

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF ALMEIDA V. ARGENTINA

JUDGMENT OF NOVEMBER 17, 2020

(Merits, reparations and costs)

In the case of *Almeida v. Argentina*,

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

Elizabeth Odio Benito, President
Patricio Pazmiño Freire, Vice President
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 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, which is structured as follows:

* Judge Eduardo Vio Grossi did not take part in the deliberation and signature of this judgment for reasons of force majeure. Judge Eugenio Raúl Zaffaroni, an Argentine national, did not take part in the processing, deliberation, or signature of this judgment, in accordance with the provisions of Article 19(1) and (2) of the Court’s Rules of Procedure.

** The Deputy Secretary, Romina I. Sijniensky, did not participate in the processing of this case, or in the deliberation and signature of this judgment.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On August 7, 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of *Rufino Jorge Almeida with regard to the Argentine Republic* (hereinafter also “the State” or “Argentina”). The Commission indicated that the case involved a failure to apply Law 24,043 of November 27, 1991, to provide compensation to Mr. Rufino Jorge Almeida (hereinafter “Mr. Almeida” or “the alleged victim”) for the time during which he was under a regime similar to supervised release during the civil-military dictatorship. The Commission asked that the State be found responsible for the violation of the rights to adequate grounds, equal protection, and judicial protection, established in articles 8(1), 24, and 25(1) of the American Convention, in relation to articles 1(1) and 2 of the Convention, to the detriment of Rufino Jorge Almeida.
2. *Procedure before the Commission.* The procedure before the Commission was as follows:
 - a) *Petition.* On July 3, 2000, Rufino Jorge Almeida, Myriam Carsen, and Octavio Carsen filed a petition before the Commission alleging State responsibility to the detriment of Rufino Jorge Almeida.
 - b) *Admissibility Report.* The Commission approved Admissibility Report 45/14 on July 18, 2014.
 - c) *Report on the Merits.* On December 7, 2018, the Commission adopted Report on the Merits No. 147/18 in which it reached a series of conclusions¹ and made several recommendations to the State.
3. *Notification to the State.* The Report on the Merits was notified to the State in a communication dated February 7, 2019, giving it two months to report on compliance with the recommendations. The State asked for a first deadline extension, which was granted by the Commission. The State later requested a second deadline extension with identical terms and without submitting any specific information on implementation of the recommendations set forth in the Report on the Merits.
4. *Submission to the Court.* On August 7, 2019, the Commission submitted the totality of the facts and human rights violations described in the merits report before the jurisdiction of the Inter-American Court, “in view of the need to secure justice for the victim in the instant case.”²
5. *The Commission’s requests.* Based on the foregoing, the Commission asked the Court to find the State internationally responsible for the violations contained in its Report on the Merits (*supra* para. 2.c). The Commission asked the Court to order the State to provide measures of reparation, which are detailed and analyzed in Chapter VIII of this Judgment. This Court notes

¹ The Commission concluded that the State was responsible for the violation of the rights established in articles 8(1), 24, and 25(1) of the American Convention, in relation to the obligations established in articles 1(1) and 2 of the same instrument, to the detriment of Rufino Jorge Almeida.

² As its delegates before the Court, the Commission chose José Eguiguren Praeli, a Commissioner at the time, and the Executive Secretary at the time, Paulo Abrão. Also, as legal advisor, it selected Analía Banfi Viquez, a lawyer for the Office of the Secretary. Later, Commissioner Joel Hernández García was designated to replace José Eguiguren Praeli, and Secretariat lawyer Paulina Corominas was selected as the legal advisor.

with concern that more than 19 years have elapsed between the presentation of the initial petition before the Commission and the submission of this case to the Court.

II PROCEEDINGS BEFORE THE COURT

6. *Notification to the State and the representatives.* The State and the representatives of the alleged victims were notified of the submission of the case on February 11, 2019.

7. *Brief with pleadings, motions and evidence.* On November 11, 2019, the representative of the alleged victim (hereinafter “the representative”)³ presented her brief with pleadings, motions, and evidence (hereinafter “pleadings and motions brief”) pursuant to Articles 25 and 40 of the Court’s Rules of Procedure. The representative agreed with what the Commission had alleged and asked that the State be ordered to adopt a series of measures of reparation, in particular measures of non-repetition and to reimburse costs and expenses.

8. *Answering brief.* On February 5, 2020, the State⁴ submitted to the Court its brief answering the Commission’s submission of the case, together with its observations on the pleadings and motions brief (hereinafter “answering brief”). In its brief, the State recognized the conclusions of the Report on the Merits presented by the Commission, accepting its international responsibility pursuant to the terms indicated below (*infra* Chapter IV).

9. *Observations on acknowledgement of responsibility.* In briefs submitted on March 2, 2020, the Commission and the representative submitted, separately, their observations on the State’s recognition of responsibility.

10. *Final written argument.* On July 30, 2020, the President issued an Order⁵ whereby, taking into consideration the situation caused by the pandemic due to the spread of COVID-19, pursuant to the principle of procedural economy and the power granted to it by Article 50(1) of the Rules of Procedure of the Court, it decided not to call a public hearing in the present case and request the statements of the alleged victim and two expert witnesses by affidavit.⁶ The State submitted its expert witness report on August 27, 2020; the representative submitted her statement on August 28, 2020; and lastly, the Commission submitted its expert witness report on August 31, 2020.

11. *Final written arguments and observations.* On September 28, 2020, the representatives presented their final written arguments, along with a number of annexes. Likewise, on September 30, 2020, the State submitted its final written arguments. Lastly, the Commission submitted its final written observations on September 30, 2020. The documentation presented in the annex by

³ Mr. Octavio Carsen and Ms. Myriam Carsen acted as the alleged victim’s representatives before the Commission. Later, as a result of the poor health and subsequent death of Ottavio Carson, a note was received by the Secretariat of the Court on November 4, 2020, indicating that Myriam Carsen would be the exclusive representative before the Court.

⁴ The State appointed Alberto Javier Salgado, Director of International Human Rights Litigation of the Ministry of Foreign Affairs and Culture, as its lead agent and Gonzalo Luis Bueno, legal counsel of the Office International Human Rights Litigation of the Ministry of Foreign Affairs and Culture as alternate agent.

⁵ *Cf. Case of Almeida v. Argentina.* Order of the Inter-American Court of Human Rights of July 30, 2020. Available at: http://www.corteidh.or.cr/docs/asuntos/almeida_30_07_20.pdf.

⁶ Requested were the statement of the alleged victim, collected *ex officio* by the Court, and the expert witness reports of Roberto P. Saba—proposed by the Commission—and María José Gueembe—proposed by the State.

the representative was forwarded to the State and the Commission, which were given time to present their observations. Their observations were submitted on October 8, 2020.

12. *Deliberation of this case.* The Court deliberated on this judgment in a virtual session on November 17, 2020.⁷

III COMPETENCE

13. 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 Convention since September 5, 1984, and accepted the contentious jurisdiction of the Court on the same date.

IV ACKNOWLEDGMENT OF RESPONSIBILITY

A. Recognition by the State, observations of the parties and of the Commission

14. In its answering brief, the **State** accepted "the conclusions contained in Report on the Merits 147/18 adopted by the [...] Inter-American Commission on Human Rights," and consequently, recognized "the Argentine State's responsibility for the rights violations determined in Report on the Merits 147/18." On making this recognition, the State noted "the marked exceptionality of Mr. Almeida's case," noting the dates, circumstances, and facts characterizing Mr. Almeida's situation and that of his partner, who was a beneficiary of compensation provided for under Law 24,043, as well as the clarity of his statement regarding the situation of supervised release to which he was subjected.

