

**INTER-AMERICAN COURT OF HUMAN RIGHTS \***  
**CASE OF ARROM SUHURT ET AL. VS. PARAGUAY**  
**JUDGMENT OF MAY 13, 2019**  
**(Merits)**

In the case of *Arrom Suhurt et al. v. Paraguay*,

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

Eduardo Ferrer Mac-Gregor Poisot, President;  
Eduardo Vio Grossi, Vice President;  
Humberto Antonio Sierra Porto, Judge;  
Elizabeth Odio Benito, Judge;  
Patricio Pazmiño Freire, Judge, and  
Ricardo Pérez Manrique, Judge

also present,

Pablo Saavedra Alessandri, Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and with Articles 31, 32, 42, 65 and 67 of the Rules of Court (hereinafter "the Rules of Procedure" or "the Court's Rules of Procedure"), delivers the present judgment, structured as follows:

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\* Judge Eugenio Raúl Zaffaroni excused himself from participating in this case, in accordance with the provisions of Article 19(2) of the Statute of the Court and 21 of its Rules of Procedure, which was accepted by the President by order of January 16, 2019.

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## I INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* - On December 12, 2017, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Court the case of *Arrom Suhurt, Martí Méndez et al. regarding the Republic of Paraguay* (hereinafter also "the State"). The Commission indicated that the case is related "to the forced disappearance and torture of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez, leaders of the Patria Libre political movement, between January 17 and 30, 2002." The Commission concluded that "the State of Paraguay is responsible for the violation of Articles 3, 4(1), 5(1), 5(2), 7, 8(1), 8(2) and 25(1) of the Convention, in relation to the obligations established in Article 1(1) of the same instrument. Likewise, the Commission concluded that the State is responsible for the violation of Articles I(a) and I(b) of the Inter-American Convention on Forced Disappearance of Persons and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish the Torture." Lastly, the Commission indicated that the facts of this case entailed a violation of Article 5(1) against the next of kin of the alleged victims.<sup>1</sup>

2. *Proceedings before the Commission.* - The proceedings before the Commission were as follows:

- a) *Petition.* - On September 23 and 27, 2002, Marina and Cristina Arrom Suhurt presented the initial petition on behalf of the alleged victims.
- b) *Admissibility Report.* - On October 30, 2008, the Commission approved the Admissibility Report No. 86/08.<sup>2</sup> On November 14, 2008, the Commission notified said report to the parties and made it available to them in order to reach a friendly settlement agreement. On June 24 and 25, 2010, the State and the petitioners, respectively, expressed their desire not to continue with the friendly settlement process.
- c) *Report on the Merits.* - On September 5, 2017, the Commission approved the Report on the Merits No. 100/17, in which it reached a series of conclusions<sup>3</sup> and made several recommendations to the State.<sup>4</sup> The Merits Report was notified to the State on September 12, 2017.

<sup>1</sup> The next of kin of Juan Arrom Suhurt identified as alleged victims are his sisters Cristina Arrom Suhurt, Carmen Arrom Suhurt, and María Auxiliadora Arrom Suhurt. The next of kin of Anuncio Martí Méndez identified as the alleged victims are his sisters Marina Cristina Martí Méndez and Marta Ramona Martí Méndez. Likewise, the Commission indicated in its Report on the Merits that at the time of the events Juan Arrom "had a partner and they had children" and that Anuncio Martí also had "a partner and a child of a few years of age," concluding that these persons were alleged victims without identifying them by name. In this regard, the State filed a preliminary objection for the "lack of determination and individualization of the victims" which will be duly analyzed by the Court (*infra* paras. 24 to 27).

<sup>2</sup> Cf. IACHR, Report No. 86/08, Petition 04-03, Admissibility, *Juan Francisco Arrom Suhurt, Anuncio Martí Méndez, Víctor Antonio Colmán Ortega, Ana Rosa Samudio de Colmán, Jorge Samudio Ferreira and their next of kin*, Paraguay, October 30 of 2008.

<sup>3</sup> The Commission concluded that the State is responsible for the violation of Articles 3, 4.1, 5.1, 5.2, 7, 8.1, 8.2 and 25.1 of the American Convention on Human Rights, in relation to the obligations established in Article 1.1 thereof. instrument. Likewise, the Commission concluded that the State is responsible for the violation of Articles 1 a) and 1 b) of the Inter-American Convention on Forced Disappearance of Persons and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish the Torture.

<sup>4</sup> The Commission made a series of recommendations to the State in relation to: 1. Comprehensive reparation for the human rights violations declared in this report, both materially and non-materially. The State must adopt pecuniary compensation and satisfaction measures; 2. Order the necessary physical and mental health care measures for the rehabilitation of Juan Arrom and Anuncio Martí, if they wish and in a concerted manner. Taking into account that they are in Brazil, it is appropriate to pay them a specific amount to cover the medical services that they must pay for in that country; 3. Reopen and complete the criminal investigation diligently, effectively and within a

- d) *Report on the recommendations of the Commission.* – The Paraguayan State responded to the Report on the Merits, rejecting the determinations made regarding the violations established and the reparations ordered in favor of the victims.
- e) *Submission to the Court.* – On December 12, 2017, the Commission submitted this case to the Court “due to the need to obtain justice and reparation for the victims.” The Commission appointed Commissioner Francisco Eguiguren Praeli and Executive Secretary Paulo Abrão as its delegates. The Commission also appointed Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, attorney from the IACHR Executive Secretariat, as legal advisers.

3. *Commission requests.* – Based on the foregoing, the Inter-American Commission requested this Court to conclude and declare the international responsibility of the State of Paraguay for the violations contained in its Report on the Merits and to order the State, as reparation measures, the recommendations included in said report (*supra* para. 2).

## II PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and to the representatives of the alleged victims.* – The submission of the case was notified to the State of Paraguay and to the representatives of the alleged victims through communications of February 12 and 13, 2018, respectively.

5. *Brief with pleadings, motions and evidence.* – On April 3, 2018, the representatives of the alleged victims (hereinafter “the representatives”) presented their brief with pleadings, motions and evidence (hereinafter “brief with pleadings and of requests and arguments”), pursuant to Articles 25 and 40 of the Rules of Procedure. of the Court <sup>5</sup>. The representatives agreed with what was alleged by the Commission, and added that the State was also responsible for the violation of Articles 11(1) and 22 in relation to Articles 1(1) and 2 of the Convention, as well as Articles 7 and 9 of the Inter-American Convention to Prevent and Punish Torture. Likewise, the representatives requested that the State be ordered to adopt various measures of reparation and the reimbursement of certain costs and expenses.

6. *Answering brief.* – On August 14, 2018, the State submitted to the Court its brief of preliminary objections and response to the case submitted by the Commission, as well as its

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reasonable time in order to fully clarify the facts, identify all possible responsibilities and impose the corresponding sanctions regarding the human rights violations declared in this report, and 4. Establish non-repetition mechanisms that include: a) Strengthening the investigative capacity of the Public Ministry, especially in cases of serious human rights violations, which ensure the ex officio initiation of the investigation and due diligence in its development; b) Adopt the necessary measures so that the actions of the Public Prosecutor's Office that can definitively close the possibility of investigating serious violations of human rights, can be submitted to judicial control, and c) Adopt the necessary measures so that in the development of the investigations and criminal proceedings all authorities comply with the duty to respect the presumption of innocence and avoid stigmatizing those who are being prosecuted within the framework of the search measures for said persons.

<sup>5</sup> On January 25, 2018, the alleged victims presented powers of attorney in favor of Carlos Abadie Pankow. On February 22, 2019, Juan Francisco Arrom Suhurt remitted his power of attorney together with that of Anuncio Martí Méndez in favor of the lawyer Marcos Santos Vasconcelos. On March 26, 2019, they submitted a new power of attorney in favor of Rubén Bernardo Lisboa Lezcano and Hugo Ruiz Díaz Balbuena. On April 10, 2019, the alleged victims submitted a brief in which they revoked the power of attorney initially granted to Carlos Abadie Pankow. Therefore, when referring to the arguments or evidence presented by the lawyers Carlos Abadie Pankow, Marcos Santos Vasconcelos, Ruben Bernardo Lisboa Lezcano or Hugo Ruiz Diaz Balbuena, the Court will refer to them as “the representatives.”

observations on the brief or pleadings and motions (hereinafter “answering brief”).<sup>6</sup> In said brief, the State filed two preliminary objections, opposed the alleged violations, and the requests for measures of reparation from the Commission and the representatives.

7. *Brief with observations on preliminary objections.* – On November 14 and 19, 2018, the representatives and the Commission presented their observations on the preliminary objections.

8. *Legal Assistance Fund.* – By note of October 24, 2018, the President of the Court granted the request submitted by the alleged victims, through their representatives, to avail themselves of the Legal Assistance Fund.

9. *Provisional measures.* – On January 3, 11, and 12, 2019, the representatives submitted a request for provisional measures to guarantee the rights of Messrs. Juan Francisco Arrom Suhurt, Anuncio Martí Méndez, Víctor Antonio Colmán Ortega, and Esperanza Martínez. The Court dismissed such request by an Order of February 6, 2019.<sup>7</sup> On March 16 and 29, 2019, the representatives made a new request for provisional measures in favor of Cristina Arrom in relation to public statements by the Minister of the Interior. The Court dismissed said request by Order of May 13, 2019.<sup>8</sup>

10. *Supervening evidence.* – On January 28, 2019, the State forwarded an administrative file from the Paraguayan Office of the Ombudsperson, requesting that it be admitted as documentary evidence in accordance with the provisions of Article 57.2 of the Rules of Procedure of the Court.

11. *Public hearing.* – On December 17, 2018, the President issued an Order in which he called the parties and the Commission to a public hearing on the preliminary objections and eventual merits, reparations and costs, to receive the final oral arguments of the parties and the Commission's final oral observations on said issues.<sup>9</sup> In addition, through this order, two alleged victims, proposed by the representatives, and a witness, proposed by the State, were called to testify at the public hearing. In addition, the President ordered that the statements of 23 declarants were receive through declarations before a notary public (affidavit). These affidavits were presented on January 24, 26 and 31, 2019. On December 21, 2018 Paraguay requested a reconsideration of the President’s order calling for a public hearing. This was addressed through a Court Order of January 29, 2019, in which the Court decided to call an additional witness proposed by the State.<sup>10</sup> The public hearing was held on February 7, 2019, during the Court’s 29<sup>th</sup> Regular Period of Sessions, held at its seat.<sup>11</sup> During this hearing, the

<sup>6</sup> The State appointed Francisco Barriocanal, Attorney General of the Republic, as its agent, and Minister Marcelo Scappini, General Director of Human Rights, and attorney Rubén Ortiz, Director of the Legal Affairs Department, as alternate agents.

<sup>7</sup> Cf. *Case of Arrom Suhurt et al. v. Paraguay*. Request for Provisional Measures. Order of the Inter-American Court of Human Rights of February 6, 2019. Available at: [http://www.corteidh.or.cr/docs/medidas/arrom\\_se\\_01.pdf](http://www.corteidh.or.cr/docs/medidas/arrom_se_01.pdf)

<sup>8</sup> Cf. *Case of Arrom Suhurt et al. v. Paraguay*. Request for Provisional Measures. Order of the Inter-American Court of Human Rights of May 13, 2019. Available at: [http://www.corteidh.or.cr/docs/medidas/arrom\\_se\\_02.pdf](http://www.corteidh.or.cr/docs/medidas/arrom_se_02.pdf)

<sup>9</sup> Cf. *Case of Arrom Suhurt et al. v. Paraguay*. *Call to audience*. Order of the President of the Inter-American Court of Human Rights of December 17, 2018. Available at: [http://www.corteidh.or.cr/docs/asuntos/arrom\\_suhurt\\_17\\_12\\_18.pdf](http://www.corteidh.or.cr/docs/asuntos/arrom_suhurt_17_12_18.pdf)

<sup>10</sup> Cf. *Case of Arrom Suhurt et al. v. Paraguay*. *Call to a hearing*. Order of the Inter-American Court of Human Rights of January 29, 2019. Available at: [http://www.corteidh.or.cr/docs/asuntos/arrom\\_29\\_01\\_19.pdf](http://www.corteidh.or.cr/docs/asuntos/arrom_29_01_19.pdf)

<sup>11</sup> The following people appeared at this hearing: a) for the Inter-American Commission: Silvia Serrano Guzmán, Legal Advisor, and Christian González Chacón, Legal Advisor; b) by the representatives of the alleged victims: Carlos Abadie Pankow; Carmen Marina Arrom Suhurt, and María Teresa Arrom Suhurt, and c) for the Paraguayan State: Sergio Coscia Nogués, Attorney General of the Republic; Ricardo Merlo, Deputy Prosecutor in charge of the Specialized Human Rights Unit of the Public Ministry; Marcelo Scappini, General Director of Human Rights of the Ministry of Foreign Affairs; José Félix Fernández Estigarribia, Ambassador of Paraguay to Costa Rica; María Noelia López, Director of Human Rights of the Ministry of Foreign Affairs; Renzo Cristaldo, Agent, Delegate Attorney; Pablo Rojas, Delegate Attorney; Belén Diana, Attorney Delegate; Alejandra Peralta, Director of Human Rights of the Public Ministry; Myriam

Court's judges asked the parties and the Commission to provide certain information and explanations.

12. *Measures for violation of Article 53 of the Court's Rules of Procedure.* – On February 20, 2019, the representatives requested that Paraguay be ordered to take pertinent measures, because it had violated Article 53 of the Court's Rules of Procedure by admitting a criminal complaint against Cristina Arrom for her statements at the public hearing of the case before the Court. The Court resolved this request on March 14, 2019, and ordered the State to adopt the necessary measures to cease the criminal proceedings initiated against Cristina Haydée Arrom Suhurt<sup>12</sup>.

13. *Final written arguments and observations.* – On March 6 and 7, 2019, the representatives and the State, respectively, presented their final written arguments as well as certain attachments. The Commission submitted its final written observations on March 8, 2019.

14. *Information and evidence to facilitate adjudication of the case.* – On March 11, 2019, the President of the Court requested that the State present documentation to facilitate adjudication of the case. Paraguay submitted this information on March 18, 2019.

15. *Observations to the information and evidence to facilitate adjudication of the case.* – On March 18, 2019, the representatives and the State presented their observations on the attachments presented with the final written arguments. On March 21 and April 1, 2019, the representatives and the Commission, respectively, presented their observations on the evidence submitted by the State as evidence to facilitate adjudication.

16. *Supervening facts.* – On March 15 and 16, 2019, the representatives forwarded information on supervening facts related to the alleged victims' refugee status in Brazil and the alleged violation of their presumption of innocence. The State submitted observations on this information on March 26, 2019.

17. *Disbursements in application of the Legal Assistance Fund.* – On April 9, 2019, the report on the disbursements made from the Legal Assistance Fund in this case was transmitted to the State. The State presented its observations on this report within the time limits allotted.

18. *Deliberation of the present case.* – The Court began deliberating this judgment on May 13, 2019.

### **III JURISDICTION**

19. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention, because Paraguay has been a State Party to the Convention since August 24, 1989, and accepted the contentious jurisdiction of this Court on March 11, 1993. Furthermore, the State deposited the instruments of ratification of the Inter-American Convention to Prevent and Punish Torture on September 3, 1990, and of the Inter-American Convention on Forced Disappearance of Persons on November 26, 1996.

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Rodríguez, Rapporteur of the Public Ministry; Antonella Saint Paul, Rapporteur of the Public Ministry; Ramiro Sabino Ocampos, Director of Legal Advice of the Ministry of the Interior; Juan Pablo Feliciangeli, Director of Human Rights, Ministry of the Interior; Gloria Delagrancia, Communications, Ministry of the Interior, and Raquel Cáceres, Official Embassy of Paraguay to Costa Rica.

<sup>12</sup> Cf. *Case of Arrom Suhurt et al. v. Paraguay*. Order of the Inter-American Court of Human Rights of March 14, 2019. Available at: [http://www.corteidh.or.cr/docs/asuntos/arrom\\_14\\_03\\_2019.pdf](http://www.corteidh.or.cr/docs/asuntos/arrom_14_03_2019.pdf)

## IV PRELIMINARY CONSIDERATIONS

20. The **State** filed two preliminary objections related to the failure to determine and individualize the alleged victims, and the failure to exhaust domestic remedies. However, the Court notes that these arguments do not constitute preliminary objections, since they are not questioning the admissibility of the case or the jurisdiction of the Court to hear a particular case or any of its aspects.<sup>13</sup> On the contrary, the State refers to: i) the determination and individualization of the alleged victims and ii) the inclusion of facts that supposedly do not form part of the factual framework of the case. For this reason, they will be analyzed as preliminary considerations.

### A. **Determination and individualization of the alleged victims**

#### A.1 Arguments of the parties and the Commission

21. The **State** indicated that the Commission has identified the next of kin of Juan Arrom Suhurt and Anuncio Martí as alleged victims in a generic way. It stressed that before the Court the representatives have "presented a list of 24 people, alleging a supposed 'family link' existing with Messrs. Juan Arrom Suhurt and Anuncio Martí." It argued that "in order to grant the status of alleged victim, [they] must examine the alleged violations committed against [the detriment of] each individual," however, in the present case the Commission presumed the effects on their personal integrity without further analysis. The State also highlighted that the partners and children of Juan Arrom Suhurt and Anuncio Martí were not identified by name. It requested the Court that "only Messrs. Juan Arrom Suhurt and Anuncio Martí be considered as alleged victims."

22. The **Commission** argued that, "contrary to what the State affirmed, [the Commission] individualized at least six next of kin as victims of harm to their mental integrity and the remaining persons were mentioned with the highest level of specificity possible, within the available information." It indicated that "[i]n this scenario, it will be up to the Honorable Court to determine whether the exception contained in Article 35.2 of the Rules of Procedure is applicable to the persons not identified by name in the Report on the Merits."

23. The **representatives** alleged that the State "had the opportunity to oppose the participation of the next of kin of Arrom and Martí and they did not do so. Instead, under the pretext of an alleged a lack of precision by the [Commission], they are trying to do so now." They indicated that "when the Commission refers to the next of kin of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez, it makes specific reference to all persons who meet such conditions and not to others. For this reason [...], there is no lack of precision."

#### A.2 Considerations of the Court

24. The Court notes that the arguments presented refer to the alleged failure to identify the next of kin of Juan Arrom Suhurt and Anuncio Martí. In its Report on the Merits, the Commission concluded that "the next of kin of Juan Francisco Arrom Suhurt were victims of a violation to their personal integrity, namely, his partner and the children they had at the time, and his sisters Cristina, Marina, Carmen and María Auxiliadora; as well as [...] the next of kin of Anuncio Martí Méndez, namely, his partner and the son he had at the time the events occurred and his sisters Marina Cristina and Marta Ramona." Subsequently, in the concluding

<sup>13</sup> cf. *Case of Las Palmeras v. Colombia. Preliminary Objections*. Judgment of February 4, 2000. Series C No. 67, para. 34, and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, para. 20.

paragraph of the Report on the Merits, the Commission indicated that “the State of Paraguay is responsible for the violation of the rights to juridical personality, to life, to personal integrity, to personal liberty, to judicial guarantees and protection established in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to the obligation established in Article 1(1) of the same instrument, to the detriment of Juan Francisco Arrom Suhurt[,] Anuncio Martí Méndez and his relatives.” The Court understands that the term “relatives” included in the conclusion of the Report on the Merits refers to the next of kin previously identified in the chapter on personal integrity.

