

INTER-AMERICAN COURT OF HUMAN RIGHTS*
CASE OF VALLE AMBROSIO ET AL. V. ARGENTINA
JUDGMENT OF JULY 20, 2020
(Merits and Reparations)

In the case of *Valle Ambrosio et al.*,

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

Elizabeth Odio Benito, President;
L. Patricio Pazmiño Freire, Vice President;
Eduardo Vio Grossi, Judge;
Humberto Antonio Sierra Porto, Judge;
Eduardo Ferrer Mac-Gregor Poisot, 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 Right (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” or “the Rules of the Court”), delivers this Judgment, which is structured as follows:

* Judge Eugenio Raúl Zaffaroni, an Argentine national, did not take part in the deliberation or signature of this Judgment, pursuant to the provisions of Article 19(1) and 19(2) of Rules of Procedure of the Court.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* – On September 4, 2018, 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 *Valle Ambrosio et al. with regard to the Argentine Republic* (hereinafter “the State of Argentina,” “the Argentine State,” “the State,” or “Argentina”). The Commission indicated that the case concerned the alleged violation of the right of Julio César Ramón del Valle Ambrosio and Carlos Eduardo Domínguez Linares to appeal the judgment of the Ninth Criminal Chamber of Córdoba, which had sentenced them to three years and six months imprisonment for having committed the crime of fraud. In this regard, the Commission also considered that the appeals of cassation filed against that decision had been ruled inadmissible without having been fully examined and that, therefore, the alleged victims were not provided a full review, in violation of the right to appeal a judgment granted by Article 8(2)(h) of the American Convention. Furthermore, the Commission concluded that, as a consequence of the limited nature of the remedy of cassation and the even more limited special remedy and that of complaint, the alleged victims were not provided with a simple and effective recourse, in violation of Article 25(1) of the Convention, in relation to the obligations established in Articles 1(1) and 2 thereof.
2. *Procedure before the Commission.* –The procedure before the Commission was as follows:
 - a) *Petition.* – On July 10 and October 4, 2000, Julio César Ramón del Valle Ambrosio and Carlos Eduardo Domínguez, respectively, lodged their respective petitions before the Commission.
 - b) *Admissibility Report.* – On July 10, 2013, the Commission approved Admissibility Report No. 35/13, in which it found that the petitions were admissible.¹
 - c) *Report on the Merits.* – On September 5, 2017, the Commission approved Report No. 97/17, pursuant to Article 50 of the Convention (hereinafter “Report on the Merits” or “Report No. 97/17”), in which it reached a series of conclusions² and made several recommendations to the State.
 - d) *Notification to the State.* – The Report on the Merits was notified to the State by note of October 4, 2017, granting it two months to report on compliance with the recommendations. The Commission granted the Argentine State three extensions to provide the requested information on such compliance. The State did not provide information that would demonstrate compliance with the recommendations.
3. *Submission to the Court.* – On September 4, 2018, the Commission submitted to the Court all facts and violations of human rights contained in the Report on the Merits “due to the need to obtain justice and reparations.”³

¹ The Report was notified to the parties on September 6, 2013. In its Report, the Commission decided that both petitions were admissible with regard to the violation of the right recognized in Article 8(2)(h) of the American Convention, in relation to Articles 1(1) and 2 thereof. In addition, it decided that it would analyze at the Merits stage the alleged violation of Articles 7, 8 and 25 of the Convention. Cf. Admissibility Report No. 35/13, *Posadas et al. v. Argentina*, of July 11, 2013.

² The Commission concluded that the Argentine State was responsible for the violation of the rights to appeal a judgment and to judicial protection guaranteed in Articles 8(2)(h) and 25(1) of the American Convention, in relation to the obligations established in Articles 1(1) and 2 thereof, to the detriment of Julio César Ramón del Valle Ambrosio and Carlos Eduardo Domínguez Linares.

³ The Commission appointed, as its delegates before the Court, Commissioner Luis Ernesto Vargas Silva and Executive Secretary Paulo Abrão. It also appointed as legal advisors, Silvia Serrano Guzmán, then a staff lawyer of the Commission’s Secretariat, and Piero Vásquez Agüero, a staff lawyer of the Commission’s Secretariat.

4. *The Commission's requests.* – Based on the foregoing, the Commission requested that the Court declare the international responsibility of the State for the violations contained in its Report on the Merits (*supra* para. 2(c)). It also asked that the Court order the State, as measures of reparation, to adopt those contained and analyzed in Chapter VII of this Judgment. The Court notes with concern that 18 years had passed between the lodging of the initial petition before the Commission and the submission of the case to the Court.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the representatives and to the State.* – The Court notified the submission of the case by the Commission to the representatives of the alleged victims⁴ (hereinafter “the representatives” or “the defense”) on December 27, 2018 and to the State by note of November 2, 2018.

6. *Inadmissibility of the brief with pleadings, motions and evidence.* – On March 10, 2019, the representatives presented, beyond the period established, their brief with pleadings, motions and evidence.⁵

7. *Answering brief.* – On July 26, 2019, the State submitted to the Court its answering brief to the submission brief and to the Report on the Merits of the Commission. In its brief, the State rejected the allegations presented by the Commission.

8. *Suspension for reasons of negotiating a friendly settlement.* – On September 30, 2019, the State submitted a copy of a document dated September 12, 2019, signed by the representatives of the alleged victims and the State, in which both parties manifested their will to “open a dialogue to begin a process of friendly settlement within the framework of the petition.” The procedure before the Court was therefore suspended until February 27, 2020, at which time the representatives informed the Court that the attempt at a friendly settlement had “failed.”

9. *Procedure of the final written brief.* – After evaluating the principal briefs submitted by the Commission and the State and, pursuant to the provisions of Articles 15, 45 and 50(1) of the Rules of Procedure, the President, after consulting with the other judges, ordered that, for reasons of procedural economy, it was not necessary to convoke a public hearing in the present case and granted the parties and the Commission until April 9, 2020 to submit their final written briefs and final written observations on the merits and on the eventual reparations and costs.⁶ In view of the

⁴ María Isabel Rúa, Gonzalo Eduardo Rúa and Ramiro Hernán Rúa represented Carlos Eduardo Domínguez Linares and Julio César Ramón del Valle Ambrosio until February 18, 2020. After that date, Juan Carlos Vega and Víctor Rodolfo Pérsico assumed the representation of the alleged victims.

⁵ According to the records, the Commission's submission brief was notified to the representatives of the alleged victims on October 29, 2018 and, on December 21, 2018, it was sent by courier together with all of the attachments, and was received by the representatives on December 27, 2018. The brief of the representatives, and the attachments, were received by the Court by means of communications of March 10 and 15, 2019. In view of the Court's vacation that began on December 21, 2018 and ended on January 7, 2019, the period for filing the brief with the pleadings, motions and evidence began to count as of the latter date and ended on March 7, 2019, which means that the brief was filed after the procedural date, governed by Article 40 of the Rules of the Court.

⁶ Cf. *Case of Valle Ambrosio et al. v. Argentina*. Order of the President of the Court of March 6, 2020.

Court Agreements 1/20 of March 17, 2020⁷ and 2/20 of April 16, 2020⁸ that suspended the calculation of all deadlines due to the health emergency caused by the COVID-19 pandemic, the expiration of the period was extended until June 12, 2020.