15. Regarding the reparations, the **State** asked the Court to establish the pecuniary reparations and sums for costs and expenses associated with this procedure based on the criteria of equity. However, it argued that the institutional measures of reparations requested by the representative "ignore the exceptional nature of [Mr.] Almeida's situation." Effectively, it underscored that "both the courts and the administrative forums have for years used a broader interpretation of cases of supervised release," for which reason it is not necessary to update the administrative mechanisms or issued new criteria to the personnel involved in processing requests for reparation or amending the law.

16. The **Commission** "view[ed] very positively the statement of the [...] Argentine State recognizing its international responsibility, which constitutes a positive contribution to the development of this international process and the dignification of the victim." Regarding the nonpecuniary measures of reparation, it underscored the presence of international responsibility for violation of Article 2 of the Convention for excluding *de facto* supervised release from being covered under Law 24,043, but that this situation "was in general terms corrected subsequently through [...] judicial interpretation." It therefore asked that the pertinence of the measures of reparation proposed by the representative be evaluated based on these considerations.

17. The **representative** welcomed "the Argentine State's willingness through its current representatives to recognize, in the particular case of this party, its international responsibility for

⁷ Due to the exceptional circumstances brought about by the COVID-19 pandemic, this judgment was deliberated and approved during the 138th Regular Period of Sessions, which was held remotely, using technological means, in keeping with the provisions of the Rules of Procedure of the Court. See Press Release No. 111/2020, of October 29, 2020, available here: http://www.corteidh.or.cr/docs/comunicados/cp_111_2020.pdf.

the violations alleged." However, she argued that the recognition of responsibility is partial, "as it does not recognize that the violations of the Convention alleged [...] are not exceptional and continue to this day." She specifically underscored that the State fails to recognize that domestic law empowers the Supreme Court of the Nation to not provide grounds for its judgments and permits refusal to analyze human rights violations based on mere formalities. She therefore reiterated her request for measures of nonpecuniary reparations.

B. Considerations of the Court

18. Pursuant to Articles 62 and 64 of the Rules of Procedure, and in exercise of its authority in relation to the international protection of human rights, a matter of international law, the Court must ensure that acts of recognition of responsibility are acceptable for the purposes pursued by the inter-American system.⁸ The Court will now proceed to analyze the situation in this specific case.

B.1. Regarding the facts

19. Argentina recognized its international responsibility for all the human rights violations indicated by the Commission (*infra*, para. 20). It is the Court's understanding that, by accepting all the human rights violations described in the Report on the Merits, the State has also recognized all the facts set forth in the report establishing these violations.

B.2. Regarding the legal claims

20. This Court finds that the State's recognition constitutes acceptance of the Commission's legal claims as to the violation of the right to equal protection, the right to adequate grounding of judicial decisions, and the right to judicial protection, recognized in articles 24, 8(1) and 25(1) of the Convention, in relation to articles 1(1) and 2 of the Convention. It is therefore concluded that there are no disputes as to the merits.

B.3. Regarding the reparations

21. Lastly, with regard to reparations, the State explicitly accepted the pecuniary reparations requested by the Commission and by the representative. However, it argued there was no reason to order any of the measures of non-repetition requested. Therefore, the only remaining dispute is over the exceptional nature of Mr. Almeida's case and whether there is a need to take general measures to ensure compliance with the obligations derived from Article 2 of the Convention in response to the observations made by the representative on the State's recognition of responsibility. Thus, the Court will analyze the measures requested in the section of this judgment on reparations.

B.4. Assessment of the acknowledgement of responsibility

22. The Court finds that the total acknowledgement of international responsibility makes a positive contribution to the development of these proceedings and the observance of the principles that inspire the Convention, as well as to the victims' needs for reparation.⁹ The acknowledgement made by the State has full legal effects pursuant to above-mentioned articles 62 and 64 of the Court's Rules of Procedure, and has significant symbolic value to ensure that similar facts are not

⁸ Cf. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment dated May 26, 2010. Series C No. 213, para. 17, and *Case of Fernández Prieto and Tumbeiro v. Argentina*. Merits and Reparations. Judgment of September 1, 2020. Series C No. 411, para. 19.

⁹ Cf. *Case of Benavides Cevallos v. Ecuador. Merits, Reparations, and Costs*. Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of Fernández Prieto and Tumbeiro v. Argentina, supra*, para. 20.

repeated. Owing to the comprehensive acknowledgement made by the State, the Court considers that the legal dispute in this case has ceased with regard to the facts and the merits, and the legal dispute persists only with regard to nonpecuniary measures of reparation.

23. Based on the violations acknowledged by the State and the requests of the parties and the Commission, the Court considers it necessary to deliver a judgment in which it determines the facts that occurred based on the evidence provided in the proceedings before it and their recognition by the State, as doing so contributes to providing victims with reparations, preventing similar facts from being repeated, and, essentially, fulfilling the purpose of the inter-American human rights jurisdiction.¹⁰

24. Nevertheless, on this occasion, the Court does not find it necessary to conduct a detailed discussion of all the points that were the purpose of the litigation, in view of the State's broad recognition of international responsibility and because the rights claims made and recognized in this case have already been subjected to jurisprudential development by the Inter-American Court.

V EVIDENCE

A. Admissibility of the documentary evidence

25. The Court received various documents presented as evidence by the Commission, the representative, and the State, which, as in other cases, it admits in the understanding that they were presented at the appropriate procedural moment (Article 57 of the Rules of Procedure).¹¹

26. Additionally, the representative attached a series of documents in an annex to her observations on both the State's recognition of responsibility and on its final arguments.¹² The Court notes that this documentation is inadmissible on being time-barred.

¹⁰ Cf. *Case of Tu Tojin v. Guatemala. Merits, Reparations, and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Argentina, supra*, para. 21.

¹¹ Documentary evidence, in general and pursuant to Article 57(2) of the Rules of Procedure, may be presented with the application brief, the pleadings and motions brief, or the answering brief, as applicable, and evidence submitted outside these procedural opportunities cannot be admitted, except in the event of the exceptions stated in the aforementioned Article 57(2) of the Rules of Procedure (namely, force majeure, serious impediment) or it refers to an event which occurred after the procedural moments indicated. Cf. *Case of the Barrios Family v. Venezuela. Merits, Reparations, and Costs*. Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18; and *Case of Olivares Muñoz et al. v. Venezuela. Merits, Reparations, and Costs*. Judgment of November 10, 2020. Series C No. 415, para. 39.

¹² Along with her observations on the recognition, the representative submitted a copy of several pages of a judgment by the National Federal Criminal and Correctional Court 3 in case 14,216/03, titled "Suárez Mason Carlos y otros sobre privación ilegal de la libertad," in which Mr. Almeida's testimony is mentioned (evidence file, folios 1397-1402); copy of the motion filed by the General Director of Legal Affairs of the Ministry of Justice and Human Rights in case file CUDAP S04:0054313/2012 (file on the merits, folios 1404-1413); copy of technical report 294/14 of December 22, 2014, filed by the Coordinator of law 24,043 of the Secretariat on Human Rights before the Ministry of Justice and Human Rights in the framework of casefile S04:0054313/12 (evidence file, folios 1414-1418); copy of the Resolution of the Federal Contentious-Administrative Court (Chamber IV) of October 17, 2017, in the framework of case file 29,745/2017/CA1 (evidence file, folios 1419-1430); copy of resolution of April 17, 2018, whereby the Supreme Court of the Nation declared inadmissible the special motion brought in the framework of case file 29,745/2017/RH1 (evidence file, folio 1431); copy of Court Order IF-2018-30923206-APN-DGAJ#MJ of June 29, 2018 (evidence file, folios 1434-1435), and motion filed before the Ministry of Justice and Human Rights of November 5, 2019, in the framework of case file S04:55830/2016 (evidence file, folios 1436-1456).

