 8339); 34th Criminal Court of Santiago, Special Inspecting Judge, Ruling, February 21, 2014 (evidence file, folio 8368).

109 *Cf.* 34th Criminal Court of Santiago, Special Inspecting Judge, Judicial statement of Andrés Antonio Valenzuela Morales, March 3, 2014 (evidence file, folio 8392 and *ff*.).

110 *Cf.* Forensic Medicine Service, Communication No. 3888, Report concerning case 179-2013, March 12, 2014 (evidence file, folio 8421).

111 *Cf.* 34th Criminal Court of Santiago, Special Inspecting Judge, Ruling, April 14, 2014 (evidence file, folio 8464).

112 *Cf.* 34th Criminal Court of Santiago, Special Inspecting Judge, Communication No. 1764-2014, May 19, 2014 (evidence file, folio 7601).

113 *Cf.* Santiago Appellate Court, 3rd prosecutor, Communication No. 209-2014, June 18, 2014 (evidence file, folios 7765 and 7766).

114 *Cf.* Forensic Medicine Service, Communication No. 10831, Copy of Forensic Medicine Service report No. 1603/2010, May 19, 2014 (evidence file, folio 8492).

of the victims in the case.[115] On June 26, 2014, the Santiago Archbishopric, Documentation and Archive Foundation of the Vicaria de la Solidaridad answered the communication of the 34th Court requesting all the information it possessed on 71 victims.[116]

67. In July 2014, the 3rd judicial prosecutor of the Santiago Appellate Court filed a complaint concerning the wrongful acts of torture and others that had been committed against Omar Humberto Maldonado Vargas, Álvaro Federico Yáñez del Villar and Iván Rojas Ravanal, while they were imprisoned and subject to military justice for the crimes of sedition and others. In addition, he requested an order to re-open case 1058-2001 of the 9th Criminal Court of Santiago.[117] On July 4, 2014, the 34th Court admitted the complaint, ordered that it be added to case 179-2013, and decided to request that case 1058-2001 of the 9th Criminal Court of Santiago be forwarded in order to decide the requested re-opening and joinder. On August 21, 2014, another communication was sent requesting that the 9th Court's case 1058-2001 be forwarded.[118]

68. On September 4, 2014, the Assistant Investigation Police Inspector provided the Appellate Court with information on the procedures conducted in case 179-2013.[119] On September 30, 2014, the Santiago Appellate Court was informed that the files of case 1058-2001 of the 9th Court had been sent to the Appellate Court on September 25, 2014.[120]

69. There is no information of any investigation procedures after that last date.[121] The investigation in case 179-2013 is still underway.

VI
MERITS

70. Based on the violations of the Convention alleged in this case, the Court will make the following analysis: (1) the rights to judicial guarantees and to judicial protection with regard to the alleged failure to investigate the acts of torture; (2) the right to judicial protection and the obligation to adopt domestic legal provisions with regard to the alleged lack of an adequate and effective remedy of review, and (3) the right to protection of honor and dignity.

---

115 *Cf.* Ministry of Foreign Affairs, Legal Affairs Directorate, response of June 20, 2014, to communication 1383 of April 14, 2014 (evidence file, folio 8468).

116 *Cf.* Santiago Archbishopric, Documentation and Archive Foundation of the Vicaria de la Solidaridad, Answer to communication No. 1765-2013 of the 34th Criminal Court of Santiago, June 26, 2014 (evidence file, folios 7579 to 7592).

117 *Cf.* Santiago Appellate Court, 3rd prosecutor, Complaint (evidence file, folios 7873 to 7881).

118 *Cf.* 34th Criminal Court of Santiago, Special Inspecting Judge, Ruling, August 21, 2014 (evidence file, folio 7888).

119 *Cf.* Chilean Investigation Police, Metropolitan Police Intelligence Brigade, Police report No. 21/00220, September 4, 2014 (evidence file, folios 7593 to 7598).

120 *Cf.* Santiago Appellate Court, Communication No. 542-2014, September 30, 2014 (evidence file, folio 7603).

121 The State's answering brief of November 7, 2014, with which it included the judicial case file that the Court has consulted with regard to some of the facts.

VI-1
THE RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION WITH REGARD TO THE ALLEGED FAILURE TO INVESTIGATE THE ACTS OF TORTURE

A. Arguments of the parties and of the Commission

71. The Commission observed that, following ratification of the American Convention, the State was aware of the torture alleged by the presumed victims in this case. Consequently, a criminal investigation should have been opened *ex officio* given that it became aware of the facts through (a) the final report of the Valech Commission in 2004;[122] (b) the charges in the case No. 1058-2001;[123] (c) the appeal for review filed with the Supreme Court on September 10, 2001, and the appeal to reconsider the ruling of September 7, 2002;[124] (d) the petition lodged before the Commission on June 23, 2003, and (e) a statement by a former FAC agent of November 10, 1990, providing an account of his participation in the State's security agencies from 1974 to 1984.

72. The Commission indicated that, at the date it prepared its Merits Report, it had received no information to show that the State had opened criminal investigations *ex officio* to address, comprehensively and completely, the acts of torture that it knew had occurred in the context of the courts-martial at the time of the coup d'état, and which involved the presumed victims in this case. Consequently, the Commission considered that the absence of an investigation *ex officio*, serious, exhaustive and impartial, into the report of presumed acts of torture violated the rights contained in Article 8(1) and 25 of the American Convention, in relation to the obligation to ensure the rights established in Article 1(1) of this instrument. In addition, it argued that the State had violated Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

73. The representatives considered that, in addition to the foregoing, the State had not investigated the torture diligently, either because, without any justification, it had not considered all the victims as such, or had not prosecuted all those responsible. Regarding case 1058-2001, they indicated that the provisional dismissal constituted a denial of justice, because the reason for this dismissal outlined in the decision was that it had not been proved that the plaintiffs had been victims of torture, without citing the grounds for reaching this conclusion. They added that the responsibility of all those involved had not been determined owing to the failure to investigate all the torturers of the War Academy, and to prosecute and sentence them as appropriate.[125] Lastly, they also indicated that the

---

[122] The Commission mentioned, in particular, the 1991 National Truth and Reconciliation Commission which had established that torture was routinely used during interrogations in the proceedings before the courts-martial, and the National Commission on Political Prisoners and Torture which had attached an annex to its report entitled "List of political prisoners and those tortured" that included the presumed victims in this case. The Valech Commission's report indicated with regard to these and other individuals that "an examination of the proceedings reveals that "acting with systematic disregard for the impartiality of due process, prosecutors permitted and even encouraged torture as a valid method of interrogation." Consequently, the Commission concluded that those reports constituted precise "sources of information that should haves triggered *ex officio* a criminal investigation, although they could not be regarded as mechanisms that can replace the State's obligation to see that justice is done when acts of torture are committed."

[123] Regarding case 1058-2001, the Commission observed that, for many years during which the American Convention and the Inter-American Convention to Prevent and Punish Torture were in force, the State had refrained from opening and promoting investigations *ex officio*. It concluded that this omission, in itself, engaged the State's international responsibility.

[124] It considered that, even though, on September 10, 2001, the presumed victims in this case had filed an appeal for review with the Supreme Court arguing that they had been subjected to torture in the military criminal trials brought against them by the courts-martial, the State had failed to order *ex officio* an investigation into the acts of torture denounced before that court.

[125] Regarding case 1058-2001 that culminated in the conviction of two individuals for the torture inflicted on, among others, three of the presumed victims in this case, the representatives indicated that the right to the truth

confidentiality of the Valech Commission, established in article 15 of Law No. 19,992, had hindered the investigation.

74. The State indicated that the acts of torture against those convicted in case 1-73 were either currently subject to a rigorous criminal investigation or a guilty verdict had already been handed down, and distinguished between two criminal proceedings undertaken to investigate the acts of torture denounced, namely: (1) case 1058-2001,[126] and (2) case 179-2013, opened on August 28, 2013.[127] The State concluded that numerous effective procedures had been conducted in both criminal proceedings that determined the existence of the crime and, to date, the conviction of two individuals as perpetrators of the crime of torture against three of the complainants. Also that, currently, it is clear that the courts of justice were investigating the acts of torture against all those convicted by wartime military tribunals in case 1-73. Regarding the confidentiality of the Valech Commission, the State indicated that this was based on several grounds, including that the success of the tasks entrusted to the National Commission on Political Prisoners and Torture was, to a great extent, linked to the confidentiality and secrecy that, from the moment of its creation, surrounded its actions and the information it collected.[128]

B. Considerations of the Court

75. The Court has considered that the State is obliged to provide effective judicial remedies to anyone who alleges that they are a victim of human rights violations (Article 25 of the Convention), remedies that must be substantiated in keeping with the rules of due process of law (Article 8(1) of the Convention), all of this under the general obligation of the States to ensure the free and full exercise of the rights recognized by the Convention to everyone subject to their jurisdiction (Article 1(1) of the Convention).[129] In this regard, "it is necessary to ensure, within a reasonable time, the right of the presumed victims or their

---

had been partially violated, because all the perpetrators had not been identified and the command structures and the circumstances that surrounded the torture had not been defined clearly and comprehensively.

126 It indicated that this was initiated on April 3, 2001, and culminated in the first instance judgment handed down on April 30, 2007, for the crimes of torture and unnecessary force causing serious injuries to the petitioners in the case who included three of the 12 presumed victims in this case: Belarmino Constanzo Merino, Manuel López Oyanedel and Gustavo Lastra Saavedra. The complainants in this case were: Bernardo Pizarro Meniconi, Ignacio Puelma Olave, Gastón Muñoz Briones, María Marchi Badilla, María Padilla Contreras, Margarita Iglesias Saldaña, Sergio Castillo Ibarra, Carmen Díaz Rodríguez, Liliana Mason Padilla, Patricio Rivas Herrera, Sergio Santos Señoret, Ricardo Parvex Alfaro, Cecilia Olmos Cortés, Belarmino Constanzo Merino, José Carrasco Oviedo, Manuel López Oyanedel and Gustavo Lastra Saavedra.

127 Case opened for the crimes of torture, unlawful physical and mental coercion, and also unlawful association, acts that had been committed between September 1, 1973, and December 1974, and that involved the other presumed victims in this case. The State added that this case was initiated based on a complaint filed by the Agrupación de Familiares de Ejecutados Políticos and useful procedures had been conducted to clarify the facts, including the reception of reports issued by the Health Services, psychological reports and reports of the victims' injuries prepared by the Forensic Medicine Service, reports on the aftereffects on the victims prepared by the Forensic Medicine Service, and a communication from the Museum of Memory and Human Rights. During the case, contacts had been made with the Archive Foundation of the Vicaría de la Solidaridad" and an "order to investigate [had been sent] to the working team of the National Intelligence Headquarters of the Chilean Investigation Police."

128 The State added that the Commission received information and testimony that was protected by legal confidentiality for one specific purpose: to identify those persons who had suffered imprisonment and torture for political reasons owing to acts of agents of the State or individuals in its service between September 11, 1973, and March 10, 1990, and to propose measures of reparation for such persons to the President of the Republic. It also argued that the confidentiality of the information established in Law No. 19,992 met all the requirements indicated by this Court, "because it is established by law and, in addition, seeks to protect the right to privacy of those who gave their testimony, who are the only owners of this information and who can dispose of it freely. Thus, it satisfies an essential public interest, which is to obtain this information in order to acknowledge and make reparation to the victims of human rights violations and to conserve the historical memory."

129 *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*, para. 346.

families that everything necessary is done to know the truth of what happened and that those eventually found responsible are punished."[130] This obligation is stipulated and supplemented by the Inter-American Convention to Prevent and Punish Torture that, in its Articles 1, 6 and 8, imposes the obligation "to conduct an investigation" and "to punish" acts of torture.[131] Consequently, the State has a duty to investigate the facts, which is an obligation of means and not of results, but one that must be assumed by the State as an inherent legal obligation and not as a mere formality preordained to be unsuccessful, or as a simple measure taken by private interests that depends on the procedural initiative of the victims or their families, or on the private contribution of probative elements.[132]

B.1. Regarding the opening of investigations into the acts of torture suffered by the presumed victims

76. As the Court has stated in its consistent case law, when the state authorities become aware of an act that could constitute torture, they must "initiate *ex officio* and without delay, a serious, impartial and effective investigation"[133] using all available legal means and addressed at determining the truth and the pursuit, capture, prosecution and eventual punishment of all the masterminds and perpetrators of the acts, especially when state agents are or may be involved.[134] Also, with regard to acts of torture, Article 8 of the Inter-American Convention to Prevent and Punish Torture establishes that the "authorities will proceed *ex officio* and immediately to conduct an investigation into the case," whenever "there is an accusation or a well-grounded reason to believe that an act of torture has been committed within [the State's] jurisdiction."