10. *Final written arguments and observations.* – On May 22, 2020, the representatives submitted their final written briefs and, on May 28, 2020, the Commission submitted its final written observations. On June 12, 2020, the State submitted its final written arguments.

11. *Deliberation of the present case.* – The Court deliberated on this Judgment in a virtual session on July 20, 2020.⁹

III JURISDICTION

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

IV EVIDENCE

A. Admissibility of the documentary evidence

13. The Court received various documents filed as evidence by the Commission, which, as in other cases, are admitted with the understanding that they were filed at the proper procedural moment (Article 57 of the Rules of Procedure).¹⁰

14. In addition, the Commission, in its submission brief and the Report on the Merits, requested that the expert opinion of Alberto Bovino in the *Case of Mendoza et al. v. Argentina*¹¹ and in the *Case of Amrhein et al. v. Costa Rica*¹² be incorporated into the present case. The State did not object to this request in its answering brief. By virtue of the President's order of March 6, 2020, it was deemed appropriate to incorporate these expert opinions, if considered relevant, into the file of the case as documentary evidence.¹³

⁷ Available at: http://www.corteidh.or.cr/docs/comunicados/cp_18_2020.pdf

⁸ Available at: http://www.corteidh.or.cr/docs/comunicados/cp_28_2020.pdf

⁹ Due to the exceptional circumstances caused by the COVID-19 pandemic, this Judgment was deliberated and adopted during the 135th Regular Session, which was held virtually by using technological resources, pursuant to the Court's Rules of Procedure.

¹⁰ Documentary evidence may, in general, be submitted under Article 57(2) of the Rules of Procedure with the application brief, the pleadings, motions or answering briefs, as applicable, but evidence submitted beyond the specified deadline is inadmissible, unless it falls within the exceptions set out in the aforementioned article (namely *force majeure*, serious impediment) or unless it refers to a supervening act, that is, one that occurs after the procedural moments indicated. *Cf. Case of Barrios Family v. Venezuela. Merits, Reparations and Costs.* Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18 and *Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 12, 2020. Series C No 402, para. 34.

¹¹ Expert opinion of Alberto Bovino in the *Case of Mendoza et al. v. Argentina* on "The scope of appealing a judgment in a criminal case."

¹² Expert opinion of Alberto Bovino in the *Case of Amrhein et al. v. Costa Rica* on "Standards on the right to appeal."

¹³ *Cf. Case of Valle Ambrosio et al. v. Argentina.* Order of the President of the Court of March 6, 2020. Considerations 13 and 14.

15. At the request of the Court,¹⁴ on April 9, 2020 the defense submitted the following resolutions: Decision No. 391, of December 17, 1998, which declared inadmissible the appeal of cassation filed by the defense of Mr. del Valle Ambrosio, and Decision No. 220, of June 16, 1999, which declared inadmissible the special appeal filed by the defense of Mr. del Valle Ambrosio. The Court, pursuant to the provisions of Article 58(b) of its Rules, added those documents to the record as evidence that might be useful to resolve the case.

16. The defense of the alleged victims submitted, together with its final briefs, a psychiatric certification, dated April 22, 2020, regarding Mr. del Valle Ambrosio. The Court points out that the defense did not justify why, in view of the provisions of Article 57(2) of the Rules, it presented the certification with the final brief since the proper procedural moment to do so was with the brief with pleadings, motions and evidence. Therefore, the certification is inadmissible because it is time-barred.

V FACTS

17. In this Chapter, the Court shall establish the facts within the factual framework submitted to the Court by the Commission with respect to (i) the criminal process against Mr. del Valle Ambrosio and Mr. Domínguez Linares and (ii) the relevant legal framework at the time of the event and its subsequent evolution.

18. The Court notes that, in their final written arguments, the representatives alleged new facts on (i) the effects of the custodial sentence imposed on the alleged victims and (ii) what occurred in the unsuccessful friendly settlement proceedings that began on September 12, 2019. The Court will not refer to those events because they are time-barred.

A. The criminal proceedings against Mr. del Valle Ambrosio and Mr. Domínguez Linares

a.1 The sentence

19. Mr. del Valle Ambrosio and Mr. Domínguez Linares were charged as necessary accomplices to the crime of “aggravated fraud on account of fraudulent administration.”¹⁵ On December 23, 1997, the Ninth Criminal Chamber of Córdoba, the first instance, held each of them to be a necessary participant in the aforementioned crime under Articles 45, 174(5) and 173(7) of the Criminal Code, and sentenced them to three years and six months imprisonment with subsidiary penalties and costs.¹⁶

a.2 Remedies filed

(i) Remedies filed by Mr. Domínguez Linares

20. The defense of Mr. Domínguez Linares filed an appeal of cassation of the aforementioned sentence, pursuant to Articles 458 *et seq.* of the Code of Criminal Procedure of the Province of Córdoba (hereinafter “CPPC”). It alleged that the conviction was tainted by *vicio in iudicando* because “the Criminal Code had been erroneously applied,” as well as by *vicio in procedendo* due to a lack of

¹⁴ Cf. Notes of the Secretariat of March 12, 2020, CDH-15-2018/049, CDH-15-2018/050, CDH-15-2018/051 and CDH-15-2018/052.

¹⁵ Cf. Injunction to bring to trial, Seventh Shift, Public Prosecutors’ Office, December 20, 1996 (evidence file, folio 141).

¹⁶ Cf. Sentence No. 47 of the Ninth Criminal Chamber of Córdoba, of December 23, 1997 (evidence file, folio 642).

correlation between the accusation and the sentence.¹⁷

21. On March 5, 1998, the Ninth Criminal Chamber accepted the appeal of cassation and referred it to the Criminal Division of the Superior Tribunal of Justice of the Province of Córdoba (hereinafter "TSJC").¹⁸

22. On December 17, 1998, the Criminal Division declared the appeal inadmissible. With respect to the alleged *vicio in iudicando*, the Division stated:

2. It is the consistent jurisprudence of the Criminal Division [...] that an appeal of cassation is inadmissible with regard to the substance if it ignores, bends or modifies the facts on which the trial court based its legal finding that the appellant deems mistaken or that it failed to reach the finding that the appellant deems correct [...]

This doctrine matches the interpretation agreed upon by the lawmakers, which, in respect of the substantive ground for cassation (CPP, 468(1)), is coordinated with the unified interpretation of the substantive law, definitively submitting it to the interpretation of the High Court of the Province where the case arrives with conclusively established facts and, therefore, that court can only decide whether the correct legal procedure had been followed.