Additionally, along with her final arguments, the representative submitted as evidence the legal report of an *amparo* motion for unreasonable delay (evidence file, folios 1538-1545); copy of Law 26,913 on the Reparations Regime for Former Political Prisoners of the Argentine Republic of November 27, 2013 (evidence file, folios 1546-1548); motion for reconsideration of dismissal of appeal filed by J.A.B. before the Supreme Court of Justice of the Nation (evidence

B. Admissibility of the testimonial and expert evidence

27. The Court finds it pertinent to admit the statements provided by affidavit,¹³ insofar as these are in keeping with the purpose defined by the Order that required them and the purpose of this case.

VI FACTS

28. In this chapter, the Court will establish the facts considered proven in this case based on the body of evidence admitted, the factual framework established by the Report on the Merits, and the State's recognition of international responsibility. Facts submitted by the parties to explain or clarify this factual framework will also be included.¹⁴ Hereinafter, the facts will be set forth in the following order: A) The regime for reparation of human rights violations committed during the dictatorship in Argentina; B) The facts that took place with respect to Mr. Almeida during the dictatorship; and C) The procedure for requesting reparations for Mr. Almeida domestically.

A. The regime for reparation of human rights violations committed during the dictatorship in Argentina

29. In 1976, a *coup d'état* set up a dictatorship in Argentina that remained in power until December 1983, systematically committing grave human rights violations. With the return to democracy, the victims began filing legal actions demanding compensation for the grave human rights violations suffered during the dictatorship. However, this route was not effective for addressing the situations in question. In particular, given the secrecy that characterized the State terrorism, it was difficult to meet standards of evidence. Additionally, the prescription regime for civil actions, established in article 4037 of the Civil Code in force at the time, gave a deadline of two years for filing lawsuits.¹⁵

30. In response to these difficulties, the Argentine State decided to establish a legal regime of reparation measures for victims of the dictatorship. The first measures were restorative in nature. Thus, in 1984, laws were passed reinstating public officials who had been dismissed from their

casefile, pages 1549-1559); copy of Decree 1058/2014, establishing the regulations for Law 26,913 (evidence file, folios 1560-1563); Judgment of the Supreme Court of Justice of the Nation in the case of J.A.B. (evidence file, folios 1564-1565), and the Judgments of the Federal Contentious Administrative Chamber in the case of J.A.B. (evidence file, pages 1566-1576).

¹³ The Court received testimony given by affidavit by Rufino Jorge Almeida, procured *ex officio* by the Court; it also received the expert reports of Roberto P. Saba and María José Guembe, offered by the Commission and by the State, respectively.

¹⁴ Cf. *Case of the "Five Pensioners" v. Peru. Merits, Reparations, and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Acosta Martínez et al. v. Argentina. Merits, Reparations, and Costs*. Judgment of August 31, 2020. Series C No. 410, para. 30.

¹⁵ Cf. Expert witness report given before notary public by María José Guembe on August 26, 2020 (evidence file, folio 1468).

positions for political or labor union reasons.¹⁶ Measures were then adopted granting a pension to the partners and children of the persons detained or disappeared during the dictatorial regime.¹⁷

31. The measures of compensation were taken up starting in 1991, in execution of a friendly settlement agreement with the Inter-American Commission. Indeed, in 1989, a group of persons who had been illegally detained by the military junta filed petitions before the Commission alleging that the rulings of the Supreme Court of Justice of the Nation declaring that prescription applied to their lawsuits for damages violated the right to justice and judicial guarantees.¹⁸ In the framework of the friendly settlement agreement with the Commission, the State enacted Decree 70/91 of January 10, 1991, establishing benefits for individuals who had been held by the National Executive Branch (*Poder Ejecutivo Nacional*, hereinafter "PEN") under an order issued by it prior to December 10, 1983 and who, having filed suit seeking compensation for damages for this prior to September 10 1985, were not able to obtain satisfaction upon prescription being applied via final judgment.¹⁹ On November 27, 1991, Law 24,043 was passed, granting benefits to persons held by the PEN during martial law or who, as civilians, were detained on warrants issued by courts martial.²⁰ Specifically, the law establishes as follows:

Article 1. The persons who, while martial law was in effect, were held by the National Executive Branch on its orders, or who, being civilians, were detained on warrants issued by courts martial, whether or not a trial was initiated for damages, shall have access to the benefits under this law, as long as they have not received any compensation via court judgment for the facts considered herein.

Article 2. To avail themselves of the benefits under this law, the persons referred to in the above article must meet one of the following requirements:

- a) Having been held under the supervision of the National Executive Branch prior to December 10, 1983.
- b) As civilians, having been deprived of their liberty through warrants issued by courts martial, whether or not convicted by such courts.

Article 3. The beneficiary's request shall be made before the Ministry of Interior Affairs, which shall, with all due haste, confirm that the requirements set forth in the above articles are met and determine the duration of the measure described in article 2, subparagraphs a) and b).

A ruling fully or partially denying the benefit shall be appealable within ten (10) days after notification before the National Contentious Administrative Federal Appeals Court of the Federal Capital. The motion shall include the grounds for the appeal, and the Ministry of

¹⁶ Cf. Law No. 23,053 of February 22, 1984, reinstating foreign service personnel; Law 23,117 of September 30, 1984, reinstating workers who had been fired or dismissed from mixed State enterprises for political, labor union, or social reason; Law 23,238 of September 10, 1985, reinstating laid off teachers; Law 23,523 of June 24, 1988, which enabled the reinstatement of bank workers dismissed for political or labor union reasons, and Law 23,278 of September 28, 1985, which ordered that the period of inactivity be counted for the purposes of retirement for those individuals who, for political or labor union reasons, were laid off, declared dispensable, or forced to resign from their public or private positions or forced to go into exile (expert witness report given before public notary by María José Gumbre on August 26, 2020, evidence file, folios 1470-1471).

¹⁷ Cf. Law 23,466 of December 10, 1986, which grants a pension to the heirs of persons disappeared between March 24, 1976, and December 9, 1983 (expert witness report given before public notary by María José Gumbre on August 26, 2020, evidence file, folio 1471).

¹⁸ Cf. IACHR, Report No. 1/93 on friendly settlement regarding cases 10.288, 10.310, 10.436, 10.496, 10.631, and 10.771 of March 3, 1993.

¹⁹ Cf. Decree 70/91 of January 10, 1991, establishing benefits for individuals who had been held by the National Executive Branch under an order issued by it prior to December 10, 1983 and who, having filed suit seeking compensation for damages for this prior to September 10 1985, were not able to obtain satisfaction upon prescription being applied via final judgment (evidence file, folio 405).

²⁰ Cf. Evidence file, folios 410 and 411.

Interior Affairs shall send the Court its opinion within five days. The Court shall reach a decision without further processing within twenty (20) days of receiving the interventions.

Article 4. The benefit established in this law shall be equal to one thirtieth of the monthly remuneration assigned to the top category of the pay scale for civilian personnel in the national government (approved by Decree 1428 of February 22, 1973, or its replacement) for each day the order referred to in article 2, subparagraphs a) and b) lasted, for each beneficiary. For these purposes, monthly remuneration will be considered to include all the parts of an agent's salary subjected to retirement contributions, excluding special additions (for seniority, title, etc.), and the amount shall correspond to the month in which the benefit is granted.