77. According to the facts of the case, two criminal investigations were opened in relation to the acts of torture suffered by the presumed victims: (a) the one corresponding to case 1058-2001, and (b) the one corresponding to case 179-2013.

78. Regarding the one in case 1058-2001 opened in April 2001, the Court notes that this referred to the acts of torture suffered by Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel, Gustavo Raúl Lastra Saavedra, Víctor Hugo Adriazola Meza, Jaime Arturo Donoso Parra, Mario Antonio Cornejo Barahona, Mario González Rifo and Ernesto Augusto Galaz Guzmán, among others (*supra* para. 53). Consequently, bearing in mind the previous considerations, the Court concludes that the State is not responsible for an excessive delay in opening an investigation into the acts of torture suffered by these eight individuals.

79. In relation to the other four presumed victims in this case who were not part of case 1058-2001, the Court notes that the State was aware of the facts to be investigated as of September 10, 2001, the date on which the CODEPU filed an appeal with the Supreme Court requesting the review and, subsidiarily, the declaration of nullity against the above-mentioned convictions issued in case 1-73 (*supra* para. 57). However, case 179-2013, which also refers to the acts of torture of these individuals, was initiated on August 28,

---

130 *Cf. Case of Bulacio v. Argentina*. *Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 200.

131 Chile ratified the Inter-American Convention to Prevent and Punish Torture on September 15, 1989.

132 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs,* para. 351.

133 *Cf. Case of the Pueblo Bello Massacre. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 145, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*, para. 347.

134 *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 156, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 488.

2013, approximately 12 years after the State became aware of the facts through the filing of the appeal with the Supreme Court requesting the review of the judgments delivered in case 1-73 (*supra* para. 59).

80. Therefore, the Court finds that the State delayed the start of that investigation excessively and that it has failed to comply with its obligation to open an investigation in violation of Article 8(1) of the Convention, in relation to Article 1(1) of this instrument, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ivar Onoldo Rojas Ravanal, Alberto Salustio Bustamante Rojas, Álvaro Yáñez del Villar and Omar Humberto Maldonado Vargas.

B.2. Regarding the investigation procedures in the cases 1058-2001 and 179-2013

B.2.1. Case 1058-2001

81. The Court notes that several arguments were presented concerning the presumed violation of the duty to investigate with due diligence in the case in reference. The Court will examine these arguments in the following order: (a) on how to prove acts of torture; (b) on the confidentiality of the Valech Commission archives; (c) on the alleged failure to determine other individuals who were responsible, and (d) on the presumed violation of the right to the truth.

a) Evidence of acts of torture

82. Regarding the investigation opened in April 2001 (case 1058-2001), the evidence in the case file reveals that various measures were taken in this investigation which ended on April 30, 2007, with the conviction of two individuals for the crime of torture or unnecessary force causing serious injuries (*supra* para. 57). Moreover, the Santiago Appellate Court confirmed this first instance judgment on November 6, 2008. As already indicated, five of the eight victims of torture in this case (Víctor Hugo Adriazola Meza, Jaime Arturo Donoso Parra, Mario Antonio Cornejo Barahona, Mario González Rifo and Ernesto Augusto Galaz Guzmán), who were parties in the complaint, were not recognized as victims of torture because a partial and provisional dismissal of case 1058-2001 was decreed (*supra* para. 56).

83. The representatives indicated that they were excluded from the criminal investigation specifically because they lacked the physical or mental sequelae of torture, and the only difference between the three victims who continued in the proceedings and the five who were excluded consisted in the results of the medical appraisals that were not performed in keeping with the Istanbul Protocol.

84. In this regard, the Court notes that the decision of July 19, 2006, in which the case was partially and provisionally dismissed with regard to several complainants, among whom where five of the presumed victims in this case, does not indicate clearly the reasons why "the perpetration of the crimes that have been denounced has not been fully verified in this case" with regard to that group of individuals. The representatives presume that this conclusion was reached merely due to the fact that the medical appraisals did not consider that the acts of torture had been proved owing to the absence of sequelae. However, the Court possesses no information to the effect that the 9th Court had reached that conclusion merely on the basis of that element, so that it lacks evidence to determine the factors that led the domestic judge to reach the said conclusion. Furthermore, the Court notes that the representatives have not referred to other probative elements that the judge should have considered in order to reach the said determination in that case, or possible difficulties due to the refusal of the Valech Commission to provide the 9th Court with information.

85. Lastly, the Court notes that, in 2013, in the context of case 179-2013, the domestic jurisdiction determined that the proceedings should be re-opened for the five individuals regarding whom case 1058-2001 had been partially and provisionally dismissed (*supra* para. 56). The investigations into the acts of torture are still underway in case 179-2013; accordingly, it is not incumbent on the Court to issue a ruling in that regard, beyond noting the shortcomings at the start of those investigations which were examined in the preceding section.

86. Nevertheless, the Court recalls that in cases in which an individual alleges during the proceedings that his statement or confession has been obtained through coercion, States first have the obligation to verify the truth of this accusation[135] by an investigation conducted with due diligence. Moreover the burden of proof cannot rest with the complainant; rather the State must prove that the confession was voluntary.[136] Likewise, according to the Istanbul Protocol, when investigating cases of torture, the medical examination "should be undertaken regardless of the length of time since the torture."[137] In addition, "[w]itness and survivor testimony are necessary components in the documentation of torture" and "[t]o the extent that physical evidence exists, it provides important confirmatory evidence that a person has been tortured. However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars."[138]

b) The confidentiality of the Valech Commission archives

87. In order to analyze whether the State violated its duty to conduct investigations with due diligence, the Court must now examine the arguments that have been presented, especially those referring to the impact of the confidentiality of the Valech Commission archives on the investigations in case 1058-2001.

88. The facts of the case reveal that, on December 17, 2004, the 9th Court which intervened in case 1058-2001 asked the Valech Commission for any information it had on several individuals who had been included on its list of victims (*supra* para. 55) and that, on January 3, 2005, the Valech Commission denied this request for information citing article 15 of Law No. 19,992 of December 17, 2004, which established the confidentiality of the documents, testimony, and other information provided by the victims to the National Commission on Political Prisoners and Torture. This communication from the Valech Commission reiterated paragraph 3 of the said article 15, which expressly indicated that, while the confidentiality established in the article subsisted, "no person, group of persons, authority or judge shall have access to the aforementioned […], without prejudice to the

---

135 *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2010 Series C No. 220, para. 136. See also, United Nations. Committee against Torture, *P.E. v. France*, Communication 193/2001, Report of November 21, 2002, para. 6.3.

136 *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objections, merits, reparations and costs, para.* 136. The Sub-Committee for the Prevention of Torture has indicated that: "Regarding the judicial evaluation of evidence, the State party bears the burden of proving that its agents and institutions have not committed acts of torture. Victims should not be expected to prove that torture has occurred, particularly as they may have been subjected to conditions that make it impossible to prove." *Cf.* United Nations, Subcommittee on Prevention of Torture, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico, May 31, 2010, CAT/OP/MEX/1, para. 39. Also, United Nations. Human Rights Committee, *Nallaratnam Singarasa v. Sri Lanka,* Communication No. 1033/2001, August 23, 2004, CCPR/C/81/D/1033/2001, para. 7.4.

137 United Nations, Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004*,* para. 104. *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*, Judgment of November 20, 2014. Series C No. 289, para. 255.

138 United Nations, Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004*,* para. 161.

personal right of the owners of those documents and reports, and the statements and testimony included in them, to disclose them or to provide them to third parties of their own free will" (*supra* para. 55).

89. Regarding access to information in the hands of the State and contained in archives, it is relevant to recall that this Court has established that, in cases of human rights violations, the state authorities cannot shield themselves behind mechanisms such as State secrets or the confidentiality of the information, or reasons of public interest or national security, in order not to provide information required by the judicial or administrative authorities in charge of pending investigations or proceedings.[139] However, the Court notes that these precedents do not refer specifically to archives of truth commissions responsible for seeking the extrajudicial truth about egregious human rights violations, so that it is necessary to determine whether such precedents are applicable in situations such as those of the instant case.

90. In addition, the Court notes that access to the information in the Valech Commission's archives was refused based on a legal provision: namely, article 15 of Law No. 19,992 (*supra* para. 55). Therefore, the representatives' argument relates to the presumed obstruction of the investigations in case 1058-2001 by the State on the basis of a legal provision that regulated confidentiality in the access to information contained in the Valech Commission's archives. In this regard, the Court has indicated in other cases that the right of access to information in the hands of the State admits restrictions, which must be established by a law enacted "for reasons of general interest and for the purpose for which they have been established"; these reasons must respond to a purpose permitted by the Convention, and be necessary in a democratic society, "which depends on their being designed to meet an essential public interest." Furthermore, among the different options to achieve this purpose, the one that least restricts the protected right should be chosen. Lastly, the restriction should be proportionate to the interest that justifies it and should be appropriate to achieve the legitimate purpose, with the least possible interference in the effective exercise of the right.[140]

91. Consequently, the Court must determine whether the restriction of access to the information contained in the Valech Commission's archives was contrary to the Convention, and to this end, it will analyze whether that restriction: (i) was legal; (ii) complied with a legitimate purpose; (iii) was necessary, and (iv) was strictly proportionate.

i. Legality

92. The information presented by the parties reveals that this restriction had been established Law No. 19,992 of December 24, 2004.

ii. Purpose

---

139 *Cf. Case of Myrna Mack Chang. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 180; *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190, para. 77; *Case of Radilla Pacheco v. United Mexican States. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 258, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 202.

140 *Cf. Case of Claude Reyes et al. v. Chile*. *Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, paras. 88 to 91. Also, *cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights),* Advisory Opinion OC-5/85, November 13, 1985. Series A No. 5, para. 46; Case of *Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of July 2, 2004. Series C No. 107, paras. 121 and 123; *Case of Ricardo Canese v. Paraguay. Merits, reparations and costs.* Judgment of August 31, 2004. Series C No. 111, para. 96, and *Case of Palamara Iribarne v. Chile*. *Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, para. 85.

93. The State has indicated in this case, and the representatives have not contested, that the purpose of the above provision establishing the confidentiality of the Valech Commission's archives was to protect the right to privacy of the individuals who provided their testimony. In addition, the "*Historia de la Ley No. 19.992*" indicates that "the success of the tasks entrusted to the National Commission on Political Prisoners and Torture is, to a great extent, linked to the confidentiality and secrecy that, from the moment of its creation, surrounded its actions and the information it collected."[141]

94. Consequently, the Court notes that the law had two purposes: (1) to ensure the success of the tasks entrusted to the National Commission on Political Prisoners and Torture so that Chilean society could know the truth about what happened and that the victims of torture could have access to the measures of reparation established by the State, and (2) to protect the rights to privacy of those who provided their testimony.

iii. Necessity

95. Regarding the necessity of the measure, the Court notes that, according to the State, and uncontested by the representatives, the "secrecy and confidentiality permitted those who had been directly affected by prison and torture for political reasons to find in that body a place of refuge and respectful consideration for themselves and for their painful experiences and testimony, essential elements to instill them with the confidence and courage required by the hard task of recalling past suffering, abuse and degradations, to describe this, express it and, ultimately, deliver it to unknown third parties, including individuals who had not been subjected to their experiences."

96. Similarly, witness Jorge Correa stated in the hearing before this Court that the confidentiality of the archives of the "Rettig Commission and [of] the Valech Commission has been very controversial" and that "in the case of the Rettig Commission, the reason is that, to the contrary, we would not have obtained statements from some people; it was a time of […] fearfulness, a heightened feeling that there could be possible reprisals, even a backlash against democracy and, thus, the essential guarantee to obtain statements was that this was done respecting confidentiality […] and without this, I insist, its work would have been impossible. And, once people had made their statements under that condition, the State of Chile considered that it would signify a betrayal to disclose this information, although naturally they were free to disclose it as they saw fit*;* but it is not the Commission that should disclose it; and I understand that it is the same for the Valech Commission."[142]

97. The Court lacks additional information to determine whether it would, in fact, have been possible to obtain those testimonies if the State had not guaranteed secrecy and confidentiality to those who wished to provide them. Consequently, the Court finds, based on the information it possesses, that the said restriction established by law was necessary to meet the legitimate purpose that it sought.