3. In this case, the appellant disagrees with the legal characterization of the facts, ignoring all the fact-based conclusions reached by the judge, according to which the conduct that the accused is charged with did not merely consist of noncompliance of a contract that could result in a potential damage, but rather of primary complicity in eliciting fraudulent loans that caused actual harm to the Social Bank.¹⁹

23. With respect to the *vicio in procedendo*, the Criminal Division held that:

2. The appeal of cassation is inadmissible for the following reasons:

a) In accordance with our unchanging jurisprudence, the appeal must show a well-founded grievance, authentically based on the records of the proceedings, so that if those records are ignored, bent or modified and if those alterations cause a wrong, irrespective of the actual proceedings, the challenge to the judgment is not formally viable [...]. In such a case, the brief of the filing incurs in the same wrong as that which is the subject of the accusation: the lack of correlation between the accusation and the sentence. This is so because, in the first place, the appellant limits the facts to the first loan, whereas the accusation as well as the judgment include numerous other loans deemed to be fraudulently obtained and to be prejudicial [...]. Secondly, reference is made to the security guarantee on the property in the cemetery only with respect to the original loan included in the accusation and the judgment [...]. The appellant, who dogmatically states that these circumstances were decisive, has failed to substantiate that claim, especially because he has failed to demonstrate their decisive nature so as to show a lack of correlation with their formal admissibility in accordance with the Division's invariable jurisprudence.

b) It is also noted that the appellant reference only to the initial loan alluded to in both the accusation and the judgment, which identifies the reduction in the security guarantee for the later commercialization of the cemetery lots and which the trial court deemed to be proved factual during the trial, was not included in the accusation and was therefore excluded from the judgment [...]. Since the appeal also questions the item in the operative paragraph of the judgment that

¹⁷ Cf. Appeal of cassation filed by the defense of Mr. Domínguez Linares (evidence file, folios 651, 653, 655 and 661). See also, Interlocutory decision No. 7, Ninth Criminal Chamber of Córdoba, of March 5, 1998 (evidence file, folios 680 and 681).

¹⁸ Cf. Interlocutory decision No. 7, Ninth Criminal Chamber of Córdoba, of March 5, 1998 (evidence file, folio 683).

¹⁹ Cf. Decision No. 396, of December 17, 1998, which declares the appeal of cassation filed by Mr. Domínguez Linares inadmissible (evidence file, folios 692 and 693).

ordered, on the basis of those grounds, the return of the proceedings to the Investigating Section "for the purposes it deems fit," strictly speaking (illegible) the matter cannot be appealed in cassation (C.P.P. 469)."²⁰

24. On February 5, 1999, the defense of Mr. Domínguez Linares filed a special appeal before the Criminal Division,²¹ which was formally declared inadmissible.²² Finally, on March 21, 2000, the Supreme Court of the Nation (hereinafter "CSJN") declared the appeal of complaint filed by the defense of Mr. Domínguez Linares inadmissible.²³

(ii) Remedies filed by Mr. del Valle Ambrosio

25. On February 19, 1998, the defense of Mr. del Valle Ambrosio filed an appeal of cassation against the judgment of December 23, 1997. The appeal alleged, in the first place, that the substantive law had been applied erroneously due to the "failure to observe the standards of the code under penalty of inadmissibility, expiration and nullity," because, in its opinion, the court had incorrectly evaluated the information collected as evidence," which would be a violation of Article 406 of the CPPC²⁴ "since

²⁰ Cf. Decision No. 396, of December 17, 1998, which declares the appeal of cassation filed by Mr. Domínguez Linares inadmissible (evidence file, folios 705 to 709).

²¹ Cf. Special appeal filed before the Criminal Division of the TSJC by the defense of Mr. Domínguez Linares, of February 5, 1999 (evidence file, folios 761 to 780).

²² Cf. Decision No. 222, of June 16, 1999, of the Criminal Division of the TSJC that declared the special appeal filed by the defense of Mr. Domínguez Linares inadmissible (evidence file, folios 783 to 792). The decision specifically pointed out the following (evidence file, folios 786, 787 and 792):

The doctrine of arbitrariness developed by the Supreme Court of Justice has repeatedly established that this type of appeal is not designed to correct, in the third instance, decisions that the appellants deem mistaken, but rather to review the decisions that lack even the minimum conditions required for the challenged ruling to constitute a judicial decision.

When it is a question of ordinary or local law, the mere invocation of the arbitrary action in the appeal is not sufficient to invoke the special jurisdiction if that invocation is not preceded by a substantiated critique of each of the arguments on which the conclusion is based that the appellant considers erroneous [...]. In the present case the brief is no more than a summarized repetition of the errors that were presented to the court in the appeal of cassation [...] but with a weak argument regarding the reasoning in the appealed judgment.

In brief, the appellant appears to have only one ground that would enable a new review in the third instance of a decision with which he disagrees and with which he disputes the interpretation of issues of ordinary law without properly dealing with each and every one of the arguments of the challenged decision.

As has been stated, the foregoing causes the appellant to err with regard to the subject matter of the procedural remedy of Article 14 Law No. 48 and is, thus, a claim that exceeds the carefully defined and special competence of the CSJN and, therefore, the appeal is inadmissible.

²³ Cf. The appeal of complaint filed by the defense of Mr. del Valle Ambrosio, (evidence file, folios 796 to 836) and the decision of the Supreme Court of Justice, of March 21, 2000, which declares inadmissible the appeal of complaint filed by the defense of Mr. Domínguez Linares (evidence file, folio 840). The decision specifically indicates the following (evidence file, folio 840):

Considering:

The special appeal, the denial of which caused the present claim, is inadmissible (Art. 200 of the Code of Civil and Commercial Procedure). Therefore, the claim is rejected.

²⁴ This article establishes the following:

Article 406.- Standards of Deliberation. The Tribunal shall resolve all issues raised in the trial, arranging them, if possible, in the following order: the incidentals that have been deferred (384), those on the existence of a criminal act, the differentiation of the legally relevant circumstances; the participation of the accused, the legal characterization and applicable sanction; the requested restitution or compensation and costs.

The issues raised shall be resolved successively, by majority vote, taking into account the transcript of the debate in accordance with Article 193.

The judges and the juries shall vote on each one of them, regardless of how they voted previously.

The accused shall be given the benefit of the doubt with respect to questions of fact.

it would not have granted the appellant the benefit of the doubt” and Article 413(4),²⁵ because the rule of sound judicial discretion regarding the elements of decisive evidence was not observed.”²⁶

26. On March 5, 1998, the Ninth Criminal Chamber of Córdoba admitted the appeal of cassation and referred it to the Criminal Division of the TSJC.²⁷

27. On December 17, 1998, the Criminal Division declared the appeal of cassation inadmissible. In the first place, the Division reproached the appellant for the lack of correlation between the alleged wrong and the relevant justifications:

As occurred with the other reproaches, the appellant, after announcing that he would appeal in cassation by invoking both motives, claimed a wrong (the lack of substantiation in the gradation of the sentence) that is exclusively in accord with the formal motive (C.P.P., 468(2)), but simply offers a rationale that confuses aspects of issues of law (retribution cannot legally be taken into account in sentencing, reform and social re-adaptation as the only legal possibility, issues of culpability as a circumstance to be taken into account in calculating the sentence, the characterization of the acts of Ambrosio that emphasizes the author and not the act), with issues of fact (the invocation of facts that have not been accredited, the failure to take into account the absence of penal antecedents). This lack of correlation between the wrong and the arguments renders the appeal inadmissible.²⁸

28. With respect to the substance of the appeal, the decision also indicated the following:

With regard to the substantive basis of cassation, the appeal is inadmissible because the appellant merely made dogmatic assertions about his sentence and the criminal law, simply describing the sentence as contrary to those assertions without entering into the substance [...] and is merely a transcription and has no concrete link with the erroneous concept that is being judged [...] the appeal lacks the standards necessary for acceptance, with only the minimum conditions of admissibility that are found found in the express requirements of the procedural law.”²⁹

29. With regard to the alleged lack of rationale of the sentence, the Criminal Chamber indicated that the reasons given by the appellant “were not congruent and the only ones that were minimally relevant were not developed [...] or lacked verifiable support.”³⁰

30. On February 4, 1999, the defense of Mr. del Valle Ambrosio filed a special appeal before the Criminal Division,³¹ which declared it formally inadmissible on June 16, 1999.³² On March 21, 2000,

If there are more than two opinions in the voting on the appropriate sanctions, the median term shall be applied

²⁵ This article establishes the following:

Article 413.- Nullity. The sentence shall be nullified:

[...]

