

INTER-AMERICAN COURT OF HUMAN RIGHTS*

CASE OF JENKINS V. ARGENTINA

JUDGMENT OF NOVEMBER 26, 2019

(Preliminary objections, merits, reparations and costs)

In the case of *Jenkins*,

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

Eduardo Vio Grossi, acting President
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
L. Patricio Pazmiño Freire, Judge, and
Ricardo Pérez Manrique, Judge;

also present,

Pablo Saavedra Alessandri, 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, 62, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment, structured as follows:

* Judge Eduardo Ferrer Mac-Gregor Poisot, for reasons beyond his control accepted by the full Court, did not take part in the deliberation and signature of this judgment. Judge Eugenio Raúl Zaffaroni, an Argentine national, did not take part in either the processing of this case or the deliberation and signature of this judgment in accordance with the provisions of Article 19(1) and (2) of the Court’s Rules of Procedure.

I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE	4
II PROCEEDINGS BEFORE THE COURT	5
III JURISDICTION.....	6
IV PRELIMINARY OBJECTIONS.....	6
A. Non-existence of certain facts alleged in the Commission’s Merits Report and in the brief with pleadings, motions and evidence	6
a.1 Arguments of the parties and the Commission	6
a.2 Considerations of the Court	7
B. Failure to exhaust domestic remedies	7
b.1 Arguments of the parties and the Commission	7
b.2 Considerations of the Court	7
C. Alteration of the procedural purpose of the case by the Commission	8
c.1 Arguments of the parties and the Commission	8
c.2 Considerations of the Court.....	9
D. Lack of jurisdiction <i>ratione materiae</i>	9
d.1 Arguments of the parties and the Commission	9
d.2 Considerations of the Court	10
V PRELIMINARY CONSIDERATION	10
VI EVIDENCE	11
A. Admissibility of documentary evidence.....	11
B. Admissibility of testimonial and expert evidence	11
VII FACTS.....	11
A. Arrest, preventive detention and criminal proceedings against Mr. Jenkins	11
a.1 Arrest of Mr. Jenkins	11
a.2 Remedies filed against incarceration	12
a.3 Acquittal of Mr. Jenkins	14
a.4 Judgment of the Supreme Court of Justice of June 15, 2010	15
B. The civil action for damages filed by Mr. Jenkins	15
b.1 Action for damages.....	15
b.2 Remedy of appeal, second instance decision and remedy of complaint	16
VIII MERITS.....	16
VIII-1 RIGHT TO PERSONAL LIBERTY AND JUDICIAL GUARANTEES	17
A. Arguments of the parties and the Commission	17
a.1 Initial order of preventive detention	17
a.2 Duration of the preventive detention	17
a.3 Effectiveness of the remedies to challenge the deprivation of liberty	18
B. Considerations of the Court	18
b.1 Initial order of preventive detention	19
b.2 Duration of the preventive detention.....	22
b.3 Effectiveness of the remedies to challenge the deprivation of liberty	26
VIII-2 RIGHT TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION	26
A. Arguments of the parties and the Commission	27
B. Considerations of the Court	27
b.1 Complexity of the matter.....	28
b.2 Procedural activity of the interested party	29
b.3 Conduct of the state authorities	30

b.4 General effects on the legal situation of Mr. Jenkins.....	30
IX REPARATIONS	31
A. Injured party.....	31
B. Measures of rehabilitation and satisfaction	32
b.1 Measures of rehabilitation.....	32
b.2 Measures of satisfaction	32
C. Other measures requested	33
D. Compensation	34
d.1 Pecuniary damage	34
d.2 Non-pecuniary damage	36
G. Costs and expenses	36
H. Reimbursement of expenses to the Victims' Legal Assistance Fund of the Inter-American Court	38
I. Method of complying with the payments ordered	38
X OPERATIVE PARAGRAPHS	39

I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On September 22, 2017, 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 “Gabriel Oscar Jenkins” against the Argentine Republic (hereinafter “the State of Argentina,” “the Argentine State,” “the State” or “Argentina”). According to the Commission, the case relates to the alleged arbitrary deprivation of liberty of Mr. Jenkins from June 8, 1994, until November 13, 1997, in the context of the case known as “Padilla Echeverry *et al.*” in Federal Oral Criminal Court No. 6 for the offenses of illicit trafficking in drugs and unlawful association of which he was ultimately acquitted. In addition, the Commission established that, while Mr. Jenkins was deprived of liberty, his preventive detention and the need to maintain it were never reviewed. It added that the judicial remedies filed did not enable a prompt and effective review of either the reasons for or the duration of the preventive detention. Lastly, the Commission concluded that the duration of the civil action for damages filed by Mr. Jenkins was unreasonable.
2. *Procedure before the Commission.* The procedure before the Commission was as follows:
 - a) *Petition.* On September 9, 1997, the representative (hereinafter “the petitioner”) lodged the initial petition before the Commission.
 - b) *Admissibility Report.* On October 13, 2004, the Commission adopted the Admissibility Report, in which it concluded that the petition was admissible.
 - c) *Merits Report.* On December 6, 2016, the Commission adopted Merits Report No. 53/16, under Article 50 of the Convention (hereinafter also “the Merits Report” or “Report No. 53/16”), in which it reached a series of conclusions,¹ and made several recommendations to the State.
 - d) *Notification to the State.* The Merits Report was notified to the State on December 22, 2016. The Argentine State requested two extensions, which the Commission granted. In the interim, and based on the State’s indication of its willingness to comply with the recommendations made in the Merits Report, the Commission attended a working meeting between the parties. However, the parties failed to reach an agreement on compliance with the recommendations at that meeting. Subsequently, the State did not ask for a further extension so as to suspend the time limit indicated in Article 51 of the Convention, pursuant to the provisions of Article 46 of the Commission’s Rules of Procedure.
3. *Submission to the Court.* On September 22, 2017, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and human rights violations described in Report No. 53/16 “in view of the need to obtain justice for the victim in this specific case.”² The Court notes that more than twenty years passed between the lodging of the initial petition before the Commission and the submission of the case to the Court. The Court emphasizes that the Commission should always ensure the reasonableness of the time taken to process petitions. However, within certain reasonable timespans, some omissions or delays in complying with the Commission’s procedures may be

¹ The Commission concluded that the State of Argentina was responsible for “the violation of the rights to personal liberty and to judicial guarantees, to equality before the law and to judicial protection established in Articles 7(1), 7(3), 7(5), 7(6), 8(1), 8(2), 24 and 25(1) of the American Convention in relation to Articles 1(1) and 2 of this instrument to the detriment of Gabriel Oscar Jenkins, in relation to the preventive detention to which he was subjected, the legal framework applied, the remedies filed to achieve his release, and the claim for damages.”

² The Commission appointed Commissioner Francisco Eguiguren and Executive Secretary Paulo Abrão as its delegates before the Court. It also appointed Elizabeth Abi-Mershed, then Deputy Executive Secretary, and the lawyers, Silvia Serrano Guzmán and Christian González Chacón, as legal advisers.

excused, provided that a suitable balance between justice and legal certainty is preserved.³

4. *The Inter-American Commission's requests.* Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violations indicated in its Merits Report. The Commission also asked the Court to require the State to provide measures of reparation.

II PROCEEDINGS BEFORE THE COURT

5. *Appointment of inter-American public defenders.* Since the presumed victim did not have a duly accredited legal representative, by a Secretariat note of October 24, 2017, Mr. Jenkins was offered the possibility of being represented by inter-American defenders appointed by the Inter-American Association of Public Defenders (hereinafter "AIDEF"), pursuant to the provisions of Article 37 of the Court's Rules of Procedure. On October 31, 2017, Mr. Jenkins agreed to the appointment of inter-American defenders. In a Secretariat note of November 3, 2017, the AIDEF General Coordinator was asked to appoint an inter-American defender to represent the presumed victim in this case. On November 14, 2017, the Association's General Coordinator advised the Inter-American Court that two inter-American public defenders had been appointed: Lorena Padován and Octavio Tito Sufán Farías (hereinafter referred to, indistinctly, as "the inter-American public defenders" or "the representatives"). Nilda López Britez was appointed alternate inter-American defender. On November 20, 2017, Mr. Jenkins indicated his disagreement, due to "incompatibility," with the appointment of Lorena Padován. In a Secretariat note of December 4, 2017, the AIDEF General Coordinator and Mr. Jenkins were advised of the appointment of Nilda López Britez as inter-American defender in substitution of Lorena Padován.

6. *Notification of the representatives and the State.* The Court notified the Commission's submission of the case to the representatives of the presumed victims (hereinafter "the representatives") and the State on December 11, 2017.

7. *Brief with pleadings, motions and evidence.* On February 10, 2018, the representatives of the presumed victim submitted their brief with pleadings, motions and evidence to the Court. The representatives agreed substantially with the Commission's allegations and asked the Court to declare that the State was internationally responsible for the violation of the articles that had been alleged by the Commission and, also, the violation of Article 8(2)(h), and of the right to be heard by an impartial court in violation of Article 8(1) and 8(2) in relation to Articles 1(1) and 2 of the American Convention. In addition, the presumed victim, through his representatives, asked to access the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Court's Legal Assistance Fund" or "the Fund"). Lastly, they asked the Court to order the State to adopt various measures of reparation and to reimburse certain costs and expenses.

8. *Answering brief.* On May 8, 2018, the State submitted to the Court its brief answering the Inter-American Commission's Merits Report submitting the case and the representatives' brief with pleadings, motions and evidence (hereinafter "the answering brief"). In this brief, the State filed four preliminary objections and contested the alleged violations and the claims for measures of reparation.

9. *Observations on the preliminary objections.* On July 30, 2018, and August 10, 2018, the Commission and the representatives, respectively, presented their observations on the preliminary objections filed by the State.

³ Cf. *Case of Cayara v. Peru. Preliminary objections.* Judgment of February 3, 1993. Series C No. 14, para. 42, and *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 22, 2013. Series C No. 265, para. 41.

10. *Victims' Legal Assistance Fund.* In an order issued by the President of the Inter-American Court on December 19, 2018, the request made by the presumed victim, through his representatives, to access the Court's Legal Assistance Fund was declared admissible.

11. *Public hearing.* In an order of December 19, 2018,⁴ the President called the State, the representatives and the Inter-American Commission to a public hearing to receive their final oral arguments and observations on the preliminary objections and eventual merits, reparations and costs, as well as to receive the statement of the presumed victim and the opinion of an expert witness, both proposed by the representatives. The public hearing took place on February 1, 2019, during the Court's 129th regular session held at its seat.⁵

12. *Final written arguments and observations.* On March 1, 2019, the State forwarded its final written arguments and the Commission presented its final written observations. The representatives presented their final written arguments belatedly on March 2, 2019;⁶ therefore, they will not be admitted.

13. *Deliberation of the case.* The Court began the deliberation of this judgment on November 25, 2019.

III JURISDICTION

14. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention because Argentina has been a State Party to the American Convention since September 5, 1984, and accepted the contentious jurisdiction of the Court on the same date.

IV PRELIMINARY OBJECTIONS

A. Non-existence of certain facts alleged in the Commission's Merits Report and in the brief with pleadings, motions and evidence

a.1 Arguments of the parties and the Commission

15. First, the **State** argued that the facts relating to the prolonged preventive detention and to the judicial guarantees during the trial had become abstract and, thus, no longer existed because Mr. Jenkins had been acquitted in December 1997. Second, it indicated that the Supreme Court of Justice of the Argentine Nation had established the unconstitutionality of article 10 of Law No. 24,390 on June 15, 2010; consequently, the complaint regarding the conventionality of article 10 of that law no longer subsisted.

⁴ *Cf. Case of Jenkins v. Argentina. Call to a hearing.* Order of the President of the Inter-American Court of Human Rights of December 19, 2018. Available at: http://www.corteidh.or.cr/docs/asuntos/jenkins_19_12_18.pdf

⁵ There appeared at this hearing:

- a) For the Inter-American Commission: Commissioner Francisco Eguiguren Praeli and legal adviser Silvia Serrano Guzmán;
- b) For the representatives of the presumed victim: Octavio Tito Sufán Farías and Nilda López Brites;
- c) For the State of Argentina: Alberto Javier Salgado, Director of International Human Rights Disputes, Ministry of Foreign Affairs and Worship; Siro de Martini, Adviser to the Ministry of Justice and Human Rights, and Alfredo Vitolo, Adviser to the Secretariat of Human Rights and Cultural Pluralism.

⁶ As indicated by the President of the Court during the public hearing of this case held on February 1, 2019, the non-extendible time limit for the parties and the Commission to present their final written arguments and observations expired on March 1, 2019. The representatives' brief was forwarded on March 2, 2019, at 6.51 a.m. Costa Rican time.

16. The **Commission** considered that the State's contention did not constitute a preliminary objection; rather, it referred to a matter that corresponded to the merits of the matter.

17. The **representatives** stressed that, when the international petition was lodged, Mr. Jenkins was deprived of liberty, so that this claim was substantiated. They also indicated that, even though this situation changed at the time of his release, it was necessary to analyze whether the international responsibility of a State ended when the action that resulted in a human rights violation ceased.

a.2 Considerations of the Court

18. First, the Court considers that Mr. Jenkins' acquittal in December 1997 does not affect the Court's competence to examine the facts of this case – namely, his alleged arbitrary deprivation of liberty from June 8, 1994, until November 13, 1997, as well as the duration of the proceedings of the civil action for damages that he filed – and these will be the subject of the analysis of the merits of the dispute. Second, the Court notes that one of the aspects to be examined in this case consists in determining the compatibility of article 10 of Law No. 24,390, which was applied to Mr. Jenkins, with the American Convention. Therefore, the alleged declaration of the unconstitutional nature of that article does not deprive this Court of its competence to rule in this regard at the time when the facts of this case occurred. The Court notes that this matter corresponds to the merits of the case. Therefore, the Court rejects the preliminary objection filed by the State.