---

[141] This document adds that "not only has the secrecy and confidentiality of the information provided to the Commission been essential for the success of its task, but also represented a formal commitment made by the Government to the victims who appeared before this body to provide their testimony, a commitment that we are all called on to comply with and respect." Also, the "information, testimonies and other data provided to the Commission belongs exclusively to its owners. They delivered it to a government body for a sole specific purpose that was materialized in the report prepared and delivered by the said Commission. Therefore, neither the Commission nor its members or participants, nor the Government or its authorities, may dispose of this information for a purpose that differs from the one established without betraying the commitment to confidentiality assumed towards the victims of prison and torture, and without violating the elementary right of everyone to their own history, to their own experiences and memories." Available on August 4, 2015, at the following link: http://www.Leychile.cl/navegar/scripts/obtienearchivo?id=recursoslegales/10221.3/2452/1/hl19992.pdf

[142] Statement made by Jorge Correa, witness proposed by the State, during the public hearing in this case.

iv. Strict proportionality

98. On this point, the evidence and the arguments of the parties reveal that article 15 of Law No. 19,992 establishes that the owners of the documents, reports, statements and testimonies contained in the archives may provide that information to third parties of their own free will. Thus, the law itself establishes an exception to the principle of absolute secrecy of the archives, on the grounds that the owner of that information may decide to disclose it. Apart from this the restriction would be in effect for 50 years for third parties who would not be able to access any information that could violate the right to privacy of those who appeared before the Valech Commission.

99. Consequently, the Court finds that the restriction of access to the information established by article 15 of Law No. 19,992 is proportionate because the sacrifice inherent in the restriction is not exaggerated or excessive compared to the advantages obtained by this restriction and the realization of the objective sought.

100. On a different note, the Court observes that the representatives did not explain why the interested parties in case 1058-2001 did not authorize the disclosure of their statements before the Valech Commission, or why they did not produce them before the judicial bodies that were conducting the investigations into the acts of torture against them. In short, the representatives failed to provide an explanation of why it was not possible to have obtained the information contained in the Commission's archives by other means.

101. Lastly, and without prejudice to the foregoing, the Court notes that the State mentioned in its arguments that the confidentiality of the Valech Commission's archives was being amended and that the "National Human Rights Institute, in answer to a request to rule on the possibility of disclosing this information to judges who are investigating human rights cases, has indicated that a criterion that could be applied would be to accede to this only on the basis of a request channeled through the corresponding courts of justice."

102. Therefore, the Court concludes that, in the specific circumstances of this case, the refusal of the Valech Commission to provide information to the 9th Court did not constitute an unlawful restriction of access to the information contained in the Valech Commission's archives during the investigation in case 1058-2001.

c) The alleged failure to identify other perpetrators

103. With regard to the State's responsibility for the presumed failure to identify all those responsible for the acts of torture, the representatives indicated that, even though a large number of possible perpetrators were considered during the investigations in case 1058-2001, only two were prosecuted and convicted, while "it was not logical to think that only two individuals had been responsible for the acts of torture in the War Academy, because the Rettig and Valech Commissions had proved that torture was practiced systematically; it was a structure for violating human rights within the Air Force. However, from 2001 to date, only two people have been convicted." They also indicated that the 2008 judgment convicting those two individuals had "not examined structures or practices, or considered a complete picture of the situation that existed in the Air War Academy." They added that "neither was the torturers' command structure considered, which would have helped to identify more perpetrators."

104. On this point, the Court reiterates, as it has indicated in other cases, that the obligation to investigate acts that constitute egregious human rights violations entails the duty to address the efforts of the state apparatus to unravel the structure that permitted

such violations, the causes, beneficiaries and consequences, and not merely to identify, prosecute and punish, as appropriate, the direct perpetrators.[143]

105. In the instant case, the Court notes that the investigations into the acts of torture are still underway in case 179-2013, and that, as indicated by the representatives themselves, the State was "trying to complete what remained pending in 2007." The effects of the delay in initiating those investigations have already been analyzed in the section on the State's responsibility for the delay in opening the investigations. Nevertheless, the Court notes that, in the context of the investigations in case 1058-2001, other presumed perpetrators of the acts of torture were investigated but, following an assessment of the evidence obtained, it was decided to prosecute only two individual for the facts. The representatives indicated this in their arguments.

d) The presumed violation of the right to know the truth

106. The representatives argued that, in the instant case, the right to the truth had been violated owing to the failure of the courts to identify all those responsible for the facts and also for the failure of the courts to recognize the condition as victims of torture of nine presumed victims in the instant case.

107. Regarding this argument, the Court notes that, in this regard, the investigations into the acts of torture are still underway in case 179-2013 and that, in addition, the State's responsibility for the delay in initiating the investigation has already been examined *supra*; therefore, it does not find it necessary to make an additional ruling on the alleged violation of the right to the truth argued by the representatives.

108. Nevertheless, the Court cannot fail to notice that the State of Chile created two truth commissions (the Rettig Commission and the Valech Commission) to examine the egregious human rights violations committed by the State during the military dictatorship, and that one of them, the Valech Commission, specifically referred to the acts of imprisonment and torture for political reasons and even explicitly recognized the twelve presumed victims in this case as victims of torture, information that this Court has considered in the chapter on the facts.

B.2.2. Case 179-2013

109. With regard to case 179-2013, as already noted, the State initiated an investigation following the filing of a complaint on August 28, 2013 (*supra* para. 59). During the case, actions were taken to investigate and identify those responsible for the acts of torture against the presumed victims (*supra* paras. 59 to 68).

110. Bearing in mind the information on case 179-2013, and without prejudice to procedures that may still be pending in the investigation, in particular those referring to the participation of the victims in the proceedings, the Court considers that, to date, it cannot reasonably be concluded that the investigation opened on August 28, 2013, has been conducted in violation of the right to judicial guarantees and protection owing to the failure to respect the standards for due diligence.

B.2.3. Conclusion on the investigation procedures in cases 1058-2001 and 179-2013.

---

143 *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 194, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012 Series C No. 258, para. 148.

111. In conclusion, the Court considers that the State is not responsible for the violation of the rights contained in Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of this instrument and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, in the investigation procedures in cases 1058-2001 and 179-2013, to the detriment of the twelve presumed victims in this case.

VI-2
THE RIGHT TO JUDICIAL PROTECTION AND THE OBLIGATION TO ADOPT DOMESTIC LEGAL PROVISIONS WITH REGARD TO THE ALLEGED LACK OF AN ADEQUATE AND EFFECTIVE REMEDY OF REVIEW

A. Arguments of the parties and of the Commission

112. The Commission indicated that the Supreme Court of Chile had failed to review the case to investigate the complaints of torture that had been filed and, where appropriate, take steps to exclude any evidence obtained through torture and has not ordered other measures in this regard. It added that the said court did not advise the petitioners of any remedy or recourse they could use to ensure the application of the exclusionary rule. Consequently, the Commission concluded that, by denying the appeals for review and reconsideration, the Supreme Court determined that the petitioners had no legal protection since they were not provided with an effective remedy to enforce the said exclusionary rule. The Commission also indicated that Chile had not taken any step, *ex officio*, to apply the exclusionary rule directly.[144]

113. The Commission also underlined the lack of any domestic legal provision or relevant judicial practice establishing a remedy to enforce the exclusionary rule regarding evidence obtained through torture. Likewise, it observed that the law itself prevented the ordinary courts from reviewing decisions by the military authorities. In the instant case, the Chilean Supreme Court served to perpetuate the problem, by interpretation, since it failed to exercise a "control of conventionality" by providing the presumed victims in this case with an effective remedy that would have enforced the exclusionary rule. The Commission pointed out that the State had not contested the inexistence of a domestic mechanism to achieve the application of the exclusionary rule in proceedings that culminated in a criminal conviction between 1990 and 2005. The Commission considered that the 2005 reform merely overcame the obstacle concerning the competence to rule on the decisions of the courts-martial.[145] Consequently, it concluded that the Chilean State had failed to comply with the obligations stipulated in Article 25 of the Convention, in relation to Articles 1(1) and 2 of this instrument. Lastly, the Commission indicated that, in this case, the State was also responsible for violating the Inter-American Convention to Prevent and Punish Torture – which requires the investigation and punishment of torture and expressly prohibits the use of confessions obtained through torture in its Article 10 – to the detriment of the presumed victims.

---

[144] The Commission considered that, based on the lack of judicial protection to enforce the exclusionary rule, the international responsibility of the State of Chile had been engaged from the moment that, in 2001, the presumed victims activated the only mechanism that was legally available to them to invalidate their convictions, receiving in response a rejection based on lack of jurisdiction without any indication of other possible remedies.

[145] The Commission also indicated that even though 10 years had passed since this reform, there was no example of the effectiveness of the appeal for review in order to enforce the exclusionary rule. It argued that expert witness Jonatan Valenzuela had indicated that, following the 2005 reform, it was "plausible" to file this remedy, but on being questioned about its real effectiveness, he was unable to provide any information that would allow it to be considered that, above and beyond matters of jurisdiction, the Supreme Court of Justice would apply the exclusionary rule in the context of an appeal for review.

114. The representatives argued that, in this specific case, the application of Article 25 of the Convention should have been implemented by a remedy that allowed a review of judgments delivered in violation of the rules of due process, such as the judgments of the wartime military tribunals. They indicated that "an effective judicial remedy could and should exist in the State of Chile to review judgments delivered in violation of due process"; a remedy that, additionally, "should be able to evaluate all judgments, regardless of whether they were delivered by a wartime military tribunal." They pointed out that "the relevance of using Article 25 to investigate past violations of human rights is not limited in time *per se*. Moreover, there are crimes that do not prescribe and that can be investigated at any time after they are committed." They argued that the State had violated the articles mentioned previously owing to: (1) the inexistence of an effective judicial remedy to protect against the violations of due process committed against the presumed victims in this case in 1974 and 1975, and (2) the inexistence of an effective judicial remedy to exclude evidence obtained through torture from proceedings culminating in a guilty verdict against the presumed victims in this case in 1974 and 1975.

115. In relation to the appeal filed in 2011, the representatives added that the Supreme Court had considered that all the information obtained by the Rettig Commission and the Valech Commission and in the judgment in case 1058-2001 would not constitute appropriate grounds for a review of the judgments. They argued that, according to this interpretation, the Supreme Court would be establishing that it lacked competence to annul judgments delivered in violation of due process and this revealed the inexistence of such a remedy in the domestic legal system. They also indicated that the State had the obligation to put an end to the effects of the violation of a peremptory norm of international law, such as evidence obtained through torture. The representatives concluded that the foregoing revealed that there had been a violation of Article 25 in relation to Article 1(1) of the Convention, but also of Article 2 of this instrument because, in 2001, the obstacles that prevented the exercise of the exclusionary rule in the case of evidence obtained through torture had not been removed.

116. The State considered that it was complying with the existence of an effective remedy to exercise the exclusionary rule and indicated that both the 1906 Code of Criminal Procedure and the current criminal procedure include measures that permit the exclusion of a confession obtained through torture and its effects. It also indicated that, even though it was inquisitorial, the former procedural system prohibited coercion or threats to obtain a statement and that system also included mechanisms to prevent and prohibit torture, such as the appeal for review and the appeal in cassation on the merits.[146] The State indicated that Chile's current legal system included three remedies that, in different ways, could be invoked by the victim of the crime of torture from which evidence was obtained: (1) the precautionary mechanism (*cautela de garantía)*;[147] (2) the appeal for annulment,[148] and (3)

---

[146] The State mentioned that its expert witness, Jonatan Valenzuela, had indicated that the 1906 Code of Criminal Procedure and the actual 2000 Criminal Procedure Code establish appropriate mechanisms for applying the exclusionary rule to evidence obtained through torture, which vary depending on the stage of the proceedings.

[147] The precautionary mechanism is included in article 10 of the Criminal Procedure Code, and permits the examining judge, at any stage of the proceedings – by *ex parte* application or *ex officio* – to adopt the necessary measures to avoid the violation of the rights of the accused, including, for example, the incorporation of evidence obtained through torture.

[148] The appeal for annulment was created in order to invalidate an oral trial and the judgment, or only the judgment resulting from the said proceeding, if any of the grounds established by law were satisfied, so that if "during the oral trial – and the subsequent delivery of the judgment – any evidence obtained through torture was considered, the Chilean legal system has an effective remedy – heard by the Supreme Court – to end the violation of the fundamental rights of the person convicted and, in this way, it can annul both the oral trial and the guilty verdict obtained by means of flawed evidence."

the appeal for review.[149] It also referred to the 2005 constitutional reform relating to the directive, correctional and economic oversight of the Supreme Court over all the wartime military tribunals, under which it exercises disciplinary authority, resulting in the possibility of curbing errors and abuse by officers by the application of disciplinary measures.

117. Referring to the appeal for review filed in 2011, the State argued that this appeal had been decided by the Supreme Court on December 21, 2012, rejecting it on the merits (contrary to what happened in 2001, when it declared it inadmissible due to lack of jurisdiction since, following the 2005 constitutional reform, the Supreme Court did have jurisdiction) because it considered that "the factual assumptions on which the claim is founded do not accord with requirements of the alleged grounds." The State clarified that this remedy was not rejected because it was not effective in order to examine the violation of a fundamental right, but merely because the factual assumptions had not been met in that case in particular. It also indicated that "the only new information presented […] was the statement that [the representatives] made in their brief filing the appeal, […] without the existence of a final judgment or any other document of a similar value that authenticates it" and "it cannot be expected that an effective remedy to annul a past conviction in which the violation of due process is argued complies with international standards and permits the annulment of judgments merely because someone states that they have been a victim of this violation." Lastly, the State argued that the appeal for review was fully available for the twelve presumed victims.

B. Considerations of the Court

118. The arguments of the Commission and the representatives refer to the exclusionary rule for evidence or confessions obtained through torture or cruel and inhuman treatment, and this has been recognized in diverse treaties[150] and by different international bodies for the protection of human rights which have established that this rule is intrinsic to the prohibition of such acts,[151] and that it is absolute and non-derogable in nature.[152] This has

---

[149] Regarding the appeal for review, the State argued that this is currently established in article 473 of the Criminal Procedure Code and that the wording is almost the same as that of article 657 of the Code of Criminal Procedure, in force at the time of the facts of the case. It stressed that it can be pointed out that, when an appeal for review is filed accompanied by new irrefutable information that the person convicted had been a victim of torture, and that the evidence obtained from him was an essential precedent to establish his responsibility for a specific crime, the Supreme Court must admit the appeal, delivering the corresponding replacement judgment or – if appropriate – ordering a new trial.

[150] Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes that: "[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." Meanwhile, Article 10 of the Inter-American Convention to Prevent and Punish Torture indicates that "[n]o statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means."

[151] In this regard, the Committee against Torture has indicated that "the obligations in articles 2 (whereby "no exceptional circumstances whatsoever may be invoked as a justification of torture"), 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions that "must be observed in all circumstances." *Cf.* United Nations, Committee against Torture, General Comment No. 2, "Implementation of article 2 by States Parties," January 24, 2008 (CAT/C/GC/2), para. 6. Also, the Human Rights Committee has indicated that: "The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights. […] no statements or confessions or, in principle, other evidence obtained in violation of this provision may be invoked as evidence in any proceedings covered by article 14, including during a state of emergency, except if a statement or confession obtained in violation of article 7 is used as evidence that torture or other treatment prohibited by this provision occurred." United Nations, Human Rights Committee, General Comment No. 32, "Article 14. Right to equality before courts and tribunals and to a fair trial," August 23, 2007 (CCPR/C/GC/32), para. 6.

also been recognized by this Court in other cases.[153] However, the Court recalls that, as already indicated, it lacks temporal jurisdiction to analyze case 1-73 and whether it observed the judicial guarantees (*supra* para. 18). This Court must only determine whether the presumed victims in this case could, subsequently, rely on an adequate and effective remedy to review their convictions that had been handed down in a military criminal trial that took into account evidence obtained through torture. Consequently, in this case the exclusionary rule for evidence obtained through torture is enforced by a judicial remedy that permits a review of the guilty verdicts delivered by the courts-martial and its analysis will be limited to this.

119. The Court must now analyze whether the facts of the case constitute a violation of Articles 2 and 25 of the Convention in relation to Article 1(1) of this instrument and whether the State is responsible for failing to provide the presumed victims in this case with a remedy to review the guilty verdicts handed down in a military criminal trial that took into account evidence obtained through torture.

120. Regarding 25(1) of the Convention, this Court has indicated that it establishes, in broad terms, the obligation of the States to provide to everyone subject to their jurisdiction an effective judicial remedy against acts that violate their fundamental rights.[154] Article 25(1) of the Convention also establishes that this should be understood even when such violations are committed by individuals in the exercise of their official functions. Furthermore, as already indicated in this judgment (*supra* para. 75), States are obliged to provide effective judicial remedies to individuals who allege that they are victims of human rights violations (Article 25 of the Convention), which must be substantiated pursuant to the rules of due process of law (Article 8(1) of the Convention), all within the general obligation to ensure the exercise of the rights recognized in the Convention to everyone who is subject to their jurisdiction (Article 1(1) of the Convention).[155]

121. With regard to appeals for review, this Court has established on other occasions that "[d]octrine has repeatedly referred to the appeal for review as an exceptional remedy in order to avoid *res judicata* preserving a situation of evident injustice following the discovery of a fact that, if it had been known when the judgment was delivered, would have modified the result or that would reveal the existence of a substantial flaw in the judgment."[156]

122. Accordingly, the Court understands that the appeal for review constitutes an exception to the principle of *res judicata* and is addressed at rectifying errors, irregularities or violations of due process committed in certain judicial decisions so that, in application of real justice, a new decision is pronounced that respects the legal order when it is evident that errors or illegalities had been committed in those judicial decisions that made them

---

152 In addition, the Committee against Torture has indicated that "the broad scope of the prohibition in article 15, proscribing the invocation of any statement which is established to have been made as a result of torture as evidence "in any proceedings", is a function of the absolute nature of the prohibition of torture and implies, consequently, an obligation for each State party to ascertain whether or not statements admitted as evidence in any proceedings for which it has jurisdiction, including extradition proceedings, have been made as a result of torture." United Nations, Committee against Torture, Communication No. 219/2002, May 15, 2003 (CAT/C/30/D/219/2002), para. 6.10.

153 *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objections, merits, reparations and costs*, para. 165 and *Case of García Cruz and Sánchez Silvestre v. Mexico. Merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 273 para. 58.

154 *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, para. 91, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs,* para. 314.

155 *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, para. 91, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*, para. 346.

156 *Case of Genie Lacayo v. Nicaragua. Request to review the judgment on merits, reparations and costs.* Order of the Court of September 13, 1997. Series C No. 45, para. 10.

contrary to law.[157] The domestic laws of several States of the region[158] have incorporated such remedies into their criminal procedural laws. Likewise, several international criminal courts,[159] and even international non-criminal courts,[160] establish in their procedures the possibility of reviewing a guilty verdict for different reasons. Thus, it should be understood that such remedies are established to rectify acts that violate fundamental rights in the terms of Article 25 of the Convention which have been committed during judicial proceedings.

123. The Court has also indicated that States have the responsibility to establish by law and to ensure the due implementation of effective remedies and guarantees of due process of law before the competent authorities that protect everyone subject to their jurisdiction against acts that violate their fundamental rights or that entail the determination of their rights and obligations.[161] It has also established that, for a State to comply with the provisions of Article 25 of the Convention, it is not sufficient that the remedies exist formally, but it is also necessary that they are effective in the terms of this article;[162] in other words, that they provide results or answers to the violations of rights recognized

---

157 *Mutatis mutandis, Case of Genie Lacayo v. Nicaragua. Request to review the judgment on merits, reparations and costs,* para. 11.

158 *Cf.* Argentina, Criminal Procedure Code of the Nation, Law No. 23,984 (amended 2011), articles 479 and *ff.*, Criminal Procedure Code of the province of Buenos Aires, Law No. 11922, articles 467 and *ff.* (text according to Law No. 12,059), Criminal Procedure Code of the province of Córdoba, Law No. 8123, articles 489 and *ff.*, Criminal Procedure Code of the province of Mendoza, Law No. 6730, articles 495 and *ff.*; Bolivia, Code of Criminal Procedure, Law No. 1970 of March 25, 1999, articles 421 and *ff.*; Brazil, Code of Criminal Procedure, Decree-Law No. 3,689, of October 3, 1941, article 621; Colombia, Code of Criminal Procedure, Law 906 of 2004, article 192; Costa Rica, Criminal Procedure Code, Law No. 7594 published in insert 31 of Official Gazette 106 of June 4, 1996, article 408; Chile, Code of Criminal Procedure, Law No. 1853, article 657 and *ff.*; Cuba, Law of Criminal Procedure (Law No. 5 of August 13, 1977, in its version amended by Decree No. 208 of February 16, 2000), article 455; Dominican Republic, Criminal Procedure Code, Law No. 76-02, articles 428 and *ff.*; Ecuador, Comprehensive Criminal Code, published in the Supplement, Official Record No. 180 on February 10, 2014, article 658; El Salvador, Criminal Procedure Code, Decree No. 733, Official Gazette No. 20, article 489; Guatemala, Congress of the Republic of Guatemala, Decree No. 51-92, article 455; Haiti, Code of Criminal Procedure, articles 345 and 346; Honduras, Law on Constitutional Justice, September 3, 2005, articles 95 and *ff.*; Mexico, Criminal Procedure Code of Chihuahua, August 9, 2006, articles 430 and *ff.*; Code of Criminal Procedure of the state of Morelos, latest amendment of October 8, 2014, articles 429 and *ff.*, Code of Military Justice, August 31, 1933, Last amended on June 13, 2014, article 871 and *ff.*, Code of Criminal Procedure of the state of Yucatán, Congress of the state of Yucatán, General Secretariat of the Legislature, Technical and Legislative Services Unit, December 15, 1994, latest amendment April 8, 2011, articles 408 and *ff.*; Nicaragua, Criminal Procedure Code, Law No. 406, November 13, 2001, published in Official Gazette No. 243 and No. 244 on December 21 and 24, 2001, articles 337 and *ff.*; Panama, Code of Criminal Procedure, digital Official Gazette, Law No. 63 of August 28, 2008, articles 191 and *ff.*; Paraguay, Criminal Procedure Code, Law No. 1286-98, articles 481 and *ff.*; Peru, Criminal Procedure Code, Legislative decree No. 957, published in the Official Gazette "*El Peruano*" on July 29, 2004, articles 439 and *ff.*; Uruguay, Code of Criminal Procedure, Law No. 15,032, published on August 18, 1980 – No. 20806, articles 283 and *ff.*; Venezuela, Organic Criminal Procedural Code, Decree No. 9,042, June 12, 2012, articles 462 and *ff.*

159 *Cf.* Rome Statute of the International Criminal Court, July 17, 1998, entered into force on July 1, 2002, article 84; United Nations, Statute of the International Criminal Tribunal for Rwanda, Resolution 955, November 8. 1994, articles 25 and 27, International Criminal Tribunal for Rwanda, Rules of procedure and evidence, June 29, 1995, Rule 120; United Nations, Statute of the International Criminal Tribunal for the former Yugoslavia, Resolution 827, May 24, 1993, articles 26 and 28, International Criminal Tribunal for the former Yugoslavia, Rules of procedure and evidence, February 11, 1994, rule 119, and United Nations, Statute of the International Residual Mechanism for Criminal Tribunals, Resolution 1970, December 22, 2010, articles 24 and 26, Mechanism for International Criminal Tribunals, Rules of procedure and evidence, June 8, 2012, Rule 146.

160 *Cf.* San Francisco Conference, Statue of the International Court of Justice, June 26, 1945, article 61, International Court of Justice, Rules of Court, April 14, 1978, article 99, and European Court of Human Rights, Rules of Court, September 18, 1959, Rules 80 and 109.

161 *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 237, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2010 Series C No. 216, para. 166.

162 *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights),* Advisory Opinion OC-9/87, October 6, 1987. Series A No. 9, para. 24 and *Case of Rosendo Cantú et al. v. Mexico*. *Preliminary objections, merits, reparations and costs*, para. 166.

either in the Convention, the Constitution or in law.[163] This signifies that the remedy must be suitable to combat the violation and that its implementation by the competent authority must be effective.[164] Moreover, an effective remedy means that the analysis of a judicial remedy by the competent authority cannot be limited to a mere formality; rather, that authority must examine the reasons cited by the plaintiff and issue an express pronouncement on them.[165]

124. Furthermore, the Court has determined that a State that has acceded to an international treaty must introduce the necessary amendments to its domestic law to ensure the execution of the obligations assumed[166] and that this principle, recognized in Article 2 of the Convention, establishes the general obligation of the States Parties to adapt their domestic law to the provisions of the said treaty in order to ensure the rights that it contains,[167] which means that the domestic legal measures must be effective (*effet util).*[168] In addition, the Court has understood that this adaptation involves the adoption of two types of measure, namely: (i) the elimination of norms and practices of any nature that entail a violation of the guarantees established in the Convention, that disregard the rights recognized therein, or that hinder their exercise, which means that the norm or practice that violates the Convention must be amended,[169] repealed or annulled,[170] or reformulated,[171] as appropriate,[172] and (ii) the issue of norms and the implementation of practices conducive to the effective observance of those guarantees.[173]

125. The Court notes that, according to the arguments of the representatives and the Commission, the presumed violation of the right to judicial protection contained in Article 25 occurred owing to: (a) the failure to review the convictions in the specific case, because the presumed victims did not have an effective remedy to obtain a review of the guilty verdict in case 1-73, and (b) the ineffectiveness of the actual remedies for situations such as those alleged by the presumed victims. On this last point, the representatives argued that, even though the Supreme Court now has jurisdiction to review the guilty verdicts handed down

---

163 *Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 30, 2010 Series C No. 215, para. 182, and *Case of Rosendo Cantú et al. v. Mexico*. *Preliminary objections, merits, reparations and costs*, para. 166.

164 *Cf. Case of Maritza Urrutia v. Guatemala. Merits, reparations and costs.* Judgment of November 27, 2003. Series C No. 103, para. 117, and *Case of Rosendo Cantú et al. v. Mexico*, para. 166.

165 *Cf. Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 96, and *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 6, 2008. Series C No. 184, para. 93.

166 *Cf. Case of Garrido and Baigorria. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 68, and *Case of Zambrano Vélez et al. v. Ecuador*. *Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, para. 55.

167 *Cf. Case of Garrido and Baigorria. Reparations and costs*, para. 68, *and Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs,* para. 56.

168 *Cf. Case of Ivcher Bronstein. Jurisdiction.* Judgment of September 24, 1999, para. 37, and *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs,* para. 56*.*

169 *Cf. Case of Zambrano Vélez et al. v. Ecuador*. *Merits, reparations and costs,* para. 56, and *Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs.* Judgment of June 20, 2005. Series C No. 126, paras. 97 and 130.

170 *Cf. Case of Zambrano Vélez et al. v. Ecuador*. *Merits, reparations and costs,* para. 56, and *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs. Judgment of* June 23, 2005. Series C No. 127*,* para. 254.

171 *Cf. Case of Zambrano Vélez et al. v. Ecuador*. *Merits, reparations and costs,* para. 56, and *Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs,* paras. 87 and 125.

172 *Cf. Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs,* para. 56, and *Case of La Cantuta v. Peru. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of November 20, 2009, para. 172.

173 *Cf. Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs, para. 56, and Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs,* para. 118*.*

by the military tribunals, that court would reject an appeal filed to request that it interpret the grounds for the appeal for review, as in did recently in 2011; thus, there is no effective remedy (*supra* paras. 112 to 115).

126. This Court understands that the facts of this case reveal a situation that can be separated into two different moments in time: (a) before the 2005 constitutional reform that accorded the Supreme Court jurisdiction to examine judgments relating to decisions of the courts-martial, and (b) after 2005 and the said constitutional reform.

a) The appeal for review before the 2005 constitutional reform

127. Regarding the period before 2005, the facts of the case reveal that, in 2001, the presumed victims filed an appeal with the Supreme Court of Chile requesting the review and, subsidiarily, the declaration of nullity of the judgments delivered by wartime military justice in case 1-73. On September 2, 2002, the Supreme Court of Chile determined that the appeal was inadmissible because it lacked jurisdiction to decide the issue; it reached the same conclusion on December 9, 2002, in response to an appeal to reconsider its decision (*supra* para. 47).

128. In addition, according to the representatives, article 657 of the Chilean Code of Criminal Procedure established that: "[t]he Supreme Court may, in exceptional circumstances, review final judgments in which someone had been convicted of a crime or simple misdemeanor in order to annul them in the following cases: […] (4) When, following the judgment, a new fact occurs or is discovered or a document appears that was not examined during the proceedings that is of such importance that it is sufficient to establish the innocence of the person convicted." However, despite this, in its ruling of September 2002, the Supreme Court interpreted that it lacked jurisdiction to examine those appeals pursuant to article 70-A.2) of the Code of Military Justice according to which "the Supreme Court […] shall also be responsible for exercising the protective, disciplinary and economic authority referred to in article 2 of this Code in relation to the administration of military justice in peacetime, and to examine: […] (2) Appeals for review of final judgments in matters within the military jurisdiction in peacetime." In that case, the Supreme Court interpreted that the judgments of the courts-martial had been issued in time of war and, therefore, based on the said article, it lacked jurisdiction (*supra* para. 47).

129. Meanwhile, the Inter-American Court notes that the State itself, in its arguments, confirmed that, at that time and up until 2005, the Supreme Court of Chile lacked jurisdiction to examine such appeals. However, the State did not specify before which domestic court the presumed victims should have filed the said appeal. Consequently, it is unclear what the adequate domestic mechanism would have been to review the said judgments, and which domestic court would have had jurisdiction to examine them.

130. During the public hearing in this case, the representatives and expert witness Juan Méndez provided the Court with evidence aimed at questioning the Chilean Supreme Court's lack of jurisdiction to examine appeals for review of courts-martial judgments. In particular, expert witness Méndez stated that "if the Court has to decide whether or not what occurred in Chile following 1973 was a war, there are norms of international law that can […] determine that it was not; that those were acts of repression and not acts of war and, therefore, the argument that the state of war prevented the review should be declared inapplicable." Similarly, the representatives argued "that military tribunals should operate only in the presence of organized and militarized rebel forces. However, under decree-laws of September 1973, the Military Junta established a state of siege throughout national territory and, based on article 419, this was interpreted as a situation comparable to a state of war." Consequently, they concluded that "the proceedings before the courts-martial not only suffered from deficiencies as regards due process, but were not a competent court to

examine the said cases." In addition, they referred to the Valech Commission's final report, which established that "[f]aced with the inexistence of a context of internal war, in the absence of an armed struggle that would endanger the monopoly of force reserved to the Armed and Security Forces, legally there was no justification for subordinating the legal order to that situation of emergency […]. Thus, the declaration of war by decree acted as a legal fiction and political justification for repressive actions that did not correspond to the context in reference, and the use of wartime military tribunals." The State did not contest the arguments of the representatives and expert witness Méndez.

131. Nevertheless, this Court considers that it is not essential to rule on whether Chile was in a time of war when the alleged violations occurred and whether or not the Supreme Court of Chile truly lacked jurisdiction to examine the appeals that were filed. Rather, this Court must analyze whether an effective remedy was available to the presumed victims in the terms of Article 25(1) of the Convention to review the guilty verdicts delivered against them by the courts-martial.

132. On this point, the Court notes that the presumed victims were unable to obtain a review of their convictions. Consequently, the Court finds that the State is responsible for violating the right to judicial protection recognized in Article 25(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Omar Humberto Maldonado Vargas, Álvaro Yañez del Villar, Mario Antonio Cornejo Barahona, Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel, Ernesto Augusto Galaz Guzmán, Mario González Rifo, Jaime Donoso Parra, Alberto Salustio Bustamante Rojas, Gustavo Raúl Lastra Saavedra, Víctor Hugo Adriazola Meza and Ivar Onoldo Rojas Ravanal. The State is also responsible for violating the obligation to adopt domestic legal provisions contained in Article 2 of the Convention in relation to Article 25 of this instrument to the detriment of the same persons owing to the inexistence of a remedy of review in Chile's domestic law prior to 2005.

b) The appeal for review following the 2005 constitutional reform

133. In the case of the period after 2005, the Court notes that: (a) the presumed victims did not file an appeal with the Supreme Court following the amendment of the Constitution that granted that court jurisdiction in this regard; (b) to prove that the said remedy continues to be ineffective even though the Supreme Court now has jurisdiction to review the guilty verdicts issued by the courts-martial, the representatives referred to an appeal filed in 2011 by persons other than the presumed victims who had also been tried and convicted by courts-martial in case 1-73 (*supra* para. 52); (c) the Supreme Court rejected this appeal arguing that no incident, new discovery or appearance of a document had been verified pursuant to the requirements established in article 657 of the Code of Criminal Procedure which regulates the appeal for review (*supra* para. 52); (d) the persons who filed the appeal for review, like the presumed victims in this case, appear on the list of political prisoners and those tortured during the Chilean military dictatorship attached to the Valech Commission's final report, and (e) several of those who filed the 2011 appeal also appear as injured parties in case 1058-2001, which was decided in a judgment of April 30, 2007, confirmed by the Santiago Appellate Court in a ruling of November 6, 2008, against which a remedy of cassation was filed that the Supreme Court rejected in September 24, 2009 (*supra* para. 58).

134. Added to the above, the Court notes that those who filed the said appeal for review asked the Supreme Court to review the judgment in case 1-73, or, subsidiarily, to declare it null and void or "to set it aside *ex officio*"[174] (*supra* para. 52). The request was based on the grounds for review established in article 657 of the Code of Criminal Procedure, which

[174] *Cf.* Brief filing an appeal for review, p. 43 (evidence file, folio 6469).

establishes that "[t]he Supreme Court may, in exceptional circumstances, review final judgments in which someone had been convicted of a crime or simple misdemeanor in order to annul them in the following cases: […] (4) When, following the judgment, a new fact occurs or is discovered or a document appears that was not examined during the proceedings that is of such importance that it is sufficient to establish the innocence of the person convicted" (*supra* para. 128). The appellants filed several probative elements including, in particular, the judgments delivered in case 1058-2001, and asked that the court "certify and take note of the files in cases 1-73, […] 1058-2001 and joindered cases, that are located with the 34th Court" and "send an official communication to the National Human Rights Institute requiring information on those persons declared victims and, in particular, on the acts that took place in the Air War Academy" and offered additional testimonies.[175]

135. The Chilean Supreme Court's ruling of December 21, 2011, indicated that "the factual assumptions on which the claim is founded do not accord with requirements of the alleged grounds, because these consist of the proceedings in case 1-73 […], in which guilty verdicts were delivered against those who are requesting the review, adding that: 'Subsequently, new facts and information has appeared, following the judgment in question, that suffice to prove the innocence of those who were convicted,' because the evidence used has no legal value, as it was obtained in a flawed proceeding that could not serve as grounds for the said verdict, and the appellant is merely criticizing the assessment of the evidence." Thus, the Supreme Court concluded that "this does not refer to the occurrence or discovery of a new fact or the appearance of a document, so that this appeal cannot be admitted for processing."[176] Furthermore, it considered that the arguments submitted by the appellants could not constitute a new fact and that, to the contrary, it was "a criticism" of the assessment of the evidence made by the court-martial in the judgments in case 1-73.

136. Taking the foregoing into account, this Court notes that the situation of the presumed victims in this case is very similar to that of those who filed the appeal in 2011. In particular, it has been able to verify that they were all convicted in the same proceeding by the courts-martial in case 1-73; that they all appear on the same list of victims of torture in the Valech Commission's report, and that some of them haves been recognized as victims in the same criminal proceedings (case 1058-2001), that, in fact, was submitted as one of the main grounds in the 2011 appeal for review (*supra* para. 52).

137. In the instant case, it is not incumbent on the Court to assess whether the domestic courts made a correct assessment of domestic law when considering what constitutes a new fact under Chilean law. However, this Court does have competence to determine whether, at the present time, the presumed victims have an adequate and effective remedy to review the guilty verdict issued against them in case 1-73.

138. The Court also recalls that, in general, it is unable to examine whether an existing domestic judicial action or remedy is adequate and effective based on what happened in other cases that concerned other individuals who are not the presumed victims in the case submitted to its consideration. This is founded on the fact that this Court might lack sufficient information to determine that what was decided at the domestic level in that other case was transferable to the situation of the presumed victims in the case before it. However, exceptionally, there could be cases in which the degree of similarity between two factual and legal situations is so great that the analysis of each of them necessarily and reasonable leads to the same conclusions.

---

175 *Cf.* Brief filing an appeal for review, p, 45 (evidence file, folio 6471).

176 *Cf.* Second Chamber of the Supreme Court, Ruling, December 21, 2011 (evidence file, folio 6472).

139. Thus, in the instant case, although it is true that the presumed victims have not filed a remedy following the 2005 constitutional reform, it is also true that the only appeal for review that was filed by other individuals who had been convicted in case 1-73 in 2011 did not result in a review by the Chilean high court. In addition, as could be verified, the factual and legal circumstances of the presumed victims in the instant case and that of those who filed an appeal in 2011 are almost identical as regards the elements that are of interest for the purposes of the review by the Supreme Court of Justice. More specifically, they were all found guilty in the same case by the courts-martial and were all victims of torture, a circumstances from which it can reasonably be inferred that if the presumed victims in this case had filed an appeal for review after 2005, it is more than probable that it would have had the same result as that presented in 2011. This Court's attention is particularly drawn to the fact that some of the evidence provided in the 2011 appeal for review consisted in judgments handed down in 2007 and 2009, one of which was delivered by the Chilean Supreme Court itself, in which an appeal to annul a judgment was rejected, and in which it was established that the appellants had been victims of torture in the context of the "investigations" that preceded the trial in case 1-73 (*supra* para. 58).

140. Nevertheless, it is unclear to this Court: (a) whether the evidence submitted by those who filed the 2011 appeal for review to prove the acts of torture suffered by those convicted in case 1-73 was insufficient. If it was, neither the State nor the Supreme Court explained, in the context of a criminal proceeding, what type of evidence on new facts – in this case acts of torture – in addition to those presented by the appellants in the 2011 brief that consisted *inter alia* of court judgments and the Valech Commission's report, were sufficient for the Supreme Court to admit the appeal for review, and (b) if it is the Supreme Court's understanding that, due to their nature, acts of torture do not constitute one of the grounds for review established in article 657 of the Code of Criminal Procedure, in which case the said appeal would not be the adequate and effective remedy to obtain the said review. In that case, the 2005 constitutional reform would not have altered the situation of the presumed victims, insofar as, although the Supreme Court now has jurisdiction to review judgments issued by courts-martial, its interpretation of the said grounds means that, in practice, it would not admit any appeal for review filed against guilty verdicts delivered based on evidence obtained through torture during the dictatorship.

141. Moreover, the Court recalls that, as verified, since the 2005 constitutional reform, the Supreme Court "has directive, correctional and economic oversight of all the courts of the Nation," and that the decisions of the courts-martial do not constitute an exception to these powers (*supra* para. 51). Accordingly, the Supreme Court could have admitted the appeal for review filed in 2011 by persons other than the victims in this case; however, it decided not to examine that appeal.

142. The foregoing considerations allow this Court to conclude that, for any of the above reasons, the persons convicted in judgments of the courts-martial during the dictatorship still do not have an adequate and effective remedy that would allow for a review of the judgments in which they were convicted. Consequently, the Court concludes that the State is responsible for violating the obligation to adopt domestic legal provisions contained in Article 2 of the Convention, in relation to Article 25 of this instrument, owing to the lack of an adequate and effective remedy to review the guilty verdicts issued by the courts-martial to the detriment of Omar Humberto Maldonado Vargas, Álvaro Yañez del Villar, Mario Antonio Cornejo Barahona, Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel, Ernesto Augusto Galaz Guzmán, Mario González Rifo, Jaime Donoso Parra, Alberto Salustio Bustamante Rojas, Gustavo Raúl Lastra Saavedra, Víctor Hugo Adriazola Meza, and Ivar Onoldo Rojas Ravanal.

VI-3
THE RIGHT TO PROTECTION OF HONOR AND DIGNITY

A. Arguments of the parties and of the Commission

143. The representatives argued that, in the instant case, the right to protection of honor and dignity recognized in Article 11 of the Convention had been violated because case 1-73 was processed without respecting due guarantees and in order to exact political revenge, which constituted abusive and arbitrary interference with the honor and reputation of the convicted men.[177] They added that this interference did not end when the judgments were issued, but has remained over time, because those guilty verdicts were final and had not been annulled to date. Also, as regards the scope of the alleged attacks on honor and reputation, the representatives indicated that they were transferred to the family members, affecting not only the individuals, but also their whole family group, stigmatizing them in the eyes of society.[178] Furthermore, the representatives indicated that the State had not provided mechanisms or taken steps to remedy the violation of Article 11 of the Convention to the detriment of those convicted in FACH case 1-73.[179] Consequently, they considered that Article 11 had been violated, in relation to Articles 1(1) and 2 of the Convention, because the State had failed to provide adequate mechanisms of protection and reparation to ensure the right to honor and reputation of the presumed victims and their families, specifically by rejecting the appeal for review filed in 2001. The Commission indicated that it had no factual grounds to substantiate a violation of the said right.

144. The State asked the Court to reject the supposed violation of honor and reputation due to lack of evidence, and considered that it should not form part of the discussion in this case because the alleged violation originated in facts that did not form part of the purpose of these proceedings, due to the temporal restriction. It added that the alleged violation of honor and reputation was directly related to the measures of reparation adopted.[180] Regarding the families of those who were convicted, it argued that the 2002 judgment could not result in a violation of the presumed victims' right to honor and, therefore, even less could it constitute a violation of this nature with regard to their next of kin.[181] In addition,

---

177 They indicated that the judgments in case 1-73 had caused great harm to the life of the victims, a harm that differed from torture and prison, and from deportation and exile.

178 They added that "using the media of that era, different stories were aired referring to conspiracy and treason committed by the presumed victims in this case. Their categorization as "traitors" in 1974 "still accompanies them."

179 They added that although the admissibility of reviewing the convictions issued in case 1-73 was based, principally, on the need to have an effective remedy to review trials in which due process had been violated and to exercise the exclusionary rule, the review in this specific case was also a "mechanism of protection" to restore honor and reputation. Nevertheless, they added that the mere annulment of the judgments via an appeal for review would not repair all the harm that the guilty verdicts had caused the presumed victims at the time. Complete reparation entailed not only a review of the judgments, but involved recognizing that the victims were not traitors, or guilty of sedition, nor did they fail to comply with their military duties, as the Military Junta made Chilean society believe and, to the contrary, those convicted were loyal to the Constitution and the law and complied fully with their military duties.

180 In this regard, it referred to the actions and measures taken to make reparation to the presumed victims and to restore the democratic institutions. Specifically, it indicated that the Rettig Commission and then Valech Commissions I and II made a significant contribution to clarifying the truth, together with the State's justice apparatus by enhancing procedures, increasing the number of judges, improving infrastructure and incorporating international standards into the legal doctrine and case law of the domestic courts and in the legislation.

181 The State recalled the words of expert witness Francisco Zúñiga who stated that "the members of a victims' family may, in turn, be victims of a violation. However, in order to extend the concept of victim to the family members, it is necessary to prove that they have suffered harm and that they are therefore passive subjects of the alleged facts." Thus, personal rights are private, innate and lifelong subjective rights involving the inner expressions of the individual and, since they are inherent, extra-patrimonial and necessary, they absolutely and completely cannot be disposed of or transmitted.

the State reiterated that remedies were available so that the party who felt that he had been wronged could have recourse to the pertinent and competent bodies, and that the appeal for review now available, following the 2005 constitutional reform, did not require special conditions and was a simple remedy addressed at the highest court in the judicial system.

B. Considerations of the Court

145. The Court notes that the representatives haves argued that the State's acts and omissions that supposedly resulted in violations of the rights recognized in Article 25 of the Convention, in relation to Articles 1(1) and 2 of this instrument, had also resulted in the alleged violation of Article 11. In particular, in their arguments, they maintain that the State is responsible for the violation of that right for three different reasons: (1) for handing down guilty verdicts without respecting due guarantees and in order to exact "political revenge"; (2) for not having used some type of mechanism to annul the convictions, and (3) due to the inexistence of an effective mechanism or remedy to review proceedings that violate due process and to exercise the exclusionary rule.

146. On the first point, the Court recalls that it lacks jurisdiction *ratione temporis* to analyze the judgments delivered in case 1-73; consequently, it is unable to arrive at conclusions as to the purpose of the convictions and an eventual use of the trials to violate the right to honor and dignity of the presumed victims. As already indicated in the chapter on the facts (*supra* para. 17), the guilty verdicts in case 1-73 were only referred to as background information to contextualize the facts of this case, but not in order to conclude that judicial guarantees had been violated during the proceedings, which was outside the Court's temporal jurisdiction and, moreover, has not been argued as a purpose of this case by the parties or the Commission.

147. Furthermore, the Court notes that the representatives did not indicate how the failure to annul the guilty verdicts in case 1-73 or the alleged inexistence of an appeal for review for this type of conviction had translated into violations of specific rights other than those already established in the preceding chapters. The Court has already analyzed the lack of an effective remedy against the guilty verdicts in case 1-73 in the chapter on Article 25 of the Convention. Consequently, in this case, the Court refers to its decision in this judgment as regards the right to judicial protection, to the detriment of the victims, so that it will not rule on the alleged violation of the right to honor and dignity.

148. Nevertheless, the effects on the victims of the violation of the right to judicial protection, and the evidence of this, will be taken into account in the chapter on reparations for non-pecuniary damage.

VII
REPARACIONES
(Application of Article 63(1) of the American Convention)

149. Based on the provisions of Article 63(1) of the Convention,[182] the Court has indicated that any violation of an international obligation that has caused harm entails the obligation

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

to make adequate reparation,[183] and that this provision "reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility."[184] In addition, this Court has established that the reparations should have a causal nexus to the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Accordingly, the Court must analyze this concurrence to rule appropriately and in keeping with law.[185]

150. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum)*, which consists in restoration of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the violated rights and to redress the consequences of the violations.[186] Accordingly, the Court has found it necessary to grant diverse measures of reparation in order to redress the harm integrally, so that in addition to pecuniary compensation, measures of restitution, satisfaction and guarantees of non-repetition are particularly relevant for the harm caused.[187]

151. Consequently, and without prejudice to any other type of reparation that may have been granted or that is agreed between the State and the victims based on the violations of the American Convention declared in this judgment, the Court will proceed to establish measures addressed at redressing the harm caused. To this end, it will take into account the claims of the Commission and the representatives, together with the arguments of the State, in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation.[188]

152. Bearing in mind the considerations on the merits and the violations of the American Convention declared in Chapter VI of this judgment, the Court will proceed to examine the claims presented by the Inter-American Commission and the victims' representatives in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation in order to establish measures to repair the harm caused to the victims.[189]

A. Injured party

153. The Court reiterates that, according to Article 63(1) of the American Convention, the injured party is considered to be anyone who has been declared a victim of the violation of any rights recognized therein. Therefore, the Court considers that the following are the injured party: Omar Humberto Maldonado Vargas, Álvaro Yañez del Villar, Mario Antonio Cornejo Barahona, Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel, Ernesto Augusto Galaz Guzmán, Mario González Rifo, Jaime Donoso Parra, Alberto Salustio

---

183 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 341.

184 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 25, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*, para. 341.

185 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*, para. 343.

186 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 26, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*, para. 342.

187 *Cf. Case of the "Mapiripán Massacre" v. Colombia*, para. 294, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*, para. 342.

188 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 to 27, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*, para. 454.

189 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 and 26, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*, para. 344.

Bustamante Rojas, Gustavo Raúl Lastra Saavedra, Víctor Hugo Adriazola Meza and Ivar Onoldo Rojas Ravanal, and in their capacity as victims of the violations declared in this judgment, they will be considered beneficiaries of the reparations ordered by the Court.

B. Obligation to investigate

154. The Commission asked the Court to order the State to investigate, prosecute and punish the alleged torture committed against the victims in this case. It also asked that the State be ordered to establish any criminal and/or administrate responsibilities that there might be for the failure to investigate the torture suffered by the victims in this case which had been brought to the attention of the Chilean judicial authorities. The representatives added that, in order to ensure an effective investigation for the victims in this case, the State should be ordered to guarantee the Special Inspection Judge in charge of the case full access to the documents of the Valech Commission that may identify names of torturers, other victims of torture, and evidence that can help him in his jurisdictional task." The State did not present arguments with regard to this measure of reparation.

155. In this judgment, the Court has established that the State has violated Article 8(1) of the Convention, in relation to Article 1(1) of this instrument and to the obligations established in Articles 1, 6 and 8 of the Inter-America Convention to Prevent and Punish Torture, owing to the excessive delay in initiating the investigation into the acts perpetrated against four of the victims in this case: namely, Ivar Onoldo Rojas Ravanal, Alberto Salustio Bustamante Rojas, Álvaro Yáñez del Villar and Omar Humberto Maldonado Vargas (*supra* para. 80). However, in 2013, following a complaint by the parties involved, the State initiated investigations into the acts of torture against the 12 victims in this case, and this is still underway (*supra* para. 69). Consequently, this Court establishes that the State must continue and conclude, within a reasonable time and with due diligence, the investigations into the acts of torture committed against the victims in this case, in order to identify and, as appropriate, prosecute and punish those responsible.[190]

156. In particular, to this end, the State must: (a) ensure full access and legal standing to the victims and their next of kin at all stages of these investigations in keeping with domestic law and the norms of the American Convention; (b) since the case relates to an egregious violation of human rights and considering the particularities and the context in which the facts occurred, the State must refrain from using mechanisms such as an amnesty to benefit the perpetrators, or any other analogous provision, such as the statute of limitations, the non-retroactivity of criminal law, *res judicata, ne bis in idem,* or any other similar exclusion of liability to exempt itself from this obligation; (c) guarantee that the investigations and proceedings relating to the facts of this case always remain in the ordinary jurisdiction, and (d) publicize the results of the proceedings so that Chilean society may know the judicial decision on the facts that are the purpose of this case.[191] Likewise, the State must publicize the result of an eventual review of the convictions of the 12 victims in this case in an internal communication medium of the Chilean Armed Forces so that their members are informed of this.

---

190 *Cf. Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2007. Series C No. 168 para. 112, and *Case of Cruz Sánchez et al. v. Peru*. *Preliminary objections, merits, reparations and costs*, para. 460.

191 *Cf. Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Cruz Sánchez et al. v. Peru*. *Preliminary objections, merits, reparations and costs*, para. 460.

C. Measures of satisfaction

157. The Court will determine measures that seek to redress the non-pecuniary harm and that are not of a pecuniary nature, as well as measures of public scope or repercussion.[192] International case law and, in particular, that of this Court has established repeatedly that the judgment constitutes *per se* a form of reparation.[193]

C.1. Public act to acknowledge responsibility

158. The representatives requested that the State organize a public act to acknowledge responsibility "after the judgments have been reviewed" in which it "provides information on the result of this review."[194] The Commission did not refer to this measure of reparation.

159. The State expressed its willingness to organize renewed symbolic acts of reparation that include the presumed victims and all the members of the Armed Forces who were affected by the violation of their human rights. In addition, during the public hearing, the State formally reiterated its full readiness to organize further acts of symbolic reparation and stated that:

> "[…it] recognized that the petitioners in this case are victims of egregious human rights violations committed during the dictatorship. They were subjected to courts-martial owing to their defense of the Constitution and the law and their loyalty to the democratic system, and because of this they were tortured and convicted of treason. This is indisputable in this case. Therefore, the State of Chile expresses its full respect and recognition to the petitioners for their noble struggle in defense of truth, justice and dignity. The State […] has condemned and, on this occasion, reiterates this condemnation of the courts-martial that convicted the petitioners, and that represented a paradigm of the violations of due process and fundamental guarantees. The human rights violations of which the petitioners were victims were committed by agents of the State in the context of severe, massive and systematic violations of the said fundamental rights during the dictatorship that reigned in Chile between September 11, 1973, over 41 years ago, and March 10, 1990."

160. The Court establishes, as it has in other cases,[195] that the State must organize a public act to acknowledge international responsibility in which it must refer to the human rights violations declared in this judgment. The date, place and details of the act must be agreed with the victims and their representatives. The act should take place in a public ceremony in the presence of senior authorities of the State. The State has one year from notification of this judgment to organize this act. As regards the State authorities who should be present or take part in this act, the Court, as it has in other cases, indicates that they should be high-ranking. However, it will correspond to the State to define to whom this task should be entrusted; nevertheless, the Judiciary must be represented in the act.

---

192 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 370.

193 *Cf. Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*, para. 412.

194 They indicated that the victims and their family members who so wish should attend the act, as well as representatives of the three branches of the State and of the FACH, and the site of the act should be agreed on with the victims in this case.

195 *Cf. Case of González et al. ("Cotton Field") v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 469, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 368.

C.2. Publication and dissemination of the judgment

161. The representatives asked the Court to order the publication of the judgment in a national newspaper, as well as on the websites of the pertinent State agencies, especially that of the Judiciary. The representatives also asked the Court to order the State to arrange that the Chilean Air Force disseminate the summary of the judgment via an internal communication medium. Neither the Commission nor the State referred to this request.

162. The Court finds it pertinent to order, as it has in other cases,[196] that the State, within six months of notification of this judgment, make the following publications: (a) the official summary of this judgment prepared by the Court in the Official Gazette, in a national newspaper with widespread circulation, and in an internal communication medium of the Chilean Air Force so that all its members are informed of it, and (b) this judgment in its entirety, available for at least one year, on the website of the Judiciary.

C.3. Installation of a commemorative plaque

163. The representatives asked that the Court order the State: (a) to install a commemorative plaque or memorial "that includes the names of all the members of the Air Force who were accused, convicted and/or assassinated in the context of the FACH courts-martial" and that "should be placed permanently in the Air War Academy and thus preserve the memory of what happened in that place," and (b) to provide the necessary resources to prepare a documentary on the history of the victims in the case and of the courts-martial in general, to contribute to the population's knowledge of the truth about what occurred and to the reparation of the victims' honor and reputation." The State did not present arguments with regard to these requests although it indicated that it had "organized important acts of symbolic and material reparation to acknowledge institutional responsibility in the human rights violations that took place in relation to court case 1-73, and these had made a significant contribution to the rehabilitation of the honor and reputation of the complainants; also that the said acts had been carried out under the State's program of comprehensive reparation, based on the human rights policies of the democratic governments." The Commission did not refer to these requests.

164. On previous occasions, the Court has assessed favorably those acts carried out by the State that have had the effect of recovering the memory of the victims and acknowledging their dignity.[197] Thus, since the State has not objected to the representatives' requests, the Court orders the State, within one year, to unveil a plaque to remain permanently in a place accessible to the members of the Air War Academy on which the names of the victims in the case are inscribed together with a brief text narrating the circumstances in which the violations of their human rights occurred.

165. Regarding the other reparations requested, the Court finds that the other measures ordered in this judgment are sufficient and adequate.

---

196 *Cf. Case of Cantoral Benavides v. Peru*. Reparations and costs. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 386.

197 *Cf. Case of Maritza Urrutia v. Guatemala. Merits, reparations and costs,* para.171*; Case of the Pueblo Bello Massacre.* Judgment of January 31, 2006. Series C No. 140, para. 254; *Case of Manuel Cepeda Vargas* v. Colombia*, Preliminary objections, merits, reparations and costs,* para. 223; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010 Series C No. 217, para. 248; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs,* para. 229, and *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011 Series C No.221, para. 266.

D. Measure of restitution

166. The representatives asked the Court to order the State of Chile, immediately, to review the convictions of the 12 victims in this case issued as a result of case 1-73 (without the need for the victims to take further procedural steps), based on the standards concerning the exclusionary rule and the need for an effective remedy against violations of due process. The Commission asked the Court to order "the adoption of the measures necessary to afford an effective judicial remedy for the protection of the violated rights of the victims and their next of kin, particularly with regard to the evidentiary value attached to the confessions made under torture." In its final observations, the Commission added that the State, *ex officio*, should proceed "to provide a rapid and effective mechanism to invalidate, as soon as possible, the criminal convictions of the victims the persistence of which constitute[d] a permanent offense to the most essential principles underlying international human rights law." In response to this request, the State reiterated its arguments on the existence at the present time of an effective remedy for the full application of the exclusionary rule.

167. The Court notes that, in Chapter VI-2 of this judgment, it has declared the State of Chile responsible for failing to provide an effective remedy to review the guilty verdicts delivered in case 1-73, thus violating Article 8(1) of the American Convention in relation to Articles 1(1) and 2 of this instrument. Consequently, the Court orders the Stat to provide the victims in this case, within one year of notification of this judgment, with an effective and rapid mechanism to review and/or annul the judgments handed down against them in the said case.

E. Guarantees of non-repetition

168. The Commission asked the State to adopt the legislative, administrative and other measures necessary to make Chile's laws and practices conform to inter-American standards concerning torture and judicial protection, and measures to prevent the repetition of acts similar to those at issue in this case. The representatives requested, as measures of non-repetition: (a) that the State of Chile guarantee, by all available means, the diligent and *ex officio* investigation of all acts of torture that are reported to it, especially those committed against the other individuals convicted as a result of case 1-73;[198] (b) that the State of Chile "be ordered to design a protocol, law or any other appropriate instrument that ensures that the Chilean courts apply the exclusionary rule *ex officio*, and assume the burden of proof," and (c) that "the curriculum of the Chilean Air Force for both officers and non-commissioned officers should include, on a permanent basis, reference to case 1-73 affirming that all those convicted by those proceedings, including the 12 victims in this case, were innocent and had confessed crimes while being tortured because they had opposed the coup d'état and because they had been loyal to the President of the Republic, the Constitution and the law."

169. Meanwhile, the State indicated, in general, that it had gradually been implementing public policies to comply with its international obligations and that transitional justice involved complementarity in its measures and progressivity in their implementation. The State also indicated that the "current and former Chilean procedural system included the exclusionary rule concerning evidence obtained through torture. In addition, the former Code of Criminal Procedure (art. 657) included a procedural rule that an appeal for review could be filed if a new fact had occurred or was discovered or a document appeared that

---

[198] They added that, in order to ensure that the investigations were diligent and *ex officio* in other cases of torture during the military dictatorship, the State should also ensure "by all available means, an effective remedy […] so that other individuals convicted in case 1-73, and in other wartime military proceedings may benefit from the exclusionary rule and raise the issue of whether due process was observed in those trials."

had not been examined during the proceedings that could establish the innocence of the person convicted. This procedural rule is still in force." It also indicated that, under the 2005 constitutional reform, it "had restored the directive, correctional and economic oversight authority of the Supreme Court over the wartime military tribunals."

170. In this regard, the Court has established in this judgment that the State violated Article 25 and Article 2 in relation to Article 1(1) of the Convention owing to the absence of an effective remedy to annul the judgments handed down in case 1-73 against the victims in the instant case (*supra* paras. 132 and 142). Consequently, the Court orders the State, within one year of notification of this judgment, to adopt the legislative, administrative and any other measure appropriate to make a mechanism available to those convicted by courts-martial during the Chilean military dictatorship that is effective to review and annul the guilty verdicts delivered in proceedings that took into account evidence and/or confessions obtained through torture.

171. Regarding the other reparations requested, the Court finds that the measures ordered in this judgment are sufficient and adequate.

F. Compensation for pecuniary and non-pecuniary damage

172. In the instant case, no economic harm has been argued or proved based on the facts that gave rise to the international responsibility of the State for the human rights violations declared in this judgment. Therefore, the Court does not find it appropriate to establish compensation for pecuniary damage

173. The representatives asked that the State grant "pecuniary compensation to all the 12 victims in this case, who were convicted as a result of case 1-73, based on the non-pecuniary harm caused by the absence of an investigation, the refusal to provide an effective remedy, and the harm to their honor and reputation, [they also asked that the State] grant pecuniary compensation to all the family members identified in this case for the non-pecuniary harm caused by the violation of the victims' human rights."[199] In addition, they asked that, pecuniary compensation, based on the equity principle, be granted "to all the family members individualized in this case owing to the non-pecuniary harm caused by the violation of their own human rights." On this point, the State referred in detail to the Human Rights Reparations Program in Chile that was created to redress the harm comprehensively and indicated that the victims in this case were beneficiaries of that program. In this regard, the Commission observed that the State had provided information on the reparations received by the victims for the torture they had suffered under the national Reparations Program; however, it recalled that those violations did not constitute the purpose of this case.

174. The Court has established that non-pecuniary damage supposes the "loss of, or detriment to, the victims' earnings, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus to the facts of the case."[200] In its case law, it has also developed the concept of non-pecuniary damage and has established that "it may include both the suffering and afflictions caused to the direct victim and to his next of kin and the impairment of values of great significance to the individual,

---

[199] The representatives asked that the sum of US$20,000 United States dollars be awarded to each direct victim in the case.

[200] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 402.

and also the changes of a non-pecuniary nature in the living conditions of the victims or their family."[201]

175. First, the Court notes that the victims in this case are, indeed, beneficiaries of the Chilean program of reparations for victims of torture during the military dictatorship (*supra* paras. 40 and 43). Nevertheless, the State has not referred to reparations that would include the human rights violations that the Court has declared in this case: namely, the rights to judicial guarantees and judicial protection. Consequently, it is not incumbent on the Court to take into consideration the principle of subsidiarity,[202] as the State claims, to determine the reparations for the human rights violations declared in this judgment.

176. However, the Court recalls that, as it has indicated *(supra para.* 17), it lacks jurisdiction to examine the acts of torture that took place in the context of case 1-73 over the period from 1973 to 1975, and therefore it is not for the Court to grant measures of reparation in that regard.

177. In relation to reparation for non-pecuniary damage, the Court notes that it has been possible to conclude that the State is responsible for various violations of rights contained in the American Convention and the Inter-American Convention to Prevent and Punish Torture to the detriment of the twelve victims recognized in this judgment.

178. Consequently, the Court has declared the responsibility of the State of Chile for the violation of the rights contained in Article 8(1) of the Convention, in relation to Article 1(1) of this instrument and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ivar Onoldo Rojas Ravanal, Alberto Salustio Bustamante Rojas, Álvaro Yáñez del Villar, and Omar Humberto Maldonado Vargas, owing to the excessive delay in initiating the investigation more than 12 years after becoming aware of the facts; thus, they have been waiting for 40 years to obtain justice for the acts of torture. In addition, the Court has declared the international responsibility of the State for the violation of the right to judicial protection contained in Article 25 of the Convention, in relation to Articles 1(1) and 2, owing to the lack of an effective remedy to review the convictions handed down against the same persons. Consequently, the Court deems it pertinent to establish, in equity, the sum of US$30,000 (thirty thousand United States dollars) for each of above-mentioned victims as a form of compensation for the non-pecuniary damage caused.

179. With regard to Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel, Gustavo Raúl Lastra Saavedra, Mario Antonio Cornejo Barahona, Ernesto Augusto Galaz Guzmán, Mario González Rifo, Jaime Donoso Parra and Víctor Hugo Adriazola Meza who were recognized as victims of a violation of the right to judicial protection contained in Article 25 of the Convention in relation to Article 1(1) and of the duty to adopt domestic legal provisions contained in Article 2 of the Convention, the Court deems it pertinent to establish, in equity, the sum of US$25,000 (twenty-five thousand United States dollars) each as compensation for the non-pecuniary damage caused.

---

201 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs, para. 84, and Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 402.

202 *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, para. 336; *Case of the Afro-descendant Communities displaced from the Río Cacarica Basin (Operation Genesis)v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2013. Series C No. 270, para. 474, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objections, merits, reparations and costs,* para. 194.

G. Costs and expenses

180. The representatives requested reimbursement of the expenses generated by their appearance at the public hearings that had been held and asked the Court to establish, in equity, the reimbursement of expenses incurred in the domestic and international proceedings for office expenditure and meals during the public hearing.[203] In this regard, the State indicated that the request for costs and expenses included reimbursement of air fares and accommodation, among others expenses, for individuals who were neither a common intervener nor a deponent called to appear at the public hearing. The Commission did not present arguments on this point.

181. The Court reiterates that, pursuant to its case law, costs and expenses form part of the concept of reparation, because the actions taken by the victims to obtain justice at both the national and the international level entail disbursements that must be compensated when the international responsibility of the State is declared in a judgment.[204] Regarding their reimbursement, it is for the Court to prudently assess their scope which includes the expenses arising before the authorities of the domestic jurisdiction, as well as those arising during the proceeding before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the equity principle and taking into account the expenses indicated by the parties, provided that the *quantum* is reasonable.[205]

182. Furthermore, the Court recalls that it is not sufficient to merely forward probative documents, "rather the parties are required to submit arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established."[206] Moreover, the Court has indicated that "the claims of the victims or their representatives for costs and expenses and the supporting evidence must be submitted to the Court at the first procedural moment granted to them; that is, with the motions and pleadings brief; nevertheless, those claims may be updated subsequently based on new costs and expenses incurred due to the proceedings before this Court."[207]

183. In the instant case, the Court notes that the representatives did not refer to the amount of the expenditure incurred during the litigation at the domestic level nor did they provide any evidence in this regard. Therefore, the Court has no probative support to determine the expenses incurred at that stage. Regarding the expenses incurred during the international litigation, the representatives only referred to expenses they had assumed for an affidavit, air fares and accommodation related to the public hearing. In this regard, they

---

[203] They also indicated that it was "reasonably justified" that the delegation representing the victims consisted of 9 persons, 4 legal advisers and 5 victims, and that the legal team was justified owing to the great complexity of the case and the need to question the deponents appropriately. Regarding the victims, they added that Ernesto Galaz had appeared as a deponent accompanied by his daughter, Silvia Galaz, because it was not advisable that he travel alone owing to his advanced age. Also, Mario Cornejo and Mario González were accompanied by the latter's daughter, Mónica González.

[204] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 42; *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs,* para. 488, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 408.

[205] *Cf. Case of Garrido and Baigorria v. Argentina*. *Reparations and costs*, para. 82, and *Case of Cruz Sánchez et al. v. Peru*. *Preliminary objections, merits, reparations and costs,* para. 488.

[206] *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 277*, and Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 409.

[207] *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. *Preliminary objections, merits, reparations and costs,* para. *275, and Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*, para. 409.

provided 18 vouchers for air fares, accommodation and an affidavit for a total of US$9,022 (nine thousand and twenty-two United States dollars).[208] The Court notes that the vouchers provided correspond only to the said expenses and therefore has no further information or evidence with regard to expenses incurred during the international litigation, including during the processing of the case before the Commission.

184. In addition, with regard to the State's comments on the persons who are not common interveners or were not called on to appear at the hearing, the Court notes that it had opportunely provided information on the persons who would be the four members of the delegation to represent the presumed victims. Also, Ernesto Galaz appeared as a deponent accompanied by his daughter, Silvia Galaz, because it was not advisable that he travel alone in view of his advanced age; therefore, it would be reasonable to accept that the travel expenses of the person accompanying him be included in the concept of costs and expenses. In the case of the other expenditure for the air fares and accommodation of the persons who did not form part of the group of representatives and who were not called on to testify during the hearing, the Court establishes that this will not be taken into account when calculating the amount to be reimbursed for the concept of costs and expenses. Therefore, after deducting those expenses, the Court notes that the representatives authenticated expenditure for air fares, accommodation and an affidavit amounting to US$6,714 (six thousand seven hundred and fourteen United States dollars) and provided the corresponding vouchers.

185. Consequently, the Court decides to establish the sum of US$10,000 (ten thousand United States dollars) for the work carried out in the litigation of this case at the international level, a sum that includes the US$6,714 (six thousand seven hundred and fourteen United States dollars) that were authenticated by payment vouchers and an amount, in equity, to reimburse expenses incurred in the international procedures held before the Commission as well as for office expenses and meals during the public hearing. The State must pay that sum to the representatives within six months of notification of this judgment. The Court considers that, in the proceedings on monitoring compliance with judgment, it may establish that the State should reimburse the victims or their representatives any reasonable expenses they incur during that procedural stage.

H. Method of complying with the payments ordered

186. The State shall make the payments of the compensation for non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons indicated herein within one year of notification of the judgment, in accordance with the following paragraphs.

187. In the case of the victims who are deceased (*supra* footnote 32) or if any of the other beneficiaries of the reparations should die before they receive the respective compensation, the corresponding payments shall be made directly to their heirs in keeping with the applicable domestic laws.

188. The State shall comply with its obligation by payment in United States dollars or Chilean currency, using the exchange rate between the two currencies in force in the Central Bank of Chile on the day before the payment to make the respective calculation.

189. If, for reasons that can be attributed to the beneficiaries of the compensation, it is not possible for them to receive it within the established time frame, the State shall deposit the said amounts in their favor in a deposit certificate or account in a Chilean financial institution, in United States dollars and in the most favorable financial conditions permitted

---

[208] *Cf.* Appendix 2: Expenses (evidence file, folios 1640 to 1643).

by the State's banking law and practice. If the compensation has not been claimed after 10 years, the amounts shall be returned to the State with the interest accrued.

190. The amounts allocated in this judgment as compensation shall be delivered to the persons indicated in full, as established in the judgment, without any deductions arising from possible taxes or charges.

191. If the State should fall in arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in Chile.

VIII
OPERATIVE PARAGRAPHS

192. Therefore,

THE COURT

DECLARES,

unanimously, that:

1. The State is responsible for the violation of the right to judicial guarantees recognized in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument and the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ivar Onoldo Rojas Ravanal, Alberto Salustio Bustamante Rojas, Álvaro Yáñez del Villar and Omar Humberto Maldonado Vargas, owing to the excessive delay in opening an investigation, pursuant to paragraphs 76 to 80 of this judgment.

2. The State is responsible for the violation of the right to judicial protection, recognized in Article 25(1) of the American Convention on Human Rights and the obligation to adopt domestic legal provisions contained in Article 2 of the Convention, in relation to the obligation to respect and ensure rights contained in Article 1(1) of this instrument, to the detriment of Omar Humberto Maldonado Vargas, Álvaro Yañez del Villar, Mario Antonio Cornejo Barahona, Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel, Ernesto Augusto Galaz Guzmán, Mario González Rifo, Jaime Donoso Parra, Alberto Salustio Bustamante Rojas, Gustavo Raúl Lastra Saavedra, Víctor Hugo Adriazola Meza and Ivar Onoldo Rojas Ravanal, owing to the absence of remedies to review their convictions, pursuant to paragraphs 118 to 142 of this judgment

3. The State is not responsible for the violation of the right to protection of honor and dignity contained in Article 11 of the Convention to the detriment of Omar Humberto Maldonado Vargas, Álvaro Yañez del Villar, Mario Antonio Cornejo Barahona, Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel, Ernesto Augusto Galaz Guzmán, Mario González Rifo, Jaime Donoso Parra, Alberto Salustio Bustamante Rojas, Gustavo Raúl Lastra Saavedra, Víctor Hugo Adriazola Meza and Ivar Onoldo Rojas Ravanal, pursuant to paragraphs 145 to 148 of this judgment.

AND ESTABLISHES

unanimously, that:

4. This judgment constitutes *per se* a form of reparation.

5. The State shall continue and conclude, within a reasonable time, the investigation of the facts of this case, pursuant to paragraphs 155 and 156 of this judgment.

6. The State shall make the publications indicated in paragraph 162 of this judgment, within one year of its notification.

7. The State shall, within one year of notification of this judgment, organize a public act to acknowledge international responsibility, pursuant to paragraph 160 of this judgment.

8. The State shall, within one year of notification of this judgment, unveil a plaque inscribed with the names of the victims in this case, pursuant to paragraph 164 of this judgment.

9. The State shall make available to the victims in this case, within one year of notification of this judgment, a rapid and effective mechanism to review and annul the convictions that were delivered against them in the said case, pursuant to paragraph 167 of this judgment. This mechanism must be made available to all the other individuals who were convicted by the courts-martial during the Chilean military dictatorship, pursuant to paragraph 170 of this judgment.

10. The State shall pay, within one year of notification of this judgment, the amount established for the non-pecuniary damage caused to Omar Humberto Maldonado Vargas, Álvaro Yañez del Villar, Mario Antonio Cornejo Barahona, Belarmino Constanzo Merino, Manuel Osvaldo López Oyanedel, Ernesto Augusto Galaz Guzmán, Mario González Rifo, Jaime Donoso Parra, Alberto Salustio Bustamante Rojas, Gustavo Raúl Lastra Saavedra, Víctor Hugo Adriazola Meza, and Ivar Onoldo Rojas Ravanal, pursuant to paragraphs 178 and 179 of this judgment.

11. The State shall pay the amount established in paragraph 185 of this judgment for reimbursement of costs and expenses within one year of notification of this judgment, pursuant to its paragraphs 180 to 185.

12. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it.

13. The Court will monitor full compliance with this judgment in exercise of its authority and in fulfillment of its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with all its provisions.

Judgment on merits, reparations and costs in the case of Omar Humberto Maldonado Vargas *et al. v.* Chile.

Humberto Antonio Sierra Porto
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Diego García-Sayán

Eduardo Ferrer Mac-Gregor Poisot

Emilia Segares Rodríguez
Deputy Secretary

So ordered,

Humberto Antonio Sierra Porto
President

Emilia Segares Rodríguez
Deputy Secretary