4) If it lacks or contradicts the majority of the Tribunal, or if the rule of sound judicial discretion has not been observed with respect to the decisive evidence.

²⁶ Cf. Interlocutory decision No. 7, Ninth Criminal Chamber of Córdoba, of March 5, 1998 (evidence file, folio 678) and Interlocutory decision No. 7, Ninth Criminal Chamber of Córdoba, of March 5, 1998 (evidence file, folio 678) and Decision No. 391, Criminal Division of the TSJC, of December 17, 1998 (evidence file, folio 1219).

²⁷ Cf. Interlocutory decision No. 7, Ninth Criminal Chamber of Córdoba, of March 5, 1998 (evidence file, folio 683).

²⁸ Cf. Decision No. 391, Criminal Division of the TSJC, of December 17, 1998 (evidence file, folios 1246 and 1247).

²⁹ Cf. Decision No. 391, Criminal Division of the TSJC, of December 17, 1998 (evidence file, folios 1247 and 1248).

³⁰ Cf. Decision No. 391, Criminal Division of the TSJC, of December 17, 1998 (evidence file, folio 1249).

³¹ Fact alleged by the Commission (Merits file, folio 13) and confirmed by the State in its answering brief (Merits file, folio 230).

³² Cf. Decision No. 220, Criminal Division of the TSJC, of June 16, 1999 (evidence file, folios 1250 to 1261).

the Supreme Court of Justice declared the appeal of complaint filed by the defense of Mr. del Valle Ambrosio inadmissible.³³

B. Legal framework of relevant criminal procedure: legislation applicable to the case

31. Article 1 of the Constitution of Argentina states that its form of government is “representative republican federal,” which implies, inter alia, that each province, as well as the Autonomous City of Buenos Aires, has the reserved authority to enact codes of criminal procedure for non-federal crimes.

32. With reference to the Province of Córdoba, Article 468 of the Code of Criminal Procedure of the Province (CPPC) governed the proceedings of the appeal of cassation as follows:

Article 468.- Grounds. The appeal of cassation may be filed on the following grounds:

1) Failure to observe or erroneous application of substantive law.

2) Failure to observe the standards set by this Code under penalty of inadmissibility, expiration or nullity, as long as the appellant, except in cases of absolute nullity (186(2)), had filed a timely claim to remedy the defect, if possible, or had given notice that he would file an appeal of cassation.

33. Article 474 of the CPPC governed the manner in which the remedy of cassation may be filed:

Article 474.- An appeal of cassation shall be filed before the court that issued the ruling, within 15 days after notification and in writing with the attorney’s signature, where the legal provisions that are deemed to have been breached or erroneously applied shall be specifically cited and the application that is being requested shall be indicated.

Each reason must be indicated separately with its justifications.

Outside of this opportunity, no other reason can be claimed.

The appellant must indicate whether he or she will report orally.

34. Moreover, Article 455 of the CPPC governed the grounds on which an appeal of cassation could be held inadmissible or rejected by indicating that the appeal would not be “granted by the court that issued the ruling being challenged, when the latter is not subject to appeal, or when it is not filed on time.”³⁴ This Article also states that “if the appeal is inadmissible, the higher court (Tribunal de Alzada) must declare it so without ruling on the merits” and must also reject it “when it is evident that it is substantially out of order.”³⁵

³³ Cf. Appeal of complaint filed by the defense of Mr. del Valle Ambrosio (evidence file, folios 796 to 836). With regard to the inadmissibility of the appeal: it is a fact indicated by the Commission in its Report on the Merits (Merits file, folio 14) and confirmed by the State in its answering brief (Merits file, folio 231).

³⁴ Cf. Code of Criminal Procedure of the Province of Córdoba, Law No.8.123, Article 455.

³⁵ *Ibid.*

VI MERITS

RIGHT TO APPEAL A JUDGMENT BEFORE A JUDGE OR HIGHER COURT AND RIGHT TO JUDICIAL PROTECTION, AS WELL AS THE OBLIGATION TO ADOPT PROVISIONS OF DOMESTIC LAW ³⁶

35. The Court notes that the controversy in the present case is centered on whether the State is responsible for the violation of the right to appeal a judgment before a judge or higher court and of the right to an effective judicial remedy, in view of the response of the lower courts to the appeals filed against the convictions of Mr. del Valle Ambrosio and Mr. Domínguez Linares by their defense. In addition, the Court must decide whether the legislation and jurisprudence on cassation in the Province of Córdoba violates Article 2 of the Convention. The Court shall, therefore, assess whether the response of the lower courts to the appeals presented by the representatives of Mr. del Valle Ambrosio and Mr. Domínguez Linares, as well as the legal structure that governed cassation at the time of the events, complied with the State's obligations enshrined in Articles 8(2)(h) and 25(1) of the Convention, in relation to Articles 1(1) and 2 thereof.

36. Finally, the Court notes that it will not rule on the additional violations alleged by the representatives in their final written briefs since they were time-barred.

A. Arguments of the parties and the Commission

37. The **Commission** first pointed out that Article 468 of the CPPC contains a rule that limited the remedy of cassation to errors of law, both substantive and procedural. According to the Commission, this has occasioned a consistent judicial practice that restrictively interpreted the laws that governed the remedy of cassation, which precluded a review of issues of fact and the weighing of evidence. That practice was recognized by the Supreme Court and is applicable to the present case by the similarity of the rules governing the remedy of cassation at the federal level and in the Province of Córdoba, among other provinces.

38. The Commission added that the limited scope of the remedy of cassation is reflected in the manner in which the appeals were resolved in the present case where they were formally declared inadmissible pursuant to Article 455 of the CPPC, which meant that the declaration of inadmissibility was not a decision on the merits. The Commission maintained that the decisions on the appeals of cassation included a rationale that demonstrated that their rejection was due to the judicial practice of a restrictive interpretation of the rules governing the remedy of cassation. In its final written observations, the Commission emphasized that Mr. del Valle Ambrosio and Mr. Domínguez Linares reached the appeals stage with an *a priori* limitation on questions where an argument could be made, with some chance of success, that was based on the applicable normative framework and the existing practice of a restricted interpretation of the remedy.

39. The Commission concluded that Argentina had violated the right to appeal a judgment enshrined in Article 8(2)(h) of the Convention, in relation to Articles 1(1) and 2 thereof. It also concluded that, as a consequence of the limited nature of the remedy of cassation and the even more limited special remedy and that of complaint, the alleged victims did not enjoy simple and effective judicial remedies, in violation of Article 25(1), in relation to the obligations set forth in Articles 1(1) and 2.

³⁶ Articles 8(2)(h), 25 and 2 of the American Convention on Human Rights.

40. For its part, the **State** maintained that the appeals of cassation were declared inadmissible because they were not well substantiated, which is a requisite that the State may stipulate as a condition of admissibility of an appeal. In addition, the State emphasized that the reason that the appeals were declared inadmissible was because the alleged defect was not specified nor was the impact of the evidence apparent in the reasoning of the lower court, which in no way was related to the alleged narrowness of the appeal procedure, but rather was due to the poor quality of the defense.