25. On the other hand, the representatives in their arguments included other relatives of Juan Arrom Suhurt and Anuncio Martí Méndez.<sup>14</sup>

26. Regarding the identification of the alleged victims, the Court recalls that Article 35(1) of the Court’s Rules of Procedure establishes that the case will be submitted to the Court by presenting the Report on the Merits, which must identify the alleged victims. It is therefore up to the Commission to accurately identify at the appropriate procedural opportunity the alleged victims in a case before the Court,<sup>15</sup> save for the exceptional circumstances contemplated in Article 35(2) of the Rules of Procedure. In this exception, when a justification is offered as to the impossibility to identify the alleged victims, because it concerns massive or collective violations, the Court shall decide in due course whether to consider them victims according to the nature of the violation.<sup>16</sup>

27. This Court finds that in this case it is not appropriate to apply the exception provided for in Article 35(2) of the Rules of Procedure. Consequently, only those persons specifically identified in the Report on the Merits may be considered alleged victims. Therefore, only Juan Arrom Suhurt, Anuncio Martí Méndez, Cristina Arrom Suhurt, Carmen Arrom Suhurt, Maria Auxiliadora Arrom Suhurt, Marina Arrom Suhurt, María Cristina Martí Méndez and Marta Ramona Martí Méndez will be considered alleged victims.

28. Lastly, the Court notes that part of the State's allegations is that there is insufficient proof or reasoning regarding certain violations of the Convention with respect to the next of kin of Juan Arrom Suhurt and Anuncio Martí Méndez. These allegations are related to the merits of the case and therefore will not be examined in this chapter.

## **B. On the factual framework of the case**

### **B.1 Arguments of the parties and the Commission**

29. The **State** alleged that “[a]fter the admissibility process had been closed” the petitioners introduced arguments referring to 2010 press publications, which included the alleged victims in

<sup>14</sup> In particular, in the communication in which the representatives presented the powers of attorney, they indicated that they also represented Juan Arrom Suhurt and Anuncio Martí Méndez, Liza Liana Larriera Rojas, Gloria Elizabeth Blanco, Carlos Ernesto Arrom Insaurralde, Laura María Arrom, Luana María Larriera Arrom, Felipe Manuel Martí Blanco, Sara Blanco Martí, Elena Mendez Vda. de Martí, Maria Teresa Arrom Suhurt, Carmen Aurora Arrom de Salgado, Carmen Edilia Arrom de Cabello, Carmen Marina Arrom Suhurt, Cristina Haydée Arrom Suhurt, Rossana Eleuteria Arrom de Ecurra, Elizabeth Avelina Arrom de Fernández, Wenceslao Marcial Arrom, María Auxiliadora Arrom de Orrego, Mercedes Beatriz Arrom Leiva, Marta Ramona Martí de Páez, Isabelino Martí Mendez, María Cristina Martí Méndez, and Rufina Martí Méndez. Cf. Communication of January 25, 2018 (merits file, fs. 63 to 66).

<sup>15</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Omeara Carrascal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 21, 2018. Series C No. 368, para. 55.

<sup>16</sup> Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 4, 2012. Series C No. 250, para. 48, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2018. Series C No. 359, para. 27.



a publication titled "enemies of the people." The State argued that it found itself "in a state of defenseless" without being able to make arguments on the failure to exhaust domestic remedies on these facts before the Commission, since they occurred after the admissibility report.

30. The **Commission** observed that the published propaganda "was a supervening fact in the framework of the criminal investigation carried out against Messrs. Arrom and Martí in Paraguay and additional evidence of the absence of guarantees in said process, including the guarantee of impartiality." Therefore, "it is not necessary to continue demanding the exhaustion of domestic remedies in relation to each fact of this nature." It added that "if the State considered that these facts were not supervening and had such entity and independence to demand the exhaustion of domestic remedies in an autonomous manner, it should have raised such issue in the proceedings before the Commission at the first opportunity."

31. The **representatives** argued that the State had the opportunity to present this objection when the case was before the Commission, but it did not. They argued that the publications from 2010 onwards "should be understood as one more act related to the illegal persecution of [the alleged victims], which [...] continues [...] to this date."

## B.2 Considerations of the Court

32. In the present case, the State argued before the Court that domestic remedies had not been exhausted with respect to a publication circulated in 2010 entitled "Enemies of the Paraguayan People WANTED", which includes Juan Arrom and Anuncio Martí, offering a reward of up to five hundred million of guaraníes (G\$500,000,000) for useful information that leads to their capture.<sup>17</sup> Despite the State referring to this as a preliminary objection, due to the failure to exhaust local remedies, it is clear that what is actually being objected to is the inclusion of these facts in the process before the Inter-American System, from reading the State's arguments.

33. The aforementioned publication is included in the Report on the Merits and both the Commission and the representatives alleged violations of the American Convention in this regard. This publication is related to the criminal investigation carried out against Mr. Arrom and Mr. Martí in Paraguay for their alleged participation in the kidnapping of María Edith Bordón de Debernardi.

34. According to the Court's jurisprudence, the factual framework of a case before the Court is made up of the facts contained in the Report on the Merits submitted for its consideration.<sup>18</sup> However, when an allegation such as the one made by the Paraguayan State is made, it is necessary to examine whether the aforementioned facts are really part of the object of the case whose admissibility was examined by the Commission, and if these could be considered supervening facts.

35. The Admissibility Report analyzes the alleged detention and torture of the alleged victims and the criminal investigation carried out regarding these facts.<sup>19</sup> After the case was determined admissible, on August 23, 2010, the representatives referred to the campaign initiated by the State where a reward was offered to whoever provided information on the whereabouts of the alleged victims.<sup>20</sup> In response to this brief, the State indicated that the alleged victims are

<sup>17</sup> Cf. Copy of the notice entitled "Enemies of the Paraguayan People, WANTED" (evidence file, f. 704).

<sup>18</sup> Cf. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 14, 2014. Series C No. 287, para. 47, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018*. Series C No. 371, para. 45.

<sup>19</sup> Cf. IACHR, Report No. 86/08, Petition 04-03, Admissibility, *Juan Francisco Arrom Suhurt, Anuncio Martí Méndez, Víctor Antonio Colmán Ortega, Ana Rosa Samudio de Colmán, Jorge Samudio Ferreira and their next of kin*, Paraguay, October 30 of 2008.

<sup>20</sup> Cf. Brief of the representatives of August 23, 2010 (evidence file, f. 1659).

defendants in the proceedings for the kidnapping of María Edith Bordón de Debernardi and that “[a]ny allegation of irregularities in these proceedings must be submitted to the consideration of the Court of Judgments designated for the public and oral trial [of that] case.”<sup>21</sup> Subsequently, on November 7, 2011, the State indicated that the process for the kidnapping of María Edith Bordón de Debernardi “must necessarily be separated from the facts of the alleged deprivation of liberty and torture committed against Mr. Arrom and Mr. Martí, and in that sense, any argument or irregularity must be put to the consideration of each body that intervenes in said processes separately.”<sup>22</sup>

36. In the Report on the Merits, the Commission notes that:

The petitioners stated that the State violated their rights in the judicial process regarding the kidnapping of Mrs. María Edith Bordón. The State maintained that the possible irregularities in said process must be discussed in the national courts and that the Commission is not competent to rule on the matter. The Commission considers that the matter on which it will rule is mainly the alleged disappearance and torture of Juan Arrom and Anuncio Martí; however, it notes that the facts of the case are intertwined with the process for the kidnapping of Mrs. Bordón. Therefore, it will address this last process whenever it is related to the possible violations raised by the alleged victims.

37. The Court notes that the publication entitled “Enemies of the Paraguayan People WANTED” happened eight years after the investigation into the alleged forced disappearance of Messrs. Arrom Suhurt and Martí Méndez was carried out and that they occurred within the framework of a different judicial proceeding. Therefore, regardless of the conclusions reached by the Commission in the Report on the Merits, this Court does not consider that these are supervening facts within the petition initially submitted for consideration of the Commission, nor are they related to the alleged violations of judicial guarantees and effective judicial remedy in the framework of the investigation for the alleged forced disappearance. Thus, it has no relation to the factual framework of this case.

38. Consequently, the inclusion in the Report on the Merits of the publication entitled “Enemies of the Paraguayan People” is not related to the object of the litigation. Therefore, it cannot be considered part of the factual framework of the case. Additionally, it is necessary to highlight that the Commission did not examine the admissibility of these facts. Thus, the Court will not take into account the publication entitled “Enemies of the Paraguayan People WANTED” nor will it examine the violations alleged in its regard.

## V EVIDENCE

### **A. Admissibility of documentary evidence**

39. The Court received various documents presented as evidence by the Commission, the representatives and the State, as well as those requested by the Court or its Presidency as evidence to facilitate adjudication, which, as in other cases, it admits with the understanding that they were presented at the appropriate procedural moment (article 57 of the Rules of Procedure)<sup>23</sup> and their admissibility was not disputed or challenged.

<sup>21</sup> Cf. Brief of the State of February 28, 2011 before the Commission (evidence file, f. 1541).

<sup>22</sup> Cf. Brief of the State of November 7, 2011 before the Commission (evidence file, f. 2419).

<sup>23</sup> Documentary evidence may be submitted, in general and in accordance with Article 57.2 of the Rules of Procedure, together with the submission brief, the brief of pleadings, motions and evidence, or the answering brief, respectively. Evidence submitted outside of these procedural opportunities is not admissible, other than in the exceptions established in article 57(2) of the Rules of Procedure (namely, force majeure or serious impediment) or unless it was a supervening event, that is, it occurred after the aforementioned procedural moments. *cf. Case of the*

40. On the other hand, regarding the supervening evidence provided by the State on January 28, 2019 (*supra* para. 10), the State indicated that “the reason for the extemporaneous presentation was that the administrative file was received on January 25, 2019” and for this reason “could not have been offered previously because its content was unknown”. This Court recalls that evidence submitted outside of the due procedural moments is not admissible, save for the the exceptions established in the Article 57(2) of the Rules of Procedure, namely, force majeure, serious impediment or if it were an event that occurred after the cited procedural moments.<sup>24</sup> The Court does not consider that the justification provided by the State falls within these situations, nor was such evidence expressly requested by the Court. For these reasons, the evidence is time-barred under the terms of Article 57(2) of the Court’s Rules of Procedure, and therefore it is inadmissible.

41. Regarding the evidence presented by the State and the representatives together with their final written arguments, in addition to that requested by the judges during the public hearing (*supra* para. 13),<sup>25</sup> the Court notes that the representatives have not justified the reasons why, under the terms of Article 57(2) of the Rules of Procedure, they presented attachments 8,<sup>26</sup> 23,<sup>27</sup> 25,<sup>28</sup> and 27<sup>29</sup> with the final written arguments, being that the appropriate procedural moment would have been with their brief of pleadings and motions. Consequently, said evidence is time-barred and in accordance with Article 57(2) of the Rules of Procedure, it cannot be admitted to the body of evidence in this case. On the other hand, attachment 51<sup>30</sup> refers to supervening facts, for which reason it can be accepted by this Court. Regarding the other attachments provided by the representatives, the Court notes that they were already part of evidentiary file of the case, hence it does not deem it necessary to issue a separate ruling on their admissibility.

42. Lastly, on March 15 and 16, 2019, the representatives informed the Court on certain supervening facts, related to the alleged victims’s refugee status in Brazil, and attached pages from the book by Juan Arrom “Callejones del terror”, several journalistic articles and a video of statements made to a media outlet by María Edith Bordón de Debernardi on March 11, 2019 as evidence.<sup>31</sup> The State argued that these journalistic articles are not related to the case. The

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*Barrios Family v. Venezuela. Merits, Reparations and Costs.* Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 6, 2019. Series C No. 375, para. 38.

<sup>24</sup> Cf. *Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations and Costs.* Judgment of October 13, 2011. Series C No. 234, para. 22, and *Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 20, 2018. Series C No. 364, para. 53.

<sup>25</sup> The four annexes presented by the State and annexes 10, 13, 14, 17, 20, 22, and 33 presented by the representatives are considered related to the questions asked by the judges.

<sup>26</sup> Corresponds to the note from the Diario Noticias, entitled “According to Nogués, tyranny continues”, of February 3, 2002 (evidence file, f. 13456).

<sup>27</sup> Corresponds to the note of the ABC color digital newspaper, entitled “They ask that the refuge of Arrom and Martí be revoked”, of July 8, 2005 (evidence file, f. 13500).

<sup>28</sup> Regarding the new information, it corresponds to the resolution of the Supreme Court of Justice of Colombia in process No. 29,877 of May 18, 2011 (evidence file, fs. 13506 to 13532).

<sup>29</sup> Annex 27 to the final written arguments of the representatives corresponds, as regards the new information, to Decision No. 236 of December 20, 2001 (evidence file, fs. 13586-13590).

<sup>30</sup> Annex 51 to the final written arguments of the representatives corresponds to the notes of the Última Hora digital newspaper entitled “Arrom and Martí Case: Codehupy sustains that the State intends to lower the protection in Human Rights”, of January 15, 2019 (evidence file, fs. 13940 to 13942); “Attacking the Inter-American Court is to ignore all the progress made in terms of human rights,” of January 21, 2019 (evidence file, fs. 13943 to 13946), and “To ignore the role of the Inter-American Court would be to follow the path of Venezuela,” of January 22, 2019 (evidence file, fs. 13947 to 13948).

<sup>31</sup> Specifically, the notes presented by the representatives as evidence of the supervening facts are: (i) Note from the newspaper La Nación, titled “Await reciprocity from Brazil in handing over fugitive criminals,” dated March 15, 2019; (ii) Note from the ABC Color newspaper, titled “Bolsonaro would withdraw the refuge from Arrom and Martí” of March 13, 2019; (iii) Note from the newspaper La Nación, entitled “Bolsonaro insinuates that Arrom and Martí will

Court admits the journalistic articles and the video of the statements of María Edith Bordón, as it considers them supervening facts related to this case. Regarding the pages of the aforementioned book, the Court notes that it is already part of the evidentiary file of the case, hence it does not deem it necessary to rule on its admissibility.

**B. Admissibility of testimonial and expert evidence**

43. The Court heard the statements of Juan Francisco Arrom Suhurt, Cristina Haydée Arrom Suhurt, Óscar Germán Latorre Cañete, and Edgar Gustavo Sánchez Caballero during the public hearing. Additionally, the **representatives** provided the Court the affidavits sworn by sixteen people on January 24 and 26, 2019<sup>32</sup>. For his part, Marcelo Kimati Dias, expert witness offered by the representatives, provided the medical-psychiatric expert studies performed on Messrs. Arrom and Martí on January 31, 2019. The **State** provided the affidavits sworn by Adolfo René Marín Ferreira and Juan Carlos Duarte Martínez, as well as the expert opinions of Pablo Ernesto Lemir Marchese and Nicolás Garcete on January 31, 2019. The Commission provided the Court with the expert opinion of Víctor Madrigal Borloz on January 31 and February 1, 2019.

44. Considering they were not challenged by the parties, the Court finds it appropriate to admit the statements of Juan Francisco Arrom Suhurt, Cristina Haydée Arrom Suhurt, Óscar German Latorre Cañete, Edgar Gustavo Sánchez Caballero, Anuncio Martí Méndez, María Auxiliadora Arrom de Orrego, Carmen Edilia Arrom de Cabello, Carmen Marina Arrom Suhurt, María Cristina Martí Méndez, Marta Ramona Martí de Páez, Héctor Raúl Marín Peralta, Federico Aníbal Emery, Esperanza Martínez, Carlos Portillo Esquivel, Mario Torres, Víctor Antonio Colmán Ortega, Liza Liana Larriera Rojas, Gloria Elizabeth White, Elena Mendez Vda. de Martí, and Paulo Ezequias de Jesús, insofar as they relate to their purpose as defined in the Order in which they were required by the Presidency (*supra* para. 11). The arguments presented regarding the assessment of this statements will be taken into account when examining said evidence.

45. On the other hand, the Court notes that the **State** asked the Court to declare inadmissible the expert opinions of Marcelo Kimati Dias and Víctor Madrigal Borloz because, among other things, the version signed by a notary public arrived after the deadline for presenting said expert opinions had expired. In this regard, the Court notes that a version of both statements arrived on January 31, 2019, the deadline for their presentation. However, these versions did not meet the requirement of having been done before a notary public. On February 1, 2019, the Commission provided Mr. Madrigal's expert opinion done before a notary public, while the expert opinion of Marcelo Kimati Dias before a notary public was received on February 25, 2019. The Commission indicated that the delay had been due to imponderable reasons, and the representatives did not present arguments in this regard. Due to the fact that the Commission and the representatives did not duly justify the extemporaneous presentation of the expert opinions, this Court decides to declare them inadmissible following the provisions of Article 57(2) of the Court's Rules of Procedure.

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lose their refugee status," of March 13, 2019, and (iv) Note from the newspaper Última Hora, titled "Bolsonaro promises to Abdo not to grant asylum to bandits hidden in Brazil," of March 13, 2019. For its part, the video provided consists of an interview with Maria Edith Bordón de Debernardi on March 11, 2019 on the television program "Algo Anda Mal," which is available at the following link: <https://www.youtube.com/watch?v=kxRexb5Hod8>

<sup>32</sup> The representatives provided the statements before a notary public (affidavits) of Anuncio Martí Méndez, María Auxiliadora Arrom de Orrego, Carmen Edilia Arrom de Cabello, Carmen Marina Arrom Suhurt, María Cristina Martí Méndez, Marta Ramona Martí de Páez, Héctor Raúl Marín Peralta, Federico Aníbal Emery, Esperanza Martínez, Carlos Portillo Esquivel, Mario Torres, Víctor Antonio Colmán Ortega, Liza Liana Larriera Rojas, Gloria Elizabeth Blanco, Elena Mendez Vda. of Martí, and Paulo Ezequias of Jesus.

## VI FACTS

46. Taking into account the arguments presented by the parties and the Commission, the main facts of the case will be displayed in the following order: A) the events that occurred between January 17 and 30, 2002; B) actions taken by the next of kin and investigation of the facts, and C) refugee status of Juan Arrom and Anuncio Martí in Brazil. It has not been proven before this Court that these events occurred in a context of systematic and generalized practice of forced disappearances, nor in a context of persecution of the alleged victims for their political activities.

### **A. Events that occurred between January 17 and 30, 2002**

47. On January 19, 2002, the Public Prosecution's Office ordered the arrest of Juan Arrom Suhurt and Anuncio Martí Méndez for their alleged participation in a kidnapping.<sup>33</sup> According to press releases, since January 20, 2002, the Minister of the Interior, Julio César Fanego, stated that various leaders of the organization Patria Libre were involved in the kidnapping of María Edith Bordón, including Juan Arrom Suhurt and that "since [January 15] surveillance was already being carried out on the criminal perpetrators, due to which they were very sure that all those who participated in the kidnapping would be caught."<sup>34</sup> At the same time, since January 20, 2002, it had been widely reported in the press that Juan Arrom Suhurt and Anuncio Martí Méndez had disappeared<sup>35</sup>.

48. The Court notes that what happened to the alleged victims between January 17 and 30, 2002 is contested. On one hand, the representatives and the Commission argued that the alleged victims were deprived of their liberty on January 17, which constituted the beginning of a forced disappearance that ended on January 30, 2002, when they were found alive. They also indicated that during this time they were subjected to torture. They explained that these acts were carried out by groups of the National Police, with the acquiescence of senior officials of the Ministry of the Interior, the Chief of Police, and the National Prosecutor's Office. On the other hand, the State based its defense on the fact that the participation of State agents has not been proven, and that the alleged victims are evading national justice in the investigation process for the kidnapping of María Edith Bordón. The Court will solve the dispute regarding the participation of state agents in the corresponding chapter on the merits.

49. This chapter will summarize the information received relating to the apprehension of the alleged victims on January 17, 2002, their appearance on January 30, 2002, and the possible mistreatment to which they were subjected.

50. According to what was stated by Juan Arrom and Anuncio Martí, on January 17 they were at Anuncio Martí's house.<sup>36</sup> They left the house in Martí Méndez's car to buy diapers for his son

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<sup>33</sup> Resolution No. 8 of January 19, 2002 of the Public Prosecutor's Office (evidence file, fs. 6516 and 6517).

<sup>34</sup> Cf. Note from the newspaper La Nación, titled "Kidnappers are from a Free Homeland", dated January 20, 2002 (evidence file, f. 71), and Note from the newspaper ABC, titled "Police say they have identified the intellectual author of the kidnapping," of January 20, 2002 (evidence file, f. 72). See also, Note from Diario ABC, titled "The police suspect that a leftist group is behind the kidnapping," published on January 19, 2002 (evidence file, f. 68).

<sup>35</sup> Cf. Note from the newspaper La Nación, entitled "They denounce that Arrom is missing", dated January 20, 2002 (evidence file, f. 71); Note from the Diario Noticias, entitled "Family members of an accused request that he be presented," published on January 21, 2002 (evidence file, f. 78); Note from the Diario Crónica, entitled "Family members denounce the strange disappearance of Juan Arrom", published on January 21, 2002 (evidence file, fs. 87 and 88), and Note from the Diario Crónica, entitled "Family members are still looking for Juan", published on January 22, 2002 (evidence file, f. 1894).

<sup>36</sup> Statement of Anuncio Martí Méndez of February 4, 2002 before the Criminal Guarantees Judge (evidence file, f. 4049), and Statement of Juan Arrom Suhurt of February 4, 2002 before the Criminal Guarantees Judge (evidence file, f. 4032).

and take Arrom Suhurt downtown.<sup>37</sup> They stopped the vehicle for a moment and Arrom Suhurt got out to speak on the phone with the person he was going to meet.<sup>38</sup> Both alleged victims stated that, at that moment, they were approached by armed men dressed as civilians, who put Juan Arrom in a white Gol vehicle and put Anuncio Martí in the back seat of his vehicle.<sup>39</sup> This was at approximately 10:00pm.<sup>40</sup> They indicated that they were blindfolded, beaten, suffocated, and interrogated about the kidnapping of María Edith Bordón and the organization Patria Libre.<sup>41</sup> They were then reportedly taken to a river and subjected to torture by immersion, to the point that Arrom Suhurt reportedly fainted.<sup>42</sup>

51. The alleged victims indicated that they were taken to a house where there was nothing, then moved to another, which flooded, and later taken to a third house, where they were found.<sup>43</sup>

52. Separately, on January 30, 2002, Cristina Haydée Arrom Suhurt received information that her brother and Anuncio Martí could be detained in a house in Villa Elisa.<sup>44</sup> Juan Arrom's sisters, Cristina Haydée and María Auxiliadora, went to that address.<sup>45</sup>

53. According to statements by some people present, as well as a video provided, filmed by the Telefuturo channel, it can be established that when Arrom Suhurt's sisters arrived they found two Gol vehicles without license plates parked, a white one at the entrance to the garage and a gray one inside the garage.<sup>46</sup> At one point, somebody leaned out from one of the windows of the house,

<sup>37</sup> Cf. Statement of Anuncio Martí Méndez of January 31, 2002 before the intervening Prosecutor of the Specialized Unit for Punishable Acts against Human Rights (evidence file, f. 4750); Statement of Anuncio Martí Méndez of February 11, 2002, before the Fifth Shift Investigating Judge of the Police Justice Department (evidence file, f. 6011); Testimony of Anuncio Martí of February 4, 2002, before the Criminal Guarantees Judge (evidence file, f. 4049), and Testimony of Juan Arrom Suhurt of February 4, 2002, before the Criminal Guarantees Judge (evidence file, f. 4032).

<sup>38</sup> Cf. Statement of Anuncio Martí Méndez of January 31, 2002 before the intervening Prosecutor of the Specialized Unit for Punishable Acts against Human Rights (evidence file, f. 4750); Testimony of Anuncio Martí of February 4, 2002, before the Criminal Guarantees Judge (evidence file, f. 4049), and Testimony of Juan Arrom Suhurt of February 4, 2002, before the Criminal Guarantees Judge (evidence file, f. 4033).

<sup>39</sup> Cf. Statement of Anuncio Martí Méndez of January 31, 2002 before the intervening Prosecutor of the Specialized Unit for Punishable Acts against Human Rights (evidence file, f. 4750); Statement of Anuncio Martí of February 4, 2002 before the Criminal Guarantees Judge (evidence file, f. 4050); Statement of Anuncio Martí Méndez of February 11, 2002, before the Examining Investigating Judge of the Fifth Shift of the Police Justice Directorate (evidence file, f. 6011), and Statement of Juan Arrom Suhurt of February 4, 2002, before the Criminal Judge of Guarantees (evidence file, f. 4033).

<sup>40</sup> Cf. Statement of Anuncio Martí Méndez of February 4, 2002, before the Criminal Guarantees Judge (evidence file, f. 4049), and Statement of February 11, 2002, of Anuncio Martí Méndez before the Examining Judge of the Fifth Rotation of the Police Justice Department (evidence file, f. 6012).

<sup>41</sup> Cf. Statement of Anuncio Martí Méndez of January 31, 2002 before the intervening Prosecutor of the Specialized Unit for Punishable Acts against Human Rights (evidence file, f. 4751); Testimony of Anuncio Martí Méndez of February 4, 2002, before the Criminal Guarantees Judge (evidence file, f. 4050), and Testimony of Juan Arrom Suhurt of February 4, 2002, before the Criminal Guarantees Judge (evidence file, f. 4033).

<sup>42</sup> Cf. Statement of Anuncio Martí Méndez of January 31, 2002 before the intervening Prosecutor of the Specialized Unit for Punishable Acts against human rights (evidence file, f. 4752); Testimony of Anuncio Martí of February 4, 2002, before the Criminal Guarantees Judge (evidence file, f. 4051), and Testimony of Juan Arrom Suhurt of February 4, 2002, before the Criminal Guarantees Judge (evidence file, f. 4034).

<sup>43</sup> Cf. Statement of Anuncio Martí Méndez of February 4, 2002 before the Criminal Judge of Guarantees (evidence file, fs. 4052 and 4053); Testimonial statement of Anuncio Martí Méndez of May 31, 2002, before the Public Prosecutor's Office (evidence file, fs. 5837 and 5838); Statement of February 11, 2002, by Anuncio Martí Méndez before the Fifth Shift Investigating Judge of the Police Justice Department (evidence file, fs. 6017 and 6019); Statement rendered before a notary public (affidavit) by Anuncio Martí Méndez on January 16, 2019 (evidence file, f. 13189); Testimony of Juan Arrom Suhurt before the Criminal Guarantees Judge on February 4, 2002 (evidence file, f. 4036), and Juan Arrom Suhurt's statement rendered at the public hearing held in this case.

<sup>44</sup> Cf. Testimony of February 11, 2002, of Cristina Haydée Arrom Suhurt (evidence file, f. 4968), and Statement of Esteban Domingo Centurión Vera of January 31, 2002, before the Criminal Judge of Guarantees of Feria y de Guardia (evidence file, fs. 4754 and 4755).

<sup>45</sup> Cf. Testimony of February 11, 2002, by Cristina Haydée Arrom Suhurt (evidence file, f. 4968).

<sup>46</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "archive01" minutes 00:03 to 00:06, 00:13 to 00:27, 00:43 to 00:58, 01:11 to 01:24

and seconds later a white Gol vehicle without a license plate passed by the street in front of the house.<sup>47</sup> About a minute later, both parked cars hastily pulled out.<sup>48</sup>

54. Anuncio Martí Méndez stated that on January 30 at approximately 6:00 p.m. he heard the kidnappers' cell phones ring. A few minutes later he heard one of the Gol vehicles get out, through a crack he saw that there were television cameras and journalists, so he began to scream.<sup>49</sup> Arrom Suhurt testified that when he heard Anuncio Martí screaming, he went to his room and began to scream along with him.<sup>50</sup>

55. The Court notes that in the video shouts are heard saying: "I am Anuncio Martí, I am here with Juan Arrom!... I am Anuncio"<sup>51</sup>and "We we here! I am, I am Juan!"<sup>52</sup> Subsequently, it is observed how the hand of Anuncio Martí Méndez comes out of one of the windows and some shouts are heard saying: "get us out of here!, please! please! We are Anuncio and Juan Arrom".<sup>53</sup> Minutes later, police officers arrived, who crossed the gate of the house and approached the window where the hand of Mr. Martí Méndez could be seen. They made a brief tour of the outskirts of the property, told a journalist that they could not enter without a prosecutor's order, and left.<sup>54</sup> Next, Juan Arrom left the front door of the house without a shirt, with his hands raised, and with bruise marks on his lower back, followed by Anuncio Martí.<sup>55</sup> Both testified before the media and relatives what had happened.<sup>56</sup> At one point, Anuncio Martí can be seen entering the house and then coming out again with a T-shirt, his glasses and other objects.<sup>57</sup>

56. After making statements to the press, Juan Arrom and Anuncio Martí tried to get into a vehicle but were prevented by police officers. At that moment, Héctor Raúl Marín Peralta, the Deputy Ombudsman, got between the alleged victims and the police officers, telling them that he

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and 01:25 to 01:55); Witness statement of February 11, 2002, of María Auxiliadora Arrom Suhurt (evidence file, f. 4965), and Witness statement of February 11, 2002, of Cristina Haydée Arrom Suhurt (evidence file, fs. 4968).

<sup>47</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, audiovisual material folder, "archive01" minutes 01:09 to 01:10); Testimony of February 11, 2002, of María Auxiliadora Arrom Suhurt (evidence file, fs. 4963 to 4966); Testimonial statement of Federico Aníbal Emery of May 7, 2002 (evidence file, f. 5675), and Testimonial statement of Patricia Raquel Baudin of July 9, 2002 (evidence file, f. 1850).

<sup>48</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, audiovisual material folder, "archive01" minutes 02:15 to 02:50); Witness statement of February 11, 2002, by Cristina Haydée Arrom Suhurt (evidence file, f. 4969), and Witness statement by Federico Aníbal Emery on May 7, 2002 (evidence file, f. 5675).

<sup>49</sup> Cf. Statement of Anuncio Martí Méndez of February 4, 2002 before the Criminal Guarantee Judge (evidence file, f. 4054).

<sup>50</sup> Cf. Testimonial statement of Juan Arrom Suhurt of May 23, 2002, before the Public Prosecutor's Office (evidence file, fs. 5792 and 5793), and Statement of Juan Arrom Suhurt rendered at the public hearing held in this case.

<sup>51</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "file01").

<sup>52</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "file01").

<sup>53</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "file01"), and Testimonial statement of Federico Aníbal Emery of May 7, 2002 (evidence file, f. 5676).

<sup>54</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "file01"), and Testimonial statement of Federico Aníbal Emery of May 7, 2002 (evidence file, fs. 5675 and 5676).

<sup>55</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "file01").

<sup>56</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "file01").

<sup>57</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "file01").

would take responsibility.<sup>58</sup> After several struggles between the police officers and the demonstrators present, a policeman entered a car where the alleged victims were and headed to the private health center Sanatorium Migone.<sup>59</sup>

57. At the Migone Sanatorium they underwent a medical examination, the report of which is signed by thirteen doctors.<sup>60</sup> The exam done to Juan Arrom Suhurt found that he had wounds or bruises on his head, neck, thorax, abdomen, buttocks, penis, testicles, and upper and lower limbs, highlighting the presence of a large bruise on the posterior and lateral walls of the abdomen and buttocks.<sup>61</sup> The report concluded that Juan Arrom Suhurt "has suffered various injuries with natural blunt weapons (hands and feet), proper blunt weapons (the butt of a firearm and metal objects such as handcuffs). These wounds could have around 15 days, except for the large bruise described which [...] has between 5 and 7 days."<sup>62</sup>

58. Attached to the report is a psychiatric evaluation of the same date that concluded that Arrom Suhurt was in a state of alarm, permanent stress, affective-emotional lability, and had insomnia.<sup>63</sup>

59. At the request of Cristina Arrom Suhurt, this medical examination was witnessed by a notary public, who indicated that the examination was carried out by nine doctors<sup>64</sup> and that six other doctors were present.<sup>65</sup>

60. The report of the medical examination carried out on Anuncio Martí Méndez found that he had a recently excoriated scar on his head, a bruise on his abdomen, and injuries to his upper and lower limbs.<sup>66</sup> This report concluded that Anuncio Martí Méndez "has suffered various injuries with natural blunt weapons (hands and feet), proper blunt weapons (the butt of a firearm and metal objects such as handcuffs). These wounds could have around 15 days."<sup>67</sup>

61. Attached to the report is a psychiatric evaluation of the same date that concluded that Martí Méndez was in a state of permanent alarm even when the threatening situation is reduced, affective-emotional lability, fear, insecurity, and arterial hypertension. The report indicated that he may present insomnia, nightmares, and post-traumatic stress.<sup>68</sup>

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<sup>58</sup> Cf. Canal Telefuturo, video of the rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "file01"), and Statement rendered by Héctor Raúl Marín Peralta before a notary public on January 2019 (evidence file, f. 13181).

<sup>59</sup> Cf. Canal Telefuturo, video of the Rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "file01"); Record of testimony of Pascual Roberto Sotelo on April 17, 2002 (evidence file, f. 5497), and Statement made by Héctor Raúl Marín Peralta before a notary public on January 24, 2019 (evidence file, f. 13181).

<sup>60</sup> The reports were signed by doctors Domingo A. Mendoza, Miguel Ferreira Galeano, Ricardo Morales, Jorge Querey Rojas, Carlos Meilicke, Esperanza Martínez, Irma Ortiz, Hector Lacognata, Enrique Bellasai, Edgar Gimenez, Fernando Herrerossu, Eugenio Baez and Juan Fabio O. Cf. *Medical report of January 30, 2002, of Juan Arrom Suhurt* (evidence file, fs. 4888 to 4892), and *Medical report of January 30, 2002, of Anuncio Martí* (evidence file, fs. 4893 and 4896).

<sup>61</sup> Cf. *Medical report of January 30, 2002, of Juan Arrom Suhurt* (evidence file, f. 4891).

<sup>62</sup> Cf. *Medical report of January 30, 2002, of Juan Arrom Suhurt* (evidence file, fs. 4888 to 4891).

<sup>63</sup> The evaluation is signed by Carlos Portillo. Cf. *Psychiatric report of January 30, 2002 of Juan Arrom Suhurt* (evidence file, f. 4798).

<sup>64</sup> In particular, it refers to doctors Domingo A. Mendoza, Miguel Ferreira Galeano, Ricardo Morales, Jorge Querey Rojas, Carlos Meilicke, Esperanza Martínez, Irma Ortiz, Enrique Bellasai and Edgar Gimenez. Cf. *Notarial certificate confirming physical abuse of January 30, 2002* (evidence file, fs. 4800 and 4801).

<sup>65</sup> In particular, it refers to doctors Hector Lacognata, Juan Fabio, Fernando Herrerossu, Eugenio Baez Maldonado, Oscar Felipe Armele and Carlos Portillo. Cf. *Notarial certificate confirming physical abuse of January 30, 2002* (evidence file, f. 4801).

<sup>66</sup> Cf. *Medical report of January 30, 2002, of Anuncio Martí Méndez* (evidence file, fs. 4893 to 4895).

<sup>67</sup> Cf. *Medical report of January 30, 2002 of Anuncio Martí Méndez* (evidence file, f. 4895).

<sup>68</sup> Cf. *Psychiatric report of January 30, 2002 of Anuncio Martí* (evidence file, f. 4720).



62. The case file also contains photos and a video of the injuries suffered by Juan Arrom and Anuncio Martí after their release, where wounds can be seen in different parts of the body, in consistency with the medical reports.<sup>69</sup>

**B. Actions taken by the next of kin and investigation of the facts**

**B.1 Actions taken at the request of the next of kin**

63. According to what the alleged victims stated, on January 19, Juan Arrom's sisters looked for him at the Ministry of the Interior, at police stations, at the National Police Headquarters, and at the Crime Investigation Department.<sup>70</sup> On January 20, they visited Prosecutor Hugo Velázquez at the Luque Prosecutor's Office and Commissioner González Cuquejo at the Crime Investigation Department.<sup>71</sup> On January 23, they went to the Paraguari Artillery Command and to the Office for Vehicle Control of the National Police.<sup>72</sup> After that, they went to the Office of the Archbishop, and then to Congress, where they were received by a senator, who summoned them so that the following day their case could be presented to the Permanent Commission of Congress.<sup>73</sup>

64. At the same time, on January 19, 2002, Cristina Arrom and Carmen Marina Arrom filed a petition for *habeas corpus* on behalf of their brother Juan Arrom, requesting that his release be ordered immediately. They indicated that, it had been stated in the media that he had been apprehended on Thursday, January 17, 2002, by authorities of the Police or the Ministry of the Interior and that he had been taken to the Ybycuí area.<sup>74</sup>

65. On January 20, the judge issued an official notice ordering the Ministry of the Interior and the National Police to inform whether Juan Arrom Suhurt was detained.<sup>75</sup> In response, the Head of the Judicial Department, the Crime Investigation Department and the Minister of the Interior indicated that Juan Arrom was not detained.<sup>76</sup> On January 22, the Arrom Suhurt sisters submitted a new brief reiterating that Mr. Arrom Suhurt was in the premises of state security organizations, without them being able to determine the exact place of detention.<sup>77</sup>

66. On January 23, 2002, the court decided to deny the request for *habeas corpus*.<sup>78</sup> It indicated that "it had no certainty on whether Juan Francisco Arrom Suhurt had been deprived of his liberty."<sup>79</sup> It explained that the remedy of *habeas corpus* "is not oriented to avoid the modification of an existing factual situation, that is, the absence with unknown whereabouts of [Mr. Juan Francisco Arrom Suhurt - existing an order of deprivation of liberty ordered by a competent

<sup>69</sup> Cf. Photographs of the injuries of Juan Arrom Suhurt and Anuncio Martí Méndez (evidence file, fs. 221 to 236), and video 2 attached to the pleadings and motions brief.

<sup>70</sup> cf. Witness statement of February 11, 2002, of María Auxiliadora Arrom Suhurt (evidence file, f. 4963); Testimony of February 11, 2002, by Cristina Arrom Suhurt (evidence file, f. 4967); Statement made by Cristina Arrom Suhurt on February 7, 2019 at the public hearing held in this case; Statement of Carmen Marina Arrom Suhurt rendered by affidavit presented before the Court (evidence file, fs. 13138 and 13139)

<sup>71</sup> cf. Testimony of February 11, 2002, of María Auxiliadora Arrom (evidence file, f. 4963); Statement made by Cristina Arrom Suhurt on February 7, 2019 at the public hearing held in this case; Statement of Liza Liana Larriera Rojas rendered by affidavit submitted to the Court (evidence file, f. 13202), and Statement of María Auxiliadora Arrom rendered by affidavit submitted to the Court (evidence file, affidavits and expert opinions, f. 13159).

<sup>72</sup> cf. Testimony of February 11, 2002, of María Auxiliadora Arrom (evidence file, f. 4964); Statement of June 21, 2002, of Ofelia Noemí Insaurralde Morel (evidence file, fs. 5929); Statement of María Auxiliadora Arrom rendered by affidavit submitted to the Court (evidence file, affidavits, and expert opinions, f. 13159), and Statement rendered by Cristina Arrom at the public hearing held in this case.

<sup>73</sup> cf. Testimony of February 11, 2002, by María Auxiliadora Arrom (evidence file, f. 4964).

<sup>74</sup> Cf. Final Judgment No. 4 of January 23, 2002 (evidence file, f. 504).

<sup>75</sup> *Interlocutory* order No. 38 of January 20, 2002 (evidence file, f. 1151).

<sup>76</sup> Cf. Final Judgment No. 4 of January 23, 2002 (evidence file, f. 504).

<sup>77</sup> Cf. Final Judgment No. 4 of January 23, 2002 (evidence file, f. 506).

<sup>78</sup> Cf. Final Judgment No. 4 of January 23, 2002 (evidence file, f. 507).

<sup>79</sup> Cf. Final Judgment No. 4 of January 23, 2002 (evidence file, f. 506).

[a]uthority-; the [court] came to the conclusion that it could not grant the request for *habeas corpus*, [...] noting [...] that there is no illegal deprivation of liberty to be restored."<sup>80</sup>

67. On January 23, 2002, María Cristina and Marta Ramona Martí Méndez filed a preventive *habeas corpus* in favor of Anuncio Martí Méndez, arguing that he had been missing since Thursday, January 17, 2002 and that he was being held in a police facility.<sup>81</sup> That same day, the judge issued an official notice ordering the Ministry of the Interior and the National Police to inform whether Anuncio Martí Méndez was detained.<sup>82</sup>

68. On January 24, 2002, the Criminal Court decided not to grant the request for *habeas corpus*. It indicated that "the circumstance[s] presented [...] do not fall within the provisions of [the Constitution] because the police report shows that [Anuncio Martí] was not detained in police facilities." Therefore, it considered that elements of an illegal detention were not met "given the existence of an arrest warrant issued by the [Prosecutor's Office] against him."<sup>83</sup>

69. On the other hand, the Inter-American Commission issued precautionary measures on February 6, 2002 to "ensure the life and physical integrity of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez."<sup>84</sup>

## B.2 Criminal investigation

70. On January 24, 2002, the sisters of Anuncio Martí Méndez filed a criminal complaint for the disappearance of Anuncio Martí along with Juan Arrom since January 17. They indicated that, according to press reports, they had been detained that day by police officers and taken to offices of the Investigations Department of the National Police. They indicated that "other versions indicate [...] that he could be detained in a place in Ybycuí, owned by the [at that time] Minister of the Interior."<sup>85</sup> On the morning of January 30, 2002, at the request of the sisters of Anuncio Martí Méndez, the prosecutor went to the house of Martí Méndez to carry out an inspection.<sup>86</sup>

71. After the discovery of the alleged victims, on January 30, an inspection was carried out at the house where Juan Arrom and Anuncio Martí were found.<sup>87</sup> The following day, a raid was carried out on another house in Villa Elisa, where the alleged victims had allegedly been detained for the first few days.<sup>88</sup> On February 2, 2002, the prosecutor forwarded the evidence collected in the aforementioned raids for criminal analysis.<sup>89</sup>

72. On February 1, 2002, Marta Ramona Martí expanded the criminal complaint indicating that Anuncio Martí was also a victim of torture, for which she requested that various procedures be carried out and attached the medical report done on January 30.<sup>90</sup>

<sup>80</sup> Cf. Final Judgment No. 4 of January 23, 2002 (evidence file, f. 507).

<sup>81</sup> Cf. Final Judgment No. 1 of January 24, 2002 (evidence file, f. 509).

<sup>82</sup> *Interlocutory order* No. 65 of January 23, 2002 (evidence file, f. 1157).

<sup>83</sup> Cf. Final Judgment No. 1 of January 24, 2002 (evidence file, f. 510).

<sup>84</sup> Cf. Note from the Inter-American Commission of February 6, 2002 (evidence file, fs. 827 and 828).

<sup>85</sup> Cf. Report of disappearance of Anuncio Martí presented on January 24, 2002 (evidence file, fs. 4700 to 4703); Note from the ABC newspaper, entitled "Martí's sisters appeal to the prosecution", dated January 25, 2002 (evidence file, f. 170), and Note from the La Nación newspaper, entitled "Disappearance complaint is part of the plan", dated 25 January 2002 (evidence file, f. 176).

<sup>86</sup> Cf. *Incorporation act* of January 30, 2002 (evidence file, fs. 4707 to 4708).

<sup>87</sup> Cf. Inspection records of January 30, 2002 (evidence file, fs. 5370 to 5373); Criminal report of January 29, 2003 (evidence file, fs. 7269 to 7276), and Proceedings record of February 13, 2002, of evidence collected on January 30 and 31, 2002 (evidence file, f. 7295).

<sup>88</sup> Cf. Record of search of January 31, 2002 (evidence file, fs. 4713 to 4714), and Report of the search procedure of January 31, 2002 (evidence file, fs. 4728 and 4729).

<sup>89</sup> Cf. Criminal Prosecutor's Note No. 25 of February 2, 2002 (evidence file, f. 4733).

<sup>90</sup> *Expansion* of the complaint of February 1, 2002 (evidence file, fs. 4716 and 4717), and Medical report of January 30, 2002 (evidence file, fs. 4718 and 4719).

73. On February 7, 2002, the Office of the Public Prosecutor charged Saturnino Antonio Gamarra Acosta and José David Schémbori Ocampos with the crimes of deprivation of liberty, forced disappearance and torture against Juan Arrom and Anuncio Martí.<sup>91</sup> Subsequently, the Public Prosecutor's Office indicted the Head of the Judicial Investigation Center of the Office of the Public Prosecutor, Javier Casal Elizeche, for the same crimes.<sup>92</sup> On February 14, 2002, the arrest of Juan Carlos González Villar was ordered, because he was the tenant of the house where the alleged victims were found.<sup>93</sup> However, it could not be processed because the identity card number in the lease contract did not match with the name of Juan Carlos González Villar.<sup>94</sup>

74. On February 7 and 26, 2002, Juan Arrom and Anuncio Martí, respectively, filed individual criminal complaints for the facts of which they claimed to be victims.<sup>95</sup>

75. During the investigations, statements were received from the alleged victims, their next of kin, the Minister of the Interior, the Minister of Justice and Labor, the Attorney General, three prosecutors from the Public Prosecutor's Office, and at least 16 police officers, and 87 people who might have had information about what happened, or who might be involved.<sup>96</sup> Additionally, diverse information was requested,<sup>97</sup> a reconstruction of the alleged arrest of Juan Arrom and Anuncio Martí<sup>98</sup> and their discovery<sup>99</sup> was carried out. Spoken portraits were also made based on what was stated by Juan Arrom.<sup>100</sup>

76. On January 29, 2003, a criminal report on the evidence collected in the inspections and raids carried out on January 30 and 31, 2002 was presented.<sup>101</sup> The report notes that on February 13, 2002, the studies that would be carried out on this evidence were scheduled for between February

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<sup>91</sup> Cf. Record of charges against Antonio Gamarra and José David Schémbori of February 7, 2002 (evidence file, fs. 4957 to 4959).

<sup>92</sup> Cf. Record of charges against Javier Casal Elizeche of February 21, 2002 (evidence file, fs. 5016 to 5017).

<sup>93</sup> Resolution No. 12 of February 14, 2002 (evidence file, fs. 4991 and 4992).

<sup>94</sup> Note of February 15, 2002 from the National Police (evidence file, f. 4989).

<sup>95</sup> Juan Arrom *Suhurt*'s complaint was filed against the Deputy Police Commissioner, Saturnino Antonio Gamarra; The Director of the Center for Judicial Investigation, Javier Casal, the Minister of Justice and Labor, Silvio Ferreira Fernández, Mr. Marcos Antonio Álvarez Pereira, the Minister of the Interior of the Executive Power, Julio César Fanego Arellano, and the Prosecutor Hugo Velázquez Moreno, all of them for punishable acts against freedom, serious coercion, kidnapping, threat, attempted homicide, forced disappearance, serious injury, serious injury in the exercise of public functions, torture and persecution of innocents, all of the above in criminal association. Complaint filed by Juan Arrom *Suhurt* on February 7, 2002 (evidence file, fs. 4808 to 4810). The Anuncio Martí complaint was filed against the same persons included in Juan Arrom's complaint, with the exception of Messrs. Fanego Arellano and Velázquez Moreno. Likewise, the complaint was also filed against the Deputy Commissioner in charge of the Crime Investigation Department of the National Police, José David Schémbori Ocampos, the Police Sub-Officer Pablo Morínigo, Commissioner Roberto González Cuquejo, Mrs. Gladys Maubet de Ferreira, wife of the former Minister Silvio Ferreira, Inspector Officer Gomez, Officer 1<sup>o</sup> Martínez, Inspector Officer Nelson Alderete, Inspector Officer Julio Diaz, Officer Limenza and Officer Morínigo, for the crimes of kidnapping, torture, forced disappearance, serious injury, illicit association, serious coercion, threat, attempted homicide, serious injury in the exercise of public functions, persecution of innocents, all in criminal association. Cf. Complaint filed by Anuncio Martí on February 26, 2002 (evidence file, f. 526).

<sup>96</sup> Cf. File labeled Saturnino Antonio Gamarra et al. on torture and others (evidence file, fs. 4697 to 8554).

<sup>97</sup> See, for example, Communication of March 8, 2002 (evidence file, f. 5167); Note from the Criminal Prosecutor No. 309 of March 8, 2002 (evidence file, f. 5186); Official letter No. 151 of the National Police of March 11, 2002 (evidence file, fs. 5193 to 5196); Note from the Criminal Prosecutor of March 8, 2002 (evidence file, f. 4899); Request of March 11, 2002 (evidence file, f. 5190).

<sup>98</sup> Cf. Action to reconstruct the events of April 18, 2002 (evidence file, fs. 5519 to 5525).

<sup>99</sup> Cf. Record of proceedings of November 28, 2002 (evidence file, fs. 6536 to 6547).

<sup>100</sup> Cf. Minutes No. 027 / 2002; Act No. 028 / 2002; Record No. 029 / 2002 and Record No. 030 / 2002 (evidence file, fs. 5426 to 5432). For his part, Anuncio Martí reported that "due to [his] personal impossibility and on the recommendation of [his] lawyer [he] abstain[s] from making the corresponding identification." Cf. Record of April 11, 2002 (evidence file, fs. 5435 and 5436).

<sup>101</sup> Cf. Criminal report of January 29, 2003 (evidence file, fs. 7269 to 7280).

15 and 19, but these were not completed due to the absence of "the representatives of Messrs. Arrom and Martí."<sup>102</sup> Therefore, the evidence was not processed.

77. On February 8, 2003, the Public Prosecutor's Office requested the definitive dismissal of the case against Javier Benjamín Cazal Elizeche, José David Schémbori and Saturnino Antonio Gamarra Acosta.<sup>103</sup> On that same date, the public prosecutor requested the dismissal of the individual criminal complaints filed by the alleged victims, since "the factual circumstances that supposedly incriminate the defendants, did not constitute punishable acts".<sup>104</sup>

78. For their part, on February 8 and 10, respectively, Anuncio Martí and Juan Arrom filed charges against the defendants and offered certain evidence.<sup>105</sup> On March 28 and 31, 2003, Anuncio Martí and Juan Arrom opposed the dismissal request and requested the gathering of some evidence.<sup>106</sup>

79. On May 14, 2003, the preliminary hearing was held.<sup>107</sup> That same day, the Judge in charge determined that the grounds for the request for definitive dismissal were not sufficient "because the lack of participation of the defendants must appear evidently and without a doubt." She stressed that "there are various pieces of evidence [in the case] that must be discussed and analyzed in public and oral trial."<sup>108</sup> Consequently, it ordered that the proceedings be forwarded to the Attorney General so that he could indict or ratify the request made by the prosecutors who acted initially, as provided by the Code of Criminal Procedure.<sup>109</sup>

80. On May 27, 2003, the Deputy Prosecutor, in charge of the Office of the National Attorney General, ratified the request for dismissal presented by the prosecutors in favor of Antonio Gamarra, José David Schémbori and Javier Cazal, and considered that it was in accordance with the law to dismiss the individual criminal complaints filed against Hugo Velázquez Moreno, Julio César Fanego Arellano and Silvio Gustavo Ferreira Fernández.<sup>110</sup>

81. On June 19, 2003, Juan Arrom's lawyer filed an objection of unconstitutionality because he considered that the application of article 358 of the Criminal Procedure Code in the case went against the constitutional rights of his defendant. The aforementioned article provides that the Judge may not decree the opening of a trial if there is no accusation by the prosecution.<sup>111</sup> On September 19, 2003, the Constitutional Chamber of the Supreme Court of Justice dismissed the objection of unconstitutionality, considering that Article 358 of the Criminal Procedure Code was part of a series of provisions of the mixed accusatory criminal system in which the Public Prosecutor's Office has the function of prosecuting and the Judge of Guarantees has the task of ensuring the protection of the rights of the accused and the victim, as well as that of analyzing the evidence obtained in the investigation.<sup>112</sup>

<sup>102</sup> Cf. Criminal report of January 29, 2003 (evidence file, fs. 7278 to 7280), and Proceedings record of February 13, 2002, of evidence gathered on January 30 and 31, 2002 (evidence file, f. 7296).

<sup>103</sup> Cf. Request for dismissal from the Public Prosecutor's Office of February 8, 2003 (evidence file, fs. 7512 and 7513).

<sup>104</sup> Cf. Request for dismissal from the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7467).

<sup>105</sup> Cf. Anuncio Martí Méndez brief of February 8, 2003 (evidence file, fs. 8208 to 8220), Juan Arrom Suhurt's brief of February 10, 2003 (evidence file, fs. 1204 to 1223).

<sup>106</sup> Cf. Anuncio Martí's brief of March 28, 2003 (evidence file, fs. 8244 to 8255), and Juan Arrom Suhurt's brief of March 31, 2003 (evidence file, fs. 8256 to 8312).

<sup>107</sup> Cf. Record of the preliminary hearing of May 14, 2003 (evidence file, fs. 8333 to 6339).

<sup>108</sup> Resolution No. 68 of May 14, 2003 (evidence file, f. 8340).

<sup>109</sup> Resolution No. 68 of May 14, 2003 (evidence file, f. 8341).

<sup>110</sup> Cf. Opinion of the State Attorney General's Office of May 27, 2003 (evidence file, fs. 8342 to 8369).

<sup>111</sup> Cf. Brief of June 19, 2003 (evidence file, fs. 634 to 644).

<sup>112</sup> Cf. Judgment of the Supreme Court of Justice of September 19, 2003 (evidence file, fs. 646 to 648).

82. On November 4, 2003, the Criminal Judge declared the definitive dismissal of the cases against Javier Casal, Antonio Gamarra and José David Schémbori, and ordered the extinction of the criminal case. The Judge explained that article 358 of the Criminal Procedure Code establishes that if the Public Prosecutor has not charged, the Judge will request that the proceedings be referred to the Attorney General so that they may accuse or ratify what was said by the previous prosecutor; then, if the Attorney General confirms he does not intend to accuse, the Judge must decide in accordance with the request of the Public Prosecutor's Office. Consequently, taking into account that the request for dismissal was ratified by public prosecutors and the Attorney General's office, the Judge considered that he had to declare the dismissal of the case against the accused, regardless of their internal conviction.<sup>113</sup>

83. On November 11 and 12, 2003, lawyers for Anuncio Martí Méndez and Juan Arrom Suhurt filed a general appeal against the November 4, 2003 decision of the Criminal Judge.<sup>114</sup>

84. On March 24, 2004, the Fourth Chamber of the Appeals Tribunal for Criminal matters confirmed the dismissal.<sup>115</sup> The Chamber held that the role of the prosecutor as title bearer of criminal actions entailed presenting before judges only cases which were "rationally based and had the possibility of overcoming the rules of contradiction, examination and cross-examination in public oral trials."<sup>116</sup> The tribunal also stressed that in no case may the judge order the initiation of a trial if there is no accusation by the prosecutor.<sup>117</sup> With this decision, the case was definitively closed.

### **C. Refugee status of Juan Arrom and Anuncio Martí in Brazil**

85. On August 11, 2003, Juan Arrom Suhurt and Anuncio Martí Méndez moved to Brazil.<sup>118</sup> On December 1, 2003, the National Committee for Refugees of Brazil –CONARE– unanimously decided to recognize their refugee status for having "demonstrated a founded fear of persecution for reasons of a political nature."<sup>119</sup>

86. On three occasions, Paraguay has asked the Brazilian government to review the case.<sup>120</sup> The first two instances were denied.<sup>121</sup> Paraguay made a third request on January 10, 2019, which had not been resolved as of the date of this judgment.<sup>122</sup>

<sup>113</sup> Cf. Decision of November 4, 2003 (evidence file, fs. 8468 to 8470).

<sup>114</sup> Cf. Appeal of November 11, 2003 (evidence file, fs. 8537 to 8539), and Appeal of November 12, 2003 (evidence file, fs. 8495 to 8512).

<sup>115</sup> Cf. Decision of the Fourth Chamber of the Criminal Appeals Court of March 24, 2004 (evidence file, fs. 8516 to 8526).

<sup>116</sup> Cf. Decision of the Fourth Chamber of the Criminal Appeals Court of March 24, 2004 (evidence file, f. 8522).

<sup>117</sup> Cf. Decision of the Fourth Chamber of the Criminal Appeals Court of March 24, 2004 (evidence file, f. 8522).

<sup>118</sup> Cf. Statement of Juan Arrom Suhurt rendered at the public hearing held in this case, and Statement of Anuncio Martí Méndez before a notary public on January 16, 2019 (evidence file, f. 13193).

<sup>119</sup> The technical note does not mention the names of the three Paraguayan citizens to whom it granted refugee status. Cf. Technical note of the Coordinator-General of the CONARE National Committee for Refugees (evidence file, f. 687).

<sup>120</sup> The requests were made on October 27, 2006, February 22, 2010, and January 10, 2019. Cf. Technical note of the Coordinator-General of the CONARE National Committee for Refugees (evidence file, f. 687); Note from the *Diario Estadao*, entitled "Brasil will deny extradição de refugios políticos", of May 3, 2010 (evidence file, fs. 690 and 691), and Request DM/Nº 9/2019 of January 10, 2019, signed by Hugo Saguier Caballero, Substitute Minister of Foreign Affairs addressed to the Minister of Foreign Affairs of the Federative Republic of Brazil (file of provisional measures, fs. 136 to 145).

<sup>121</sup> Cf. Technical note from the Coordinator-General of the CONARE National Committee for Refugees (evidence file, f. 687), and Note from the *Estadao* newspaper, entitled "Brasil will deny extradição de refugios políticos", of May 3, 2010 (evidence file, fs. 690 and 691).

<sup>122</sup> Cf. Request DM/Nº 9/2019 of January 10, 2019 signed by Hugo Saguier Caballero, Substitute Minister of Foreign Affairs addressed to the Minister of Foreign Affairs of the Federative Republic of Brazil (file of provisional measures, fs. 136 to 145).

## **VII MERITS**

87. In the present case, the Commission and the representatives claim that Juan Arrom Suhurt and Anuncio Martí Méndez were victims of forced disappearance and torture between January 17 and 30, 2002. The State emphasized that the participation of state agents in such events has not been proven, and thus it is not internationally responsible. In addition, whether or not the State carried out a complete and diligent investigation and is responsible for alleged violations against the next of kin is in contention.

88. This Court notes that the representatives alleged the violation of Articles 11, 22 and 2 of the American Convention and Articles 7 and 9 of the Inter-American Convention to Prevent and Punish Torture, without presenting arguments on why they considered that they had been violated. The Commission did not allege the violation of the mentioned articles. Therefore, the Court considers that it does not have elements to rule on the alleged violation of said provisions<sup>123</sup>.

89. According to the arguments of the parties and the Commission, in this case the Court will examine (1) the alleged violation of the rights to personal liberty, personal integrity, life, and juridical personality, (2) the alleged violations of judicial guarantees and judicial protection, and (3) the alleged violation of the personal integrity of the next of kin of Juan Arrom Suhurt and Anuncio Martí Méndez.

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<sup>123</sup> In the final arguments, the representatives also alleged the violation of Article 24 of the Convention, as well as Article 2 of the Inter-American Convention to Prevent and Punish Torture and Articles VII, IX, and XI of the Inter-American Convention on Forced Disappearance of Persons. However, these allegations were submitted extemporaneously, so the Court will not rule on the matter.

**VII-1**  
**ALLEGED VIOLATION OF THE RIGHTS TO PERSONAL LIBERTY,<sup>124</sup> PERSONAL**  
**INTEGRITY,<sup>125</sup> LIFE<sup>126</sup> AND RIGHT TO JURIDICAL PERSONALITY,<sup>127</sup> IN RELATION**  
**TO THE OBLIGATION TO RESPECT RIGHTS<sup>128</sup>**

**A. Arguments of the parties and of the Commission**

90. The **Commission** alleged that “there were multiple indications of participation by State agents” in the events related to the alleged forced disappearance and torture of Messrs. Arrom and Martí. In this regard, it stressed that “the statements of Juan Arrom and Anuncio Martí are consistent with each other and in these they mentioned the participation of state agents.” It also highlighted that “(i) according to a statement by the Minister of the Interior, Julio César Fanego, published in the press, he was monitoring the leaders of Patria Libre, days before their alleged disappearance, for their possible responsibility in the kidnapping of the Ms. María Edith Bordón de Debernardi; (ii) police officer Antonio Gamarra asked the Public Prosecutor’s Office to issue an arrest warrant for Juan Arrom and Anuncio Martí, which indicates that state agents were not only monitoring but also searching for them; (iii) there are several testimonies about unusual activity in the neighborhood in which Juan Arrom and Anuncio Martí claimed to have been captured, just at the moment in which they specified that they were detained, and in a context in which Mr. Resck claimed to have seen the director from the Center for Judicial Investigations, Javier Cazal,

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<sup>124</sup> Article 7 of the Convention establishes that: “1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. 7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.”

<sup>125</sup> Article 5 of the Convention establishes that: “1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal. 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.”

<sup>126</sup> Article 4 of the Convention establishes that: “1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. 2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply. 3. The death penalty shall not be reestablished in states that have abolished it. 4. In no case shall capital punishment be inflicted for political offenses or related common crimes. 5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women. 6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.”

<sup>127</sup> Article 3 of the Convention establishes that: “Every person has the right to recognition as a person before the law.”

<sup>128</sup> Article 1.1 of the Convention establishes that: “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

who was also later identified by Juan Arrom; (iv) Héctor Lacognata affirmed that the wife of the Minister of Labor, Silvio Ferreira, informed him that he was aware of the arrest of Juan Arrom and that he and Anuncio Martí would be presented to the Public Prosecutor's Office; (v) according to a press release, the Deputy Ombudsman, Héctor Raúl Marín Peralta, denounced that the prosecutors [...] knew about the clandestine detention of Juan Arrom and Anuncio Martí; (vi) the journalist Aníbal Emery indicated that, during the release of Messrs. Arrom and Martí, they saw deputy officer José David Schémbori, identified by Juan Arrom as one of his torturers [...]; (vii) Juan Arrom's sisters identified José David Schémbori in the same context; (viii) Víctor Colmán and Ana Rosa Samudio denounced that state agents [...] broke into their house and told them that they had detained Juan Arrom and Anuncio Martí; (ix) journalist Mónica Laneri stated that she was informed that Juan Arrom had been detained but that Commissioner González Cuquejo denied it on air, adding that she asked [prosecutor Velásquez] about the situation and he told her that Martí's situation was 'very negotiable', and (x) the statements – with unduly investigated retractions– by Esteban Centurión and Ángela Estefanía Salinas involving police officer Antonio Gamarra.”

91. The **representatives** indicated that Juan Arrom Suhurt and Anuncio Martí saw and recognized various state agents, some of whom were also seen by Luis Alfonso Resck, Aníbal Emery, Cristina Arrom and María Auxiliadora Arrom. “Some of them also appear in the video and photographs taken on the day of the rescue.” They added that, in the first days “they were taken to a first house located in Villa Elisa, owned by the wife of the then Deputy Commissioner Saturnino Antonio Gamarra,” then a second house where they stayed for a day and then a third house of imprisonment “also in the city of Villa Elisa, owned by police commissioner Octavio Francisco Flores.”

92. The **State** argued that “the participation of state agents has not been proven,” and that there is no context or systematic pattern of disappearances in the instant case. Therefore, a presumption cannot be used to the detriment of the State. It insisted that “from the evidence contained in the four volumes of the judicial case file and thirteen volumes of the prosecutor’s investigation file, it was correctly concluded that the accused had not participated in the punishable acts investigated.”

### **B. Considerations of the Court**

93. In the present case, the representatives and the Commission argued that Juan Arrom Suhurt and Anuncio Martí Méndez were detained, tortured, and forcibly disappeared by state agents between January 17 and 30, 2002. For its part, the State indicated that the participation of state authorities in such events has not been proven.

94. In order for a violation of the American Convention to be established, it is necessary that the acts or omissions that generated said violation be attributable to the respondent State. These acts or omissions can be of any power or organ of the State, regardless of its rank or hierarchy.<sup>129</sup> Taking into account the existing controversy, the Court will proceed to examine whether these alleged events can be attributed to the State and later, if necessary, it will determine if they constituted violations of the American Convention and other alleged international treaties.

95. In cases such as this, where there is no direct evidence of state action, the Court has emphasized that the use of circumstantial evidence, indicia, and presumptions is legitimate and can be as the basis for a judgement, provided that consistent conclusions about the facts can be

<sup>129</sup> Cf. *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, para. 79, and *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of September 26, 2018. Series C No. 362, para. 127.



inferred from them.<sup>130</sup> In this regard, this Court has indicated that, in principle, the plaintiff bears the burden of proof regarding the facts on which his or her allegations are based. However, it has highlighted that, in human rights proceedings, the defense of the State cannot rest on the impossibility of the plaintiff to adduce evidence, when it is the State that has control of the means to clarify events that occurred within its territory.<sup>131</sup>

96. The Court notes that the present case, unlike others before this Court, did not happen in the context of a systematic and generalized practice of forced disappearances, political persecution or other violations of human rights. Therefore, it is not possible to use the context to corroborate other evidence.<sup>132</sup> There is also no evidence in this case that shows that the alleged victims were in custody of state agents before the alleged events occurred.<sup>133</sup> Therefore, a presumption against the State in relation to what happened is not applicable. In this regard, contrary to what was indicated by the Commission, the State does not have the obligation to present an alternative thesis about what happened to the alleged victims.

97. On the other hand, in this case the evidence presented by the representatives and the Commission refer primarily to the alleged participation of certain state agents identified by the alleged victims, who were investigated by the domestic authorities. The Court will analyze the conclusions of the investigation, which examined evidence related to the possible participation of said state agents in the alleged violations of the rights of Messrs. Arrom Suhurt and Martí Méndez.

98. Taking into account the foregoing, as well as the arguments of the parties, the Court will proceed to examine: 1) the information that aims to demonstrate the alleged state participation in the present case, and 2) the conclusions of the criminal investigation carried out.

### **B.1 Information that aims to demonstrate the alleged state participation**

99. The case file includes: i) statements by the alleged victims; ii) statements of persons who claim to have witnessed the moment of the arrest of the alleged victims by state agents; iii) statements from people who affirm that they have received information on the participation of state agents in general, and iv) information on the houses where the alleged victims were detained.

#### B.1.a Statements by the alleged victims

100. In the instant case, the alleged victims have made various statements about what happened. The first statements were given to the press just after leaving the house on January 30, 2002. The Telefuturo video shows that after the release, a journalist asked Anuncio Martí Méndez if he could recognize those who took him, to which he replies: "we don't know", then Juan Arrom Suhurt interrupts him saying that: "it seems that they were from the Judicial Investigation office, they said so. No, we don't know, they had us hooded almost all day."<sup>134</sup>

<sup>130</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, paras. 130 and 131, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 169.

<sup>131</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 135, and *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of September 26, 2018. Series C No. 362, para. 163.

<sup>132</sup> See, for example, *Case of Terrones Silva et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2018. Series C No. 360.

<sup>133</sup> See, for example, *Case of Munárriz Escobar et al. v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 20, 2018. Series C No. 355.

<sup>134</sup> Cf. Canal Telefuturo, video of the Rescue of Juan Arrom and Anuncio Martí of January 30, 2002, (evidence file, folder of audiovisual material, "file01").

101. Subsequently, the alleged victims have indicated that after their release they identified some state agents when they saw photographs in the press.<sup>135</sup> The record shows that Mr. Arrom Suhurt testified on February 4, 2002 before the Criminal Judge of Guarantees,<sup>136</sup> on April 18, 2002, during the reconstruction of the events of January 17,<sup>137</sup> and on May 23, 2002, before prosecutors,<sup>138</sup> and on February 7, 2019 at the public hearing held in this case.<sup>139</sup> For his part, Mr. Martí Méndez

<sup>135</sup> Cf. Statement of Anuncio Martí of February 4, 2002 before the Criminal Judge of Guarantees (evidence file, fs. 4054 and 4055); Testimony of Juan Arrom Suhurt of February 4, 2002 before the Criminal Guarantee Judge (evidence file, f. 4033), and Reconstruction of the facts of April 18, 2002 (evidence file, f. 5527).

<sup>136</sup> On that occasion, Mr. Arrom Suhurt stated that at the time of the capture they were all acting with their faces uncovered. He indicated that after his capture they took him to a place where he could see that Deputy Commissioner Antonio Gamarra was there. They then took him near the entrance of a stable where he remembers seeing a tall, thin person with a mustache and a semi-grown beard, whom they nicknamed KABUL. He indicated that the next day, after asking Deputy Commissioner Gamarra to meet with Mr. Ferreira, they put him in a car and took him to a place where Minister Ferreira came to speak with him. Minister Ferreira reportedly indicated that he would speak with Minister Fanego, who was going to "give him guarantees." Upon returning from that meeting, they handed him a telephone and Minister Fanego told him "Arrom, here I am with Minister Ferreira, he is listening to what I am going to tell you, collaborate with the people we are going to send you, we are going to give all the guarantees and we will get you out of the country." He indicated that after a while they covered his eyes and mouth with packing tape and put him in a van and asked him to give Víctor Colman's address. He indicated that at one point "the group of people who were in the truck changed and people who said they were from the Anti-Terrorism Secretariat got on." On Saturday night a doctor came to examine him and Commissioner Gamarra was present. When they were transferred to the second house, "they put packing tape over his face, eyes and mouth again" and they remained blindfolded all day, he pointed out that he "could see the people who moved in the room, recognizing fully a man they say is [Mr.] Cazal, whose photos appear in the newspaper." He indicated that he saw Commissioner Gamarra on two more occasions, on Monday night, two days before they were found, and on Wednesday morning. He also indicated that Gamarra told him that they had to heal his wounds so that they could take him to the Public Prosecutor's Office and to collaborate by signing a statement that prosecutor Velázquez had already prepared. He further indicated that "several policemen [asked] him to please not implicate [them]." Cf. Testimony of Juan Arrom Suhurt of February 4, 2002 before the Criminal Guarantee Judge (evidence file, fs. 4032 to 4037).

<sup>137</sup> On that occasion, Mr. Arrom Suhurt declared that they all acted with their faces uncovered. He indicated that at the time of the capture, Deputy Commissioner Gamarra, David Schémbori, Javier Cazal were present and one last person whose photograph appeared a few days ago in the newspaper Última Hora, a man named Francisco Servián." Cf. Reconstruction of events of April 18, 2002 (evidence file, f. 5520).

<sup>138</sup> On that occasion, Mr. Arrom Suhurt declared that he ratified his previous statement and added that: the person who he identified through a photo in the newspaper, the person they called KABUL, is Deputy Officer José David Schémbori, who was there when they tortured him in the river and was accompanied by Francisco Servián. He pointed out that on Friday, when he left the house, some people identified themselves as being from an anti-terrorist secretariat. He indicated that that day, when they were visiting Mr. Víctor Colman's area, "in order for [him] to identify his house[,] at a given moment [they] lifted the packing tape from the left side of his eye so that he could say if one of the houses [was that of] Víctor Colman." At that moment, he realized that on his left side was a person he met in March 2000, Army Lieutenant Colonel Mario Restituto González Benítez. He stated that the person who gave him the phone to speak with Minister Fanego was Francisco Servián. He explained that when they passed the phone they told him that he would speak with Minister Fanego and that he recognized the voice "from having heard it on several previous occasions on the radio and television." He affirmed that they pressured him to sign statements that prosecutor Hugo Velázquez already had ready. He indicated that he saw the officer Pablo Morínigo in the first place where they were held, saw him on several occasions and when they took him to speak with Minister Ferreira. He reiterated that the first day he was tortured by Deputy Commissioner Gamarra and that he saw Javier Cazal in the second house. He explained that he had packing tape over his eyes but it was loose. He added that on the day of the release, Deputy Commissioner Gamarra went to inspect the wounds and, after Arrom's complained, he told him that they would take him to the public prosecutor's office soon. Cf. Testimony of Juan Arrom Suhurt of May 23, 2002, before the Public Prosecutor's Office (evidence file, fs. 5785 to 5795).

<sup>139</sup> On that occasion, Mr. Arrom Suhurt declared that the head of the group that captured him was Deputy Commissioner Antonio Gamarra, who appeared several times, including on January 30. On one occasion, Arrom asked what day they were going to appear before the prosecutor, to which he replied that on Friday or Monday because the wounds needed to heal. He reiterated that he met with Minister Ferreira and that when Francisco Servián returned he handed him a phone to talk to Minister Fanego. He explained that "the agents who kidnapped [them] and who tortured [them] showed up with their faces uncovered. On all the days that [they were] kidnapped, all of them acted with their faces uncovered." He indicated that he "did not know anyone by name, except for one that I identified on January 18, 2002, who was a soldier whom I had seen at a given moment in the lobby of Minister Silvio Ferreira's office". He pointed out that on January 30, Deputy Commissioner Gamarra was in the house and Deputy Officer José David Schémbori. He also reiterated that they pressured him to sign statements that prosecutor Hugo Velázquez had prepared. cf. Statement by Juan Arrom Suhurt rendered at the public hearing held in this case.

testified on January 31, 2002, when the intervening Prosecutor of the Specialized Unit for Punishable Acts against Human Rights interviewed him at the Migone Sanatorium,<sup>140</sup> on February 4, 2002 before the Criminal Judge of Guarantees,<sup>141</sup> on February 11, 2002, before the Fifth Shift Investigating Judge of the Police Justice Department,<sup>142</sup> on April 18, 2002, during the reconstruction of events that occurred on January 17;<sup>143</sup> on May 31, 2002 before prosecutors,<sup>144</sup> and on January 17, 2019 before a notary public.<sup>145</sup>

102. From the analysis of said statements, the Court notes that, in general terms, according to the alleged victims, (i) they identified as their captors Deputy Commissioner Gamarra, Deputy Officer José David Schémbori, Commissioner Francisco Servián and Deputy Police Officer Pablo Ignacio Morínigo; (ii) they saw the Director of the Center of Judicial Investigations, Javier Cazal, on at least one occasion, and (iii) Mr. Arrom met with the Minister of Justice and Labor, Silvio Ferreira Fernández, on Friday the 18<sup>th</sup> and was later given a phone where the Minister of the Interior from the executive branch, Julio César Fanego Arellano told him that he was with Minister Ferreira.

<sup>140</sup> Mr. Martí Méndez stated that, when they were captured, they told him: "we are policemen and we are due to the kidnapping." This statement was not signed by Mr. Martí Méndez because his lawyer was not present. *Cf.* Record of prior interview to Anuncio Martí Méndez on January 31, 2002 (evidence file, f. 4750).

<sup>141</sup> On that occasion, Mr. Martí Méndez stated that at the time of his capture they told him "we are policemen and we are here due to the kidnapping." He indicated that on Friday at 9:00 p.m. he saw Deputy Commissioner Gamarra. On Saturday he heard mention of Minister Ferrera, so he asked if he was going to see them and they answered that he had already seen Juan Arrom. On Sunday Javier Cazal, Antonio Gamarra and a person who he only saw that day who "apparently was from police intelligence" appeared. When they were transferred from the second to the third house, they were blindfolded and they identified Antonio Gamarra. He indicated that he saw Deputy Commissioner Gamarra again a few days before his release. He also indicated that they were promised they would go to the public prosecutor's office when their wounds healed. *Cf.* Statement of Anuncio Martí of February 4, 2002 before the Criminal Judge of Guarantees (evidence file, fs. 4050 to 4055).

<sup>142</sup> On that occasion, Mr. Martí Méndez declared that he ratified the previously made complaints. He reiterated that at the time of the capture they told him: "we are policemen and we are here due to the kidnapping of the lady." He indicated that José David Schémbori and Pablo Ignacio Morínigo were in the river. The next day at 9:00 p.m. Commissioner Gamarra arrived. On Saturday, José David Schémbori and Pablo Morínigo remained in the place all day. On Monday the 21st, Deputy Commissioner Gamarra, Mr. Javier Cazal and "a person who claimed to be from Police or Military Intelligence" interrogated him. A few days before the liberation, he saw Deputy Commissioner Gamarra. *cf.* Statement of February 11, 2002, by Anuncio Martí Méndez before the Fifth Shift Investigating Judge of the Police Justice Department (evidence file, fs. 6011, 6014 to 6020).

<sup>143</sup> On that occasion, Mr. Martí Méndez stated that everyone had their faces uncovered and he was able to identify Deputy Police Officer José David Schémbori Ocampos, Pablo Morínigo and Francisco Servián. When asked where was Commissioner Gamarra, he indicated that "he had not mentioned Gamarra." *Cf.* Reconstruction of events of April 18, 2002 (evidence file, fs. 5524 and 5525).

<sup>144</sup> On that occasion, Mr. Martí Méndez stated that, taking into account his previous statements, he would only expand on this one. He indicated that, among those responsible for his detention and torture, he identified Javier Cazal, José David Schémbori, Julio Díaz, Officer Alderete, Officer Martínez, Officer Limenza, Officer Gómez, Officer Morínigo, Deputy Commissioner Antonio Gamarra, and Officer Francisco Servián. He indicated that the officers Servián, Morínigo and Schémbori participated in the torture in the river, and that Javier Cazal was in the first house three days after the start of the detention, together with José David Schémbori, Francisco Servián and Deputy Commissioner Gamarra. He indicated that, during his detention, "he was not always blindfolded, [...] he spent more time uncovered." He pointed out that he saw Gamarra on several occasions. He indicated that on January 30, José David Schémbori was at the house. He indicated that on one occasion they took him out of the house and in the car was Francisco Servián, José David Schémbori and Pablo Morínigo. He indicated that José David Schémbori, Francisco Servián and Pablo Morínigo were present during the transfer to the third house and that he saw González Cuquejo in his truck the day he was released. He indicated that, at the time of the arrest, his glasses fell off and they were returned to him at the third house. He clarified that he has 2.50 of farsightedness, "he doesn't see well up close but he does from a distance." He pointed out that the day he saw Javier Cazal he was not wearing his glasses. *Cf.* Record of witness statement of Anuncio Martí Méndez of May 31, 2002 (evidence file, fs. 5832 to 5844).

<sup>145</sup> On that occasion, Mr. Martí Méndez testified that, when they arrested him, they told him they were policemen. He indicated that he saw Antonio Gamarra on Friday and that Javier Cazal questioned him on Sunday. He indicated that he saw Antonio Gamarra again during one of the transfers, before taking them to the third house and he saw him again about two days before the release. He also reiterated that they had been promised that they would go to the public prosecutor's office. *Cf.* Statement of Anuncio Martí Méndez before a notary public on January 16, 2019 (evidence file, fs. 13187 to 13190).

103. On the other hand, María Auxiliadora and Cristina Arrom Suhurt testified that when they arrived at the house where Juan Arrom Suhurt and Anuncio Martí were, they saw a dark green Blazer SUV near the house, license plate ADR 642,<sup>146</sup> and that they saw a man leave the house for a moment, who they later identified as José David Schémbori Ocampos, thanks to seeing him on television regarding the investigation on the kidnapping of María Edith Bordón.<sup>147</sup> Each of these claims was corroborated by another witness.<sup>148</sup> Likewise, the presence of Deputy Officer Schémbori Ocampos on January 30 was also indicated by Juan Arrom and Anuncio Martí.<sup>149</sup>

104. Finally, the sisters of Juan Arrom Suhurt stated that they had received information between January 17 and 30 about the participation of state agents in their brother's detention. In this regard, Cristina Haydée Arrom Suhurt stated that on January 19, when she was in the Criminal Investigation Department inquiring about the whereabouts of her brother, a policeman in civilian clothes approached them and told them that Juan Arrom Suhurt was with the Minister of the Interior.<sup>150</sup> She pointed out that they were also told that the Minister of the Interior was with his brother in a ranch or establishment in the interior of the country.<sup>151</sup> She indicated that, on one occasion, a policeman and a journalist approached them and told them to enquire about Mr. Arrom's cell phone.<sup>152</sup>

105. For her part, María Auxiliadora Arrom Suhurt stated that on the night of January 23 a journalist from channel 13 called her and told her "that Juan could be at the Vehicle Control location of the National Police."<sup>153</sup> She indicated that they received information that he was in the Paraguari Artillery Command.<sup>154</sup> She also indicated that on the night of January 24 they called her and told her that the police went north, accompanied by journalists, and that they had Juan and Anuncio cornered. She declared that "[a]t Radio Ñanduti [she] was told that it was true, that the police had left and that the radio itself sent journalists to accompany her. I don't remember who gave me that information."<sup>155</sup> She indicated that at one point they received information that they might be in the hands of parapolice or paramilitary groups, "[Mrs. Cristina] had even received a

<sup>146</sup> Cf. Testimony of María Auxiliadora Arrom Suhurt on February 11, 2002 (evidence file, f. 4965); Testimony of María Auxiliadora Arrom Suhurt before a notary public on January 24, 2019 (evidence file, f. 13160); Statement of Cristina Haydée Arrom Suhurt rendered at the public hearing held in this case, and Witness statement of February 11, 2002 of Cristina Haydée Arrom Suhurt (evidence file, f. 4968).

<sup>147</sup> Cf. Testimony of María Auxiliadora Arrom on February 11, 2002 (evidence file, f. 4965); Testimony of February 11, 2002, by Cristina Haydée Arrom Suhurt (evidence file, f. 4969); Statement of Cristina Haydée Arrom Suhurt rendered at the public hearing held in this case, and Statement of María Auxiliadora Arrom Suhurt before a notary public on January 24, 2019 (evidence file, f. 13160). Likewise, Carmen Marina Arrom Suhurt also declared that she had recognized Mr. Schémbori, however she was not present at the time. Cf. Statement of Carmen Marina Arrom Suhurt before a notary public on January 24, 2019 (evidence file, f. 13141).

<sup>148</sup> Mr. Derlis Melgarejo Fariña, who worked as a driver for Ricardo Arrom Suhurt, corroborated having seen the SUV with license plate ADR642. On the other hand, Mr. Federico Aníbal Emary, a journalist from Radio Ñanduti, who was covering the events of January 30, indicated that "a tall person with a beard, had a white shirt, black shorts, was barefoot and I immediately interpreted that he came out to see what was happening, "then he went out to open the vehicle gate." He explained that he recognized Mr. Schémbori a few days later when a photo appeared in the newspaper. He indicated that he said this information on the air days later and began to receive threats. Cf. Record of testimony of Derlis Megarejo Fariña of June 6, 2002 (evidence file, f. 4161); Testimony of Federico Aníbal Emary of May 7, 2002 (evidence file, fs. 5675 and 5676), and Statement of Federico Aníbal Emary before a notary public on January 24, 2019 (evidence file, f. 13117).

<sup>149</sup> Cf. Testimonial statement of Anuncio Martí Méndez of May 31, 2002, before the Public Prosecutor's Office (evidence file 5838), and Statement of Juan Arrom Suhurt rendered at the public hearing held in this case.

<sup>150</sup> Cf. Testimony of February 11, 2002, by Cristina Haydée Arrom Suhurt (evidence file, f. 4967), and Statement by Cristina Haydée Arrom Suhurt rendered at the public hearing held in this case.

<sup>151</sup> Cf. Testimony of February 11, 2002, by Cristina Haydée Arrom Suhurt (evidence file, fs. 4967 and 4968).

<sup>152</sup> Cf. Statement of Cristina Haydée Arrom Suhurt rendered at the public hearing held in this case.

<sup>153</sup> Cf. Statement of María Auxiliadora Arrom Suhurt before a notary public on January 24, 2019 (evidence file, f. 13159).

<sup>154</sup> Testimony of February 11, 2002, by María Auxiliadora Arrom (evidence file, fs. 4964).

<sup>155</sup> Cf. Statement of María Auxiliadora Arrom Suhurt before a notary public on January 24, 2019 (evidence file, f. 13159).

fax with the names of some military officers allegedly involved, those same names had been received by journalists from *Cáritas* radio.<sup>156</sup>

106. Likewise, Carmen Marina Arrom Suhurt stated that on January 19 they went to the Criminal Investigation Department and two policemen at the entrance told them that the Minister of the Interior, Julio César Fanego, had his brother in his Ybycuí ranch.<sup>157</sup> She indicated that a journalist called her very early on Monday the 21<sup>st</sup> and told her that she had to go to "Criminal Investigations because a policeman told her that they had Juan there."<sup>158</sup> She pointed out that, when they went on Tuesday the 22<sup>nd</sup>, some journalists told them to ask for Juan Arrom's cell phone and why his SUV was full of mud.<sup>159</sup>

107. The Court recalls that, according to its jurisprudence, the statements of alleged victims cannot be evaluated in isolation but rather within the full evidence in the process, since they are useful to the extent that they can provide more information on the alleged violations and their consequences.<sup>160</sup> In a case like this, given the absence of a context and contradictory positions regarding the events that occurred, it is necessary that what was indicated by the alleged victims coincide with other elements of evidence that allow the Court to use these statements to have more information about what happened.

B.1.b Statements from persons who claim to have witnessed the moment the alleged victims were detained by state agents

108. Four residents of the area where Juan Arrom Suhurt and Anuncio Martí were allegedly detained stated that they had seen a lot of movement of cars on January 17, 2002, including some cars without license plates. Also, that at night there was a crowd of people in front of the offices of the Center of Judicial Investigations.<sup>161</sup>

109. The Court highlights that there are no direct testimonies claiming to have seen the detention of Juan Arrom Suhurt and Anuncio Martí Méndez. Only Luis Alfonso Resck Haiter claimed to have witnessed the arrest of a person, whom he did not identify.<sup>162</sup> Likewise, Mr. Resck Haiter stated that the Director of the Center of Judicial Investigations, Javier Casal, was present in the operation.<sup>163</sup>

110. Whether or not what the neighbors witnessed something happen on January 17 was questioned and put in doubt in the internal investigations. There is record of an operation carried out in the area on January 9, where two people were arrested.<sup>164</sup> Likewise, one of the residents of the area stated that "the day or night that [Mr.] Resck might have witnessed something, a pilgrimage of people arrived" and he saw Mr. Resck Haiter gesticulating and speaking loudly. He

<sup>156</sup> Testimony of February 11, 2002, by María Auxiliadora Arrom (evidence file, fs. 4964).

<sup>157</sup> Cf. Statement of Carmen Marina Arrom Suhurt before a notary public on January 24, 2019 (evidence file, f. 13139).

<sup>158</sup> Cf. Statement of Carmen Marina Arrom Suhurt before a notary public on January 24, 2019 (evidence file, f. 13139).

<sup>159</sup> Cf. Statement of Carmen Marina Arrom Suhurt before a notary public on January 24, 2019 (evidence file, f. 13140).

<sup>160</sup> cf. *Case of Liakat Ali Alibux Vs. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 30, 2014. Series C No. 276, para. 31, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of February 8, 2018. Series C No. 348, para. 39.

<sup>161</sup> Cf. Record of testimony of Amada Concepción Cerquetti de Cáceres on April 30, 2002 (evidence file, f. 5582); Testimony record of Pedro Pablo Cáceres Barrios of April 30, 2002 (evidence file, fs. 5578 and 5579); Record of testimony of María Teresa de Jesús Cerquetti of May 6, 2002 (evidence file, fs. 5666 and 5667), and Record of testimony of Zully Noemí Rosa Flores of May 6, 2002 (evidence file, f. 5670).

<sup>162</sup> Cf. Testimony of Luis Alfonso Resck Haiter on February 7, 2002 (evidence file, f. 4909).

<sup>163</sup> Cf. Testimony of Luis Alfonso Resck Haiter on February 7, 2002 (evidence file, fs. 4907 to 4909).

<sup>164</sup> Cf. Report No. 00018/02 of January 9, 2002 (evidence file, fs. 6597 to 6599), and Note from Diario ABC, entitled "Resck witnessed the operation the same day of the kidnapping" of February 8, 2002 (evidence file, f. 1766).

indicated that it was “probably the second week of January, [...] at approximately 10 p.m.”<sup>165</sup> This testimony coincides with the occurrence of an operation on January 9, 2002. Therefore, it is not clear whether the events reported by the residents occurred on the date the alleged victims were detained.

B.2.c Statements from people who claim to have received information on the participation of state agents

111. Héctor Ricardo Lacognata Zaragoza, a friend and ex in-law of Mr. Arrom Suhurt, stated that when he found out about the disappearance of Juan Arrom, he called Mrs. Gladis Maubet, wife of Silvio Ferreira, Minister of Justice and Labor. He indicated that the next day Mrs. Maubet confirmed to him that Juan Arrom was detained, that he was fine and that her husband, Silvio Ferreira, asked her not to comment on the matter.<sup>166</sup> She apparently also told him that Arrom would probably be presented before judicial authorities on January 21.<sup>167</sup> Since this did not occur, Mr. Lacognata Zaragoza contacted Mrs. Maubet again, who told him not to worry “that Juan was in the hands of serious people” and that “her husband, Dr. Silvio Ferreira, knew these people.”<sup>168</sup> He indicated that, according to Mrs. Maubet, Mr. Arrom “was not detained in a police station, but rather [...] was in custody of a specially formed group. This group was headed by Minister Fanego, but her husband, Silvio, “[was] controlling the situation and he guaranteed Juan Arrom's safety.”<sup>169</sup>

112. Similarly, Víctor Miguel Benítez Cano, a journalist, indicated that sources told him that Juan Arrom and Anuncio Martí were in custody when they were still missing. That the plan was Silvio Ferreira's idea and was done in collaboration with Minister Fanego and the Attorney General.<sup>170</sup> Likewise, journalist Mónica Laneri Ferreira stated that, according to her unofficial police sources, Arrom was detained for the kidnapping of Mrs. Bordón. She also indicated that prosecutor Velásquez told her that Anuncio Martí “was not an intellectual or material author, that he had contributed his media knowledge, but that his situation was highly negotiable.”<sup>171</sup>

113. Additionally, Víctor Colmán and Ana Rosa Samudio de Colmán, testified that on January 19, 2002, when they were arrested for their alleged participation in the kidnapping of Ms. Bordón, the Director of the Center of Judicial Investigations, Javier Casal, assured them that they had detained Mr. Arrom on January 17 at 9:00 p.m.,<sup>172</sup> and that prosecutor Velásquez Moreno told them that they had Juan Arrom and Anuncio Martí.<sup>173</sup> In his affidavit, Mr. Colmán added that the Deputy Police Commissioner, Saturnino Antonio Gamarra Acosta, and the Deputy Police Officer, José David Schémbori Ocampos, also told him at the time of his arrest that they had detained the alleged victims.<sup>174</sup> Regarding these statements, it should be taken into account that, before the

<sup>165</sup> Record of testimonial statement of Ramón Alberto López Noguera of May 3, 2002 (evidence file, fs. 5662 and 5663),

<sup>166</sup> Cf. Testimony of Héctor Ricardo Lacognata Zaragoza on February 12, 2002 (evidence file, f. 4923).

<sup>167</sup> Cf. Testimony of Héctor Ricardo Lacognata Zaragoza on February 12, 2002 (evidence file, f. 4923).

<sup>168</sup> Cf. Testimony of Héctor Ricardo Lacognata Zaragoza on February 12, 2002 (evidence file, f. 4924).

<sup>169</sup> Cf. Testimony of Héctor Ricardo Lacognata Zaragoza on February 12, 2002 (evidence file, f. 4923).

<sup>170</sup> Cf. Statement of Víctor Miguel Benítez Cano of December 20, 2002 (evidence file, fs. 6586 and 6587).

<sup>171</sup> Cf. Testimony of Mónica Laneri Ferreira of February 13, 2002 (evidence file, fs. 5005 and 5006).

<sup>172</sup> Cf. Record of testimony of Víctor Colmán of May 29, 2002 (evidence file, f. 5807); Testimony of Víctor Antonio Colmán Ortega before a notary public on January 24, 2019 (evidence file, f. 13207); Record of statement of the accused Víctor Antonio Colmán Ortega of February 11, 2002 (evidence file, f. 5069), and Testimonial statement of Ana Rosa Samudio de Colmán of May 29, 2002 (evidence file, fs. 5813 to 5815).

<sup>173</sup> Record of testimonial statement of Ana Rosa Samudio de Colmán of May 29, 2002 (evidence file, f. 5814), and Statement of Víctor Antonio Colmán Ortega before a notary public of January 24, 2019 (evidence file, f. 13207 and 13208). Additionally, Víctor Colmán indicated in his affidavit that Prosecutor Velásquez Moreno had stated that Juan Arrom had already pleaded guilty to the kidnapping of Mrs. Bordón. Cf. Statement of Víctor Antonio Colmán Ortega before a notary public on January 24, 2019 (evidence file, f. 13210).

<sup>174</sup> Cf. Statement of Víctor Antonio Colmán Ortega before a notary public on January 24, 2019 (evidence file, f. 13210).

alleged victims were released, these witnesses had only made reference to the fact that it had been insinuated to them that the alleged victims were detained.<sup>175</sup>

114. Lastly, the Deputy Ombudsman, Héctor Raúl Marín Peralta, stated that prosecutor Hugo Velázquez Moreno had told him that Juan Arrom and Anuncio Martí were in the custody of other people, mentioning at one point paramilitary or parapolice groups.<sup>176</sup> This would coincide with what Mr. Víctor Colmán stated in his affidavit, when he indicated when Mr. Marín Peralta visited him in the detention center on January 20 or 21, he told him that "policeman Schémbori and Javier Cazal said they [...] had Arrom and Martí."<sup>177</sup>

115. With respect to all these statements (*supra* paras. 108 to 114) the Court notes that they are hearsay testimonies, since they did not directly witness the events but rather testified about accounts other people told them. Therefore, these statements do not prove the veracity of the events themselves, but only that the account was received. These statements may be taken as indicia and may not be assessed in isolation but in relation to the rest of the evidentiary material. In this sense, it is necessary that what is indicated in these testimonies coincide with other elements of evidence to be conclusive in relation to the international responsibility of the State. Likewise, it is necessary to take into account that the statement of Mr. Lacognata Zaragoza refers to the account given by one person about what was said by another person, so its reliability is less than that of other hearsay testimonies.

#### B.2.d Information on the houses where the alleged victims were detained

116. According to what was stated by the alleged victims, during their detention they were in three different houses (*supra* para. 51).

117. According to the case file, the house where they were found is property of Octavio Francisco Flores García,<sup>178</sup> who was not nor has been a police officer.<sup>179</sup> On January 18, 2002, Mr. Flores García rented the house for six months to Juan Carlos González Villar, a person he had met a few days before,<sup>180</sup> under the agreement that he would move that week.<sup>181</sup> The people who took care of the house reported that they moved out around January 24 to hand over the house to the tenant.<sup>182</sup>

118. On January 31, 2002, the people who took care of the house, Esteban Centurión Vega and Ángela Estefanía Salinas de Lugo, testified that the day they moved out, a person they identified

<sup>175</sup> See, for example, Note from the Diario Noticias, entitled "Colmán says that they insinuated that Juan is detained", of January 23, 2002 (evidence file, f. 4408), and Note from the Diario Noticias, titled "Adjunct Ombudsman seeks Arrom in Investigations" of January 23, 2002 (evidence file, f. 3833).

<sup>176</sup> Cf. Statement of Héctor Raúl Marín Peralta of July 15, 2002 (evidence file, f. 6185), and Statement made by Héctor Raúl Marín Peralta before a notary public on January 24, 2019 (evidence file, f. 13181).

<sup>177</sup> Cf. Statement of Víctor Antonio Colmán Ortega before a notary public on January 24, 2019 (evidence file, f. 13209).

<sup>178</sup> Cf. Record of Sale of September 25, 2001 (evidence file, fs. 4773 to 4776), and Criminal complaint filed by Octavio Francisco Flores García on February 6, 2002 (evidence file, fs. 4771 to 4772).

<sup>179</sup> Cf. Note from the Head of the Legal Department of the National Police of February 20, 2019 (evidence file, fs. 13950), and Note from the Personnel Management Directorate of the National Police of February 20, 2019 (evidence file, f. 13951).

<sup>180</sup> Cf. Lease agreement of January 18, 2002 (evidence file, fs. 4778 to 4780); Criminal complaint filed by Octavio Francisco Flores García on February 6, 2002 (evidence file, f. 4771), and Investigation statement of Octavio Francisco Flores García on February 7, 2002 (evidence file, f. 4819).

<sup>181</sup> Cf. Investigation statement of Octavio Francisco Flores García of February 6, 2002 (evidence file, f. 4819).

<sup>182</sup> Cf. Testimony of Esteban Domingo Centurión Vera of January 31, 2002 before the Criminal Judge of Fair and Guard Guarantees (evidence file, fs. 4754 and 4755); Testimony of Ángela Estefanía Salinas de Lugo on January 31, 2002, before the Criminal Judge of Fair and Guard Guarantees (evidence file, fs. 4757 and 4758); Investigation statement of Octavio Francisco Flores García of February 6, 2002 (evidence file, f. 4818), and Testimonial statement of Octavio Francisco Flores García of April 10, 2002 (evidence file, f. 5411).

as Antonio Gamarra showed up at the house and got them a taxi to help them move.<sup>183</sup> In his statement, Mr. Centurión Vega indicated that he had received constant visits from strangers and the police at his home, and that he feared for his safety.<sup>184</sup> However, on April 12, 2002, both witnesses appeared before the public prosecutor's office and stated that on January 30 they received police visits, and that representative (*diputado*) Luis Alberto Wagner went to their home and took them to the public prosecutor's office. The representative told Mr. Centurión Vega that "it was for [his] own safety," and that "everything had been done by these police officers, and that [he] should name them, a man with the last name Gamarra and another with the last name Schembori."<sup>185</sup> He also indicated that Mrs. Cristina Arrom "told him that he should urgently make a statement to the public prosecutor in the case[,] that everything was for [his] safety." In this regard, he stressed that he testified under pressure from Luis Alberto Wagner and Cristina Arrom, who forced him to involve Mr. Gamarra and Mr. Schémbori.<sup>186</sup> He also indicated that after the appearance of Juan Arrom and Anuncio Martí, he received constant threats.<sup>187</sup> Mrs. Salinas de Lugo confirmed that her husband had told her that they should do what Deputy Wagner and Cristina Arrom said, otherwise their life was in danger, and that was when they made their first statement.<sup>188</sup> She clarified that she was rectifying her statement now that "the scare is over," explaining that Cristina Arrom and her sisters said they had to name Antonio Gamarra in the statement.<sup>189</sup>

119. This Court notes that there is no record in the case file that the threats raised by Mr. Centurión Vega and Mrs. Salinas de Lugo were investigated, nor what was indicated in their second statement. However, this is not a sufficient reason to not take into account that they retracted their statements regarding having seen Mr. Gamarra in the house where the alleged victims were found, because no elements have been included in the case file to suspect or question said retraction. Therefore, the initial statements of Mr. Centurión Vega and Mrs. Salinas de Lugo do not constitute evidentiary elements that corroborate the participation of state agents in the deprivation of liberty of the alleged victims.

120. On the other hand, the Court considers that there is no evidence, beyond the statements of the alleged victims, about the other places where they were detained.

## **B.2 The conclusions of the criminal investigation carried out on the facts**

121. In the investigation carried out about the facts of this case, diverse information supporting the innocence of the state agents identified by the alleged victims was received. Based on this information, the domestic investigation ended in a definitive dismissal and the dismissal of the individual criminal complaints (*supra* para. 82). The Court will proceed to summarize the conclusions that led to the definitive dismissal of the investigation and the complaints.

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<sup>183</sup> Cf. Statement of Esteban Domingo Centurión Vega of January 31, 2002 before the prosecutor (evidence file, fs. 4711); Testimony of Esteban Domingo Centurión Vera of January 31, 2002, before the Fair and Guard Criminal Guarantee Judge (evidence file, fs. 4754 and 4755), and Testimony of Ángela Estefanía Salinas de Lugo of January 31, 2002, before the Criminal Judge of Fair and Duty Guarantees (evidence file, fs. 4757 and 4758). There is also an undated video in the file of a statement by Mr. Centurión Vera before Telefuturo, where he relates the same sayings and indicates that he knows Antonio Gamarra. It also adds that they took him to the house of Antonio Gamarra's wife in Villa Elisa. Cf. Video 43 presented together with the arguments and evidence brief (evidence file, audiovisual material folder, "archive43").

<sup>184</sup> Cf. Testimony of Esteban Domingo Centurión Vera of January 31, 2002, before the Criminal Judge of Fair and Guard Guarantees (evidence file, f. 4755).

<sup>185</sup> Cf. Record of testimony of Esteban Domingo Centurión Vega of April 12, 2002 (evidence file, f. 5457).

<sup>186</sup> Cf. Record of testimony of Esteban Domingo Centurión Vega of April 12, 2002 (evidence file, f. 5457).

<sup>187</sup> Cf. Record of testimony of Esteban Domingo Centurión Vega of April 12, 2002 (evidence file, f. 5458).

<sup>188</sup> Cf. Record of testimony of Ángela Estefanía Salinas de Lugo of April 12, 2002 (evidence file, f. 5453).

<sup>189</sup> Cf. Record of testimony of Ángela Estefanía Salinas de Lugo of April 12, 2002 (evidence file, f. 5453).



122. Regarding Deputy Commissioner Gamarra Acosta, the Public Prosecutor's Office analyzed his possible participation in the alleged acts of deprivation of liberty, forced disappearance, and torture. In relation to the deprivation of liberty, it indicated that the alleged victims' assertions "contrast with testimonies that affirm that they saw the defendant Gamarra in the afternoon and night of January 17 and early the following day at the Piribebuy crossing." These testimonies "reinforced [by the statements of Deputy Commissioner Gamarra Acosta] dilute the statements of the alleged victims," which "were not reinforced by any other testimonies."<sup>190</sup> Regarding the forced disappearance, it indicated that in his statement, Deputy Commissioner Gamarra "discredited a large part of the accusations made against him, offering testimonies and documents regarding the activities carried out during the month of January." Therefore, "there are no elements that offer certainty regarding Gamarra's participation in this crime. To justify a serious and formal accusation, certainty and not probability must arise."<sup>191</sup> Lastly, regarding torture, it concluded that it was not possible to prove his presence with the alleged victims on the night of January 17 and early morning of January 18.<sup>192</sup>

123. When the Attorney General's Office ratified the request for dismissal of the case, it indicated that "the accusation against [Deputy Commissioner] Gamarra was exclusively due to what was stated by the victims," which "could not be reinforced with other evidence that could even roughly demonstrate that indeed Antonio Gamarra had any kind of participation in the illegal acts investigated."<sup>193</sup>

124. Regarding the Deputy Officer Schembori Ocampos, the Public Prosecutor's Office indicated that the defendant gave a detailed and pointed explanation about his activities between January 17 and 30, part of which was supported by other statements. In addition, it was shown that at this time Deputy Officer Schémbori was on vacation.<sup>194</sup> His alleged presence the night and early morning between January 17 and 18, 2002 was analyzed and it was indicated that Mr. Arrom reported in November 2002 that he had lost his driver's license on January 19, 2002 on the way to Asunción, which would not be possible if he was detained on those dates.<sup>195</sup> Moreover, the public prosecutor's office analyzed the alleged presence of Deputy Officer Schémbori on January 30, 2002, and determined that "it would not be unreasonable to consider that Juan Arrom's sisters and journalist [Federico Emery] were confused regarding the presence of Deputy Officer Schémbori [...], as they could have been influenced by the photographs that appeared in the written press the days immediately after [January 30], which presented an image on record of the suspect." It also indicated that "there is consistent and uniform testimonial and instrumental evidence that gives credence to the defendant's presence in the house where the birthday of [Patrocinio Morinigo's girl] was celebrated."<sup>196</sup> The Public Prosecutor's Office concluded that the case against him should be dismissed.<sup>197</sup>

125. When the Attorney General's Office ratified the request for dismissal of the case, it indicated that the existing statements against Deputy Officer Schémbori "cannot be considered convincing by themselves." It also pointed out that the alibi hypothesis alleged by the defendant "is absolutely corroborated with various pieces of evidence produced in the investigation, testimonies and documents, which give too much consistency and coherence to that version."<sup>198</sup>

<sup>190</sup> Cf. Request for dismissal from the Public Prosecutor's Office of February 8, 2003 (evidence file, fs. 7508 and 7509).

<sup>191</sup> Cf. Request for dismissal from the Public Prosecutor's Office of February 8, 2003 (evidence file, fs. 7510 and 7511).

<sup>192</sup> Cf. Request for dismissal from the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7511).

<sup>193</sup> Cf. Opinion of the State Attorney General's Office of May 27, 2003 (evidence file, fs. 8348 and 8349).

<sup>194</sup> Cf. Request for dismissal from the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7493).

<sup>195</sup> Cf. Request for dismissal from the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7495).

<sup>196</sup> Cf. Request for dismissal from the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7497).

<sup>197</sup> Cf. Request for dismissal from the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7493).

<sup>198</sup> Cf. Opinion of the Attorney General's Office of May 27, 2003 (evidence file, fs. 8360 and 8361).

126. With respect to the Director of the Center of Judicial Investigations, Javier Casal, the Public Prosecutor's Office indicated that his accusation "is supported exclusively by the statements of [Juan Arrom and Anuncio Martí] and the statements of the witness Luis A. Resck." In this regard, it indicated that "the versions provided by the alleged victims and current complainants have not been able to be verified, because, beyond their injuries, no elements have emerged to sufficiently corroborate, in specific manner, the participation of those accused of being responsible."<sup>199</sup> It indicated that the testimony of Mr. Resck, who initially claimed to have seen Mr. Casal at the time of the alleged detention, was later "rendered in a way that contradicted his first statement, and even referred to situations that could be described as implausible." Likewise, it highlighted that during the reconstruction of the events, a test was carried out to determine whether Mr. Resck could recognize a person from the distance he claims to have recognized Mr. Casal and he could not identify him.<sup>200</sup> On the other hand, it stressed that "numerous elements of evidence have been produced that corroborate the exculpatory arguments of the accused." By virtue of all of the foregoing, it concluded that "the evidence evaluated does not allow certifying any factual relationship raised in the individual criminal complaints."<sup>201</sup>

127. When the Attorney General's Office ratified the request for dismissal of the case, it indicated that the statements made by the alleged victims regarding the participation of Javier Casal only "find support, and only very partially, in the testimony of Luis A. Resck". In this regard, it indicated that "he himself spoke inconsistently in his successive statements" and it was not possible to corroborate "the witness' ability to perceive visually in an appropriate manner from the place where he claimed to see [Javier Casal]."<sup>202</sup>

128. Regarding the Minister of Justice and Labor, Silvio Ferreira Fernández, the Public Prosecutor's Office indicated that "the elements raised [against him] are the statements of [Mr.] Arrom and Héctor Lacognata." Regarding the statements made by Mr. Arrom Suhurt, the Public Prosecutor's Office indicated that, according to the evidence, Mr. Ferreira Fernández was sailing on the Paraguay River on the date on which, according to Mr. Arrom, he would have met with him. In this regard, it was concluded that it is not possible that he was in both places at the same time and it is unlikely that he would have met with Mr. Arrom since this "is not supported by a single procedural piece."<sup>203</sup> Regarding Mr. Lacognata's statement, it indicated that according to what was stated by Mrs. Gladis Maubet and Mr. Ferreira himself, the latter's knowledge of the alleged detention of Mr. Arrom Suhurt was limited "to a verification and questions asked of personnel from the Tacumbú National Penitentiary, [about] whether Juan Arrom had entered the prison." Therefore, it indicated that "the statements are diametrically opposed" and "since there are insurmountable and unconquerable doubts," and "being the only procedural piece of evidence available," there is no other alternative than to request the dismissal of the individual criminal complaint.<sup>204</sup>

129. Regarding the Minister of the Interior, Julio César Fanego Arellano, the Public Prosecutor's Office indicated that "the elements raised against him come from a single source: the statements of the complainant Juan Francisco Arrom," which "are not corroborated by any other element of evidence, so that a criminal hypothesis against defendant Fanego, [...] is legally unsustainable."<sup>205</sup> On the other hand, "the exculpatory allegations made by defendant Fanego appear coherent and

<sup>199</sup> Cf. Request for dismissal of the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7482).

<sup>200</sup> Cf. Request for dismissal of the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7483).

<sup>201</sup> Cf. Request for dismissal of the Public Prosecutor's Office of February 8, 2003 (evidence file, fs. 7484 and 7485).

<sup>202</sup> Cf. Opinion of the Attorney General's Office of May 27, 2003 (evidence file, fs. 8365 and 8366).

<sup>203</sup> Cf. Request for dismissal of the Public Prosecutor's Office of February 8, 2003 (evidence file, fs. 7464 to 7465).

<sup>204</sup> Cf. Request for dismissal of the the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7464).

<sup>205</sup> Cf. Request for dismissal of the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7467).

credible" and "have numerous elements of corroboration."<sup>206</sup> Therefore, it indicated that "the defendant's lack of participation has been sufficiently proven."<sup>207</sup>

130. Regarding the prosecutor, Hugo Adalberto Velázquez Moreno, the Public Prosecutor's Office indicated that Juan Arrom stated that in his conversation with Minister Fanego he told him that he should collaborate, which Mr. Arrom understood to mean that he had to sign a document before prosecutor Velázquez Moreno. In this regard, the Public Prosecutor's Office indicated that the occurrence of said telephone call has not been proven and that Mr. Arrom's statements are "suppositions that Velázquez was aware of the alleged detention suffered by him and Martí."<sup>208</sup> On the other hand, the Public Prosecutor made reference to what was stated by the Deputy Ombudsman, Héctor Raúl Marín Peralta, and pointed out that while he declared that it was prosecutor Velázquez Moreno who informed him that the alleged victims were in custody of paramilitaries, prosecutor Velázquez Moreno affirmed that it was Mr. Marín who informed him, which was reflected in press releases. Therefore, "there is certainty that Velázquez did not participate in the events."<sup>209</sup>

### **B.3 Conclusion**

131. This Court notes that the vast majority of the evidence presented to prove state participation refers to statements by the alleged victims and hearsay testimonies, which should coincide with other elements of evidence, in order to be conclusive regarding the international responsibility of the State (*supra* paras 107 and 115). The investigations carried out internally took into account said statements, as well as the evidence that would demonstrate the lack of participation of the individuals identified by the alleged victims and concluded that there were not enough elements to present an accusation against these individuals. There are no elements in the case file before the Court additional to those examined by the national authorities that demonstrate state participation.

132. Due to the foregoing considerations, the Court notes that the evidence presented before this Court is insufficient to infer the conclusion that Messrs. Juan Arrom Suhurt and Anuncio Martí Méndez were deprived of their liberty by state agents or with their acquiescence. Therefore, the Court concludes that the State is not responsible for the violation of Articles 3, 4, 5 and 7 of the Convention, in relation to Article I(a) of the Inter-American Convention on Forced Disappearance of Persons and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

## **VII-2**

### **ALLEGED VIOLATION OF JUDICIAL GUARANTEES<sup>210</sup> AND JUDICIAL PROTECTION,<sup>211</sup> IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS**

#### **A. Arguments of the parties and of the Commission**

<sup>206</sup> Cf. Request for dismissal of the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7458).

<sup>207</sup> Cf. Request for dismissal of the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7459).

<sup>208</sup> Cf. Request for dismissal of the Public Prosecutor's Office of February 8, 2003 (evidence file, f. 7466).

<sup>209</sup> Cf. Request for dismissal of the Public Prosecutor's Office of February 8, 2003 (evidence file, fs. 7466 and 7467).

<sup>210</sup> Article 8(1) of the Convention establishes that: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

<sup>211</sup> Article 25(1) of the Convention establishes that: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

133. The **Commission** alleged that the State had a duty of increased diligence to disprove the indicia regarding participation of its agents, but in the domestic criminal proceedings the dismissal was ordered based on the statements of the state agents involved, while “what was narrated by Juan Arrom and Anuncio Martí” was discarded, under the main argument that they did not corroborate their statements”, improperly transferring the burden of proof to them. Furthermore, the Commission considered that the lack of evidence to corroborate the complaints is a consequence of the lack of due diligence measures. In view of this, the Commission stated that the investigation by the Public Prosecutor's Office was merely a formality without the desire to clarify the facts and impose responsibilities. On the other hand, it considered that “the judges who heard the writs of habeas corpus did not act with due diligence, [...] since they only required the Police to inform them about the existence of arrest warrants and possible places of detention where [the alleged victims] could be.” Moreover, it indicated that an *habeas corpus* cannot be rejected due to the mere existence of an arrest warrant. With regard to the independence and impartiality of the investigation, the Commission observed that the State did not take the necessary measures to ensure that the prosecutors handling the case were independent from the accused, taking into account the decisive role of the Public Prosecutor's Office in accusing or not. In relation to the duty to remove obstacles, the Commission affirmed that the State breached said duty for not having taken the appropriate measures to ensure the possibility of some type of judicial control over the definitive actions of the Public Prosecutor's Office. This is evidenced by the impossibility of formulating an accusation in the face of a ratified request for dismissal. Likewise, the Commission considered that this duty was breached by not investigating the reasons for the retraction of key witnesses in this case.

134. The **representatives** highlighted that they requested innumerable procedures and that the Prosecutor's Office refused to carry them out. In this regard, they indicated that the case involves a fraudulent *res judicata*, where “both the Public Prosecutor's Office and the competent tribunals set up a process with a determined result.” They also indicated that the judicial organs did not remove the obstacles faced by the *habeas corpus* petitions presented and that several verbal complaints by the next of kin were not registered in writing by the relevant authorities.

135. The **State** alleged that it carried out 245 evidentiary activities, of which 160 were carried out at the initiative of the Public Prosecutor's Office. It indicated that these investigative acts were carried out to verify the facts and identify the alleged perpetrators, as well as timely and leading steps to discover the whereabouts of the petitioners and the existence of the facts denounced. With respect to certain measures requested, they were not carried out because they were “repetitive or irrelevant.” Therefore, “the request for definitive dismissal [...] was the conclusion of exhaustive prosecutorial work that originated from the first moment in which [the alleged disappearance] became known.” Regarding independence and impartiality, the State highlighted that neither the alleged victims nor their representatives challenged any of the intervening prosecutors, nor any of the competent judges, nor did they exercise their power to request judicial assistance or issues about the investigation. Regarding the obligation to remove obstacles, the State considers that throughout the investigative stage the alleged victims participated actively as private complainants and exercised all the pertinent procedural remedies to challenge the definitive dismissal. Furthermore, the State added that when it comes to forced disappearance, the context in which the facts occur must be analyzed. The facts of the present case happened within the framework of the kidnapping of María Edith Bordón, which explains that “the authorities did not have reasonable grounds [...] to suspect an enforced disappearance. It is a frequent fact that a person whose arrest has been ordered tries to postpone his arrest for a while.” Regarding the *habeas corpus*, it indicated that “all the necessary acts were carried out [...] to investigate or verify the illegal deprivation alleged in the places indicated by the plaintiffs” and that the detention of Juan Arrom could not be verified.

## **B. Considerations of the Court**

136. The obligation to investigate human rights violations is one of the positive measures that States must adopt to guarantee the rights recognized in the Convention. Thus, since its first judgment, this Court has emphasized the importance of the state's obligation to investigate and punish human rights violations,<sup>212</sup> which acquires particular importance in light of the gravity of the crimes committed and the nature of the rights violated<sup>213</sup>. This obligation also arises from other Inter-American instruments. Thus, in cases of forced disappearances, the obligation to investigate is reinforced by Article I(b) of the Inter-American Convention on Forced Disappearance of Persons,<sup>214</sup> and in cases of torture it is reinforced by Articles 1, 6, and 8 of the Inter-American Convention for Prevent and Punish Torture<sup>215</sup>.

137. Faced with the arguments made by the parties and the Commission on the rights to judicial guarantees and protection, this Court will examine: (1) the duty to initiate an investigation *ex officio*, and (2) due diligence in investigations.

### **B.1 Duty to initiate an investigation ex officio**

138. Whenever there are reasonable grounds to suspect that a person has been subjected to enforced disappearance, an investigation must be launched *ex officio*, without delay, and in a serious, impartial and effective manner.<sup>216</sup> This obligation is independent of the filing an individual complaint, since in cases of forced disappearances international law and the general duty to guarantee rights, impose the obligation to investigate the case *ex officio*, without delay, and in a serious, impartial, and effective manner, in such a way that it does not depend on the procedural initiative of the victim or their relatives or on the private contribution of evidentiary elements.<sup>217</sup> Likewise, Article 8 of the Inter-American Convention to Prevent and Punish Torture establishes that the States parties shall guarantee:

any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation

<sup>212</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 166, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 212.

<sup>213</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153, para. 128, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 212.

<sup>214</sup> Article I(b) of the Inter-American Convention on Forced Disappearance of Persons establishes: "The States Parties to this Convention undertake: [...] b) To punish, within their jurisdictions, those who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories."

<sup>215</sup> Article 1 of the Inter-American Convention to Prevent and Punish Torture establishes: "The States Parties undertake to prevent and punish torture in accordance with the terms of this Convention." Article 6 of that same Convention establishes: "In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction." Article 8, for its part, establishes: "The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State."

<sup>216</sup> Cf. *Case of Anzaldo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 65, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 215.

<sup>217</sup> cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 177, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 240.

or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

139. In the instant case, the State became aware of the alleged forced disappearance through the *habeas corpus* petitions filed by the next of kin of Arrom Suhurt and Martí Méndez, on January 19 and 23, 2002, respectively (*supra* paras. 64 and 67). The judges who received the petitions issued official notices to the Ministry of the Interior and the National Police in order to require information on whether Juan Arrom Suhurt and Anuncio Martí were detained (*supra* paras. 65 and 67). After receiving information that they were not detained, the *habeas corpus* petitions were denied, also taking into account that there was a pending arrest warrant against both of them (*supra* paras. 64 and 68).

140. The Court recalls that this case did not happen in a context of systematic and generalized practice of forced disappearance, political persecution, or other human rights violations, nor was there any evidence to show that the alleged victims were in the custody of state agents before the alleged events occurred (*supra* para. 96). Therefore, once the information requested by the judges in charge of the *habeas corpus* petitions had been received, there were no reasonable grounds to suspect that Juan Arrom Suhurt and Anuncio Martí Méndez had been victims of a forced disappearance. On the other hand, the Court notes that in this case it is a public and notorious fact that on the same days that the State became aware of the disappearance of the alleged victims, it was already carrying out various search actions to determine their whereabouts in order to enforce their arrest warrant.<sup>218</sup> It would be contradictory to consider that the state authorities were not carrying out search actions to determine the whereabouts of Juan Arrom Suhurt and Anuncio Martí Méndez.

141. Consequently, the State did not breach its obligation to initiate an investigation *ex officio* and without delay into the disappearance of Juan Arrom Suhurt and Anuncio Martí Méndez. Likewise, no violation of Article 25 of the Convention happened due to the alleged ineffectiveness of the *habeas corpus* presented.

## **B.2 Due diligence in the investigations**

142. The Court has consistently indicated that the duty to investigate is an obligation of means and not of results, which must be assumed by the State as its own legal duty and not as a simple formality preordained to be unsuccessful, or as a mere management of private interests, that depends on the procedural initiative of the victims or their relatives or on the contribution of evidence by private individuals.<sup>219</sup> In addition, the investigation must be serious, objective and effective, and be oriented towards determining the truth and the pursuit, capture, and eventual prosecution and punishment of the perpetrators of the acts<sup>220</sup>.

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<sup>218</sup> Note from the Diario Noticias, entitled "Three more kidnappers fall and 8 remain at large," published on January 21, 2002 (evidence file, fs. 77 to 78); Note from the newspaper La Nación, entitled "Prosecutor claims that Arrom is a fugitive," dated January 22, 2002 (evidence file, f. 3847); Note from the Última Hora newspaper, entitled "Search in the field" of January 22, 2002 (evidence file, f. 7424); Note from the La Nación newspaper, entitled "Unsuccessful search for Arrom and Martí in the north of Concepción," of January 27, 2002 (evidence file, f. 10250), and Note from the Última Hora newspaper, entitled "Without traces of Arrom, and Martí," of January 28, 2002 (evidence file, f. 7576).

<sup>219</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 177, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 240.

<sup>220</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of Omeara Carrascal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 21, 2018. Series C No. 368, para. 203.

143. However, the possibility of the Court, within the scope of its supporting and complementary jurisdiction, to examine the internal investigation proceedings,<sup>221</sup> can lead to a determination of failures in the due diligence to carry out such investigations.<sup>222</sup> However, this will be appropriate as long as it is evidenced that the shortcomings that are alleged could have affected the investigation as a whole, so that “as time passes, the possibility of collecting and presenting evidence that allows to clarify the facts and determine responsibilities is unduly affected.”<sup>223</sup> In this regard, it should not be assumed that failures in specific investigative measures have a negative impact on the process as a whole if, despite such failures, the investigation had an effective result in determining the facts.<sup>224</sup>

144. In the present case, it is clear from the body of evidence that the authorities in charge of the investigation into the alleged disappearance and torture of the alleged victims carried out multiple procedures and activities to investigate what happened. Among them, the following can be mentioned: a) inspection of the house where Juan Arrom and Anuncio Martí were found; b) search of another house, where the alleged victims were presumably detained the first days; c) receipt of statements made by the Minister of the Interior, the Minister of Justice and Labor, the Attorney General, three prosecutors, and at least 16 police officers and 87 people who might have had information about what happened, or those possibly involved; d) reconstruction of the alleged detention of Juan Arrom and Anuncio Martí; e) reconstruction of the discovery of Juan Arrom and Anuncio Martí, and f) spoken portraits (identikit) based on what was said by Juan Arrom (*supra* paras. 71 and 75). After this investigation, the definitive dismissal of the accused was issued.

145. The representatives presented a list of procedural acts and measures and alleged that they had not been carried out as part of the investigation. In this regard, the Court has indicated that, in principle, it is not for the Court to determine the appropriateness or usefulness of actions or specific investigative measures, unless the failure to carry them out is contrary to objective guidelines, or manifestly unreasonable.<sup>225</sup> Notwithstanding the foregoing, it is necessary to note that at least 19 measures that representatives indicate were not carried out were in fact done in the course of the investigation,<sup>226</sup> and some acts and measures were not carried out due to lack of cooperation from the alleged victims or their representatives.

<sup>221</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 178.

<sup>222</sup> Cf. *Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 22, 2016. Series C No. 325, para. 282, and *Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 178.

<sup>223</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 172, and *Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 178.

<sup>224</sup> Cf. *Case of Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, para. 167, and *Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 178.

<sup>225</sup> Cf. *Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C No. 256, para. 153, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 213.

<sup>226</sup> In particular, they requested the witness statements of Víctor Colmán, Ana Rosa Samudio, Saturnino Gamarra, José David Schémbori, Cristina Dávalos de Nicora, Florentín Giménez, Federico Aníbal Emery, as well as the statements of Hugo Velázquez Moreno, Cynthia Paola Lovera Britez, Gladys Maubet, Blas Chamorro, Raúl Marín, Antonio Debernardi, Sandra Quiñonez, Víctor Benítez, Nelson Alderete Santacruz, Gustavo Herminio Limenza Ríos, Pablo Morínigo and Roberto González Cuquejo. Cf. Request for evidentiary procedures and activities of May 22, 2002 signed by Luis Samaniego Correa, addressed to the Public Prosecutor (evidence file, f. 4483); Record of the testimonial statement of Víctor Colmán of May 29, 2002 (evidence file, fs. 5807 to 5810); Record of testimonial statement of Ana Rosa Samudio de Colmán of May 29, 2002 (evidence file, fs. 5813 to 5815); Request for witness statement of June 21, 2002 signed by Diego Bertolucci, addressed to the Public Prosecutor’s Office (evidence file, f. 4489); Investigation statement of January 14, 2003 by Saturnino Gamarra Acosta (evidence file, fs. 6681 to 6702); Preliminary statement of January 13, 2003, of José David Schémbori Ocampos (evidence file, fs. 6651 to 6660); Request for proceedings of December 4, 2002, signed by Juan Emilio Closs Suhurt, addressed to the Public Prosecutor’s Office (evidence file, fs. 4492 to 4494); Testimony of December 19, 2002, of María Cristina Dávalos de

146. Regarding this lack of collaboration, it is necessary to highlight that at the public hearing, the representatives indicated that “they were always available to the prosecution[, ] collaborating [...] permanently, but when they began [a] change of course [in the investigation produced by the change of the prosecutor in charge], then they no longer had confidence in the public prosecutor's office and trust was lost”. In this Court’s opinion, this does not justify the lack of collaboration. The representatives include among the procedures or activities not carried out the omission of the police to forward the results of the expert tests carried out on the various pieces of evidence found in two of the houses where the alleged victims were allegedly kidnapped.<sup>227</sup> However, it is clear that on February 13, 2002, the studies that would be carried out on this evidence were scheduled between February 15 and 19. These studies were not fulfilled due to the absence of “the representatives of Messrs. Arrom and Martí,” therefore that evidence was not processed.<sup>228</sup> The Court does not have information on the reasons why the presence of the representatives of Messrs. Arrom and Martí was necessary. However, it cannot fail to point out that this absence implied that the studies were not carried out.

147. Likewise, the representatives indicated that the spoken portrait or identikit of the doctor who inspected Martí Méndez's injuries had not been produced.<sup>229</sup> However, when the identikits were made, Anuncio Martí indicated that “due to [his] personal impossibility and on the recommendation of [his] lawyer [he would] abstain from making the corresponding identification.”<sup>230</sup> In response, Anuncio Martí was informed that “such procedure could not be carried out at a later date, because it is a highly personal act and he may have knowledge of the traits of the person's identi[k]it , carried out by Juan Arrom.”<sup>231</sup> By virtue of the foregoing considerations, it is not possible to determine that the alleged omissions indicated by the representatives were contrary to objective guidelines, or manifestly unreasonable. Therefore, these omissions are not enough to generate the international responsibility of the State.

148. Pursuant to Paraguayan legislation, it is appropriate to order the definitive dismissal of a criminal case “when it is evident that the event did not happen, it does not constitute a punishable

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Nicora (evidence file, fs. 6581 to 6584); Testimonial statement of December 18, 2002, by Florentín Giménez Mendoza (evidence file, fs. 6579 to 6580); Request for witness statement of May 2, 2002 signed by Diego Bertolucci, addressed to the Public Prosecutor’s Office (evidence file, f. 4495); Testimonial statement of Federico Aníbal Emery of May 7, 2002 (evidence file, fs. 5674 to 5679); Request for proceedings of February 25, 2002 signed by Diego Bertolucci, addressed to the Public Prosecutor’s Office (evidence file, f. 4485); Testimony of November 18, 2002 by Hugo Adalberto Velázquez Moreno (evidence file, fs. 6494 to 6502); Testimony of November 20, 2002 by Cynthia Paola Lovera Brites (evidence file, fs. 6510 to 6515); Record of the witness statement of Gladys Maubet of April 5, 2002 (evidence file, fs. 5334 to 5340); Request for proceedings of June 19, 2002, signed by Ramón Sosa Azuaga, addressed to the Public Prosecutor’s Office (evidence file, f. 4486); Testimonial statement of July 17, 2002, by Blas Ignacio Chamorro López (evidence file, fs. 6196 to 6200); Testimony of July 15, 2002, of Héctor Raúl Marín Peralta (evidence file, fs. 6184 to 6188); Testimonial statement of July 18, 2002, by Antonio Miguel Albino Debernardi Cano (evidence file, fs. 6213 to 6217); Testimonial statement of November 19, 2002 by Sandra Raquel Quiñonez Astigarraga (evidence file, fs. 6504 to 6515); Request reiterating the request of November 11, 2002, signed by Diego Bertolucci, addressed to the Public Prosecutor’s Office (evidence file, f. 4491); Testimony of December 19, 2002 by Víctor Miguel Benítez Cano (evidence file, fs. 6585 to 6588); Request for proceedings of April 11, 2002, signed by Ramón Sosa Azuaga, addressed to the Public Prosecutor’s Office (evidence file, fs. 4497 to 4499); Record of testimony of Nelson Alderete Santacruz of May 16, 2002 (evidence file, fs. 5698 to 5701); Record of testimony of Gustavo Herminio Limenza Ríos of May 21, 2002 (evidence file, fs. 5717 to 5719); Testimonial statement of Pablo Ignacio Morínigo of May 21, 2002 (evidence file, fs. 5724 to 5726), and Testimonial statement of Roberto González Cuquejo of April 15, 2002 (evidence file, fs. 5475 to 5479).

<sup>227</sup> Cf. Request for proceedings of October 25, 2002 signed by Diego Bertolucci, addressed to the Public Prosecutor (evidence file, f. 4475).

<sup>228</sup> Cf. Criminal report of January 29, 2003 (evidence file, fs. 7279 and 7280), and Proceedings record of February 13, 2002, of evidence collected on January 30 and 31, 2002 (evidence file, f. 7296).

<sup>229</sup> Cf. Request for proceedings dated April 11, 2002, signed by Ramón Sosa Azuaga (evidence file, fs. 4497 to 4499).

<sup>230</sup> Cf. Record of April 11, 2002 (evidence file, fs. 5435 to 5436).

<sup>231</sup> Cf. Minutes of April 11, 2002 (evidence file, f. 5436).



act, or the accused did not participate in it.”<sup>232</sup> To order the dismissal, the domestic authorities took into account that the statements of the alleged victims were not corroborated by other evidence. This Court notes that this does not constitute, as the Commission pointed out, a transfer of the burden of proof, but rather an application of the principle of presumption of innocence.

149. Regarding the alleged obstacle to the investigation because of the impossibility of formulating an accusation in the face of a ratified request from the Public Prosecutor regarding the dismissal of the case, the Court notes that the State parties can organize their criminal procedure system, considering their particular needs and conditions, provided that they comply with the purposes and obligations determined in the American Convention.<sup>233</sup> In this regard, the fact that the accusation made by the Public Prosecutor’s Office is necessary to continue with the criminal process does not imply a violation of the Convention.

150. Based on the foregoing, the Court concludes that in this case the investigation does not present manifest omissions that could constitute a violation of the Convention. This Court understands that the definitive dismissal issued in this case implies the extinction of the criminal action with respect to the accused. Although there are no actions in the case file after the definitive dismissal, the Court does not have information on the existence of circumstances not investigated by the State. If new evidence arises regarding them, in accordance with the American Convention, the State continues to be bound to investigate the facts.

151. Based on the foregoing considerations, this Court concludes that the State has complied with its international obligations contained in Articles 8 and 25 of the Convention.

152. On the other hand, this Court considers that it does not have sufficient elements to rule on the alleged lack of independence and impartiality in the investigation.

### **B.3 Conclusion**

153. By virtue of the fact that the State i) did not breach its obligation to initiate the investigation *ex officio*, and ii) carried out the investigation with due diligence, the Court concludes that the State is not responsible for a violation of Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of the same instrument, Article I(b) of the Inter-American Convention on Forced Disappearance, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

## **VII-3**

### **ALLEGED VIOLATION OF THE RIGHT TO PERSONAL INTEGRITY OF THE FAMILY MEMBERS OF JUAN ARROM SUHURT AND ANUNCIÓ MARTÍ MENDEZ**

#### **A. Arguments of the parties and of the Commission**

154. The **Commission** indicated that in cases of forced disappearance, the suffering of the next of kin derives from the uncertainty on the whereabouts of the disappeared person, which is presumed, as well as the fear due to the risk on their life and personal integrity. Moreover, the Commission highlighted the radical change in the nuclear families of the alleged victims caused by the departure from the country of Juan Arrom and Anuncio Martí.

<sup>232</sup> Cf. Court decision ordering the dismissal of November 4, 2003 (evidence file, f. 8551).

<sup>233</sup> Cf. *Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193, para. 164.

155. The **representatives** argued that the suffering of the next of kin is a direct consequence of a forced disappearance. They also indicated that the responsibility of the State is aggravated "since the next of kin of the victims found themselves in the situation of having to assume[...] the direction of the investigation." They also stressed that all this occurred "in the midst of a furious campaign of stigmatization and criminalization against the victims."

156. The **State** emphasized that the Commission did not establish what damage each of Arrom's sisters would have suffered, nor did it substantiate the existence of damage and its causal relationship with the events experienced by Arrom. In addition to this, the State referred to the impossibility of measuring a psychological or physical affectation for them, because there were no records of psychological studies. It also indicated that the change in the lives of the next of kin "occurred exclusively as a result of [Arrom and Martí's] attitude of not submitting to Paraguayan justice, for which reason it denied [...] that their next of kin suffered harm caused by the State."

### **B. Considerations of the Court**

157. The Court notes that the arguments regarding the alleged violation of the right to personal integrity of the next of kin are based on the alleged responsibility of the State for the forced disappearance and torture of Juan Arrom Suhurt and Anuncio Martí, or for the alleged lack of adequate investigation of the facts. The Court considers that there is no international responsibility of the State with respect to the aforementioned right, enshrined in Article 5 of the American Convention, since it did not establish the participation of the State in the alleged disappearance and torture of Juan Arrom Suhurt and Anuncio Martí Méndez, nor a violation of the rights to judicial guarantees and protection.

## **VIII OPERATIVE PARAGRAPHS**

Therefore,

### **THE COURT**

#### **DECLARES:**

Unanimously, that

1. The State is not responsible for the violation of Articles 3, 4, 5 and 7 of the Convention, in relation to Article 1(1) of the same instrument, Article I(a) of the Inter-American Convention on Forced Disappearance of Persons and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, as established in paragraphs 93 to 132 of this judgment.
2. The State is not responsible for the violation of Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of the same instrument, Article I(b) of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, as established in paragraphs 136 to 152 of this judgment.
3. The State is not responsible for the violation of Article 5 of the Convention, in relation to Article 1(1) of the same instrument, as established in paragraph 157 of this judgment.
4. Given that the international responsibility of the State has not been established, it is not appropriate to rule on reparations, costs and expenses.

#### **AND ESTABLISHES:**

Unanimously,

5. That the Secretariat of the Court notify this judgment to the Republic of Paraguay, to the representatives of the alleged victims and to the Inter-American Commission on Human Rights.

6. To close the case file.

Written in Spanish in Buenos Aires, Argentina, on May 13, 2019.

IHR Court. *Case of Arrom Suhurt et al. v. Paraguay. Judgment of May 13, 2019.*

Eduardo Ferrer Mac-Gregor Poisot  
President

Eduardo Vio Grossi

Humberto A. Sierra Porto

Elizabeth Odio Benito

L. Patricio Pazmiño Freire

Ricardo Pérez Manrique

Pablo Saavedra Alessandri  
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot  
President

Pablo Saavedra Alessandri  
Secretary