To calculate the period described in the preceding paragraph, the Executive Decree ordering the measure shall be used, or the arrest effectively carried out without an order from the competent judicial authority, followed by its nullification, either by a specific action or as a consequence of the end of the declaration of martial law.

House arrest or supervised release shall not be construed as an order having been rescinded. [...]

32. This compensation policy was expanded and supplemented by other laws establishing benefits for a variety of categories of victims of the dictatorships and their heirs.²¹ Additionally, Law 27,143 of May 27, 2015, established that the benefits established in the collection of laws on reparations do not expire.²²

B. The facts that took place with respect to Mr. Almeida during the dictatorship

33. Mr. Rufina Jorge Almeida was born on May 4, 1956, in the city of La Plata and is married to Ms. Claudia Graciela Esteves. On June 4, 1978, he was kidnapped by members of the Argentine Armed Forces and security forces along with his wife.²³ He was held for 54 days as a detainee-disappeared person in the secret detention camp known as "The Bank,"²⁴ where he was tortured.²⁵

34. Upon his release from detention on July 27, 1978, he was placed in a regime of "de facto supervised release."²⁶ Effectively, upon his release, Mr. Almeida and his wife were placed in the custody of the former's father. From that moment, a system of monitoring began that can be compared to a supervised release regimen, in which they were visited by guards from the "El

²¹ Cf. Law 25,914 of August 4, 2004, establishing benefits for persons born while their mothers were deprived of liberty or who, being minors, were detained because of their parents, as long as one of their parents had been detained and/or disappeared for political reasons, upon the orders of the PEN and/or courts martial; Law 24,411 of December 7, 1994, establishing the benefits to which the rightful claimants of forcedly disappeared persons shall be entitled; and Law 26,913 of November 27, 2013, establishing a reparations regime for former political prisoners (Expert witness report given before notary public by María José Guembe on August 26, 2020, evidence file, folios 1469 and 1480 to 1486).

²² Cf. Expert witness report given before notary public by María José Guembe on August 26, 2020 (evidence file, folio 1486).

²³ Cf. Testimony given before the Criminal Court by Rufino Jorge Almeida on March 13, 1987, in the case of "Suarez Mason, Carlos Guillermo *et al.* regarding homicide and illegal deprivation of liberty," (evidence file, folios 3 to 24).

²⁴ Cf. Attestation given by the President of the National Appeals Chamber to the Subsecretariat of Human Rights on June 24, 1996 (evidence file, folio 663).

²⁵ Cf. Testimony given before the Criminal Court by Rufino Jorge Almeida on March 13, 1987, in the case of "Suarez Mason, Carlos Guillermo *et al.* regarding homicide and illegal deprivation of liberty," (evidence file, folios 3 to 24).

²⁶ Cf. Petition presented before the Commission, June 26, 2000 (evidence file, folio 280).

Banco" secret camp. They were also given a phone number where they had to make check-in calls.²⁷ The supervised release ended on April 30, 1983.

C. The procedure for requesting reparations for Mr. Almeida domestically

35. On February 21, 1995, Mr. Almeida filed a request for the benefits provided for under Law 24,043.²⁸ After the Secretariat on Human and Social Rights confirmed he met the legal requirements,²⁹ the Ministry on Interior Affairs issued resolution 2638/96 of October 3, 1996, recognizing Mr. Almeida's right to compensation for 54 days of illegal detention.³⁰ Mr. Almeida was notified of this resolution on October 8, 1996.³¹

36. On November 6, 1996, Mr. Almeida filed a motion of appeal before the Ministry of Interior Affairs. He argued that resolution 2638/96 did not, for the calculation of his compensation, take into account the 1795 days during which he was kept under a form of supervised release regime.³² On March 25, 1999, the National Federal Contentious Administrative Chamber upheld the ruling under appeal, finding that:

The plaintiff's claim that the detention period should be counted as ending on April 30, 1983, because up until that date following his release on July 27, 1978, he had to report to "Colores," Javier, and Julián the Turk is dismissed because, irrespective of the truth of his claims, his situation is not provided for under Law 21,650,³³ to which, Law 24,043 implicitly refers where it stipulates that release under surveillance should not be construed as termination of the measure restricting freedom and, as a result, authorizes extension of the period of detention subject to compensation until the achievement of full freedom.³⁴

37. On April 22, 1999, Mr. Almeida filed a special appeal of the resolution of the National Federal Contentious Administrative Chamber. Specifically, he argued that the Supreme Court of Justice had issued a broader interpretation of what should be considered included in the concept of "supervised release."³⁵ To plead his case, he referred to other casefiles in which the Court had agreed in similar cases.

²⁷ Cf. Testimony given before the Criminal Court by Rufino Jorge Almeida on March 13, 1987, in the case of "Suarez Mason, Carlos Guillermo et al. regarding homicide and illegal deprivation of liberty," (evidence file, folio 14).

²⁸ Cf. Copy of the request submitted to the National Human Rights Office on February 21, 1995, by Mr. Rufino Jorge Almeida (evidence file, folios 657 and 658).

²⁹ Cf. Ruling of the Subsecretary of Human and Social Rights of July 3, 1996 (evidence file, folios 664 and 665).

³⁰ Cf. Resolution of the Ministry of Interior Affairs of October 3, 1996, No. 2638/96 (evidence file, folios 669 to 671).

³¹ Cf. Notification document dated October 8, 1996 (evidence file, folios 676 to 678).

³² Cf. Motion of appeal and request for forwarding of proceedings to the National Federal Contentious Administrative Chamber, filed before the Ministry of Interior Affairs by Rufino Jorge Almeida on November 6, 1996 (evidence file, folios 362 to 368).

³³ Institutional Act of September 1, 1977, referring to the authorities granted and the rights enshrined by article 23 of the Constitution on Martial Law and establishing that arrest ordered by the President of the Nation can be served in a criminal facility or jail; in a military facility; or by security forces, in whatever location is selected for each case, placing limits on the movement of the arrestee, under a regime of supervised release, and in the arrestee's own home. Law 21,650 established the regulations for this Act, specifically the conditions for supervised release (article 5), that is, that the presidential decree ordering this form of compliance with the arrest shall indicate: a) the location where the arrestee is to remain; b) the geographical limits of the arrestee's movement; and c) the military, security or police authority before which the arrestee must comply with the measure.

³⁴ Resolution issued by the National Federal Contentious Administrative Chamber of March 25, 1999 (evidence file, folio 371).

³⁵ Cf. Appeal filed before the Supreme Court of the Nation by Jorge Rufino Almeida on April 22, 1999 (evidence file, folio 375).

38. Effectively, on July 15, 1997, the Supreme Court of Justice of the Nation issued a judgment in the case of "Noro, Horacio José v. Ministry of Interior Affairs" ruling on the appeal filed by the State against the resolution of the National Federal Contentious Administrative Chamber granting the benefit of Law 24,043 to Mr. Noro. In its ruling the Supreme Court found as follows:

The purpose of Law 24,043 was to grant financial compensation to persons deprived of their constitutional right to liberty, not by virtue of an order issued by the competent judicial authority but because of acts—whatever their formal expression—emanating illegally in certain circumstances from courts-martial or from those exercising the power of the Executive Branch of the Nation during the last *de facto* government. The essence is not the form taken by the act of authority—much less whether it meets the requirements of article 5 of law 21,650—but demonstrating the damage effectively done to liberty, to the different degrees set forth in law 24,043.

[...]

Therefore, the law established that for the purposes of determining when the measures concluded (the grounds set forth in article 2) house arrest and supervised release will not be considered. Given that the purpose was to satisfy demands for equity and justice, and given that the law does not contain any definitions, "supervised release" should include both those cases that fell formally under the regulations of the *de facto* government [...] and other cases in which the individual was subjected to control and monitoring without guarantees or without the full exercise thereof, demonstrable on the merits, representing comparable harm to their liberty.³⁶

39. On June 8, 1999, the National Federal Contentious Administrative Chamber denied the special appeal filed by Mr. Almeida on the grounds that it did not demonstrate an exception indicating that the judgment was based on flawed logic or an obvious lack of legal grounds.³⁷ Mr. Almeida filed a motion for reconsideration of dismissal of appeal before the Supreme Court of Justice of the Nation on July 7, 1999,³⁸ which was found inadmissible by a resolution issued December 2, 1999.³⁹

40. On November 28, 2003, the National Federal Contentious Administrative Chamber issued a judgment in the framework of case 143625/2002: "Robasto, Jorge Enrique v. Ministry of Justice and Human Rights." The purpose of the judgment was to resolve an appeal filed against a resolution of the Ministry of Justice and Human Rights that did not take into account the period during which Mr. Robasto was under a supervised release regimen when calculating the compensation provided for under Law 24,043. In its examination of the appeal, the Chamber referred to the precedent set in the *Noro* case before the Supreme Court. Specifically, it stated that:

The record sufficiently demonstrates that the appellant was in a situation in which his personal liberty was restricted, as contemplated by lawmakers in the wording of paragraph three of article 4 of law 24,043, which establishes that house arrest or supervised release

³⁶ Judgment issued by the Supreme Court of Justice on July 15, 1997, case of "Noro, Horacio José v. Ministry of Foreign Affairs" (evidence file, folios 50 to 52).

³⁷ Resolution issued by the National Federal Contentious Administrative Chamber of June 8, 1999 (evidence file, folio 61).

³⁸ *Cf.* Copy of the motion for reconsideration of dismissal of appeal filed by Rufino Jorge Almeida before the Supreme Court of Justice on July 7, 1999 (evidence file, folios 64 to 73).

³⁹ *Cf.* Resolution of the Supreme Court of Justice of the Nation of December 2, 1999 (evidence file, folio 75).

will not be considered the end of the measure, as it entails an obligation to—at the very least—check in by phone to report one’s whereabouts.⁴⁰

41. Based on the similarity of the *Robasto* case to the situation, on December 27, 2004, Mr. Almeida filed an appeal for revocation of decision before the Ministry of Justice and Human Rights, expanded on March 28, 2006, to request amendment of administrative resolution 2638/96 to adapt it to the new criteria that was being applied to identical situations.⁴¹ Effectively, Mr. Almeida indicated that based on this precedent, the Human Right Secretariat modified its criteria for interpreting the scope of Law 24,043 to include cases of supervised release ordered by the competent authority under the framework of a supposed legal order as eligible for compensation. By resolution 1243/2006, on August 14, 2006, the Ministry of Justice and Human Rights rejected the appeal for revocation of decision on the grounds that Mr. Almeida was requesting modification of a judicial judgment.⁴² On August 29, 2006, Mr. Almeida filed a motion for reconsideration before the Ministry of Justice and Human Rights.⁴³ On September 25, 2006, the Ministry of Justice and Human Rights rejected this motion on the grounds that "rejection of the complaint filed before the Supreme Court of Justice of the Nation puts an end to any attempt to seek review of the matter under consideration."⁴⁴

42. Resolution M.I. 14 of January 18, 1999, granted Claudia Graciela Estevez—Mr. Almeida’s wife—57 days worth of compensation on being a beneficiary as provided for under Law 24,043. In October 2014, Ms. Estevez again asked to be granted the benefit under Law 24,043, this time for the deprivation of liberty she suffered during the period in which she was subjected to supervised release under the same conditions as her husband, Rufino Jorge Almeida. In a resolution issued on May 22, 2015, the Ministry of Justice and Human Rights decided to grant the benefit to Ms. Estevez for a total of 1709 days eligible for compensation.⁴⁵

VII MERITS

43. This case addresses an alleged lack of compensation to Mr. Rufino Jorge Almeida for the time during which he was under a regime similar to supervised release. As described in this Judgment (*supra* paras. 14 to 24), the State fully recognized its responsibility in terms set forth by the Commission in its Report on the Merits. It is therefore not necessary to conduct an exhaustive analysis of the violations alleged by the Commission and the representative and that the State recognized.

⁴⁰ Judgment of the National Federal Contentious Administrative Chamber of November 28, 2003 in the case of "Robasto, Jorge Enrique v. Ministry of Justice and Human Rights." (case 143625/2002) (evidence file, folios 77 to 81)

⁴¹ *Cf.* Brief filed before the Ministry of Justice and Human Rights by Rufino Jorge Almeida on March 28, 2006 (evidence file, folios 1065 to 1068).

⁴² *Cf.* Resolution 1243 issued by the Ministry of Justice and Human Rights on August 14, 2006 (evidence file, folios 1069 to 1071).

⁴³ *Cf.* Motion filed before the Ministry of Justice and Human Rights by Rufino Jorge Almeida on August 29, 2006 (evidence file, folios 1078 to 1086).

⁴⁴ Resolution of the Ministry of Justice and Human Rights of September 25, 2006 (evidence file, folios 1093 to 1095).

⁴⁵ *Cf.* Resolution of the Ministry of Justice and Human Rights of May 22, 2015 (evidence file, folios 83 to 85).

VII-1
RIGHT TO JUDICIAL GUARANTEES,⁴⁶ EQUAL PROTECTION,⁴⁷ AND JUDICIAL PROTECTION,⁴⁸ IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS⁴⁹ AND THE DUTY TO ADOPT DOMESTIC LEGAL EFFECTS⁵⁰

A. Arguments of the parties and of the Commission

44. The **Commission** recalled that “ensuring reparation for the violation of an international obligation of the State—such as a restriction on personal liberty—is not optional, but mandatory,” for which reason Law 24,043 merely regulates a special procedure to fulfill this obligation. It likewise noted that the law “does not seek to cover all cases of human rights violations that occurred under the country’s last civil-military dictatorship, and therefore the exclusion of some kinds of cases from the terms of the law is not per se a violation of the right to equal protection under the law, provided that said exclusion responds to an objective and reasonable justification and is proportional to the aims sought.” It argued, however, that the exclusion of the *de facto* supervised release to which Mr. Almeida was subjected violated the right to equal protection, as the State did not provide an explanation for why that exclusion was objective and reasonable.

45. The Commission noted that this situation was generally corrected subsequently with an interpretation issued through the *Robasto* case. However, it underscored that this change in the stance of domestic authorities did not benefit Mr. Almeida. Effectively, even though he filed for remedies both administratively and in the judicial system to obtain the reparation based on these new interpretive criteria, his claims were rejected based on a procedural consideration under which the situation in his case was one of *res judicata* that prevented further review. It therefore concluded that the State “is responsible for the violation of the right to judicial protection set forth under Article 25(1) of the American Convention, read together with the right to equal protection under the law provided for in Article 24 [...]”

46. The **representative** agreed with the Commission’s conclusions in its Report on the Merits. She underscored that, despite the change in operating criteria following the *Robasto* case and the revisions on handling evidence, “this criteria was questioned again and again by the State itself, leading to unequal treatment depending on the point in history and the Minister of Justice and Human Rights in charge of the portfolio.” In the final arguments, she indicated that because “restrictive application of law 24,043 to exclude [the case of Mr. Almeida], Article 24 of the Convention was violated, and because there were no adequate domestic remedies for restoring the right violated, Article 25(1) of the Convention was also violated.”

47. The **State** recognized its responsibility for the violation of articles 24 and 25(1) in relation to articles 1(1) and 2 of the Convention; however, it highlighted “the marked exceptionality of Mr. Almeida’s case, which did not properly reflect the change in the criteria of the Argentine justice system and administration, under which for several years new situations like his have been covered under the supervised release described by Law 24,043.” In its final arguments, it added that application of the precedent set by the Supreme Court in the *Noro* case to judicial and administrative matters “has had the result that is ultimately being required under the American Convention and that is here in at issue: the equitable application of Law 24,043 with regard to both *de jure* and *de facto* supervised release.

⁴⁶ Article 8(1) of the Convention.

⁴⁷ Articles 1(1) and 24 of the Convention.

⁴⁸ Article 25(1) of the Convention.

⁴⁹ Article 1(1) of the Convention.

⁵⁰ Article 2 of the Convention.

B. Considerations of the Court

48. This Court has recognized that, should domestic mechanisms exist for determining forms of reparation, these procedures and the results should be praised,⁵¹ as they constitute a State effort toward a collective process of reparation and social peace. It likewise highlights a number of international documents that explicitly recognize the right of the victims of human rights violations to access remedies and obtain individual reparations. They include the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;⁵² the Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity;⁵³ and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.⁵⁴ Similar to what this Court has established, the European Court of Human Rights has recognized the compatibility of collective and individual measures.⁵⁵ These mechanisms must meet criteria of objectivity, reasonableness, and effectiveness to provide adequate reparations for rights violations.⁵⁶

49. Starting the 1990s, Argentina began developing a policy of providing administrative measures of reparation to victims of the last dictatorship (see *supra* para. 29 to 32). Among these measures was Law 24,043, which established benefits for persons held by the PEN during martial law or who, as civilians, were detained on warrants issued by courts martial. It was at first understood that *de facto* situations of monitored release were excluded from this compensation mechanism, meaning supervised release where there was no order formally establishing the measure. However, this interpretation was later modified by the courts. Indeed, in its 1997 ruling in the *Noro* case, the Supreme Court of Justice explicitly established that the purpose of the law was to grant financial compensation to persons deprived of their constitutional right to liberty, regardless of the form of the active authority producing that deprivation (*supra* para. 38), and this interpretation was adopted by the National Federal Contentious Administrative Chamber with the 2003 *Robasto* case (*supra* para. 40).

50. Mr. Almeida filed his administrative suit for deprivation of liberty suffered during the period of the dictatorship in 1995—that is, before the change in criteria brought about by the *Noro* and *Robasto* precedents. He was therefore only granted compensation for the time during which he

⁵¹ Cf. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219, para. 303, and *Case of Perrone and Preckel v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 8, 2019. Series C No. 384, para. 116.

⁵² Adopted by the General Assembly of the United Nations in resolution 40/34 of November 29, 1985. States in its principle 4 that “they can should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redressed, as provided for by national legislation, for the harm that they have suffered.”

⁵³ Adopted by the United Nations Commission on Human Rights on February 8, 2005. Principle 31 states: “Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator.”

⁵⁴ Adopted by the General Assembly of the United Nations in resolution 60/147 of November 16, 2005. Principles 12, 13, and 14 establish the right of alleged victims to access a judicial remedy. Principle 18 of this document notes that victims have a right to “full and effective” reparation. Cf. <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>

⁵⁵ ECHR, *Case of Broniowski v. Poland*, no. 31443/96. Judgment of July 22, 2004, para. 36.

⁵⁶ Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated May 26, 2010. Series C No. 213, para. 246, and *Case of Hernández v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 22, 2019. Series C No. 395, para. 18.

was held in the illegal detention camp, without taking into account the time he was subjected to a regimen of *de facto* supervised release (*supra* para. 35). Mr. Almeida filed a special appeal before the National Federal Contentious Administrative Chamber, which was denied.

51. Following the Supreme Court of Justice's change in its stance on the matter with the *Noro* case in 1997, Mr. Almeida filed a special appeal of the resolution of the National Federal Contentious Administrative Chamber, properly referencing the change in caselaw. However, his appeal was denied (*supra* para. 39) and the motion for reconsideration of dismissal of appeal filed before the Supreme Court of Justice was declared inadmissible. Based on the precedent set in the 2003 *Robasto* case, the administrative authorities began systematically applying the criteria of treating *de jure* and *de facto* situations of supervised release the same for the purposes of establishing the benefits provided for under Law 24,043. This encouraged Mr. Almeida to present to the Ministry of Justice and Human Rights an appeal for revocation of the decisions previously adopted. The appeal was denied on the grounds that Mr. Almeida was requesting modification of a judicial judgment (*supra* 41).

52. However, for his wife, Claudia Graciela Estevez, whose factual situation was exactly the same as that of Mr. Almeida and who, in 1999, had also been denied in the administrative forum the compensation established in Law 24,043 with regard to the amount of time she was subject to *de facto* supervised release, the Ministry of Justice and Human Rights decided via a resolution of May 22, 2015, to grant her the benefit, in application of the precedents established in the *Noro* and *Robasto* cases. That is, in response to a factually identical situation regarding the supervised release to which both Mr. Almeida and Ms. Estevez were subjected, the former was treated differently without justification regarding the benefit provided for under Law 24,043, with respect to the period during which he was subjected to a regimen of *de facto* supervised release, in violation of Article 24 of the Convention.

53. Thus, the State's recognition entails acknowledging that Mr. Almeida did not have access to an effective remedy or process enabling application of the new interpretive criteria for Law 24,043 to his case and definitively putting an end to the inequality to which he had been subjected by the failure to take into account the days during which he was under *de facto* supervised release when calculating the compensation provided for under that law. The Court therefore concludes that the State was responsible for the violation of articles 8(1), 24, and 25(1) of the Convention, in relation to articles 1(1) and 2 of the same instrument, to the detriment of Mr. Almeida.

VIII REPARATIONS

54. Based on Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the duty to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.⁵⁷

55. Reparation of the harm caused by the violation of an international obligation requires, insofar as possible, full restitution (*restitutio in integrum*), which consists in the restoration of the previous situation. If this is not possible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated and to redress the

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 Olivares Muñoz et al. v. Venezuela, supra*, para. 142.

consequences of those violations.⁵⁸ Therefore, the Court has found it necessary to grant different 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.⁵⁹

56. This Court has also established that reparations should have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Accordingly, the Court must analyze the concurrence of these factors in order to rule appropriately and in keeping with law.⁶⁰

57. Consequently, taking into account the State's recognition of responsibility and the violations recognized, the Court will proceed to examine the claims presented by the Commission and the representative, together with the corresponding observations of the State, in light of the criteria established in its case law on the nature and scope of the obligation to make reparation, in order to establish measures to redress the harm caused.

A. Injured party

58. Under the terms of Article 63(1) of the Convention, this Court considers as injured party anyone who has been declared a victim of the violation of any right recognized therein. Therefore, the Court considers the "injured party" to be Mr. Rufino Jorge Almeida.

B. Measures of restitution

59. The **Commission** asked the Court to "[o]ffer Mr. Rufino Jorge Almeida a suitable, effective, and expeditious mechanism for reconsideration of his request for compensation, taking into account the arguments he raised regarding the violation to the right to equal protection under the law, in the framework of both the first administrative proceedings and the subsequent judicial appeals, as well as the subsequent petitions filed after the precedent set by Robasto case." The **representative** agreed with the request submitted by the Commission, with the same terms.

60. The **State**, in the framework of its recognition of responsibility, committed to "reevaluating the request for compensation submitted in a timely basis by Mr. Almeida, pursuant to the conclusions of the Report on the Merits of the [Commission] and paragraph c.3.1 of the [pleadings and motions brief] of the Victim."

61. In this case, and taking into account the recognition made by the State, this Court found that there was a violation of the right to have a decision that provides adequate grounds, to equal protection, and to judicial protection, as enshrined in articles 8(1), 24, and 25(1) of the Convention, in relation to the obligations established in articles 1(1) and 2 of the same instrument (*supra* para. 53). Effectively, Mr. Almeida was initially administratively and judicially denied his claims for compensation under Law 24,043 for the time during which he was under *de facto* supervised release during the dictatorship. Subsequently, following the change in case law on the matter and despite presenting a series of facts identical to the request for compensation presented by his wife, Claudia Graciela Estevez, the appeal to revoke judgment filed administratively was

⁵⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, Reparations, and Costs*, *supra*, para. 26; and *Case of Martínez Esquivia v. Colombia. Preliminary Objections. Merits and Reparations*. Judgment of October 6, 2020. Series C No. 412, para. 148.

⁵⁹ Cf. *Case of the "Las Dos Erres" Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Ximenes Lopes. Colombia*, para. 147.

⁶⁰ Cf. *Case of Ticona Estrada et al. v. Bolivia: Merits, Reparations, and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 142.

denied, even as his wife's administrative claim for the benefit provided for under Law 24,043 was finally recognized for the time during which she was under supervised release.

62. Both the Commission and the representative have asked that, as a measure of restitution, the State make a mechanism available to Mr. Almeida suitable for reconsidering his request for compensation. However, given the more than 25 years have passed since Mr. Almeida filed his initial claim, and the victim has attempted a variety of administrative and judicial routes in seeking reconsideration of his request for compensation, the Court orders the State to pay Mr. Ruffino Jorge Almeida, in equity, the amount of US\$125,000 (one hundred and twenty-five thousand United States dollars)⁶¹ in compensation for the time he was under *de facto* supervised release.

C. Measures of satisfaction

63. Neither the **Commission** nor the **representative** presented specific recommendations or arguments on this point.

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

65. The **Court** finds, as it has in other cases,⁶² 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 the Official Gazette, in an appropriate and legible font; and (b) this judgment in its entirety, to be available for one year, on an official State website. The State must inform this Court immediately when it has made each of the publications ordered, irrespective of the one-year timeframe for presenting its first report established in the eighth operative paragraph of this judgment.

D. Guarantees of non-repetition

66. The **representative** asked the State to order the administrative and legal measures necessary for reopening all the cases in which reparations have been rejected for victims of state terrorism in the framework of Law 24,043 in view of their new treatment pursuant to the criteria developed by internal jurisprudence, in respect for the human rights of the victims of State terrorism. The **Commission** issued no stance on this pleading.

67. The **State** argued that the measures of non-repetition requested by the representative "failed to acknowledge the exceptional nature of [Mr.] Almeida's situation" and noted that the Commission recognized, in its Report on the Merits, that the situation "in general terms was later corrected through [...] Judicial interpretation."

68. The Court observes that there is a possibility that other persons could be in the same factual circumstances as Mr. Almeida. Therefore, as a guarantee of non-repetition, the State is ordered to administratively review the situation of persons who request it and who are in the same factual circumstances as Mr. Almeida, pursuant to the case law criteria developed in the *Noro* and *Robasto* cases. Toward this, the State must publicize this measure to bring it to the attention of persons who may be interested in it. It shall keep an announcement published and visible for a period of three months on the official websites of the State bodies it considers pertinent, in particular on

⁶¹ To calculate this amount, the Court used the compensation granted by domestic authorities to his wife, Ms. Claudia Graciela Esteves, through Ministry of Justice and Human Rights resolution of May 22, 2015 (evidence file, folio 85), who was under the same *de facto* supervised release regime, in the same factual context, as Mr. Almeida.

⁶² Cf. Case of Cantoral Benavides v. Peru. *Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79; and Case of Martínez Esquivia v. Colombia, para. 158.

the website of the Human Rights Secretariat of the Ministry of Justice and Human Rights. It shall also notify the main non-governmental human rights organizations. Interested persons must present their requests for compensation within a period of 12 months, starting from the end of the 3-month period during which the aforementioned announcement is to be published. The State is required to observe its international obligations on equal protection. Therefore, *res judicata* cannot be invoked for the claims presented, and the interested parties must be permitted to present all the information necessary to accredit their claims.

E. Other measures requested

69. In the section on nonpecuniary measures, the **representative** requested the following measures:

That the Argentine State update the Ministry of Justice and Human Rights' administrative procedures as far as application of the policies on reparations to guarantee the implementation of a suitable, effective, and swift mechanism for handling and resolving this case in particular and other requests for reparation that remain pending resolution or that may be submitted in the future.

[...]

[that] the State must specifically instruct the lawyers, judges, judicial branch officials, and personnel involved in handling the requests for information to standardize and adjust the criteria for assessing the testimony of the victims of crimes against humanity and other evidence produced in each specific case to adhere to the criteria of the IACHR and the Inter-American Court of Human Rights.

It must therefore instruct them to give special consideration to the allegation of the facts as reported by the victims themselves as especially relevant evidence when supplementary documentary or testimonial evidence cannot be secured due to the context of secrecy and illegality in which the facts took place.

The officials involved must also be instructed to adhere to existing precedents on the subject.

[...]

The State must conduct regular trainings of the various agents, officials, and members of the three branches of government (executive, legislative, and judicial) on human rights, especially the treatment of witnesses and assessment of the testimony of victims of human rights violations, in keeping with current criteria on the matter.

The State must amend its internal laws in terms of procedure and substance to bring them in line with persons' right to judicial rulings that are properly grounded on the administrative and judicial remedies sought, including before the Supreme Court of Justice of the Nation, and especially when involving reparations and/or allegations of human rights violations.

70. The **State** rejected the measures of non-repetition requested by the representative, underscoring the exceptional nature of Mr. Almeida's case. It argued that "both the justice system and the administrative system have for years employed a broad interpretation of cases of supervised release" and asked that these measures be rejected.

71. This Court takes note of the precedent established on November 8, 2003, by the National Federal Contentious Administrative Chamber in case 143625/2002: Robasto, Jorge Enrique v. Ministry of Justice and Human Rights (*supra* para. 40) with regard to the broad interpretation of the concept of supervised release. It also takes note of the examples presented by the State of administrative case files processed subsequent to this precedent in which the payment of compensation for the days during which victims were subjected to a regime of supervised release was recognized.⁶³ It therefore concludes that the exclusion of *de facto* supervised release from

⁶³ Cf. Technical reports on Law 24,043 issued by the Office on Reparations Laws of the Secretariat on Human Rights of the Nation, Ministry of Justice and Human Rights (evidence file, folios 1339 to 1368).

the scope of Law 24,043 is a situation that has been corrected, and that the broadening of the criteria is being applied by administrative and judicial authorities. This Court therefore does not deem it necessary to order measures to modify the law or training measures. Additionally, with regard to the latter measure requested, it concludes that it has no direct connection to the facts of the case.

F. Compensation

F. 1. Pecuniary damage

72. The **Commission** asked the Court to order comprehensive reparations for the victim in view of the pecuniary damage resulting from the denial of justice of which Mr. Almeida was the victim.

73. The **representative** asked for restitution of all the expenses incurred during the internal process. Due to the complexity of quantifying these expenses and given the amount of time passed and the impossibility of submitting receipts, she asked for the "assignation of a representational and symbolic amount that reflects the legal expenses incurred over the more than 20 years fighting for the recognition of my rights."

74. The **State**, in its recognition of responsibility, asked the Court to "order pecuniary reparations [...] based on a criteria of equity."

75. In its case law, this Court has developed the concept that pecuniary damage includes 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 case⁶⁴— that is, it includes indirect damages and loss of earnings.

76. In view of the circumstances of this case, the Court considers it reasonable to order the State to pay compensation for pecuniary damages to the victim. In the statement given by the victim, Mr. Almeida only made reference to the undertaking of "activities together with other survivors and family members to gather together more testimony" and the performance of "a series of procedures, judicial presentations, and political debates to get the reparations extended to more victims."⁶⁵ Because the representative did not provide information making it possible to establish with certainty the amount of pecuniary damages caused by the facts under examination in this case, this Court sets, in equity, the amount of US\$5000 (five thousand dollars of the United States of America) in compensation to Rufino Jorge Almeida for the expenses incurred over the 20 years processing his petition.

F.2. Non-pecuniary damage

77. The **Commission** asked the Court to order comprehensive non-pecuniary damages to the victim.

78. The **representative** asked the Court to establish reparations for nonpecuniary damage in equity, taking into account that "those who suffered the violation of their fundamental human rights during the military dictatorship relived that situation when the corresponding reparation was denied along with the right to equal access to an adequate procedure for securing that reparation."

⁶⁴ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43; and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 179.

⁶⁵ Statement given before notary public by Rufino Jorge Almeida on August 27, 2020 (evidence file, folios 1502 and 1503).

79. The **State**, in its recognition of responsibility, asked the Court to "order pecuniary reparations [...] based on a criteria of equity."

80. In its case law, this Court has developed the concept of non-pecuniary damage and has established that this may include both the suffering and affliction caused to the direct victim and his family, and also the impairment of values of great significance for the individual, as well as the alterations of a non-pecuniary character in the living conditions of victims or their families.⁶⁶

81. In its judgment, the Court found pursuant to the State's recognition that Rufino Jorge Almeida was the victim of the violation of his rights to judicial guarantees, equal protection, and judicial protection. This Court has held that the nonpecuniary damage is clear, given that it is human nature that every person who experiences a violation of their human rights experiences suffering.⁶⁷

82. Taking into account the circumstances of the case and in consideration of the suffering caused to the victim by the delay in granting the measures of reparation and the harm caused by the unequal treatment after having been the victim of State terrorism, the Court deems it pertinent to establish, in equity, the amount of US\$20,000 (twenty thousand dollars of the United States of America) for nonpecuniary damages to the benefit of Rufino Jorge Almeida.

G. Costs and Expenses

83. The **representative** asked that, when determining costs and expenses, this Court consider the honoraria for representation and support in the complaint, before both the Commission and the Court, establishing the amounts for them in equity.

84. The **State**, in its recognition of responsibility, asked the Court to "order [...] the amounts for costs and expenses based on a criteria of equity."

85. The Court reiterates that, based on its case law, costs and expenses form part of the concept of reparation, because the efforts made by the victims to obtain justice, both at national and international level, entail disbursements that must be compensated when the State's international responsibility has been declared in a condemnatory judgment. Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes expenses incurred before the authorities of the domestic courts and those generated 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. This assessment may be based on the principle of equity, taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.⁶⁸

86. This Court notes that the representatives did not request a specific monetary sum for reimbursement of expenses and costs, nor did she provide the necessary supporting documentation for the totality of the expenses incurred. Consequently, the Court decides, on deeming it reasonable, to establish, in equity, the payment of a total amount of US\$20,000

⁶⁶ Cf. *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 186.

⁶⁷ Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 176, and *Case of Maldonado Ordoñez v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 3, 2016. Series C No. 311, para. 149.

⁶⁸ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, paras. 79 and 82; and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 192.

(twenty thousand dollars of the United States of America) for costs and expenses to the legal representative of the alleged victim, Ms. Myriam Carsen. In the procedure to supervise compliance with this judgment, the Court may order reimbursement by the State to the victim or to his representative of expenses reasonably and duly documented at each procedural stage.⁶⁹

H. Method of compliance with the payments ordered

87. The State shall make payment of the sum established in paragraph 62 and in compensation of pecuniary and non-pecuniary damage, as established in this judgment, directly to the persons indicated herein, within one year of notification of this judgment.

88. If the beneficiaries are deceased or die before they receive the respective compensation, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

89. The State shall comply with the 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 beneficiaries allowed by its domestic law at the time of the payment to make the respective calculation. During the stage of monitoring compliance with the judgment, the Court may make a prudent readjustment of the equivalent of the respective sums in Argentine currency in order to avoid exchange variations substantially affecting their purchasing power.

90. If, for causes that can be attributed to the beneficiaries, it is not possible to pay the amounts established within the indicated timeframe, the State shall deposit the said amount in their favor in a deposit account or certificate in a solvent Argentine financial institution, in United States dollars, and in the most favorable financial conditions permitted by banking laws and practice. If the corresponding amount is not claimed after ten years, the amounts shall be returned to the State with the interest accrued.

91. The amounts allocated in this judgment as a measure of restitution and for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, shall be delivered in full to the persons indicated, as established in this judgment, without any deductions arising from possible taxes or charges.

92. If the State should fall into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in the Argentine Republic.

IX OPERATIVE PARAGRAPHS

93. Therefore,

THE COURT

DECIDES,

Unanimously:

⁶⁹ Cf. *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs*. Judgment of August 24, 2010. Series C No. 214, para. 331, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 194.

1. To accept the acknowledgement of responsibility made by the State, pursuant to paragraphs 18 to 24 of this judgment.

DECLARES,

Unanimously, that:

2. The State was responsible for the violation of the rights contained in articles 8(1), 24, and 25(1) of the American Convention on Human Rights, in relation to articles 1(1) and 2 of the same instrument, to the detriment of Rufino Jorge Almeida, pursuant to the terms of paragraphs 20 and 48 through 53 of this judgment.

AND ORDERS:

Unanimously, that:

3. This judgment constitutes, per se, a form of reparation.

4. The State shall pay the sum established in paragraph 62, in the terms of paragraphs 87 through 92 of this judgment.

5. The State shall issue the publications indicated in paragraph 65 of this judgment.

6. The State shall guarantee administrative review of the situation of persons in the same factual situation as Mr. Almeida who request such review pursuant to the terms of paragraph 68 of this judgment.

7. The State shall pay the amounts established in paragraphs 76, 82 and 86 of this judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs, pursuant to paragraphs 87 to 92 of this judgment.

8. 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, notwithstanding the provisions of paragraph 65 of this judgment.

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

DONE, at San José, Costa Rica, on June 17, 2020, in the Spanish language.

Inter-American Court. *Case of Almeida v. Argentina. Merits, Reparations, and Costs.* Judgment of November 17, 2020.

Inter-American Court. *Case of Almeida v. Argentina. Merits, Reparations and Costs.* Judgment of November 17, 2020. Judgment adopted in San José, Costa Rica, in a virtual session.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

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