41. The State added that the Criminal Division could not be reproached for rejecting the appeals since it was the petitioners who ineffectively filed the appeals by not including questions of fact and/or the evidence. According to the State, to demand an adequate substantiation in the appeal is one of the minimum requirements that a State may expect of an appeal. It concluded that the Argentine State does guarantee the right to a broad review, as long as the appeals that challenge a judgment are sufficiently well presented.

B. Considerations of the Court

42. The Court has referred to its consistent case law on the scope and content of Article 8(2)(h) of the Convention, as well as on the standards that must be observed to ensure the guarantee of the right to appeal a judgment before a judge or higher court. The Court has understood that the right consists of a minimal and primordial guarantee “that must be respected as part of due process of law, so that a party may turn to a higher court for revision of a judgment that was unfavorable to that party’s interest.”³⁷ Bearing in mind that judicial guarantees seek to ensure that anyone involved in a proceeding is not subject to arbitrary decisions, the Court has held that the right to appeal a judgment cannot be effective unless it is guaranteed in respect to all those who are convicted,³⁸ since a conviction is a manifestation of the exercise of the punitive power of the State.³⁹ The Court has held that the right to appeal a judgment is one of the minimum guarantees of every person who is subjected to an investigation and a criminal proceeding.⁴⁰

43. Furthermore, the Court has maintained that Article 8(2)(h) of the Convention refers to a simple, accessible and effective remedy; that is, it must not be so complex as to make the right illusory. The formalities required to admit the remedy must be minimal and cannot be an obstacle to the fulfillment of its function to examine and resolve the wrongs alleged by an appellant; that is, it must obtain the results or responses for which it was conceived. It must be understood that, regardless of the appeal regime or system that the States Parties adopt and the name given to the means for challenging a conviction, in order for the remedy to be effective it must consist of an adequate means to ensure rectification of an erroneous conviction. It is, therefore, necessary that there be an analysis of the factual, evidentiary and legal standards on which the challenged judgment is based, because in jurisdictional activities there is an interdependence between the determination of facts and the application of the law. Thus, the grounds to accept the remedy must allow for a broad control of the

³⁷ Cf. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107, para. 158 and *Case of Gorioitía v. Argentina, Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 2, 2019. Series C No. 382, para. 47.

³⁸ Cf. *Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 23, 2012. Series C No. 255, paras. 92 and 93 and *Case of Gorioitía v. Argentina, supra*, para. 47.

³⁹ Cf. *Case of Baena Ricardo et al. v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of February 2, 2001. Series C No. 72, para. 107 and *Case of Montesinos Mejía v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2020, para. 175.

⁴⁰ Cf. *Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 15, 2017. Series C No. 331, para. 171 and *Case of Montesinos Mejía v. Ecuador, supra*, para. 176.

challenged conviction.⁴¹

44. The Court recalls that, on December 23, 1997, the Ninth Criminal Chamber of Córdoba held Mr. del Valle Ambrosio and Mr. Domínguez Linares to be necessary accomplices of the crime of “aggravated fraud on account of fraudulent administration” and sentenced them to three years and six months imprisonment. Each filed an appropriate appeal of cassation against the sentence and both appeals were declared inadmissible by the Criminal Division.

45. In his appeal of cassation, Mr. Domínguez Linares alleged that the conviction was tainted by *vicio in iudicando*, as well as *vicio in procedendo*.⁴² The defense of Mr. Domínguez Linares specifically argued, in the first place, that the sentence was tainted by *vicio in iudicando* because it “had erroneously applied the Criminal Code.” The defense pointed out that the sentence established “the fact and accusation against its client based on the unnecessary or excessive risk caused to the Bank’s property caused by the managers due to the loans granted,” while the majority view of the criminal doctrine in Argentina held that the harm in such cases must be “actual, effective, not potential or conjectural and must be of a patrimonial nature,” and must have resulted in “a reduction of the patrimony” as a result of the commission of the crime. In the second place, the defense argued that the sentence was tainted by *vicio in procedendo* due to the lack of correlation between the facts included in the accusation and those found in the judgment.⁴³

46. The Criminal Division declared the appeal of cassation formally inadmissible, pursuant to Article 455 of the CPPC.

47. The Court notes, in the first place, that Article 455 provides that, in the event that the appeal is inadmissible, “the higher court must also declare it inadmissible without an examination of the merits.” The appeal of Mr. Domínguez Linares was, therefore, rejected “*in limine*,” that is, without the arguments of the defense having been considered.

48. The Court also notes that the inadmissibility of the appeal was based on the impossibility on the part of the Criminal Division to review the facts determined by the *a quo* tribunal, which made the legal characterization that the defense of Mr. Domínguez Linares deems erroneous. In this regard, with respect to the first argument (the existence of *vicio in iudicando*) the Criminal Division reproached the appellant who did not agree with the legal characterization given to the facts, “regardless of all of the conclusions on the facts” adopted by the *a quo* tribunal,⁴⁴ and the Criminal Division also emphasized that it was “the consistent jurisprudential doctrine of the Criminal Division [...] that an appeal of cassation based on the merits is inadmissible if it ignores, bends or modifies the facts on the basis of which the lower court made the legal characterization that the appellant considers mistaken and that it failed to reach the finding that the appellant deems correct.”⁴⁵ In addition, the Criminal Division emphasized that in an appeal of cassation “the case is accepted with all of the facts definitively established at the trial so that what is judged is only whether their

⁴¹ Cf. *Case of Herrera Ulloa v. Costa Rica*, *supra*, paras. 161, 164 and 165 and *Case of Ruiz Fuentes et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 10, 2019, para. 158.

⁴² Cf. Appeal of cassation filed by the defense of Mr. Domínguez Linares (evidence file, folios 651, 653, 655 and 661). See also, Interlocutory decision No. 7, Ninth Criminal Chamber of Córdoba, of March 5, 1998 (evidence file, folios 680 and 681).

⁴³ Cf. Appeal of cassation filed by the defense of Mr. Domínguez Linares (evidence file, folios 651, 653, 655 and 661). See also, Interlocutory decision No. 7, Ninth Criminal Chamber of Córdoba, of March 5, 1998 (evidence file, folios 680 and 681).

⁴⁴ Cf. Decision No. 396, of December 17, 1998, which declared inadmissible the appeal of cassation filed by Mr. Domínguez Linares (evidence file, folio 693).

⁴⁵ Cf. Decision No. 396, of December 17, 1998, which declared inadmissible the appeal of cassation filed by Mr. Domínguez Linares (evidence file, folio 692).

characterization is legally correct."⁴⁶ Moreover, with respect to the second argument (the existence of *vicio in procedendo*), the Criminal Division stated that "in accordance with the consistent jurisprudence of this Division, the appeal must claim a well-established wrong in the files of the case so that they are bent, ignored or modified and if such alterations have resulted in a wrong, irrespective of the actual proceedings, the appeal is not formally viable."⁴⁷

49. As to the appeal filed by Mr. del Valle Ambrosio, the Court recalls that he alleged that the substantive law was applied erroneously in the judgment,⁴⁸ and that "the rule of sound judicial discretion had not been observed with regard to the decisive evidence."⁴⁹ The defense specifically questioned, in the first place, the rationale in the decision on the accreditation of the characterization, claiming that it was arbitrary and stating that the judgment "considered as proved the complicity of the accused in a 'delinquentum society,' while there was nothing more than a presumed friendship and a presumed work relationship with some of those who participated in handling the loan and none of them with the independent authority to do so." The defense also emphasized that the *a quo* tribunal examined "each and every one of the pieces of accusatory evidence on the collusion of the accused, but did not examine, or did so summarily, important exculpatory evidence, thus forcing the conduct of the accused to be categorized as a crime." In addition, since the evidence was "erroneously evaluated," the facts were twisted to characterize it as a crime when the elements that comprise the crime were lacking." Finally, the defense questioned the terms of the sentence, deeming them "excessive" and that "they lacked justification."⁵⁰