B. Failure to exhaust domestic remedies

b.1 Arguments of the parties and the Commission

19. The **State** argued that at the time of both the lodging of the petition before the Commission and its subsequent communication to the Argentine State, and the State's answering brief, the action for damages on which the international petition was founded had not been filed in the domestic jurisdiction. It argued that, starting with its first communication with the Commission, it had made clear that the petitioner was entitled to file an action for damages under the Argentine Civil Code in force at the time of the events. However, it was not until December 27, 1999, that he filed this remedy in the administrative jurisdiction.

20. The **Commission** reiterated that, according to the American Convention, one of its principal responsibilities is to take decisions on admissibility; therefore, such decisions should not be re-examined at later stages of the proceedings. It also considered that it was incumbent on the Court to defer to the Commission's decisions in this regard. It stressed that the petitioner had exhausted all the remedies available in the domestic jurisdiction and, regarding the administrative proceedings for damages, the exception of an unjustified delay in the administration of justice was applicable.

21. The **representatives** argued that the Commission had already dealt with this objection in its Admissibility Report of October 13, 2004. They also indicated that the briefs submitted by Mr. Jenkins revealed that he had exhausted the available remedies to obtain the benefit of release, a fact that constituted the initial grounds for the international complaint. Lastly, they added that the Court had indicated that the administrative dispute procedure was not a remedy that must necessarily always be exhausted; therefore, it did not inhibit the Court's jurisdiction to hear the case.

b.2 Considerations of the Court

22. Article 46(1)(a) of the American Convention establishes that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the remedies under domestic law having been pursued and exhausted in accordance with generally recognized

principles of international law.⁷ For a preliminary objection of failure to exhaust domestic remedies to be admissible, the State that files this objection must specify the domestic remedies that remain to be exhausted and prove that those remedies were available, appropriate, suitable and effective.⁸

23. The Court notes that this objection was filed during the admissibility procedure before the Commission; therefore, it was filed at the proper procedural moment. The Commission rejected this objection of failure to exhaust domestic remedies in its Admissibility Report of October 13, 2004, indicating that the administrative proceedings for damages that had been underway for more than four years had still reached a conclusion at first instance. Therefore, there had been an unjustified delay in the administration of justice that provided grounds for invoking the exception established in Article 46(2)(c) of the Convention.⁹ The Court observes that, when the Commission was deciding on the admissibility of the petition, Mr. Jenkins had already filed the action claiming damages¹⁰ and, according to the Commission, this had not been decided owing to an unjustified delay. The Court considers that the debate on the alleged unjustified delay in the investigation of the facts of this case entails an assessment of the State's actions in relation to its obligation to ensure the rights recognized in the American Convention that are alleged to have been violated, which is a matter that is closely related to the merits of the dispute.¹¹ Consequently, the Court considers that this argument by the State must be considered together with the merits and not as a preliminary objection.

C. Alteration of the procedural purpose of the case by the Commission

c.1 Arguments of the parties and the Commission

24. As a third preliminary objection, the **State** argued that the Inter-American Commission had altered the purpose of the proceedings. It indicated that the violations *de facto* and *de jure* relating to the eventual responsibility of the State which constituted the purpose of the case before the Commission were strictly limited to the issue of the preventive detention, the judicial remedies filed by the presumed victim and the alleged lack of diligence in the investigation into functional criminal liability. It argued that the Commission had included the considerations concerning the proceedings for damages when analyzing the objection of exhaustion of domestic remedies, rather than in the context of the characterization of the potentially internationally wrongful acts alleged in the petition. Consequently, the State asserted that the issue of the contentious proceedings for damages and respect for judicial guarantees and judicial protection in this regard did not form part of this litigation.

25. The **Commission** argued that this objection sought to call into question the Commission's fundamental ruling on the State's international responsibility for the violation of Articles 8(1) and 25(1), and therefore considered that this contention did not constitute a preliminary objection. Second, it recalled that neither the American Convention nor the Commission's Rules of Procedure established that the purpose of the case should be delimited in the Admissibility Report. In addition, it stressed that the unreasonable delay in the administrative proceedings did form part of the facts of the case in the procedure before the Commission, at both the admissibility and the merits stage.

⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 25.

⁸ Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, paras. 88 and 91, and *Case of Muelle Flores v. Peru, supra*, para. 26.

⁹ Cf. Admissibility Report No. 50/04, petition 12,056 of October 13, 2004 (evidence file, folio 60).

¹⁰ Cf. *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 25 and *Case of Duque v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of February 26, 2016. Series C No. 310, para. 34.

¹¹ Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, para. 96, and *Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 24, 2017. Series C No. 339, para. 24.

26. The **representatives** indicated that the Commission, as guarantor of the rights and guarantees established in the Convention, was able to indicate violations that the petitioner had not mentioned in light of the facts it became aware of during the international procedure. Accordingly, it was not possible to observe the alleged prejudice due to a violation of the right of defense.

c.2 Considerations of the Court

27. In the instant case, the Court observes that the alleged violations derived from the action for damages filed by Mr. Jenkins do form part of the facts of the case in the procedure before the Commission at both the admissibility and the merits stage. Indeed, in its Admissibility Report of October 13, 2004, the Commission indicated that the administrative proceedings for damages, which had been underway for more than four years, had still not concluded. Therefore, there had been an unjustified delay in the administration of justice that provided grounds for invoking the exception established in Article 46(2)(c) of the Convention.¹² Furthermore, in its Merits Report of December 6, 2016, the Commission specifically analyzed the duration, complexity, and actions of the state authorities and of the petitioner himself to reach the conclusion that the action for damages filed by Mr. Jenkins had not complied with the inter-American standards for a reasonable time. Based on the foregoing, the Court observes that throughout the proceedings, before both the Commission and the Court, the State has had the procedural opportunity to present its position, refute and challenge the facts alleged by the other party and the Commission, and to use every probative action that it deemed pertinent in its defense, thus respecting the principle of the procedural balance between the parties. Consequently, the Court rejects the State's preliminary objection.

D. Lack of jurisdiction *ratione materiae*

d.1 Arguments of the parties and the Commission

28. Lastly, the **State** underscored that the representatives had referred to instruments such as the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Protocol establishing the Mercosur Parliament. Consequently, the State argued that, with the exception of the American Convention, none of the instruments whose violation was denounced by the representatives, formed part of the list of applicable instruments. Furthermore, the Court lacked jurisdiction *ratione materiae* to apply the Argentine National Constitution, because this corresponded to the domestic courts.

29. The **Commission** argued that the representatives were not asking the Court to apply the said instruments in this specific case or to establish the international responsibility of the State for their violation. It therefore considered that it was not appropriate to admit the objection filed by the State because it did not relate to a claim made by the representatives.

30. The **representatives** argued that, in light of Article 2 of the Convention, the Argentine State had undertaken to adapt its internal laws to the terms of this instrument. Therefore, both the Court and the Commission were able to analyze, interpret and even suggest the amendment of domestic laws in order to monitor compliance with this international mandate. They also indicated that the Court had the inherent authority to determine the scope of its own competence and that this was

¹² Cf. Admissibility Report No. 50/04, Petition 12,056, of October 13, 2004 (evidence file, folio 60).

not dependent on whether or not a preliminary objection had been filed in this regard. Therefore, they concluded that it was not incumbent on the Argentine State to apprise the Court of its competence within the international human rights system.

d.2 Considerations of the Court

31. The Court reiterates that, as any organ with jurisdictional functions, it has the authority inherent in its powers to determine the scope of its own competence (*compétence de la compétence/Kompetenz-Kompetenz*). The declarations recognizing the optional clause on compulsory jurisdiction (Article 62(1) of the Convention) supposed the acceptance of the Court's right to decide any dispute concerning its jurisdiction by the States that present them.¹³

32. Notwithstanding the foregoing, the Court observes that, in this case, in their brief with pleadings, motions and evidence, the representatives asked the Court to declare that "the State of Argentina is responsible for violating the rights to personal liberty and to judicial guarantees, to equality before the law and to judicial protection established in Articles 7(1), 7(3), 7(5), 7(6), 8(1), 8(2), 24 and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Gabriel Oscar Jenkins." This was repeated in the section on legal claims of this brief. Therefore, and since the representatives' petition focuses on the declaration of the State's violation of certain provisions of the American Convention, the Court rejects this preliminary objection.

V

PRELIMINARY CONSIDERATION

33. The **representatives** indicated in their pleadings and motions brief that Mr. Jenkins and his direct family – that is, his wife, María Leticia Pironelli, and his son, Kevin Gabriel Jenkins, should also be considered the "injured party."

34. The **State** contested the inclusion of these family members as the injured party because the Merits Report prepared by the Commission only established Mr. Jenkins as the direct victim.

35. The **Commission** did not present observations in this regard.

36. Regarding the identification of presumed victims, the Court recalls that Article 35(1) of its Rules of Procedure establish that the case will be submitted by the presentation of the Merits Report which must identify the presumed victims. Thus, it corresponds to the Commission to identify the presumed victims in a case before the Court precisely and at the proper procedural moment,¹⁴ with the exclusion of the exceptional circumstances established in Article 35(2) of the Court's Rules of Procedure.¹⁵

37. Based on the provisions of Article 35(1) of the Rules of Procedure and the precedents in which

¹³ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of September 24, 1999. Series C No. 54, para. 32, 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. 41.

¹⁴ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Gorioitía v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of September 2, 2019. Series C No. 382, para. 25.

¹⁵ According to which, when it has been justified that it was not possible to identify the presumed victims in cases of massive or collective violations, the Court shall duly decide whether to consider them victims based on the nature of the violation. Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 48, and *Case of Gorioitía v. Argentina, supra*, para. 25.

the Court has ruled in this regard,¹⁶ the Court concludes that only Mr. Jenkins will be considered the presumed victim in this case and that it is not appropriate to admit the other family members as presumed victims.

VI EVIDENCE

A. Admissibility of documentary evidence

38. The Court received diverse documents presented as evidence by the Commission, the representatives and the State. Regarding the documents provided in the context of these proceedings, the Court admits them, as it has in other cases, in the understanding that they were presented at the proper procedural moment (Article 57 of the Rules of Procedure)¹⁷ and that their admissibility was not contested or challenged.

B. Admissibility of testimonial and expert evidence

39. The Court finds it pertinent to admit the statements and expert opinions provided during the public hearing and by affidavit¹⁸ insofar as they are in keeping with the purpose defined by the President in the order requiring them.¹⁹

VII FACTS

40. In this chapter, based on the factual framework submitted to its consideration by the Inter-American Commission, the Court will establish the facts of the case as they relate to: (i) the arrest, preventive detention and criminal proceedings instituted against Mr. Jenkins, and (ii) the civil action for damages.

A. Arrest, preventive detention and criminal proceedings against Mr. Jenkins

a.1 Arrest of Mr. Jenkins

41. On June 7, 1994, the Federal Operations Division of the Dangerous Drugs Superintendency of the Argentine Federal Police and the Intelligence Division of the National Gendarmerie requested a search of the residence and arrest of Mr. Jenkins as the result of an investigation conducted by the Federal Operations Division, which indicated that activities relating to illicit drug-trafficking were being conducted in the residence of Mr. Jenkins, among others.²⁰

¹⁶ Cf. *Case of the Ituango Massacres v. Colombia*, *supra*, para. 98, and *Case of Gorigoiía v. Argentina*, *supra*, para. 25.

¹⁷ The documentary evidence may be presented, in general and pursuant to Article 57(2) of the Rules of Procedure, together with the briefs submitting the case, or with pleadings and motions, or the answering brief, as applicable, and evidence forwarded outside these procedural occasions is not admissible unless it falls within the exceptions established in the said Article 57(2) of the Rules of Procedure (namely, *force majeure* and grave impediment) or if it relates to a supervening fact, in other words, one that occurred after the aforementioned procedural moments. Cf. *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 22, and *Case of Arrom Suhurt et al. v. Paraguay. Merits*. Judgment of May 13, 2019. Series C No. 377, para. 40.

¹⁸ During the public hearing held on February 1, 2019, the Court received the statement of presumed victim Gabriel Óscar Jenkins, and the opinion of expert witness Mario Luis Coriolano. In addition, the Court received affidavits from Leticia Pironelli and Tomás las Peñas Vallejo, and the notarized expert opinion of Mario Luis Coriolano, all proposed by the representatives.

¹⁹ The purposes of all these statements was established in order of the President of the Inter-American Court of December 19, 2018. Available at: http://www.corteidh.or.cr/docs/asuntos/jenkins_19_12_18.pdf

²⁰ Cf. Request of the Federal Operations Division of the Dangerous Drugs Superintendency and the Intelligence Division of the National Gendarmerie of June 7, 1994 (evidence file, folio 5749).

42. On June 8, 1994, based on an order issued by National Federal Criminal and Correctional Court No. 9 in the context of criminal case No. 73 entitled "Padilla Echeverry, José Gildardo and Others ref/ Violation of Law No. 23,737" Mr. Jenkins was arrested, accused of the offenses of illicit trafficking in drugs and unlawful association.²¹

43. On June 29, 1994, National Federal Criminal and Correctional Court No. 6 ordered the prosecution of Mr. Jenkins considering that he was the "responsible perpetrator" of the commerce, transportation, distribution and storage of narcotic drugs.²² It also ordered the embargo of his assets and/or cash up to the value of five hundred thousand pesos, and decided to convert his arrest into preventive detention.²³

a.2 Remedies filed against incarceration

44. While in preventive detention, Mr. Jenkins filed diverse remedies to obtain his release. First, Mr. Jenkins' defense counsel filed a joint action of unconstitutionality and request for release before Federal Oral Criminal Court No. 6. In this action, they indicated that article 10 of Law No. 24,390 – which established the elimination of maximum limits of preventive detention for those individuals accused of illicit drug-trafficking offenses²⁴ – was unconstitutional because: (i) the concept of a reasonable duration of preventive detention should be subject to the gravity of the offense, and (ii) there were more serious offenses, such as murder, for which release was admitted.²⁵ The defense counsel added that "the said article also violate[d] art. 16 of the National Constitution which stipulate[d] that all citizens are equal before the law, because the article in question ma[de] an arbitrary exception [...], thus creating manifest inequalities in the treatment of identical procedural situations."²⁶

45. On October 2, 1996, Federal Oral Criminal Court No. 6 decided to deny the action of unconstitutionality. That court gave the following reasons:

[...] The exclusion from the provisions of the first to seventh articles of Law 24,390 established in the tenth article of this law [...] does not appear unreasonable, given that the conducts described in the said article have warranted special treatment by the competent State organs (in

²¹ Cf. Request of the National Federal Criminal and Correctional Court No. 9 of June 7, 1994 (evidence file, folios 5755 and 5756).

²² Cf. Resolution of preliminary investigation No. 1030 ordering the prosecution of Mr. Jenkins and others of June 29, 1994 (evidence file, folio 5865 and 5868).

²³ Cf. Resolution of preliminary investigation No. 1030 ordering the prosecution of Mr. Jenkins and others of June 29, 1994 (evidence file, folio 5869).

²⁴ The said Law No. 24,390 regulated the maximum durations of preventive detention and the exceptions. Thus, article 1 of this law established the following:

Preventive detention may not exceed two years. However, when the number of offenses attributed to the accused or the evident complexity of the case has prevented concluding the proceedings within this time frame, it may be prolonged for one more year by a reasoned decision that shall be notified immediately to the corresponding appellate court for its review.

Meanwhile, article 10 of the law established an exception to this maximum limit, indicating that this was not applicable in those cases in which the individual was accused of a drug-trafficking offense, and establishing the following:

Those accused of the offense established in article 7 of Law 23,737 and those to whom the aggravating factors established in article 11 of that same law are applicable are expressly excluded from the terms of this current law.

²⁵ Cf. Action of unconstitutionality filed by Miguel Ángel Buigo and Marcelo Roberto Buigo before Oral Court No.6 (evidence file, folios 4537 to 4540).

²⁶ Cf. Action of unconstitutionality filed by Miguel Ángel Buigo and Marcelo Roberto Buigo before Oral Court No. 6 (evidence file, folio 4540).

this specific case the National Congress) by threatening to impose extremely high penalties on the offenses indicated *'supra,'* clearly demonstrating the interest in prosecuting that type of criminal organization – and its members – dedicated to the trafficking of narcotic substances, as a result of the obligations assumed by the Nation on signing the Vienna Convention on the elimination of the trafficking in those substances. [...] [I]t is consequent with this gravity and the important interests that such conducts affect, that those subject to prosecution for the perpetration of any such offenses are barred from the possibility of enjoying the right to conditional release while their cases are being processed in order to ensure their presence during the substantiation of those offenses.²⁷

46. The Oral Court also indicated that the article in question was compatible with Article 7(5) of the American Convention “because the Convention requires that everyone be tried or released within a ‘reasonable time,’ but does not prevent each State from adapting this time based on criminal policy criteria that, essentially, are related to reasons of public interest.”²⁸ The Oral Court added that the exclusion from the application of Law No. 24,390 did not entail the derogation of the principles of individual liberty and the presumption of innocence, nor did it entail a violation of the principle of equality before the law.²⁹

47. Mr. Jenkins’ defense counsel then filed an action of unconstitutionality before the National Criminal Cassation Chamber against the decision of Federal Oral Court No. 6. The action filed indicated that the decision had been arbitrary because it had not taken into account the arguments of the defense, and merely replicated a previous ruling of the same court.³⁰ They also reiterated that the prohibition of release for individuals accused of offenses linked to illicit trafficking in drugs was “manifestly unreasonable”³¹ and that the concept of a reasonable time should be subject to the gravity of the offense.³²

48. On February 24, 1997, Chamber I of the National Criminal Cassation Chamber decided to reject the action of unconstitutionality and confirmed the decision denying Mr. Jenkins’ release. Chamber I substantiated its decision by arguing that the appealed decision was similar to that in other cases in which it had examined a comparable situation, and made a comprehensive referral to the reasoning in those cases.³³

49. On February 28, 1997, Mr. Jenkins’ defense counsel filed a special remedy against the decision of Chamber I of the National Criminal Cassation Chamber denying the action of unconstitutionality.³⁴ On April 10, 1997, the National Criminal Cassation Chamber declared the special remedy filed by Mr. Jenkins’ defense counsel inadmissible because the matter submitted to the consideration of that Chamber had “already [been] decided by the Supreme Court in the ‘Arana’ precedent and by this

²⁷ Cf. Decision of Oral Court No. 6 of October 2, 1996, dismissing the action of unconstitutionality (evidence file, folios 4549 and 4550).

²⁸ Cf. Decision of Oral Court No. 6 of October 2, 1996, dismissing the action of unconstitutionality (evidence file, folio 4551).

²⁹ Cf. Decision of Oral Court No. 6 of October 2, 1996, dismissing the action of unconstitutionality (evidence file, folio 4552).

³⁰ Cf. Action of unconstitutionality filed by Miguel Ángel Buigo and Marcelo Roberto Buigo against the decision of October 2, 1996, issued by Oral Court No. 6 (evidence file, folio 4557).

³¹ Cf. Action of unconstitutionality filed by Miguel Ángel Buigo and Marcelo Roberto Buigo against the decision of October 2, 1996, issued by Oral Court No. 6 (evidence file, folios 4559 to 4563).

³² Cf. Action of unconstitutionality filed by Miguel Ángel Buigo and Marcelo Roberto Buigo against the decision of October 2, 1996, issued by Oral Court No. 6 (evidence file, folio 4561).

³³ Cf. Decision of Chamber I of the National Criminal Cassation Chamber denying the action of unconstitutionality, of February 24, 1997 (evidence file, folios 4569 to 4570).

³⁴ Cf. Special remedy filed by the defense of Gabriel Oscar Jenkins against the decision of Chamber I of the National Criminal Cassation Chamber of February 28, 1997 (evidence file, folios 4572 to 4586).

Chamber in the 'Gerez' case and, since the arguments set forth in the said remedy did not affect the doctrine established in the said rulings, the processing of the remedy became unnecessary [...]; moreover, the appellant [had] not provided reasons that call[ed] into question the applicability of that ruling or provided new arguments that m[ight] lead to a modification of the criteria established therein."³⁵

50. On April 28, 1997, Mr. Jenkins' defense counsel filed a remedy of complaint owing to the denial of the special remedy filed before the Supreme Court of Justice of the Nation³⁶ in which, among other matters, they reiterated that the exclusions established by article 10 of Law No. 24,390 were unreasonable.³⁷ Also, on April 29, 1997, Mr. Jenkins filed a remedy entitled "guarantee of liberty" requesting, *inter alia*, release on bail,³⁸ which was rejected on May 14, 1997.³⁹ In addition, on June 27, 1997, Mr. Jenkins filed an expansion of the remedy of complaint before the Supreme Court of Justice of the Nation.⁴⁰ On September 25, 1997, the Supreme Court of Justice of the Nation rejected that remedy.⁴¹ On October 27, 1997, Mr. Jenkins filed an appeal for reconsideration *in extremis* against the final judgment of September 25, 1997.⁴² The Court has no information on the result of the appeal.

51. In addition to the aforementioned remedies, Mr. Jenkins' wife, Leticia Pironelli, filed a complaint before the Ombudsman of the city of Buenos Aires "based on the prolonged detention of her husband, being prosecuted in case No. 73 on the docket of Federal Oral Criminal Court No. 6 of this city."⁴³ On June 23, 1997, the Ombudsman issued his decision on the complaint in which he decided "to urge Federal Oral Criminal Court No. 6 of the Federal Capital to order the release, under the bail conditions that it considered appropriate, of Gabriel Óscar Jenkins and of those who, like him, it has not been possible to try within a reasonable time, thus ending their current deprivation of liberty in conditions of inhumane overcrowding in a prison initially built to accommodate offenders or persons subject to legal proceedings of a reasonable duration."⁴⁴

a.3 Acquittal of Mr. Jenkins

52. On November 19, 1997, during the hearing of the criminal proceedings against Mr. Jenkins and other defendants, the prosecutor requested that he be acquitted of any wrongdoing in relation to the offense of which he was accused, considering that the evidence collected with regard to Mr. Jenkins

³⁵ Cf. Decision of Chamber I of the National Criminal Cassation Chamber denying the special remedy, of April 10, 1997 (evidence file, folios 4589 and 4591).

³⁶ Cf. Expansion of the remedy of complaint filed by Mr. Jenkins owing to the denial of the special remedy, of June 22, 1997 (evidence file, folio 4593).

³⁷ Cf. Remedy of complaint owing to the denial of the special remedy, of April 28, 1997 (evidence file, folio 4029).

³⁸ Cf. Appeal requesting guarantee of liberty and freedom from prosecution of April 29, 1997 (evidence file, folio 4689). Mr. Jenkins argued, *inter alia*, that: (i) it had been presumed that the accused had committed an offense; (ii) there was no risk of flight or the perpetration of new offenses; (iii) there was no need to investigate or the possibility of collusion; (iv) there was no risk of the exercise of pressure on witnesses, and (v) no need to preserve public order. Cf. Appeal requesting guarantee of liberty and freedom from prosecution of April 29, 1997 (evidence file, folios 4690 to 4694).

³⁹ Cf. Expansion of the remedy of complaint filed by Mr. Jenkins against the denial of the special remedy, of June 22, 1997 (evidence file, folio 4594).

⁴⁰ Cf. Expansion of the remedy of complaint filed by Mr. Jenkins against the denial of the special remedy, of June 22, 1997 (evidence file, folios 4593 to 4621).

⁴¹ Cf. Judgment of Chamber III of the National Appellate Chamber for Federal Administrative Disputes, of March 25, 2008 (evidence file, folio 4670).

⁴² Cf. Judgment of Chamber III of the National Appellate Chamber for Federal Administrative Disputes, of March 25, 2008 (evidence file, folio 4670) and appeal for reconsideration *in extremis* of October 27, 1997 (evidence file, folios 4712 to 4722).

⁴³ Cf. Decision No.935/97 of the Ombudsman of the city of Buenos Aires of June 23, 1997 (evidence file, folio 4530).

⁴⁴ Cf. Decision No.935/97 of the Ombudsman of the city of Buenos Aires of June 23, 1997 (evidence file, folio 4534).

was insufficient.⁴⁵ That same day, the Federal Oral Criminal Court decided to order the immediate release of Mr. Jenkins as there was no reason for him to continue detained.⁴⁶

a.4 Judgment of the Supreme Court of Justice of June 15, 2010

53. On June 15, 2010, the Supreme Court of Justice of the Nation delivered judgment in case No. 5640 in which it established that article 10 of Law No. 24,390 was unconstitutional because it violated principles such as the presumption of innocence, personal liberty, equality, and a reasonable time for the duration of the proceedings.⁴⁷

B. The civil action for damages filed by Mr. Jenkins

b.1 Action for damages

54. On December 27, 1999, Mr. Jenkins filed an action for damages against the State and against the judge who had ordered his detention claiming one million eight hundred and fifty thousand pesos.⁴⁸ The action was processed before Federal Administrative Court No. 10.⁴⁹

55. On June 8, 2000, the action for damages was partially rejected by admitting the objection of lack of legitimacy to be sued in the case of the [investigating judge] because the withdrawal of his immunity had not been requested previously as established in articles 115 and 53 of the National Constitution. In the same decision, Federal Administrative Court No. 10 decided to continue processing the action with regard to the State.⁵⁰ On April 30, 2007, that court delivered judgment dismissing the action for damages, indicating that for the State to be found responsible for the prejudice caused to a person who experienced preventive detention and was then acquitted, it was necessary that: "(i) the acquittal had been handed down based on his evident innocence, and (ii) that the order of preventive detention, even if confirmed by the higher courts or ordered by them, was revealed to be unquestionably unfounded or arbitrary," and this was not demonstrated by the corresponding case file. The court added that Mr. Jenkins' acquittal had not been handed down owing to his evident innocence; rather, it was the insufficiency of probative elements concerning Mr. Jenkins' conduct that led the prosecution to request his acquittal and the court to rule in this regard by a simple majority. It stressed that the remand order – which signified a provisional decision – was not revealed to be unquestionably unfounded or arbitrary because "the probative elements that, assessed as a whole within a context of indications and given the stage of the proceedings at which it was issued, convinced the judge to establish the preventive measure [...] and the order to go to trial" were different."⁵¹

⁴⁵ Cf. Judgment of Federal Oral Criminal Court No. 6 of the Federal Capital of December 23, 1997 (evidence file, folio 4267).

⁴⁶ Cf. Decision to release Mr. Jenkins, ordering his immediate liberation, of November 19, 1997 (evidence file, folio 5875).

⁴⁷ Cf. Judgment of the Supreme Court of Justice of the Nation in the case of Veliz, Linda Cristina ref/ case No. 5640, Application for judicial review, V. 210. XLI, of June 15, 2010 (evidence file, folios 5659 to 5661).

⁴⁸ Cf. Action for damages filed by Mr. Jenkins against the State and against the judge who had ordered his detention, of December 27, 1999 (evidence file, folios 4820 to 4836).

⁴⁹ Cf. Decision of Federal Administrative Court No. 10 of June 8, 2000 (evidence file, folio 4660).

⁵⁰ Cf. Decision of Federal Administrative Court No. 10 of June 8, 2000 (evidence file, folios 4658 to 4660).

⁵¹ Cf. Judgment of Federal Administrative Court No. 10 dismissing the action for damages filed by Mr. Jenkins, dated April 30, 2007 (evidence file, folios 5741 and 5742).

b.2 Remedy of appeal, second instance decision and remedy of complaint

56. Mr. Jenkins' defense counsel filed a remedy of appeal before Chamber III of the National Appellate Chamber for Federal Administrative Disputes (hereinafter "Chamber III") against the judgment of Federal Administrative Court No. 10.⁵² On March 25, 2008, Chamber III declared that the remedy of appeal filed by Mr. Jenkins was void because, "when filing it, no arguments had been submitted regarding the reasons given by the first instance judge in her decision, and there were no grounds for departing from the objective opinion in the judgment appealed."⁵³ Chamber III also considered that, when Mr. Jenkins' deprivation of liberty was ordered, there was sufficient evidence to give rise to a legitimate suspicion as to his criminal responsibility.⁵⁴ The Chamber concluded that "the acquittal was not handed down owing to his 'evident innocence' [...]; rather, the insufficiency of probative elements provided during the proceedings [...] led the prosecutor to request the acquittal of Jenkins and the Oral Court to rule in accordance with this request."⁵⁵

57. Subsequently, Mr. Jenkins filed an application for judicial review of the judgment of Chamber III of the National Appellate Chamber of March 25, 2008, before the Supreme Court of Justice of the Nation. On March 17, 2009, the Supreme Court of Justice of the Nation delivered judgment denying this remedy because: (i) the complaint had exceeded the extension established by the regulatory provisions; (ii) the complaint failed to meet its main requirement of refuting the grounds for the decision it was contesting – principally the assertion that there were no differences between the content of cassette No. 40 and its transcription; moreover, this piece of evidence was not the only one taken into account to order the preventive detention, and (iii) by applying for judicial review, Mr. Jenkins was seeking for the court to examine and decide circumstances and petitions that bore no relationship to the purpose of the *litis*.⁵⁶

VIII MERITS

58. This case relates to the alleged arbitrary deprivation of liberty of Mr. Jenkins from June 8, 1994, until November 13, 1997, in the context of a criminal case in which he was accused of the offenses of illicit trafficking in drugs and unlawful association, of which he was ultimately acquitted. The case also relates to the alleged unreasonable duration of the civil action for damages filed by Mr. Jenkins following his exoneration.

59. Based on the arguments of the parties and the Commission, in the instant case the Court will examine: (i) the arrest and prolongation of the preventive detention of Mr. Jenkins in alleged non-

⁵² Mr. Jenkins argued that: (i) during the criminal case against him, the investigating judge and the prosecutors used an in-existent piece of evidence to order his preventive detention and commit him to oral trial; (ii) the judgment of Federal Oral Criminal Court No. 6 ordered the investigation of a probable offense, which was then glossed over and not investigated; (iii) the principle of innocence was violated owing to the time that he remained detained, which anticipated that he would be sentenced to prison, with the aggravating factor that the State incurred in a crass judicial and administrative error; (iv) his subjection to preventive detention for more than two years constituted an unlawful sentence that should be redressed, and (v) due to the application of the exception established in Article 46(2)(c) of the American Convention on Human Rights, the National State had exhausted the possibility of defense and the whole process under the domestic jurisdiction had to be conducted by the person who had the authority of *iuris dictio* of the National State. *Cf.* Judgment of Chamber III of the National Appellate Chamber for Federal Administrative Disputes, of March 25, 2008 (evidence file, folio 4664).

⁵³ *Cf.* Judgment of Chamber III of the National Appellate Chamber for Federal Administrative Disputes, of March 25, 2008 (evidence file, folios 4668 and 4669).

⁵⁴ *Cf.* Judgment of Chamber III of the National Appellate Chamber for Federal Administrative Disputes, of March 25, 2008 (evidence file, folios 4674 and 4675).

⁵⁵ *Cf.* Judgment of Chamber III of the National Appellate Chamber for Federal Administrative Disputes, of March 25, 2008 (evidence file, folios 4677 and 4678).

⁵⁶ *Cf.* Decision of the Supreme Court of Justice of the Nation of March 17, 2009 (evidence file, folio 4684 to 4686).

compliance with the inter-American standards, and (ii) the alleged violation of a reasonable time in the administrative proceedings for damages.

VIII-1 RIGHT TO PERSONAL LIBERTY AND JUDICIAL GUARANTEES⁵⁷

60. In this chapter, the Court will examine the arguments concerning the violation of the right to personal liberty and judicial guarantees derived from Articles 7 and 8 of the American Convention, in relation to Articles 1(1) and 2 of the Convention, as a result of the preventive detention imposed on Mr. Jenkins from June 8, 1994, until November 19, 1999.

A. Arguments of the parties and the Commission

a.1 Initial order of preventive detention

61. The **Commission** argued, with regard to the reasons for the preventive detention imposed on Mr. Jenkins, that individualized reasons had not been provided regarding the procedural objectives sought by the preventive detention and, to the contrary, it was based on the existence of indications of responsibility, thus constituting advance punishment, rather than a precautionary measure. The Commission concluded that, from the outset, the preventive detention of Mr. Jenkins was arbitrary and disregarded the principle of the presumption of innocence in violation of Articles 7(3) and 8(2) of the Convention.

62. The **representatives** agreed with the Commission's arguments.

63. The **State** did not make any specific arguments on this particular point.

a.2 Duration of the preventive detention

64. Regarding the length of time that Mr. Jenkins was deprived of his liberty in preventive detention, the Commission stressed that during this lapse there had been no periodic review, *ex officio*, of the need to maintain the preventive detention. According to the Commission, the applicable legal framework – that is, article 10 of Law No. 24,390 which excluded offenses related to drug-trafficking from the application of the maximum term of preventive detention – revealed that the duration of the preventive detention of Mr. Jenkins was based on its automatic application and on the prohibition of release in the case of certain offenses, specifically drug-trafficking. In this regard, the Commission concluded that the duration of Mr. Jenkins' preventive detention of three years and five months was excessive and this violated the principle of reasonableness established in Article 7(5) of the Convention. Furthermore, his detention constituted advance punishment in violation of the principle of the presumption of innocence established in Article 8(2) of the Convention. In addition, this time period was related to the criminal proceedings and, in view of the State's failure to justify the duration of the preventive detention, the Commission also considered that, in light of the criteria repeatedly taken into account in inter-American case law, the guarantee of a reasonable time contained in Article 8(1) of the Convention had been violated.

65. Lastly, the Commission indicated that the application of article 10 of Law No. 24,390 established a differentiated treatment between individuals prosecuted for offenses related to drug-trafficking and individuals prosecuted for other offenses. According to the Commission, this difference in treatment was not justified because, in this specific case, the requirement of necessity was not met, so that its application and the consequent restriction of the exercise of the right to personal liberty were

⁵⁷ Articles 7 and 8 of the American Convention.

arbitrary and, therefore, violated the principle of equality and non-discrimination and the right to personal liberty established in Articles 7 and 24 of the American Convention in relation to the obligations contained in Articles 1(1) and 2 of this instrument.

66. The **representatives** agreed with the Commission's arguments. They added that the prohibition of release contemplated in article 10 of Law No. 24,390 was not reasonable because it did not protect essential legal rights, and because even those offenses where the protected legal right was life, such as murder, allowed conditional release. They also underlined that, during the public hearing held before this Court, the State had indicated that, in 2010, the Supreme Court had declared that article 10 of Law No. 24,390 was unconstitutional and this had updated domestic law to harmonize it with the international norms that had been ratified and were in force.

67. Regarding the duration of the preventive detention, the **State** indicated that Mr. Jenkins could have obtained a review of the precautionary measure. It added that the decisions denying his release were not exclusively founded on article 10 of Law No. 24,390, but were also based on the relevant provisions of the Procedural Code, to the extent that the complaints filed by the petitioner allowed this. In addition, taking into consideration the elements of the criminal proceedings and their complexity, the duration – it lasted six months more than the legal term established in article 1 of Law No. 4,390 – did not appear unreasonable.

a.3 Effectiveness of the remedies to challenge the deprivation of liberty

68. The **Commission** noted that the decisions rejecting the actions of unconstitutionality filed by Mr. Jenkins to request his release were based exclusively on the nature or the severity of the punishment attributed to the offenses for which the presumed victim was being prosecuted, without analyzing or justifying whether the procedural objectives that the relevant instances were supposed to verify, pursuant to their obligations under the American Convention, were being complied with. The Commission concluded that the judicial remedies filed did not allow a prompt and effective review of both the justification for, and the duration of, the preventive detention in light of the said standards, and this resulted in a violation of Articles 7(6) and 25(1) of the American Convention.

69. The **representatives** indicated that, Mr. Jenkins had filed numerous remedies and jurisdictional actions to defend his freedom and none of them had been successful as regards either a reasonable time or the merits of the complaint.

70. The **State** argued that Mr. Jenkins had had access to remedies to challenge his incarceration. It also noted that the remedies filed by Mr. Jenkins were not effective to challenge the duration of his preventive detention. It stressed that the request for release filed by Mr. Jenkins dealt at length with the constitutionality of the norm, but never substantiated his request for release by arguing that Mr. Jenkins did not represent a procedural risk for the investigation.

B. Considerations of the Court

71. The Court has indicated that the essential content of Article 7 of the American Convention is the protection of the liberty of the individual against any arbitrary or unlawful interference by the State.⁵⁸ It has asserted that this article contains two very different types of regulations, one general and the other specific. The general aspect is to be found in the first paragraph: "[e]very person has the right to personal liberty and security." While the specific aspect is composed of a series of guarantees

⁵⁸ Cf. *Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 223, and *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2016. Series C No. 325, para. 138.

that protect the right not to be deprived of liberty unlawfully (Article 7(2)) or arbitrarily (Article 7(3)), to be informed of the reasons for the detention and the charges (Article 7(4)), to judicial control of the deprivation of liberty and the reasonableness of the time of preventive detention (Article 7(5)), to contest the lawfulness of the detention (Article 7(6)) and not to be detained for debt (Article 7(7)).⁵⁹ Any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily result in the violation of Article 7(1).⁶⁰

b.1 Initial order of preventive detention

72. According to this Court's case law, preventive detention is the most severe measure that can be applied to anyone charged with an offense. Consequently, it should only be applied exceptionally because it is limited by the principles of legality, presumption of innocence, necessity and proportionality that are essential in a democratic society.⁶¹ In its case law, the Court has reiterated that the general rule should be the liberty of the defendant while a decision is taken on his criminal responsibility.⁶² In exceptional cases, the State may resort to a measure of preventive detention in order to avoid situations that jeopardize achieving the purposes of the proceedings; in other words, to ensure that the defendant does not impede the efficient development of the investigations or evade the action of justice.⁶³ Therefore, the preventive detention of a defendant may only be ordered exceptionally⁶⁴ and when, for example, there are no other guarantees that ensure his appearance at trial.

73. Regarding the arbitrariness mentioned in Article 7(3) of the Convention, the Court has established that no one may be subjected to detention or imprisonment for reasons and by methods that, although classified as lawful, may be regarded as incompatible with respect for the fundamental rights of the individual because, among other reasons, they are unreasonable, unpredictable or disproportionate.⁶⁵ The Court has considered that domestic law, the applicable procedure, and the corresponding explicit or tacit general principles must, *per se*, be compatible with the Convention. Thus, "arbitrariness" is not to be equated with 'against the law,' but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability."⁶⁶

⁵⁹ 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. 51.

⁶⁰ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 54, and *J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 125.

⁶¹ Cf. *Case of Tibi v. Ecuador, Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2004. Series C No. 114, para. 106, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2016. Series C No. 316, para. 143.

⁶² Cf., *inter alia*, *Case of López Álvarez v. Honduras. Merits, reparations and costs.* Judgment of February 1, 2006. Series C No. 141, para. 67; *Case of J. v. Peru, supra*, para. 157; *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 143, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 97.

⁶³ Cf. *Case of Servellón García et al. v. Honduras.* Judgment of September 21, 2006. Series C No. 152, para. 90, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2016. Series C No. 316, para. 143.

⁶⁴ Cf. *Case of Tibi v. Ecuador, supra*, para. 106, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 143.

⁶⁵ Cf. *Case of Gangaram Panday v. Surinam. Merits, reparations and costs.* Judgment of January 21, 1994. Series C No. 16, para. 47, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 231.

⁶⁶ Cf. *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2016. Series C No. 325, para. 140. See also: Human Rights Committee. Communication No. 458/1991, A. W. Mukong v. Cameroon (July 21, 1994), para. 9.8. "The drafting history of article 9, paragraph 1, confirms that "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. [...] this means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances," and Report of the Working Group on Arbitrary Detention. A/HRC/22/44, December 24, 2002, para. 61.

74. The Court has considered that the arbitrary nature of measures of deprivation of liberty should be assessed based on three factors: (i) that evidence exists to bring charges against or to prosecute an individual – in other words, that the “substantive presumptions” to order the precautionary measures are presented; (ii) that these comply with the four elements of the “proportionality test” – that is: legitimacy of the purpose (which must be compatible con the American Convention),⁶⁷ appropriateness, necessity and strict proportionality,⁶⁸ and (iii) that the decision imposing such measures includes sufficient reasoning to permit an assessment of whether they are in keeping with the foregoing conditions.⁶⁹

75. With regard to the first points, the Court has established that, before assessing the purpose of the measure, in order to comply with the requirements necessary to restrict the right to personal liberty by preventive detention, there must be sufficient evidence leading to a reasonable supposition that the individual subjected to the process could have participated in the wrongful act investigated.⁷⁰

76. Regarding the second point, the Court has indicated that, when imposing a measure of deprivation of liberty, the judicial authority must take into consideration the proportionality of the measure. Consequently, the judicial authority should only impose measures of this nature when it has verified that they are: (i) appropriate for achieving the objective sought; (ii) necessary, in the sense that they are absolutely essential to achieve the required objective and there is no available measure less injurious to the right affected that is equally suitable to achieve the proposed purpose, and (iii) that they are strictly proportionate, so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or disproportionate compared to the advantages obtained by this restriction and achievement of the intended purpose.⁷¹ This Court has indicated that the measure should only be imposed when it is necessary to meet a legitimate objective, namely: that the defendant will not impede the development of the proceedings or evade the action of justice.⁷² The Court considers that only those objectives that are specifically related to the efficient development of the proceedings – in other words, to the danger of flight of the defendant (directly established in Article 7(5) of the American Convention), or to avoid the defendant impeding the development of the proceedings – should be considered legitimate.

77. On the third point, the Court has considered that any restriction of freedom that does not include sufficient reasoning that permits an assessment of whether it is in keeping with the foregoing conditions will be arbitrary and, therefore, will violate Article 7(3) of the Convention.⁷³ In addition, in order to respect the presumption of innocence (Article 8(2)), when precautionary measures are ordered that restrict freedom, in each specific case, the State must justify, clearly and with reasons,

⁶⁷ Cf. *Case of the Women Victims of Sexual Torture v. Mexico*, supra, para. 251.

⁶⁸ Cf. *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, para. 197, and *Case of the Women Victims of Sexual Torture v. Mexico*, supra, para. 251.

⁶⁹ Cf. *Case of García Asto and Ramírez Rojas v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 25, 2005. Series C No. 137, para. 128, and *Case of the Women Victims of Sexual Torture v. Mexico*, supra, para. 251. See, for greater details, *Case of Romero Feris v. Argentina*, supra, paras. 93 to 111.

⁷⁰ Cf. *Case of Servellón García et al. v. Honduras*, supra, para. 90, and *Case of the Women Victims of Sexual Torture v. Mexico*, para. 240.

⁷¹ Cf. *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 288, para. 120, *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 248, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of April 25, 2018. Series C No. 354, para. 356.

⁷² Cf. *Case of Suárez Rosero v. Ecuador. Reparations and costs*. Judgment of January 20, 1999. Series C No. 44, para. 77; *Case of Wong Ho Wing v. Peru*, supra, para. 250, and *Case of the Women Victims of Sexual Torture v. Mexico*, supra, para. 251.

⁷³ Cf. *Case of García Asto and Ramírez Rojas v. Peru*, supra, para. 128, and *Case of the Women Victims of Sexual Torture v. Mexico*, supra, para. 251.

and prove the existence of the said factors required by the Convention.⁷⁴

78. In the instant case, the Court notes that Mr. Jenkins was arrested on June 8, 1994, based on an order issued by National Federal Criminal and Correctional Court No. 9 in the context of criminal case No. 73 entitled "Padilla Echeverry, José Gildardo and Others ref/ Violation of Law No. 23,737," accused of the offenses of illicit trafficking in drugs and unlawful association.⁷⁵ Subsequently, on June 29, 1994, the same court decided to order the prosecution of Mr. Jenkins "and, consequently, to convert his arrest into preventive detention."⁷⁶ Therefore, the Court will focus on this decision – that is the order of preventive detention – to verify its compatibility with international standards.

79. The Court notes that the said decision of June 29, 1994, only includes the grounds for the existence of the offense sanctioned in article 7 of Law No. 23,737 and the presumed participation of Mr. Jenkins. Thus, the decision merely indicates the "charges" that involved Mr. Jenkins.⁷⁷ According to this decision, Mr. Jenkins, together with other defendants:

[...] carried out [...] various actions relating to illicit trafficking in drugs for their mutual benefit. They were all aware of the purpose of the activity. They all profited from it. They should all be considered participants in the organization dedicated to the commercialization, distribution, transportation and storage of narcotic drugs.⁷⁸

80. On this basis, the ruling ordered the imposition of preventive detention, indicating:

[...] Given the foregoing, I must order the prosecution of the said individuals and also, mindful of the type of wrongful act determined – since a suspended sentence is not in order – preventive detention, based on the offense mentioned above.⁷⁹

81. The Court also notes that the said order did not contain any argument concerning the reasons why the detention of Mr. Jenkins was necessary, appropriate and proportionate to the objective sought, but merely focused on the existence of indications that allegedly linked Mr. Jenkins to the perpetration of a drug-trafficking offense. In addition, the Court notes that the judgment handed down by Federal Administrative Court No. 10 on April 30, 2007, rejecting the action for damages filed by Mr. Jenkins included an analysis of the order of preventive detention, based on which it considered that this was "not revealed to be unquestionably unfounded or arbitrary," focusing on the indications that existed in relation to Mr. Jenkins:

[...] On the contrary, from what can be observed and despite the arguments of the petitioner, this measure took into account not only the conversation that cassette No. 40 refers to, but also other probative elements that – assessed as a whole and within a context of indications and given the stage of the proceedings at which it was ordered – convinced the court to order the preventive measures that the petitioner is now contesting.⁸⁰

⁷⁴ Cf. *Case of J. v. Peru, supra*, para. 159.

⁷⁵ Cf. Request of National Federal Criminal and Correctional Court No. 9, of June 7, 1994 (evidence file, folios 5755 and 5756).

⁷⁶ Cf. Decision in preliminary investigation No. 1030 ordering the prosecution of Mr. Jenkins and others of June 29, 1994. (evidence file, folio 5868 and 5869).

⁷⁷ Cf. Decision in preliminary investigation No. 1030 ordering the prosecution of Mr. Jenkins and others of June 29, 1994 (evidence file, folio 5864).

⁷⁸ Cf. Decision in preliminary investigation No. 1030 ordering the prosecution of Mr. Jenkins and others of June 29, 1994 (evidence file, folios 5864 and 5865).

⁷⁹ Cf. Decision in preliminary investigation No. 1030 ordering the prosecution of Mr. Jenkins and others of June 29, 1994 (evidence file, folio 5866).

⁸⁰ Cf. Judgment of Federal Administrative Court No. 10 rejecting the action for damages filed by Mr. Jenkins on April 30, 2007 (evidence file, folio 5742).

82. Therefore, this Court considers that the sole criterion of the existence of indications that permitted a reasonable supposition that the individual subjected to the proceedings had taken part in the wrongful act investigated is not sufficient to justify imposing a measure of deprivation of liberty. Rather, it is essential to have recourse to elements that relate to the legitimate purpose of the measure – that is, the possible obstruction of the normal development of the criminal proceedings or the possibility of evasion from the action of justice – that lead to the conclusion that the measure of preventive detention is necessary and proportionate to the objective pursued.⁸¹ On this basis, the Court concludes that the decision of June 29, 1994, ordering the preventive detention of Mr. Jenkins was unsubstantiated because it did not set out the reasons why the measure sought a legitimate purpose and was necessary, appropriate and proportionate to achieve this objective. Consequently, the State is internationally responsible for the violation of Article 7(1) and (3) of the Convention, in relation to Articles 8(2) and 1(1) of this instrument.

b.2 Duration of the preventive detention

83. The Court has indicated that one of the characteristics required of a measure of preventive or pre-trial detention to ensure that it is in keeping with the provisions of the Convention is that it be subject to periodic review⁸² so that it does not continue when the reasons for its adoption no longer subsist. Therefore, a judge does not have to wait until an acquittal is handed down for a person who is detained to recover their freedom, but should periodically evaluate whether the reasons for, and the necessity and proportionality of, the measure remain and whether the duration of the detention has exceeded the limits imposed by law and reasonableness. Whenever it appears that the preventive detention does not meet those conditions, the release of the persons concerned must be ordered, without prejudice to the respective proceedings continuing.⁸³

84. In this regard, Article 7(5) of the Convention imposes temporal limits on the duration of preventive detention and, consequently, on the State's authority to ensure the objectives of the proceedings by this precautionary measure. When the duration of preventive detention exceeds a reasonable time, the State may limit the freedom of the defendant by other measures that are less harmful than deprivation of liberty to ensure his appearance at trial.⁸⁴ Therefore, even when there are reasons to retain an individual in preventive detention, Article 7(5) guarantees that he must be released if the duration of the detention has exceeded a reasonable time.⁸⁵

85. This Court has noted that it is the domestic authorities who are responsible for assessing the pertinence of maintaining the precautionary measures they issue pursuant to their respective laws. When doing so, the domestic authorities must provide sufficient justification to allow the reasons why the restriction of liberty is maintained to be known.⁸⁶ Also, to guarantee that preventive detention does not become an arbitrary deprivation of liberty pursuant to Article 7(3) of the American

⁸¹ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 92, *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 288, para. 120, *Case of Wong Ho Wing v. Peru*, *supra*, para. 248, and *Case of Amrhein et al. v. Costa Rica*, *supra*, para. 356.

⁸² Cf. *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs*. Judgment of May 29, 2014. Series C No. 279, para. 311, and *Case of the Women Victims of Sexual Torture v. Mexico*, *supra*, para. 255.

⁸³ Cf. *Case of Amrhein et al. v. Costa Rica*, *supra*, para. 362, and *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 117.

⁸⁴ Cf. *Case of Amrhein et al. v. Costa Rica*, *supra*, para. 361, and *Case of Argüelles et al. v. Argentina*, *supra*, para. 129.

⁸⁵ Cf. *Case of Amrhein et al. v. Costa Rica*, *supra*, para. 362, and *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 74.

⁸⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez vs. Ecuador*, *supra*, para. 107, and *Case of the Women Victims of Sexual Torture v. Mexico*, *supra*, para. 255.

Convention, it must be based on the need to ensure that the detainee will not impede the efficient development of the investigations or evade the action of justice.⁸⁷ Similarly, each time the detainee requests his release, the judge must provide the reasons, however minimal, why he considers that the preventive detention should be maintained.⁸⁸

86. The Court will now examine, first, the refusal of the domestic courts to apply to Mr. Jenkins the maximum limit of two (or, in his case, three) years of provisional detention established in article 1 of Law No. 24,390, in application of the exception contain in article 10 of that law, which excluded those accused of the offense of drug-trafficking from the lower limit. Subsequently, it will examine the reasons provided by the domestic authorities to justify prolonging the preventive detention imposed on Mr. Jenkins.

(i) Impossibility of applying the maximum limit of preventive detention

87. The Court notes that the said Law No. 24,390 regulated the maximum duration of preventive detention and the exceptions. Thus, the first article of this law stipulated:

Article 1. Preventive detention may not exceed two years. However, when the number of offenses attributed to the defendant or the evident complexity of the case has prevented concluding the proceedings within this time frame, it may be prolonged for one more year by a reasoned decision that shall be notified immediately to the corresponding appellate court for its review.⁸⁹

88. Meanwhile, article 10 of that law established an exception to this maximum limit, indicating that this was not applicable in those cases in which the individual was accused of a drug-trafficking offense:

Those accused of the offense established in article 7 of Law 23,737 and those to whom the aggravating factors established in article 11 of that same law are applicable are expressly excluded from the terms of this current law.

89. The Court notes that, according to Oral Court No. 6, which dismissed the action of unconstitutionality filed by Mr. Jenkins, in the instant case the exception included in article 10 of Law No. 24,390 to the duration of preventive detention stipulated in article 1 of that instrument was justified. Specifically, in its decision, that court indicated that this exception did not violate Article 7(5) of the American Convention because "what the [American] Convention requires is that everyone must be tried or released within a reasonable time, but does not prevent each State from adapting the time frame based on criminal policy criteria essentially related to reasons of public interest."⁹⁰ In addition, it indicated that "there [was] no doubt" that the reasons of public interest that caused the legislator to exclude conducts related to drug-trafficking were related to "the need to harmonize the provisions of domestic law with the international commitments assumed by the country on acceding to various international treaties, in particular the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances."⁹¹

⁸⁷ Cf. *Case of Bayarri v. Argentina*, *supra*, para. 74, and *Case of the Women Victims of Sexual Torture v. Mexico*, *supra*, para. 255.

⁸⁸ Cf. *Case of Chaparro Álvarez and Lapo Iñíguez v. Ecuador*, *supra*, para. 117, and *Case of Argüelles et al. v. Argentina*, *supra*, para. 122.

⁸⁹ Cf. Law No. 24,390, Duration of preventive detention, enacted on November 2, 1994, and promulgated on November 21, 1994. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/776/norma.htm>

⁹⁰ Cf. Decision of Oral Court No. 6 of October 2, 1996, dismissing the action of unconstitutionality (evidence file, folio 4551).

⁹¹ Cf. Decision of Oral Court No. 6 of October 2, 1996, dismissing the action of unconstitutionality (evidence file, folio 4551).

90. The Court notes that the exclusion from the benefit of the maximum limit of preventive detention established in the said Law No. 24,390 gave rise to unequal treatment compared to individuals in preventive detention accused of an offense other than drug-trafficking who, when they had served the two years stipulated in that law had the right to request their release. Those individuals also benefited from the maximum duration of preventive detention, which could not exceed three years, as stipulated in the aforementioned article 1, and required their automatic release when they had served the three years of preventive detention.

91. In this regard, the Court has established that States must refrain from taking measures that are in any way addressed, either directly or indirectly, at creating situations of discrimination *de jure* or *de facto*.⁹² Also, if the discriminatory treatment relates to an unequal protection of domestic law or its application, the fact must be analyzed in light of Article 24 of the American Convention⁹³ in relation to the categories protected by Article 1(1) of the Convention. The Court recalls that a difference in treatment is discriminatory when it does not have an objective and reasonable justification;⁹⁴ in other words, when it does not seek a legitimate purpose and there is no reasonable proportionality between the measures used and the purpose sought.⁹⁵

92. In the instant case, the Court notes that the exclusion of all those accused of drug-trafficking from the benefit of the maximum duration of preventive detention was justified by the interest in prosecuting that type of criminal organization – and its members – dedicated to the traffic of narcotic substances, as well as by the obligations assumed by the State on signing the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Nevertheless, the Court notes that Mr. Jenkins was automatically excluded from the benefit of release merely on the basis of the specific offense of which he was accused, without being provided with an explanation of the specific purpose sought by the difference in treatment, its appropriateness, necessity, and proportionality and, also, without taking into account his personal circumstances.⁹⁶

93. Here it is pertinent to note the case law of the Supreme Court of Justice of Argentina. In a judgment of June 15, 2010, in case No. 5640, it declared that the said article 10 of Law No. 24,390 was unconstitutional because:

[...] [The assumption by our country of international commitments with regard to the fight against the illicit traffic in drugs and psychotropic substances cannot be used as sufficient grounds for rendering inoperative constitutional rights such as the presumption of innocence, personal liberty, and the reasonable time for the duration of the proceedings. [...] The decision of the ordinary legislator to deprive a certain category of individuals from the benefits established in Law 24,390 entails not only the violation of their right to the presumption of innocence, but also the violation of the guarantee that the American Convention on Human Rights also grants them in its Art. 7(5). [...] An exception that strips part of the prison population of a fundamental right based merely on the nature of the offense that they are accused of

⁹² Cf. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 103, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 270.

⁹³ Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 209, and *Case of Ramírez Escobar et al. v. Guatemala, supra*, para. 272.

⁹⁴ Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 46, and *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2016. Series C No. 315, para. 125.

⁹⁵ Cf. *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, supra*, para. 200, and *Case of Flor Freire v. Ecuador, supra*, para. 125.

⁹⁶ Cf. *Case of Argüelles et al. v. Argentina, supra*, para. 227, and *Case of Flor Freire v. Ecuador, supra*, para. 126.

violates the principle of equality and, consequently, intrinsically harms all those who belong to this category of defendants.⁹⁷

94. The Court agrees with the opinion of the Supreme Court of Justice of Argentina and considers that the criterion used to exclude Mr. Jenkins from the benefit of the maximum duration of preventive detention meant that this unreasonably exceeded the limit established for preventive detention in domestic law, and also constituted unequal treatment compared to other individuals in a similar situation who had access to that benefit.

(ii) Justification of the prolongation of the preventive detention

95. In addition, the Court notes that, in the instant case, the request for release filed by Mr. Jenkins was rejected, not only owing to the refusal to apply the limits stipulated in article 10 of Law No. 24,390, but also because the domestic courts again analyzed the pertinence of the preventive detention. Thus, the Court notes that the decision issued by Federal Oral Criminal Court No. 6 that declared the action of unconstitutionality filed by Mr. Jenkins inadmissible, in addition to rejecting his petition, analyzed why the release of Mr. Jenkins should not be authorized, based on the following reasons:

[...] In the pertinent order to bring him to trial, he was attributed with the offense of co-perpetrator of illicit trafficking in drugs, consisting of their transportation, aggravated by the intervention of more than three persons, [...] and unlawful association [...] concurrently. In view of the penalty established for these offenses in our substantive laws, and since none of the presumptions established in article 317 of the national Code of Criminal Procedure exist, the benefit requested cannot be granted.⁹⁸

96. This Court notes that, both Federal Oral Criminal Court No. 6 and the higher courts that ratified this decision merely rejected the action of unconstitutionality filed by Mr. Jenkins without re-evaluating his situation when several years had passed since he entered prison and, above all, without verifying whether the legitimate purpose to continue the preventive detention subsisted. In particular, the Court notes that, in its decision of October 2, 1996, after rejecting the unconstitutional nature of the said article 10, Federal Oral Criminal Court No. 6 justified the continuation of Mr. Jenkins' preventive detention based merely on: (i) the procedural status of the criminal proceedings; (ii) the role of co-perpetrator of the alleged offenses of illicit trafficking in drugs and unlawful association; (iii) the punishment established for those offenses, and (iv) the fact that none of the presumptions established in article 317 of the national Code of Criminal Procedure existed.⁹⁹

⁹⁷ Cf. Judgment of the Supreme Court of Justice of the Nation in the case of Veliz, Linda Cristina ref/ case No. 5640, Application for judicial review, V. 210. XLI, of June 15, 2010 (evidence file, folios 5659 to 5661).

⁹⁸ Cf. Decision of Oral Court No. 6 of October 2, 1996, dismissing the action of unconstitutionality (evidence file, folio 4553).

⁹⁹ This article stipulated the following:

Release. Admissibility.

Art. 317. Release may be granted:

- 1) When exemption from imprisonment is in order.
- 2) When the defendant has served the maximum punishment established by the Criminal Code for the crime or crimes of which he is accused in preventive or pre-trial detention.
- 3) When the defendant has served the punishment requested by the prosecutor in preventive or pre-trial detention that, *prima facie*, would appear adequate.
- 4) When the defendant has served the punishment imposed by the non-final judgment.
- 5) When the defendant has served a time in preventive or pre-trial detention that, if he had been convicted, would have allowed him to obtain conditional release, provided he has respected the prison rules.

97. In addition, the Court notes that the said article 10 of Law No. 24,390 only established that the automatic release provided for in article 1 of that law would not be applied to those individuals accused of drug-trafficking offenses. However, the said article 10 did not establish a prohibition on eventually granting provisional release to a person accused of drug-trafficking offenses. The Court notes that, even assuming the validity of the provision under article 10 that the maximum limit of preventive detention was not applicable, the respective court had the obligation to indicate and substantiate, on an individual basis, the presumptions that still existed for the measure of deprivation of liberty to be considered appropriate, necessary and proportionate for the legitimate aim pursued.

(iii) Conclusion

98. Based on the foregoing, the Court concludes that the State is responsible for the violation of Articles 7(1), 7(3), 7(5), 8(2) and 24 of the American Convention, in relation to Article 1(1) of this instrument. In addition, the Court notes that the said unequal treatment provided to Mr. Jenkins was a result of the application of article 10 of Law No. 24,390. Even though the State has argued that, on June 15, 2010, the Supreme Court of Justice of the Nation declared that this article was unconstitutional¹⁰⁰ and, as indicated by the State in its answering brief, this has served as an "interpretive standard for the country's other courts," the fact is that this Court does not have sufficient evidence to determine whether or not the said article is currently in force. Consequently, the Court declares that the State also failed to comply with the obligation to eliminate laws and practices of any nature that result in violations of the guarantees established in the Convention,¹⁰¹ in violation of Article 2 of the American Convention.

b.3 Effectiveness of the remedies to challenge the deprivation of liberty

99. Lastly, in relation to the arguments concerning the effectiveness of the remedies filed by Mr. Jenkins to request his release, the Court recalls that Article 7(6) of the Convention protects the right of anyone who is deprived of liberty to have recourse to a competent judge or court in order that it may decide on the lawfulness of his detention and, if applicable, order his release. The Court has interpreted that this right is addressed at permitting judicial control over deprivations of liberty and corresponds to the application for *habeas corpus*.¹⁰²

100. The Court considers that, in the instant case, the reasoning of the domestic decisions and the grounds for the protracted nature of the measure of preventive detention that were analyzed previously and considered arbitrary resulted in the ineffectiveness of the remedies filed by Mr. Jenkins' defense counsel. Consequently, the State is also responsible for violating Article 7(6) of the American Convention, in relation to Article 1(1) of this instrument.

**VIII-2
RIGHT TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION¹⁰³**

101. In this chapter, the Court will examine the arguments concerning the violation of a reasonable time in the context of the action for damages filed by Mr. Jenkins, allegedly violating Articles 8 and 25 of the American Convention, in relation to Article 1(1) of this instrument.

¹⁰⁰ Cf. Judgment of the Supreme Court of Justice of the Nation in the case of Veliz, Linda Cristina ref/ case No. 5640, Application for judicial review, V. 210. XLI, of June 15, 2010 (evidence file, folios 5659 to 5661).

¹⁰¹ Cf. *Case of Castillo Petrucci et al. v. Peru. Merits, reparations and costs, supra*, para. 207, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 259.

¹⁰² Cf. *Case of Neira Alegría et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 82, and *Case of Anzaldo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 72.

¹⁰³ Articles 8 and 25 of the American Convention.

A. Arguments of the parties and the Commission

102. The **Commission** argued that the entire proceedings for damages lasted nine years and three months, which exceeded a reasonable time. It indicated that the process was not complex because the purpose of the action for damages filed by Mr. Jenkins was to obtain pecuniary compensation for the preventive detention and that the court's determination of the State's possible responsibility for the facts did not require it to gather extensive evidence or elucidate significant factual disputes. In addition, regarding the action of the state authorities, the Commission argued that it had no information that any action had been taken between June 2000 and 2007 and that it was the State's obligation to describe and prove the reasons why it had required more time than was reasonable to deliver the final judgment. Furthermore, according to the Commission, no information had been provided that Mr. Jenkins had obstructed the proceedings. Consequently, the Commission concluded that the State had failed to comply with the guarantee of a reasonable time in violation of Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of this instrument.

103. The **representatives** submitted similar arguments to the Commission; adding that the State had violated the right to judicial protection and a reasonable time in the context of the action for damages.

104. Meanwhile, **the State** argued that, in the context of the action for damages filed against the State, the procedural activity of Mr. Jenkins had a determinant impact on the duration of the judicial proceedings. In particular, it referred to the filing of remedies that, according to the State, from the outset were evidently destined to be rejected.

105. The State also indicated that the Commission had analyzed the duration of the total processing of the case without taking into account the other standards established by the Court's case law: in other words, "the complexity of the matter, the procedural activity of the interested party, the conduct of the judicial authorities, and the effects on the situation of the individual involved in the proceedings." It argued that, according to its domestic law, *a contrario sensu* to criminal cases that must be instituted *ex officio*, civil cases depend solely and exclusively on the momentum provided to the proceedings by the plaintiff and, therefore, if the proceedings had an excessive duration it was due to the negligent procedural conduct of Mr. Jenkins.

B. Considerations of the Court

106. In its consistent case law, the Court has considered that a prolonged delay in the proceedings may, of itself, constitute a violation of judicial guarantees.¹⁰⁴ The Court has established that the assessment of the reasonable time should be made in each specific case based on the total duration of the proceedings, which could also include execution of the final judgment. Accordingly, it has considered that four factors must be examined to decide whether the guarantee of a reasonable time has been complied with, namely: (i) the complexity of the matter, (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the effects on the legal situation of the presumed victim. The Court recalls that it corresponds to the State to justify, based on these factors, the reason why it has required the time that has elapsed to process a case and, if it does not do so, the Court has broad powers to come to its own conclusions in this regard.¹⁰⁵ The Court also reiterates that the total duration of the proceedings must be assessed, from the first procedural action until a final judgment is delivered, including any appeals that might eventually be filed.¹⁰⁶

¹⁰⁴ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Muelle Flores v. Peru, supra*, para. 154.

¹⁰⁵ Cf. *Case of Anzualdo Castro v. Peru, supra*, para. 156, and *Case of Muelle Flores v. Peru, supra*, para. 155.

¹⁰⁶ Cf. *Case of Suárez Rosero v. Ecuador. Reparations and costs*. Judgment of January 20, 1999. Series C No. 44, para. 71, and *Case of Quispiyalaya Vilcapoma v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November

107. According to the evidence in this case, on December 27, 1999, Mr. Jenkins filed an action for damages against the State and against J.J.G., head of National Federal Criminal and Correctional Court No. 9, an act that initiated the proceedings before Federal Administrative Court No. 10.¹⁰⁷ On June 8, 2000, that court partially rejected the action filed by admitting the objection of lack of legitimacy to be sued in the case of J.J.G. – because the withdrawal of his immunity had not been requested previously – and decided to continue the proceedings against the State alone.¹⁰⁸ On April 30, 2007, National Federal Criminal and Correctional Court No. 9 rejected the plaintiff's claim.¹⁰⁹

108. Mr. Jenkins appealed the said decision before Chamber III of the National Appellate Chamber for Federal Administrative Disputes and, on March 25, 2008, the Chamber ruled confirming the first instance decision, considering that there was a total lack of grounds for the complaint and that the acquittal was not based on manifest innocence, but on the insufficiency of probative elements.¹¹⁰

109. Based on the above, the analysis in this section will focus on evaluating the period between December 27, 1999, when the action for damages was filed, and March 25, 2008, when the final judgment was handed down on appeal by Chamber III of the National Appellate Chamber for Federal Administrative Disputes.

b.1 Complexity of the matter

110. Regarding the complexity of the matter, the Court has taken into account various criteria to determine this, including the complexity of the evidence, the diversity of procedural subjects or the number of victims, the time that has elapsed since the violation, the characteristics of the remedy established by domestic law, and the context in which the violation occurred.¹¹¹

111. In the instant case, the Court notes that the purpose of the action for damages filed by the victim against the Argentine State and the head of National Federal Criminal and Correctional Court No. 9 was to obtain compensation for the duration of his preventive detention. Mr. Jenkins was released owing to the prosecutor's request that he be acquitted during the hearing of the criminal proceedings,¹¹² which resulted in his release on November 19, 1997.¹¹³

112. Mr. Jenkins substantiated the action by indicating, *inter alia*, that: (i) the preventive detention ordered against him and the order to bring him to trial had constituted a grave judicial error in a criminal case; (ii) the judgment delivered by Federal Oral Criminal Court No. 6 was evidence of the judicial error; (iii) the advance punishment had a causal nexus to the damages claimed, because it exceeded the limits necessary to ensure the development of the investigation and his appearance; (iv) the lapse of three and a half years that he had remained in preventive detention was

23, 2015. Series C No. 308, para. 176.

¹⁰⁷ Cf. Action for damages filed by Mr. Jenkins against the State and against the judge who ordered his detention of December 27, 1999 (evidence file, folios 4820 to 4836).

¹⁰⁸ Cf. Decision of Federal Administrative Court No. 10 of June 8, 2000 (evidence file, folios 4658 to 4660).

¹⁰⁹ Cf. Judgment of Federal Administrative Court No. 10 rejecting the action for damages filed by Mr. Jenkins on April 30, 2007 (evidence file, folios 5736 to 5745).

¹¹⁰ Cf. Judgment of Chamber III of the National Appellate Chamber for Federal Administrative Disputes of March 25, 2008 (evidence file, folios 4668 to 1669).

¹¹¹ Cf. *Case of Genie Lacayo v. Nicaragua. Preliminary objections*. Judgment of January 27, 1995. Series C No. 21, para. 78, and *Case of Muelle Flores v. Peru, supra*, para. 159.

¹¹² Cf. Judgment of Federal Oral Criminal Court No. 6 of the Federal Capital of December 23, 1997 (evidence file, folio 4267).

¹¹³ Cf. Decision on the release of Mr. Jenkins, ordering his immediate liberation, of November 19, 1997 (evidence file, folio 5875).

disproportionate if it was considered that his responsibility had not been established and that his innocence was subsequently declared; (v) the rejection of his request for release when he had served two years of preventive detention, and (vi) his absence had caused harm to his family circle owing to the loss of social and employment opportunities.¹¹⁴

113. The Court notes that the action filed by Mr. Jenkins entailed an analysis by the judicial authorities of whether there had been a judicial error in the case. Therefore, this determination did not require a multitude of evidence that was difficult to assess; rather, they had to examine the judicial rulings relating to the decision to incarcerate Mr. Jenkins, as well as the subsequent judicial decisions that rejected his request to be released. Consequently, this Court notes that the action for damages filed by Mr. Jenkins did not involve particularly complex elements.

b.2 Procedural activity of the interested party

114. With regard to the procedural activity of the interested party, the State argued that, in the context of the proceedings, Mr. Jenkins had taken certain steps that delayed them. For example, the State indicated that the delay in the proceedings was due to the following:

- 1) The action filed against the intervening judge and prosecutors was not in keeping with the special procedure established for that purpose, and this delayed the processing of the case from the outset because the prosecutors who had been sued asked that they be removed from the proceedings since they lacked the authority to represent the Public Prosecution Service in trials against it based on liability, and this was accepted by the judge in charge of the proceedings. Consequently, thereafter the Ministry of Justice assumed the representation of the National State. Also, the judge filed the objection of lack of legitimacy to be sued, and the court admitted this.
- 2) Mr. Jenkins failed to indicate in the action for damages the arguments concerning the arbitrary nature of his detention and the rejections of his release based on the application of a law that, in his understanding, was unconstitutional. This prevented the domestic courts from examining this matter.
- 3) The filing of an appeal against the judicial decision to open the case to evidence.
- 4) The offer of information via letters rogatory sent to the island of Gran Canaria represented at least 18 months of procedures, which delayed the evidence stage.
- 5) The offer of testimonial evidence that Mr. Jenkins later withdrew during the proceedings.
- 6) The late presentation of his arguments, which meant that the judgment was delivered without being able to consider – owing to Mr. Jenkins' negligence, according to the State – his arguments on the evidence produced in the case.
- 7) The omission of a specific reasoned criticism of the parts that Mr. Jenkins considered erroneous in the ruling on the appeal against the first instance judgment that led the justices of Chamber III of the National Appellate Chamber for Federal Administrative Disputes to declare the remedy void.

¹¹⁴ Cf. Action for damages filed by Mr. Jenkins against the State and against the judge who ordered his detention, of December 27, 1999 (evidence file, folios 4820 to 4836).

115. Regarding the first argument, the Court notes that the action for damages was filed on December 27, 1999, and just over five months later, on June 8, 2000, the action was partially rejected by admitting the objection of lack of legitimacy to be sued filed by the trial judge, and the decision was taken to continue processing the action with regard to the National State.¹¹⁵ Therefore, this fact did not have a relevant impact on the total duration of the proceedings that, let us remember, lasted more than eight years.

116. The Court also notes that other arguments presented by the State focused on certain omissions by Mr. Jenkins when substantiating his action (*supra* para. 114.2 and 114.7). The Court notes that the correct or incorrect substantiation of remedies (or the non-admission of arguments due to late submission) was unrelated to, and unable to justify, the procedural delay in the judicial authorities providing an appropriate response to the action filed by Mr. Jenkins.

117. Regarding the filing of an appeal against the judicial decision to open the case to evidence (*supra* para. 114.3), the Court notes that Mr. Jenkins was making appropriate use of the appeal recognized by the law applicable to the defense of his interests, a matter that cannot be used against him.¹¹⁶

118. Lastly, regarding the offer of evidence and the alleged late presentation of certain arguments (*supra* para. 114.4, 114.5 and 114.6), the Court notes that the State has not provided any evidence to prove these points.

b.3 Conduct of the state authorities

119. With regard to the third factor, that is, the conduct of the judicial authorities, the Court has understood that, to ensure the full effectiveness of a judgment, the judicial authorities must act promptly and without delay¹¹⁷ because the principle of true judicial protection requires that execution procedures are carried out without undue obstruction or delay, in order to achieve their purpose in a prompt, simple and integral manner.¹¹⁸ In the instant case, the Court notes that, as the Commission also indicated, it has no information or the necessary evidence concerning the measures taken by the State from June 8, 2000 – the date on which the action was partially rejected and it was decided to continue the proceedings against the State alone – until April 30, 2007, the date on which National Federal Criminal and Correctional Court No. 9 dismissed the plaintiff's claim.

b.4 General effects on the legal situation of Mr. Jenkins

120. Lastly, in relation to the general effects on the legal situation of Mr. Jenkins, the Court has established that, if the passage of time has a relevant impact on the legal situation of the individual concerned, it will be necessary for the proceedings to be conducted with greater diligence in order to decide the matter promptly.¹¹⁹ In this case, the Court considers that it has insufficient evidence to rule in this regard.

121. Having analyzed the four factors that determine the reasonableness of the time, the Court concludes that the judicial authorities exceeded a reasonable time in the proceedings and this

¹¹⁵ Cf. Decision of Federal Administrative Court No. 10 of June 8, 2000 (evidence file, folios 4658 to 4660).

¹¹⁶ Cf. *Mutatis mutandis*, Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs, *supra*, para. 79.

¹¹⁷ Cf. Case of Mejía Idrovo v. Ecuador, *supra*, para. 105, and Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs. Judgment of March 6, 2019. Series C No. 375, para. 161.

¹¹⁸ Cf. Case of Mejía Idrovo v. Ecuador, *supra*, para. 106; Case of Ramírez Escobar et al. v. Guatemala, *supra*, para. 250, and Case of Muelle Flores v. Peru, *supra*, para. 161.

¹¹⁹ Cf. Case of Valle Jaramillo et al. v. Colombia, *supra*, para. 155, and Case of Muelle Flores v. Peru, *supra*, para. 162.

violated the right to judicial guarantees established in Article 8(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Gabriel Óscar Jenkins.

IX REPARATIONS

122. Based on the provisions of Article 63(1) of the American Convention,¹²⁰ the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to redress this adequately and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.¹²¹

123. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the restoration of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to ensure the violated rights and to redress the consequences of the violations.¹²² Therefore, the Court has considered the need to grant diverse measures of reparation in order to redress the harm integrally so that, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction and guarantees of non-repetition have special relevance for the harm caused.¹²³

124. The Court has established that the reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm verified, and the measures requested to redress the respective harm. Therefore, the Court must observe this concurrence in order to rule duly and pursuant to law.¹²⁴

125. Taking into account the violations of the American Convention declared in the preceding chapters, in light of the criteria established in the Court's case law in relation to the nature and scope of the obligation to provide reparation,¹²⁵ the Court will analyze the claims presented by the Commission and the representatives, together with the corresponding arguments of the State, in order to establish measures to redress the said violations.

A. Injured party

126. Pursuant to Article 63(1) of the Convention, the Court has considered that anyone who has been declared a victim of the violation of any right recognized therein is the injured party. Therefore, the Court considers that Gabriel Óscar Jenkins is the injured party and, in his capacity as a victim of the violations declared in Chapter VIII, he will be the beneficiary of the reparations ordered by the

¹²⁰ Article 63(1) of the Convention establishes that "[I]f 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."

¹²¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Girón et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of October 15, 2019. Series C No. 390, para. 124.

¹²² Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 26, and *Case of Girón et al. v. Guatemala, supra*, para. 125.

¹²³ Cf. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Gorioitía v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of September 2, 2019. Series C No. 382, para. 60.

¹²⁴ Cf. *Case of Ticona Estrada v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Girón et al. v. Guatemala, supra*, para. 126.

¹²⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of Girón et al. v. Guatemala, supra*, para. 127.

Court. Consequently, the Court will only refer to the arguments of the parties and the Commission that relate to Mr. Jenkins, the person who has been declared the victim in this case.

B. Measures of rehabilitation and satisfaction

b.1 Measures of rehabilitation

127. The **Commission** asked that the State provide physical and mental health care for the victim in this case, free of charge, immediately and for as long as necessary, provided that he requests this and as agreed with him.

128. The **representatives** asked the Court to order the State to pay for the necessary mental health care in an institution or by a doctor determined by Mr. Jenkins owing to the emotional suffering he endured, revealed by the anxiety, anguish, uncertainty, expectation and frustration that judicial proceedings such as those examined in this case produce in any innocent person.

129. The **State** clarified that the public health system is available to Mr. Jenkins, that it provides care for all the physical and mental ailments he could suffer from, and that he could find the appropriate professional health care within this system.

130. Based on the violations declared in this judgment, the Court establishes the State's obligation to provide, free of charge and immediately, the psychological treatment required by Mr. Jenkins, following his informed consent and for as long as necessary, including the free provision of medicines.

b.2 Measures of satisfaction

(i) Publication of the judgment

131. The **representatives** asked the Court to order the State to publish the full text of the judgment in the Official Gazette, preceded by a publication acknowledging its responsibility, as a public apology.

132. The **State** indicated that the delivery and the dissemination of the judgment using diverse media would be a sufficient and adequate measure of reparation.

133. The **Commission** did not comment on this request.

134. The Court establishes, as it has in other cases,¹²⁶ that the State must publish, within six months of notification of this judgment: (a) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation and in the Official Gazette in an appropriate and legible font, and (b) this judgment in its entirety, available for at least one year, on an official website of the State. The State must advise this Court immediately when it has made each of the publications ordered, irrespective of the one-year time frame to present its first report established in the fourteenth operative paragraph of this judgment.

¹²⁶ Cf., *inter alia*, *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79; *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 22, 2013. Series C No. 265, para. 207; *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 197; *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017. Series C No. 333, para. 300; *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 299, and *Case of Gorioitía v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of September 2, 2019. Series C No. 382, para. 68.

(ii) Public act to acknowledge international responsibility

135. The **representatives** asked the Court to order the State to organize an act to offer a public apology to Mr. Jenkins by the person who is the official institutional representative of the Judiciary in the State of Argentina. They also asked the Court to order the State to conduct, through its Ministry of Justice, a public ceremony to apologize to Mr. Jenkins.

136. As indicated above (*supra* para. 132), the **State** argued that the delivery and dissemination of the judgment by diverse media would be a sufficient and adequate measure of reparation.

137. The **Commission** did not comment on this request.

138. The Court considers that the delivery of this judgment and the reparations ordered herein are sufficient and adequate.

C. Other measures requested

139. The **Commission** asked that the State adapt its domestic laws to the standards for preventive detention described in its Merits Report. In particular, the Commission asked the Court to order the State to ensure that: (i) preventive detention was only applied on an exceptional basis; (ii) preventive detention was limited by the principles of legality, presumption of innocence, necessity and proportionality, and (iii) no difference in treatment was applied in relation to the two preceding points based on the nature of the offense.

140. The **representatives** asked the Court to order the State to adapt its domestic law to the international covenants and conventions it had signed, derogating any laws that contravened the procedural principles already examined. Specifically, the representatives asked for the derogation of article 11 [*sic*] of Law No. 24,390 and any law that permitted or established the existence of offenses for which conditional release was automatically ruled out, presuming, *de jure*, the guilt of the defendant and using a precautionary measure of last resort, such as advance punishment. The representatives added that it was important that the State take all necessary measures to comply with the guarantees included in Article 7(5) of the Convention and, specifically with regard to that article, establish a peremptory time limit for ending preventive or pre-trial detention.

141. The representatives also asked the Court to order the State to initiate a discussion on the procedural system in force, its implications and importance within the democratic rule of law, analyzing different experiences in comparative law that would not only improve access to justice but also facilitate its modernization by projects such as the "Innocence Project." In addition, the representatives asked that the State comply with the provisions of domestic and international law concerning where defendants who are detained should be accommodated, penalizing anyone who violated those provisions, and also ensure that the cells and other places where individuals who are detained, apprehended or retained are lodged comply with hygiene, health and cleanliness conditions that meet international standards. Lastly, the representatives asked the Court to order the State to create independent and impartial oversight bodies to prevent the repetition of acts that violate fundamental rights and freedoms declared and accepted as such.

142. The **State** indicated, with regard to the adaptation of domestic law to the international covenants and conventions it had signed, that it should be recalled that there had been a change in jurisprudence in Argentina as a result of the declaration that article 10 of Law No. 24,390 was unconstitutional which had served as an interpretive standard for the country's other courts. The State also indicated that Law No. 24,390, which regulated preventive detention in the Argentine Republic, established its limits and different assumptions for the admissibility of that measure.

143. Regarding the representatives' request to initiate a discussion on the procedural system in force, its implications and importance within the democratic rule of law, the State underlined the implementation of the "2020 Justice Plan," sponsored by the Ministry of Justice and Human Rights of the Nation, the purpose of which was for justice to play a leading role in the life of the Argentine people permitting the settlement of disputes independently, promptly and safely through a comprehensive enhancement of the judicial system. It added that different initiatives had been implemented in this area to modernize the criminal procedural system in Argentina, including the initiative to amend the Federal Code of Criminal Procedure, implementation of which was subject to the provisions of Decree No. 257/2015. It stressed that, starting in January 2018, the process of implementing a new code introducing an accusatory system had begun with the launch of the plan, the proposals and the work schedule, and the implementation model would be adopted by regions, from the periphery towards the center, with the first goal being to begin in the provinces of Salta and Jujuy on October 1, 2018.

144. The Court recalls that the State must ensure that preventive detention is applied exceptionally, strictly observing the principles of legality, presumption of innocence, necessity and proportionality, and that no difference of treatment exists based on the nature of the offense investigated. However, it considers that the delivery of this judgment and the reparations ordered herein are sufficient and adequate.

D. Compensation

d.1 Pecuniary damage

145. In its case law, the Court has developed the concept of pecuniary damage and has established that this supposes the loss of, or detriment to, the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.¹²⁷

146. In general, the **Commission** asked that the State provide Mr. Jenkins with full reparation by measures of pecuniary compensation and satisfaction that included the pecuniary damage caused to the victim as a result of the violations declared in its report.

(i) Consequential damage

147. The **representatives** asked that, for the concept of consequential damage, the Court order, in equity, the payment of US\$35,000 (thirty-five thousand United States dollars). They also requested US\$5,000 (five thousand United States dollars) for the travel, and board and lodging expenses of his defense counsel to attend the hearing held before the Inter-American Commission. Lastly, they requested US\$10,000 (ten thousand United States dollars) for the following expenses incurred by Mr. Jenkins:

- 1) Purchase of food during his time in prison;
- 2) Purchase of articles for hygiene and cleaning during this time;
- 3) Purchase of medicines for treating diseases contracted in prison;
- 4) Purchase of clothing;
- 5) Expenses for transportation to the establishment where Mr. Jenkins was detained, and

¹²⁷ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Ruiz Fuentes et al. v. Guatemala*. Preliminary objection, merits, reparations and costs. Judgment of October 10, 2019. Series C No. 385, para. 243.

6) Expenses assumed by his parents, in-laws, siblings and brothers/sisters-in-law to provide food and health care to his wife and son.

148. The **State** emphasized that Mr. Jenkins had not presented sufficient evidence to justify the large sums requested as compensation for pecuniary damage, and had merely made some general assertions. Regarding the expenses incurred due to the numerous legal proceedings, the State argued that it should be recalled that, in the only hearing held before the Inter-American Commission, the presumed victim participated by video call. In relation to the request to reimburse the expenditure for food, hygiene and cleaning articles, medicines and clothing, the State indicated that it had the obligation to ensure the safety and custody of individuals subject to legal proceedings, which entailed a duty to satisfy the basic needs of persons deprived of liberty, such as food, items of personal hygiene, medicines and clothing. According to the State, the requests made on behalf of Mr. Jenkins were inadmissible, especially as no evidence had been provided that authenticated the alleged expenses by the corresponding vouchers. Moreover, regarding the expenses of transportation to the establishment where he was detained, the State argued that, although the type of transportation expenses referred to were not specified, while he was deprived of his liberty, transfers were always paid for by the Federal Prison Service. Lastly, regarding reimbursement of the presumed expenses assumed by his parents, in-laws, siblings and brothers/sisters-in-law to provide food and health care to his wife and son, the State asked the Court to reject this request, because the said expenses had not been reliably authenticated.

149. The **Commission** did not present specific arguments on this point.

150. In relation to the consequential damage, the Court notes that the representatives did not provide any evidence that would allow it to make a reasonable assessment of the amount of the expenses that Mr. Jenkins incurred as a result of his detention. Nevertheless, the Court considers that the deprivation of liberty of Mr. Jenkins caused him to incur a series of expenses resulting from his incarceration. Consequently, the Court finds it pertinent to order, in equity, the payment of US\$5,000 (five thousand United States dollars) to Mr. Jenkins for consequential damage.

(ii) Loss of earnings

151. The **representatives** indicated that Mr. Jenkins had worked as a national public accountant and lawyer, employed in the public sector in the Ombudsman's Office and that he also freelanced. On this basis, the representatives requested US\$80 (eighty United States dollars) a day for the time that Mr. Jenkins was deprived of liberty, which amounted to US\$102,240 (one hundred and two thousand two hundred and forty United States dollars).

152. The **State** indicated that the arguments made were very vague and general and no evidence of any type had been provided to substantiate this request. The State argued that, at the time of his detention and subsequent deprivation of liberty, Mr. Jenkins had no university degree and no employment according to the information he himself had provided. In this regard, it indicated that Mr. Jenkins had concluded his legal studies in 1998; in other words, after he had recovered his freedom. According to his *curriculum vitae*, Mr. Jenkins earned his degree as a national public accountant in 2002, also after his release. Moreover, that document does not record any employment, or professional or academic activities prior to his deprivation of liberty.

153. The **Commission** did not present specific arguments on this point.

154. The Court notes that the representatives did not provide any type of evidence that would allow it to make a reasonable assessment of the amount for loss of earnings. However, it considers that Mr. Jenkins' deprivation of liberty resulted in a legitimate loss of income. Consequently, the Court finds that, in equity, the State must deliver to Mr. Jenkins the sum of US\$10,000 (ten thousand

United States dollars) as compensation for loss of earnings while he was deprived of his liberty in violation of Article 7 of the American Convention.

d.2 Non-pecuniary damage

155. The **Commission** asked that Mr. Jenkins be provided with full reparation by measures of pecuniary compensation and satisfaction that included the non-pecuniary damage caused to the victim as a result of the violations that were declared.

156. The **representatives** requested the payment of US\$500,000 (five hundred thousand United States dollars) owing to Mr. Jenkins' emotional suffering, as well as for the distress arising from feeling responsible for the anguish suffered by those who surround him owing to his deprivation of liberty, and for the harm that this caused to his social and labor relations. It also resulted in an alteration in the family dynamics which were severely affected by the separation. All this was added to the damage that the situation caused to his honor as a result of the stigmatization due to having been deprived of liberty for three years and five months, and the fact of being socially identified as a drug-trafficker and member of a criminal organization.

157. The **State** argued that, in order to determine the compensation for non-pecuniary damage, international case law in general and the Court's case law in particular had established that the judgment could constitute *per se* a form of reparation. Moreover, if the Court should decide not to admit the State's arguments, it asked that it take into account the international parameters and standards established by case law and reject the excessive pecuniary claim made by the presumed victim.

158. In its case law, the Court has established that non-pecuniary damage "may include both the suffering and afflictions caused by the violation and the impairment of values of great significance to the individual, and also any alteration of a non-pecuniary nature in the living conditions of the victims." Also, since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, this can only be compensated, for the purposes of full reparation to the victim, by the payment of a sum of money or the delivery of goods or services with a monetary value that the Court determines in reasonable application of judicial discretion and in terms of equity.¹²⁸

159. Therefore, considering the circumstances of this case, as well as the other consequences of a non-pecuniary nature that he suffered, the Court deems it pertinent to establish, in equity, for non-pecuniary damage, an equivalent compensation of US\$20,000 (twenty thousand United States dollars) in favor of Mr. Jenkins.

G. Costs and expenses

160. The **representatives** asked the Court to order the State to reimburse the costs and expenses incurred by Mr. Jenkins and his representatives during both the proceedings in the domestic sphere and before the Commission and the Court. They requested US\$10,000 (ten thousand United States dollars) for the professional fees of the lawyers who defended the case at the national level and US\$10,000 (ten thousand United States dollars) for the professional fees of the lawyers who defended the case in the international sphere.

161. They also asked the Court for reimbursement of the necessary and anticipated expenses of the inter-American defenders, indicating:

¹²⁸ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs, supra*, para. 84, and *Case of Girón et al. v. Guatemala, supra*, para. 243.

- a) The cost of mailing the brief with pleadings, motions and evidence by international courier;
- b) The travel, accommodation and per diem expenses relating to the presence of the inter-American defenders at the hearings in the case;
- c) The travel, accommodation and per diem expenses of the inter-American defenders to meet with the presumed victim in person in Buenos Aires, and
- d) The cost of mailing the final written arguments by international courier.

162. Regarding the request for US\$10,000 (ten thousand United States dollars) as fees for the lawyers who defended his case in the domestic sphere, the **State** asked the Court to reject this because the representatives had not provided any voucher that would prove or validate payment of this sum. Regarding the request for US\$10,000 (ten thousand United States dollars) as fees for the professionals who represented him in the international sphere, the State noted that there was no evidence that, since the start of the instant case, any professional other than Mr. Jenkins had defended it.

163. The State also indicated that the request for reimbursement of expenses claimed by Mr. Jenkins' representatives should be examined prudently and that this item included both the expenses incurred before the authorities of the domestic jurisdiction and those incurred during the proceedings 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. It indicated that Mr. Jenkins had requested the reimbursement of the necessary and anticipated expenses of the inter-American defenders without providing any specific evidence in this regard. Consequently, and in the hypothesis that the Court did not reject this in the instant case, the State asked the Court to establish the costs and expenses based on equity.

164. The Court reiterates that, pursuant to its case law,¹²⁹ costs and expenses form part of the concept of reparation because the actions taken by the victims to obtain justice at both the domestic and the international level entail disbursements that should be compensated when the international responsibility of a State has been declared in a judgment. The Court has indicated that "the claims of the victims or their representatives for costs and expenses, together with the supporting evidence must be presented to the Court at the first procedural moment granted to them; that is, with the pleadings and motions brief, without prejudice to those claims being updated subsequently, based on the new costs and expenses incurred as a result of the proceedings before this Court."¹³⁰ In addition, the Court reiterates that it is not sufficient merely to forward probative documents; rather, the parties are required to include arguments that relate the evidence to the fact it is considered to represent and that, in the case of alleged financial disbursements, the items and their justification is clearly established.¹³¹

165. In the instant case, the Court notes that the case file does not contain any precise probative support for the costs and expenses incurred by Mr. Jenkins or his representatives in relation to the processing of the case before the Commission. However, the Court considers that this necessarily entailed financial disbursements and it therefore determines that the State must deliver to Mr. Jenkins the reasonable sum of US\$10,000 (ten thousand United States dollars) for the concept of costs and expenses arising from the domestic proceedings [*sic*]. At the stage of monitoring compliance with this judgment, the Court may establish that the State reimburse the victim or his

¹²⁹ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Ruiz Fuentes et al. v. Guatemala*, *supra*, para. 251.

¹³⁰ Cf. Article 40(d) of the Court's Rules of Procedure. See also, *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, *supra*, paras. 79 and 82, and *Case of Ruiz Fuentes et al. v. Guatemala*, *supra*, para. 251.

¹³¹ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 277, and *Case of Ruiz Fuentes et al. v. Guatemala*, *supra*, para. 251.

representative any reasonable expenses that they incur during that procedural stage.¹³²

H. Reimbursement of expenses to the Victims' Legal Assistance Fund of the Inter-American Court

166. In 2008, the General Assembly of the Organization of American States established the Legal Assistance Fund of the Inter-American Human Rights System "to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."¹³³

167. In a note of the Court's Secretariat of June 20, 2019, a report was sent to the State on the disbursements made in application of the Victims' Legal Assistance Fund in this case which amounted to US\$6,174.66 (six thousand one hundred and seventy four United States dollars and sixty-six cents) and, as established in Article 5 of the Rules of the Court for the Operation of this Fund, Argentina was granted a time frame for presenting any observations it deemed pertinent. On July 2, 2019, the State presented a brief in which it indicated that it had no comments to make on the said report.

168. In light of Article 5 of the Rules of the Fund, based on the violations declared in this judgment and the fact that the requirements for access to the Fund were met, the Court orders the State to reimburse the Fund the sum of US\$6,174.66 (six thousand one hundred and seventy four United States dollars and sixty-six cents) for the necessary expenses incurred. This amount must be reimbursed within six months of notification of this judgment.

I. Method of complying with the payments ordered

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

170. If the beneficiary is deceased or dies before he receives the respective compensation, this shall be delivered directly to his heirs, in accordance with the applicable domestic law.

171. Regarding the currency for the payment of the compensation and reimbursement of costs and expenses, the State must comply with its monetary obligations by payment in United States dollars or, if this is not possible, in the equivalent in Argentine currency, using the highest and most beneficial rate for the victim permitted by domestic law in force at the time of payment to make the respective calculation. At the stage of monitoring compliance with judgment, the Court may make a prudent readjustment of the equivalent amounts in Argentine currency in order to avoid currency fluctuations substantially affecting the purchasing power of those amounts.

172. If, for causes that can be attributed to the beneficiary of the compensation or his heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit the said amounts in their favor in a deposit account or certificate in an Argentine financial institution, in

¹³² Cf. *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Interpretation of the judgment on merits, reparations and costs*. Judgment of August 19, 2013. Series C No. 262, para. 62, and *Case of Ruiz Fuentes et al. v. Guatemala, supra*, para. 252.

¹³³ AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the OAS General Assembly at the fourth plenary session of the 38th regular period of sessions of the OAS held on June 3, 2008, "Establishment of the Legal Assistance Fund of the Inter-American Human Rights System," operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, "Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System," article 1(1).

United States dollars, and in the most favorable financial conditions permitted by banking law and practice. If the corresponding compensation is not claimed, after ten years the amounts shall be returned to the State with the interest accrued.

173. The amounts allocated in this judgment as compensation and to reimburse costs and expenses shall be delivered to the person indicated in full, as established in this judgment, without any deductions derived from possible taxes or charges.

174. If the State should incur in arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund of the Court, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Argentine Republic.

X OPERATIVE PARAGRAPHS

THE COURT

DECIDES,

Unanimously:

1. To reject the preliminary objection relating to the alleged non-existence of certain facts alleged in the Commission's Merits Report and in the brief with pleadings, motions and evidence, pursuant to paragraph 18 of this judgment.
2. To reject the preliminary objection relating to the alleged failure to exhaust domestic remedies, pursuant to paragraphs 22 and 23 of this judgment.
3. To reject the preliminary objection relating to the alleged alteration of the procedural purpose, pursuant to paragraph 27 of this judgment.
4. To reject the preliminary objection relating to the alleged lack of jurisdiction *ratione materiae*, pursuant to paragraphs 31 and 32 of this judgment.

DECLARES,

Unanimously, that:

5. The State is responsible for the violation of the rights established in Articles 7(1), 7(3) and 8(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Gabriel Óscar Jenkins, pursuant to paragraphs 72 to 82 of this judgment.
6. The State is responsible for the violation of the rights established in Articles 7(1), 7(3), 7(5), 8(2) and 24 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Gabriel Óscar Jenkins, pursuant to paragraphs 83 to 98 of this judgment.
7. The State is responsible for the violation of the right established in Article 7(6) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Gabriel Óscar Jenkins, pursuant to paragraphs 99 and 100 of this judgment.
8. The State is responsible for the violation of the right to judicial guarantees established in Article 8(1) of the American Convention on Human Rights, in relation to the obligation to ensure rights

established in Article 1(1) of this instrument, to the detriment of Gabriel Óscar Jenkins, pursuant to paragraphs 106 to 121 of this judgment.

AND ESTABLISHES:

Unanimously that:

9. This judgment constitutes, *per se*, a form of reparation.
10. The State shall provide, immediately, free of charge and in Argentina, the psychological treatment required by Gabriel Óscar Jenkins, following his informed consent, and for as long as necessary, pursuant to paragraph 130 of this judgment.
11. The State shall make the publications indicated in paragraph 134 of this judgment.
12. The State shall pay the amounts established in paragraphs 150, 154, 159 and 165 of this judgment as compensation for pecuniary and non-pecuniary damage, costs and expenses.
13. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing of this case, pursuant to paragraph 168 of this judgment.
14. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it.
15. The Court will monitor full compliance with this judgment, in exercise of its authority and in compliance with its obligations under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with its provisions.

DONE, at San José, Costa Rica, on November 26, 2019, in the Spanish language.

I/A Court H.R. *Case of Jenkins v. Argentina*. Preliminary Objections, Merits, Reparations and Costs.
Judgment of November 26, 2019.

Eduardo Vio Grossi
Acting President

Humberto Antonio Sierra Porto

Elizabeth Odio Benito

L. Patricio Pazmiño Freire

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Eduardo Vio Grossi
Acting President

Pablo Saavedra Alessandri
Secretary