50. With regard to the response of the *ad quem* tribunal, the Court first notes that, on December 17, 1998, the Criminal Division declared the appeal inadmissible pursuant to the aforementioned Article 455, which meant, as occurred in the appeal filed by the defense of Mr. Domínguez Linares, a rejection "*in limine*" that, in addition, inhibited the *ad quem* tribunal from entering into the merits of the issues raised. The Division specifically questioned the assessment of the facts by the defense of Mr. del Valle Ambrosio for being ignored, bent or modified:

From an integral reading of the judgment, as a whole, there emerges the following factual circumstances that the trial court deemed proved after weighing the evidence that was selected and assessed, which was the basis for legally characterizing the action of Mr. del Valle Ambrosio as being a necessary accomplice of the crime of aggravated fraud on account of fraudulent administration (folios 662/664), which the appellant omits because he ignored, bent or modified it.⁵¹

⁴⁶ Cf. Decision No. 396, of December 17, 1998, which declared inadmissible the appeal of cassation filed by Mr. Domínguez Linares (evidence file, folios 692 and 693)

⁴⁷ Cf. Decision No. 396, of December 17, 1998, which declared inadmissible the appeal of cassation filed by Mr. Domínguez Linares (evidence file, folio 705).

⁴⁸ This article reads as follows:

Article 406.- Standards for Deliberation. The Tribunal shall resolve all issues raised in the trial, arranging them, if possible, in the following order: the incidentals that have been deferred (384); those on the existence of a criminal act, the differentiation of the legally relevant circumstances; the participation of the accused; the legal characterization and applicable sanction; the requested restitution or compensation and costs.

The issues raised shall be resolved successively, by majority vote, taking into account the transcript of the debate, in accordance with Article 193.

The judges and the juries shall vote on each one of them, regardless of how they voted previously.

The accused shall be given the benefit of the doubt with respect to questions of fact.

If there are more than two opinions in the voting on the appropriate sanctions, the median term shall be applied.

⁴⁹ Cf. Interlocutory decision No. 7, Ninth Criminal Chamber of Córdoba, of March 5, 1998 (evidence file, folio 678).

⁵⁰ Cf. Decision No. 391, Criminal Division of the TSJC, of December 17, 1998 (evidence file, folio 1229).

⁵¹ Cf. Decision No. 391, Criminal Division of the TSJC, of December 17, 1998, (evidence file, folio 1236).

51. The Court notes that, as the State claimed, the Criminal Division reproached the appellant for having made certain errors of substance and, specifically, for a lack of correlation between the arguments presented and their substantiation, as well as the proper development of those arguments. The Criminal Division rebutted the facts and the arguments presented by the appellant strictly on the basis of the factual issues previously established by the Ninth Criminal Chamber. In effect, the Court notes that the determination of the Criminal Division was based exclusively on the transcript of the facts and the legal assessment of the *a quo* judge,⁵² which made it impossible for the *ad quem* judge to make a factual and legal review of the case.

52. In view of the foregoing, the Court observes that the central core of the defenses of Mr. del Valle Ambrosio and Mr. Domínguez Linares was comprised of, inter alia, a series of arguments questioning the assessment that the Ninth Criminal Chamber made of the facts of the case and of how they were part of an intentional pattern to commit the crime of aggravated fraud on account of fraudulent administration. The rules governing the remedy of cassation and the legal doctrine that preceded it, however, inhibited the *ad quem* tribunal from differing from the factual conclusions adopted by the *a quo* tribunal and, therefore, declared both appeals inadmissible. In this regard, while the State reaffirmed the inadmissibility of the appeals of cassation filed by the representatives of Mr. del Valle Ambrosio and Mr. Domínguez Linares because it did not find due grounds and that questions of fact and/or evidence were not raised in their appeals, the Court notes that those appeals were inadmissible mainly because of the impossibility of the *ad quem* tribunal to review the factual elements found proved by the court of first instance in order to be able, thus, to consider the arguments of each appellant.

53. Finally, the Court notes that, in the *Case of Mendoza et al. v. Argentina*, it concluded that the Argentine State did not comply with its obligation under Article 2 of the American Convention, in relation to Articles 8(2)(h) and 1(1) thereof, to the detriment of the victims in the case, since Article 474 of the Code of Criminal Procedure of the Province of Mendoza, in effect at the time of the events, and Article 456 of the Code of Criminal Procedure of Argentina did not permit a review of factual or evidentiary questions by a higher court.⁵³ In the *Case of Gorioitía v. Argentina*, the Court also determined that Article 503 of the Code of Criminal Procedure of the Province of Mendoza, in effect at the time of the events and which was substantially identical to the aforementioned Article 474, was in violation of Article 2 of the American Convention, in relation to Article 8(2)(h) thereof.⁵⁴ In the present case, the Court notes that Article 468 of the CPPC has an almost identical content as that of Article 456 of the Code of Criminal Procedure of Argentina, as well as that contained in Articles 474 and 456 of the Code of Criminal Procedure of the Province of Mendoza, in effect at the time of the events in each case.

54. The Court notes that Article 468 of the CPPC, which governed the grounds for filing an appeal of cassation, provides for only two specific possibilities that would allow the remedy to succeed: (i) the failure to observe or the erroneous application of the substantive law and (ii) the failure to observe the standards of the CPPC under penalty of inadmissibility, expiration or nullity. The Court observes, as it has done in other cases,⁵⁵ that a literal reading of the rules governing the remedy of cassation does not allow the review of factual or evidentiary issues by a higher court,⁵⁶ as in the

⁵² Cf. Decision No. 391, Criminal Division of the TSJC, of December 17, 1998 (evidence file, folios 1218 to 1249).

⁵³ Cf. *Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 14, 2013. Series C No. 260, Operative Paragraph 12, paras. 301 a 303.

⁵⁴ Cf. *Case of Gorioitía v. Argentina, supra*, Operative Paragraph 3 and paras. 55 and 56.

⁵⁵ Cf. *Case of Mendoza et al. v. Argentina, supra*, para. 253, *Case of Mohamed v. Argentina, supra*, para. 159, *Case of Gorioitía v. Argentina, supra*, para. 51.

⁵⁶ Cf. Expert opinion of Alberto Bovino (from the *Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 14, 2013. Series C No. 260, párr. 253).

present case. The Court, therefore, concludes that the State is responsible for the violation of Article 8(2)(h) of the Convention, in relation to Articles 1(1) and 2 thereof. In view of the violations declared in this Chapter, the Court does not find it necessary, in the present case, to rule on the alleged violation of Article 25(1) of the Convention.

VII REPARATIONS

55. Under the provisions of Article 63(1) of the American Convention, the Court has held that any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation and that this provision reflects a customary norm that is one of the fundamental principles of contemporary international law on the responsibility of a State.⁵⁷

56. The reparation of the harm caused by a violation of an international obligation requires, wherever possible, full restitution (*restitutio in integrum*), which consists of re-establishing the previous situation. Where this is not feasible, as in most cases involving human rights violations, the Court will order measures to guarantee the infringed rights and to repair the consequences of the violations.⁵⁸ The Court has, therefore, considered the need to grant different measures of reparation in order to redress, in an integral manner, the harm caused; accordingly, in addition to pecuniary compensation, measures of restitution and satisfaction and guarantees of non-repetition have special relevance to the harm caused.⁵⁹

57. The Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved and the measures requested to repair the respective harm. Consequently, the Court must observe the co-existence of these elements in order to rule appropriately and in accordance with the law.⁶⁰

58. Taking into account the violations of the American Convention declared in the previous Chapter and in light of the criteria established in the Court's case law as regards the nature and scope of the obligation to repair,⁶¹ the Court will proceed to examine the claims submitted by Commission, as well as the State's arguments, in order to establish the measures addressed to repair said violations.

A. Injured party and requested reparations

59. The Court considers that, in the terms of Article 63(1) of the Convention, the injured party is the person declared a victim of any right recognized in that instrument. Therefore, the Court considers Julio César Ramón del Valle Ambrosio and Carlos Eduardo Domínguez Linares to be "injured parties" who, in their capacity as victims of the violations declared in Chapter VI, will be beneficiaries of the reparations ordered by the Court.

60. Moreover, the Court observes that, in the present case, the brief with petitions, motions and arguments was declared inadmissible for being time-barred (*supra* para. 6). The Court, also, notes

⁵⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25 and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 224.

⁵⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 and 26 and *Case of Jenkins v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 26, 2019. Series C No. 7, para. 123.

⁵⁹ Cf. *Case of 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 Jenkins v. Argentina, supra*, para. 123.

⁶⁰ 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 Azul Rojas Marín et al. v. Peru, supra*, para. 224.

⁶¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 to 27 and *Case of Jenkins v. Argentina, supra*, para. 125.

that the representatives of the victims requested, in their final written briefs, compensation as integral reparation. In view of the foregoing, the Court declares that this request for reparations is inadmissible for being time-barred and, therefore, the Court will not refer to it in this Chapter.

B. Measures of satisfaction and guarantees of non-repetition

b.1 Measures of satisfaction

61. The **Commission** did not present recommendations of this specific point.

62. The **State** did not submit arguments on this specific point.

63. The **Court** holds, as it has ruled in other cases,⁶² that the State must publish once, within six months of the notification of this Judgment: a) the official summary of the Judgment prepared by the Court in the Official Gazette in an appropriate and legible font; b) the official summary of this Judgment of the Court in a newspaper of wide circulation in the Province of Córdoba in an appropriate and legible font, and c) the complete Judgment, available for a period of one year, on an official Web site of the State. The State must immediately inform the Court as soon as it has implemented each one of the publications ordered, independently of the period of one year to present its first report as ordered in Operative Paragraph 6 of the Judgment.

b.2 Guarantees of non-repetition

64. The **Commission** requested that the Court order the necessary measures to conform the domestic legislation regarding the remedy of cassation to the standards of the right enshrined in Article 8(2)(h) of the American Convention. It also requested that the State adopt the necessary legislative measures to ensure that the judicial authorities exercise a control of conventionality when resolving the appeals of judgments. In their final written observations, the Commission underlined that Article 468 of the Code of Criminal Procedure of Córdoba has not undergone any modification and, thus, continues to be incompatible with the Convention.

65. For its part, the **State** maintained that it has made constant efforts in recent years, on the national and provincial levels, to modernize its criminal procedure, adapting it to the principles set out in the American Convention. Among those efforts, it mentioned Law No. 10.547 of the amended Code of Criminal Procedure that introduced many changes. The State also claimed that in 2018 the Governor of the Province of Córdoba submitted to the Provincial Legislature a "Bill to partially amend the Code of Criminal Procedure" that would introduce modifications on deferring the resolution of appeals filed in the investigative phase until that phase is concluded. It also indicated that in 2019 it expected that the Commission on the Integral Reform of the Code of Criminal Procedure of the Province of Córdoba would conclude its work, which would modernize and streamline criminal trials to conform them to international human rights standards and criminal procedural guarantees.

66. The State also claimed that in 2005 the CSJN issued the "Casal" ruling in which it examined the scope of the appeal of cassation in the national legislation in light of the American Convention and the International Covenant on Civil and Political Rights. That decision held that the American Convention established, as a guarantee in favor of the accused, the right to appeal a judgment before a judge or higher court, set forth in its Article 8(2)(h). It also determined that the appeal of cassation, governed by Article 456 of the national Code of Criminal Procedure, allowed a broad review of a judgment. According to the State, the projection of this legal doctrine has had its impact in all of the

⁶² Cf. *Case of Comunidad Indígena Yakye Axa v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125, para. 227 and *Case of Jenkins v. Argentina, supra*, para. 134.

provinces of Argentina. Thus, the various provincial superior tribunals established criteria of interpretation that was in agreement with what was ordered in the "Casal case" *et seq.*, accepting and copying its breadth that is reviewable by an appeal of cassation.

67. The **Court** notes, in the first place, that the reform of the CPPC reported by the State, that is, the result of the adoption of Law No. 10.457,⁶³ does not modify the scope and content of the remedy of cassation, but rather it concerns, as the State indicated, the introduction of rules on the principles of timeliness; the possibility that the parties have assistants and advisors during the trial; the use of monitored house arrest; the possibility of replacing transcripts with audiovisual registries; an oral phase during the sentencing of preventive detention; the conversion of public action into private action, and a greater participation of the victim in the trial. The Court observes that the State also mentioned a future reform of the CPPC, without providing any evidence on the specific modifications that would be introduced and whether these have entered into force.

68. With respect to the aforementioned "Casal" ruling, the Court notes that, on September 20, 2005, the CSJN delivered that ruling in which it examined the judicial practice of courts in Argentina and, especially, that of the National Courts of Cassation Appeals, regarding the interpretation of the standards that govern the remedy of cassation.⁶⁴ That ruling held that [...] in summary, it must be understood that Article 456 of the Code of Criminal Procedure⁶⁵ should be construed to mean that it authorizes a broad review of a judgment, as extensively as possible to allow a maximum effort of review by the cassation appeal judges, in line with the possibilities and records of each particular case without magnifying the questions reserved for intermediation, inevitable only because of the oral proceedings in conformity with the nature of things."⁶⁶ Although the State has claimed that the "Casal" ruling has been a standard of interpretation accepted by the provincial lower courts, the Court notes that it has not provided any relevant evidence to show that, as a result of the "Casal" ruling, the domestic judicial practice in appeals of cassation against a decision of the court of first instance complies with the standards in the material, as exemplified by this case (*supra* para. 43).

69. Finally, the Court notes that, in the *Case of Mendoza et al. v. Argentina* and in the *Case of Gorigoitia v. Argentina*, it concluded that the State of Argentina had failed to comply with its obligation set forth in Article 2 of the American Convention, in relation to Article 8(2)(h) thereof, to the detriment of the victims in the present case, because the legislation on criminal procedure of the Province of Mendoza (the same as Article 456 of the Code of Criminal Procedure in the *Case of Mendoza et al. v. Argentina*) did not allow a review of factual and/or evidentiary issues by a higher court.⁶⁷ The Court, therefore, ordered the State "to adapt its domestic legal order to the parameters established in this Judgment."⁶⁸

70. In view of the foregoing, the similarity of this case with the cases cited and the lack of evidence that would confirm that the aforementioned violation has ceased, the Court decides that the State must, within a reasonable time, adapt its domestic legal order with respect to its legislation on

⁶³ Cf. Law No. 10.457, which amended the Code of Criminal Procedure of the Province of Córdoba, Official Bulletin of the Province of Córdoba of June 16, 2017, available at: https://boletinoficial.cba.gov.ar/wp-content/4p96humuzp/2017/06/1_Secc_16062017_EXTRAODINARIA.pdf

⁶⁴ Cf. Decision of the Supreme Court of Justice in the case "Casal, Matías Eugenio et al. for Attempted Robbery in the Third Degree," of September 20, 2005.

⁶⁵ Article 456 of the Criminal Code of Argentina is almost identical to Article 468 of the CPPC.

⁶⁶ Cf. Decision of the Supreme Court of Justice in the case "Casal, Matías Eugenio et al. for "Attempted Robbery in the Third Degree," of September 20, 2005.

⁶⁷ Cf. *Case of Mendoza et al. v. Argentina, supra*, paras. 301-303 and Operative Paragraph 22 and *Case of Gorigoitia v. Argentina, supra*, paras. 56 and 58 and Operative Paragraph 3.

⁶⁸ Cf. *Case of Mendoza et al. v. Argentina, supra*, para. 331 and Operative Paragraph 22 and *Case of Gorigoitia v. Argentina, supra*, para. 73 and Operative Paragraph 9.

criminal procedure in the Province of Córdoba to the parameters established in this Judgment on the right to appeal to a judge or higher court.

C. Other measures requested

71. The **Commission** requested that the State order the necessary measures so that, in the event that they so wish, Mr. del Valle Ambrosio and Mr. Domínguez Linares could file a recourse whereby they could obtain a broad review of the judgment.

72. The **State** did not submit arguments on this specific point.

73. The **Court** is of the opinion that the issuance of this Judgment and the reparations ordered therein are sufficient and appropriate and, therefore, the aforementioned measures are not ordered

D. Compensation

74. In general terms, the **Commission** asked that the State fully repair the violations of the human rights set forth in its Report on the Merits, including pecuniary and non-pecuniary damages.

75. In its final written observations, the Commission referred to the State's argument in which it asked that the request for compensation be rejected since the representatives of the alleged victims did not submit the brief of pleadings, motions and evidence in a timely manner. In this regard, the Commission indicated that the victims have the right to full reparations due to the consequences of the violations committed to their detriment by the State, pursuant to Article 63(1) of the American Convention.

76. For its part, the **State** asked that no measure be granted in this respect since the representatives of the alleged victims did not submit their brief with pleadings, motions and evidence in a timely manner. In its final written arguments, the State claimed that, pursuant to the Article 40 of the Court's Rules of Procedure, any "reparatory claim" that the alleged victims or their representatives submit beyond the time limit is "governed by the rule of procedural estoppel."

77. The **Court** has established in its jurisprudence that non-pecuniary damages "may include both the suffering and distress caused by the violation as an impairment of values that are highly significant to them as well as any change of a non-pecuniary nature that affects the living conditions of the victims." While it is not possible to assign to non-pecuniary damages a precise monetary equivalent, they can be a form of compensation for the full reparation of the victim, through the payment of a sum of money or the assignment of goods or services that can be assessed monetarily, as prudently determined by the Court, applying judicial discretion and the principle of equity.⁶⁹

78. Therefore, considering the circumstances of this case and the violations committed, the Court will now determine, in equity, the non-pecuniary compensation for the victims.

79. The Court, thus, orders, in equity, the payment of the sum of USD\$20,000 (twenty thousand United States of America dollars) as non-pecuniary damages to Julio César Ramón del Valle Ambrosio and the payment of the sum of USD\$20,000 (twenty thousand United States of America dollars) as non-pecuniary damages to Carlos Eduardo Domínguez Linares. The amounts established by the Court must be paid within one year of the date of notification of this Judgment.

⁶⁹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs, supra*, para. 84 and *Case of Carranza Alarcón v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 3, 2020. Series C No. 399, para. 108.*

E. Costs and Expenses

80. The **Commission** and the **State** did not present arguments on this point.

81. The **Court** has noted that “the claims of the victims or their representatives in the matter of costs and expenses, with the supporting evidence, must be presented to the Court at the first procedural moment, that is, in the brief with pleadings, motions and evidence, although such pretensions may later be adjusted if new costs and expenses have been incurred during the procedure before this Court.”⁷⁰ The Court reiterates that in this case the representatives requested the reimbursement of costs in their final written briefs. The request, therefore, is time-barred and must be rejected.

F. Method of complying with the payments ordered

82. The State shall pay compensation for the non-pecuniary damages established in this Judgment directly to the persons indicated therein, within one year of notification of this Judgment, in accordance with the following paragraphs.

83. If the beneficiaries have died or should die before they receive the respective compensation, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

84. The State must comply with its obligation by payment in United States dollars or, if that is not possible, in the equivalent amount in Argentine currency, using the highest and most beneficial exchange rate for the beneficiaries that is permitted by domestic order in force at the moment of payment. During the compliance phase of the Judgment, the Court may prudently adjust the equivalence of these numbers in the Argentine currency in order to avoid that the changes in the exchange rate substantially affect the buying power of those amounts.

85. If, for reasons that can be attributed to the beneficiaries of the compensation, it is not possible for them to receive it within the indicated time frame, the State shall deposit these amounts in their favor in an account or certificate of deposit in a solvent Argentine financial institution, in United States dollars and in the most favorable financial conditions permitted by Argentine banking law and practice. If, after 10 years, the compensation has not been claimed, the amounts shall be returned to the State with the accrued interest.

86. The amounts assigned in this Judgment as compensation must be given fully, as established in this Judgment, without deductions from eventual taxes.

87. If the State should incur arrears, it shall pay interest on the amount owed, corresponding to bank interest on arrears in Argentina.

**VIII
OPERATIVE PARAGRAPHS**

THE COURT

DECLARES,

⁷⁰ Cf. Article 40(d) of the Rules of the Court. See also, *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, supra, paras. 79 and 82 and *Case of Coc Max et al. (Massacre of Xamán) v. Guatemala. Merits, Reparations and Costs*. Judgment of August 22, 2018. Series C No. 356, para. 194.

Unanimously, that:

1. The State is responsible for the violation of the right to appeal the judgment contained in Article 8(2)(h) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 thereof, to the detriment of Julio César del Valle Ambrosio and Carlos Eduardo Domínguez Linares, in accordance with paragraphs 42 to 54 of this Judgment.

AND ESTABLISHES:

Unanimously, that:

2. This Judgment is per se a form of reparation.

3. The State shall publish the items indicated in paragraph 63 of this Judgment.

4. The State shall adapt, within a reasonable period, its domestic juridical order to the parameters established in this Judgment on the right to appeal a judgment to a judge or higher court, as established in paragraphs 67 to 70 of this Judgment.

5. The State shall pay the amounts established in paragraph 79 of this Judgment as compensation for non-pecuniary damages.

6. The State shall provide the Court with a report, within one year of the notification of this Judgment, on the measures taken to comply with it, without prejudice to the provisions of paragraph 63 of this Judgment.

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

Done at San José, Costa Rica on September 20, 2020, in the Spanish language.

I/A Court HR. *Case of Valle Ambrosio et al. v. Argentina*. Merits and Reparations. Judgment of July 20, 2020.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary