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Case 12.704.

MERITS (PUBLICATION)

RAMÓN NICOLÁS GUARINO
ARGENTINA

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I. INTRODUCTION

1. On October 8, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or “the IACHR”) received a petition from Eleonora Devoto (hereinafter “the petitioner”). The petition alleges the international responsibility of the Republic of Argentina (hereinafter “the Argentine State”, “the State” or “Argentina”) to the detriment of Ramón Nicolás Guarino for the violation of his rights to fair trial and judicial protection. This is due to the alleged illegality and arbitrariness in the unification of two sentences, which also violated his right to personal liberty.

2. The Commission approved Admissibility Report No. 35/09 on March 27, 2009.¹ On April 6, 2009, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement. The conditions were not given to successfully conclude such process.² The parties were allowed time, in accordance with regulations, to submit additional observations on the merits. All information received was duly relayed between the parties.

II. POSITION OF THE PARTIES

A. Position of the petitioner

3. The petitioner alleges the violation of Mr. Guarino’s rights to fair trial and judicial protection due to the improper unification of two prison sentences against him. The petitioner argues that this led Mr. Guarino to be deprived of liberty for an illegal and arbitrary period of time.

4. She indicates that on November 30, 1995, Mr. Guarino was sentenced to four years and six months in prison for the crimes of unlawful possession of a national identity card, forgery of a public document to show proof of people and possession of instruments knowingly aimed at committing counterfeiting acts. She claims that because he had been in pre-trial detention since 1993, the sentence had been served by September 29, 1996. In addition, in the context of another criminal proceeding, on April 25, 1996, Mr. Guarino was sentenced to five years in prison for the crime of ongoing fraud. The petitioner explained that on July 30, 1997 the two sentences were unified, and a single prison sentence of seven years and six months was imposed.

5. The petitioner alleges that the unification of the two sentences violated Mr. Guarino’s right to fair trial. She explains that the court that decided on such unification did not adequately justify and did not take into account that the first sentence had already been served. She adds that, in spite of the many remedies submitted to challenge that decision, the State violated Mr. Guarino’s right to judicial protection. She says that the judicial instances in the proceeding only dismissed the remedies submitted by the defendant since they considered that the resolution being challenged was *res judicata* and thus final, among other formal arguments. The petitioner explains that those authorities did not take into account that the first sentence had already been served, even though this had been recognized by the court in charge of the first criminal proceeding.

6. Furthermore, the petitioner indicates that Mr. Guarino’s initial defense attorney was private and did not submit remedies to contest the unification of the sentences, against the will of the alleged victim. She argues that, as a result, Mr. Guarino requested the State to be provided with adequate legal aid. She explains that Mr. Guarino’s defense was inadequate since his attorney did not present a cassation appeal on time to challenge the decision to unify the sentences. She adds that due to this situation, Mr. Guarino’s rights to appeal the decision and to effective judicial protection were violated, insofar as the ruling to unify the prison sentences was never fully reviewed by a higher court.

¹IACHR. Report No. 35/09. Petition 466- 99. Admissibility. March 27, 2009. The Commission declared the petition admissible in relation to Articles 7, 8 and 25 of the American Convention in accordance with Article 1.1 of the same instrument.

²The Commission notes that the parties expressed their interest in initiating a friendly settlement process. On May 29, 2009, the petitioner communicated to the IACHR that initiating a friendly settlement process was feasible. By means of a communication dated on August 11, 2009, the State confirmed what the petitioner had expressed. Due to the lack of agreement between the parties, on January 16, 2019, the IACHR informed the State and the petitioner that it terminated its intervention in the friendly settlement process and decided to proceed with the merits of the case.

7. Finally, the petitioner alleges that since the decision to unify the sentences was final and not challenged, Mr. Guarino was detained illegally and arbitrarily. This led to a violation of his right to personal liberty. In other words, he served a prison sentence for a crime whose sentence he had already served.

B. Position of the State

8. The Commission notes that to date the State has not submitted observations on the merits. At the admissibility stage, the State alleged that it was not responsible for violating the rights to fair trial, judicial protection and personal liberty.

9. It indicates that the judicial decision on the unification of sentences was issued by a competent court and was final, since the time limit for Mr. Guarino's defense to appeal had expired, as set forth in Argentina's Code of Criminal Procedure. Argentina states that Mr. Guarino did not file the domestic remedy that would have given him the possibility of explaining that the unification of sentences was allegedly wrong.

III. FINDINGS OF FACT

10. The Commission notes that, taking into consideration the documentation provided by the parties, it is evident that Ramón Nicolás Guarino was investigated in the framework of various criminal proceedings for various crimes in the city of Cordoba. Below, the IACHR will present information related to the two criminal proceedings that led to the decision to unify the prison sentences.

11. With regard to the first criminal proceeding, the Commission notes that an investigation was initiated in 1991 against Mr. Guarino for the crime of unlawful possession of a national identity card. On December 11 of the same year, Mr. Guarino was arrested by police officers in the context of a police search at his house. Mr. Guarino was released nine days later. In addition, a warrant of pre-trial detention was issued against him on July 8, 1993.³

12. The IACHR notes that Mr. Guarino had already been detained since April 6, 1993, in the context of another criminal proceeding for the crime of concealment. On September 9, 1994, the Fourth Criminal Chamber of the Province of Cordoba sentenced him to one year in prison. He served this sentence by April 6, 1994.⁴ The Commission notes that Mr. Guarino continued to be detained as a result of the pre-trial detention order of July 1993.

13. On November 30, 1995, Federal Court No. 2 of the Province of Cordoba issued a decision sentencing Mr. Guarino to four years and six months in prison for the crimes of unlawful possession of a national identity card, forgery of a public document to show proof of people and possession of instruments knowingly aimed at committing counterfeiting acts.⁵

14. With regard to the second criminal proceeding, the Commission notes that an investigation was initiated for the crime of ongoing fraud by the Second Criminal Chamber of the Province of Cordoba. On April 25, 1996, said court issued a decision sentencing Mr. Guarino to two years in prison. In that decision, the Chamber considered that such sentence should be unified with the sentences of other proceedings, so that the single unified sentence would total five years in prison.⁶

15. On November 26, 1996, the Second Criminal Chamber of the Province of Cordoba ordered that the unification and execution of the sentences of the two proceedings mentioned above should take place once a final resolution on the sentence of four years and six months imposed by Federal Court No. 2 on November 30,

³ Judgement of Federal Court No. 2 of the Province of Cordoba, November 30, 1995. Appendix to Folder 1.

⁴ Interlocutory Order No. 60 of the Second Criminal Chamber of the Province of Cordoba, August 22, 1997. Appendix to the communication of the petitioner of January 3, 2019.

⁵ Judgement of Federal Court No. 2 of the Province of Cordoba, November 30, 1995. Appendix to Folder 1.

⁶ Judgement No. 17 of the Second Criminal Chamber of the Province of Cordoba, April 25, 1996. Appendix to the communication of the petitioner of January 3, 2019.

1995 was made. The Chamber argued that, in order to ensure the principle of unity in the execution of a sentence, both sentences needed to be unified in accordance with Article 58 of Argentina's Code of Criminal Procedure, which states that "the court who has applied the greater sentence shall determine, at the request of an interested party, the term of their sentence only, without altering the findings of fact contained in the other sentences." It was therefore not possible to apply Mr. Guarino's detention time to simultaneously serve the several sentences mentioned above.⁷

16. On July 8, 1997, Mr. Guarino's private attorney filed a brief before the Second Criminal Chamber of the Province of Cordoba. He said that he had previously alleged that it was impossible to proceed with the unification of the sentences in question, since the sentence of four years and six months of imprisonment had already been served. In said brief, the defendant's attorney pointed out that, although the sentence had been served, "the extinction of the sentence that precluded the unification should have occurred before the decision of the unification being final." He explained that this provision was not observed in Mr. Guarino's case. As a result, he requested the unification of the sentences in accordance with the provisions of Law No. 24,390, which regulates the duration of pre-trial detention in order to estimate the term of the sentence to be served.⁸

17. On July 30, 1997, the Second Criminal Chamber of the Province of Cordoba decided to unify the sentences of the two criminal proceedings already described above. It decided to sentence Mr. Guarino to seven years and six months in prison. The Chamber held that this decision was made after considering the nature of the facts that had resulted in both sentences, the sentencing range on which both sentences were based, the grounds on which both sentences were issued and the observations made by the public prosecutor and Mr. Guarino's private attorney.⁹

18. Two days later, Mr. Guarino was notified of that decision. The IACHR notes that Mr. Guarino stated "I appeal the decision in it" upon receiving notice of the decision.¹⁰ The Commission is also aware that the petitioner said that Mr. Guarino had requested his private attorney to file an appeal. However, the IACHR observes that his attorney did not file such an appeal.

19. On August 5, 1997, Mr. Guarino filed an extraordinary remedy "in pauperis" before the Criminal Chamber to challenge that decision. Mr. Guarino argued that his attorney's brief had defects that caused him an "irreparable harm." He added that it was essential to determine the term of the sentence since the sentence issued by the federal justice had been served by September 29, 1996. He explained that this precluded the unification of the sentences since said sentence had been final, consented and served. Mr. Guarino concluded that his attorney's brief was inconsistent, since the only sentence to be served was that of April 25, 1996.¹¹

20. On August 7, 1997, Federal Court No. 2 informed the Second Criminal Chamber that, by September 29, 1996, Mr. Guarino had served the sentence imposed in a first instance ruling of November 30, 1995. The Federal Court also noted that on October 1, 1996, it was decided to release Guarino. His release did not take place due to the proceeding held by the Second Criminal Chamber.¹²

21. On August 22, 1997, the Second Criminal Chamber admitted the request of Mr. Guarino's private attorney to apply Law No. 24,390 and thus confirmed the unification of the sentences. In addition, in light of the time Mr. Guarino had spent in pre-trial detention, the Chamber decided the entire unified sentence would be served by

⁷ Interlocutory Order No. 50 of the Second Criminal Chamber of the Province of Cordoba, November 26, 1996. Appendix to Folder 1.

⁸ Brief filed by Mr. Guarino's private attorney to the Criminal Chamber, July 8, 1997. Appendix to the communication of the petitioner of January 3, 2019.

⁹ Interlocutory Order No. 54 of the Second Criminal Chamber of the Province of Cordoba, July 30, 1997. Appendix to Folder 1.

¹⁰ Notification of Interlocutory Order No. 54 of the Second Criminal Chamber of the Province of Cordoba, August 1, 1997. Appendix to the communication of the petitioner of January 3, 2019.

¹¹ Brief filed by Mr. Guarino's private attorney to the Criminal Chamber, August 5, 1997. Appendix to the communication of the petitioner of January 3, 2019.

¹² Official Notice from the Federal Court to the Second Criminal Chamber, August 7, 1997. Appendix to Folder 1.

May 31, 2001. According to Law 24,390, each day of pre-trial detention in excess should count as two when estimating the term of the sentence to be served.¹³

22. On September 22, 1997, Mr. Guarino submitted a brief to the Second Criminal Chamber requesting the interlocutory order of August 22 to be rectified. He alleged that the order took into consideration a sentence already served when estimating the term sentence resulting from the unification. He explained that the sentence imposed by Federal Court No. 2 was final and fully served by September 29, 1996, that is, almost a year before the Chamber ordered the unification of the sentences. He reported that, since it had not been verified that the sentence had already been served, the unification should not be made effective. Mr. Guarino also requested for him to be provided with proper legal aid.¹⁴

23. The IACHR does not have information on the date on which legal aid was provided to Mr. Guarino. On October 27, 1997, his lawyer filed a cassation appeal against the interlocutory order of August 22. The lawyer indicated that Law No. 24,390 had been enforced incorrectly and that the unification of the sentences should be declared null. She said there were no legal grounds for it since no reasoned judgement had been applied. She argued that the judicial authority was unaware of the report made by Federal Court No. 2 confirming that the sentence imposed on November 30, 1995 had been fully served and releasing Mr. Guarino from prison on October 1, 1996. She stated that the motivation of the interlocutory order had been contradictory since “it affirms and denies a fact simultaneously, which is its main legal defect.”¹⁵

24. On June 5, 1998, the Supreme Court of the Province of Cordoba dismissed the cassation appeal and confirmed the interlocutory order of August 22, 1997. The Supreme Court of the Province of Cordoba held that “Mr. Guarino’s claim according to which one of the unified sentences should be excluded from the term is a palpable way of contesting an issue analyzed in the resolution it had admitted and which had become *res judicata*.” It explained that the order of July 30, 1997 became final once the deadline to contest it had expired.¹⁶

25. On June 24, 1998, Mr. Guarino filed an extraordinary federal remedy “in pauperis” before the Supreme Court of Justice of the Province of Cordoba challenging the judgement of June 5, 1998. Mr. Guarino stated that the exercise of a constitutional guarantee such as defense cannot be detrimental to the person charged. He argued that the dismissal contained no “confrontation of the grounds set forth in the remedy.” He added that, as a result, the resolution should be considered arbitrary “because it failed to pronounce on grievances that the defendant had presented.”¹⁷

26. On July 20, 1998, Mr. Guarino’s lawyer confirmed the extraordinary remedy lodged by Mr. Guarino. She argued that the judgment of June 5 was arbitrary, since it contained “very serious omissions and defects that disqualify it as a court ruling.” She also indicated that “the court should not apply a precept by renouncing to achieve objective legal truth.” In addition, she argued that the Supreme Court of Justice of the Province of Cordoba had been contradictory, since its decision showed that expired sentences could not be unified and, in spite of this, the sentences had been unified in the present case.¹⁸

27. On August 10, 1998, the Criminal Division of the Supreme Court of Justice of the Province of Cordoba found the extraordinary remedy inadmissible. The Division argued that “the defendant had failed to present a remedy that covered each and every argument of the decision he contended, and that his remedy did not observe the

¹³ Interlocutory Order No. 60 of the Second Criminal Chamber of the Province of Cordoba, August 22, 1997. Appendix to the communication of the petitioner of January 3, 2019.

¹⁴ Brief filed by Mr. Guarino to the Second Criminal Chamber, September 22, 1997. Appendix to the communication of the petitioner of January 3, 2019.

¹⁵ Cassation Appeal filed by Public Defender of Public Defense Office No. 13, October 27, 1997. Appendix to the communication of the petitioner of January 3, 2019.

¹⁶ Judgement No. 37 of the Supreme Court of Justice of the Province of Cordoba, June 5, 1998. Appendix to the communication of the petitioner of January 3, 2019.

¹⁷ Brief filed by Mr. Guarino to the Supreme Court of Justice of the Province of Cordoba, June 24, 1998. Appendix to the communication of the petitioner of January 3, 2019.

¹⁸ Extraordinary federal remedy filed by Public Defender of Public Defense Office No. 13, July 20, 1998. Appendix to the communication of the petitioner of January 3, 2019.

minimum conditions required to be filed.” It added that the defense only stated that the challenged resolution lacked grounds and, at the same time, was contradictory, without proving that it was arbitrary.¹⁹

28. On August 13, 1998, Mr. Guarino lodged a complaint before Argentina’s Supreme Court of Justice. On March 9, 1999, Argentina’s Supreme Court of Justice found the complaint inadmissible. It argued that, since the extraordinary remedy had been found inadmissible by the Criminal Division on August 10, “the remedy needed to be dismissed.”²⁰

29. The IACHR does not have information on the date on which Mr. Guarino was released. The IACHR also notes that the petitioner reported that Mr. Guarino had died on October 7, 2016. She noted that Mr. Guarino had died at the Hospital Italiano in Cordoba, where he had been diagnosed with Guillain Barre syndrome and a related respiratory infection, and had been receiving mechanical respiratory assistance.²¹ This information was not challenged by the State.

IV. ANALYSIS OF LAW

A. Right to fair trial, judicial protection and personal liberty (Articles 8.1²², 25.1²³, 7.1 and 7.3²⁴ of the American Convention) in relation to Article 1.1²⁵ of the same instrument

1. General considerations

30. The Commission has repeatedly stated that States Parties to the American Convention are obliged to provide effective judicial remedies to the victims of human rights violations, which must be substantiated in accordance with the rules of due process of law.²⁶ In this regard, the Commission has established that Article 25 of the American Convention is directly related to Article 8.1 of the same instrument, which enshrines the right of every person to be heard with due guarantees and within a reasonable period of time, by an independent and impartial judge or tribunal.²⁷

31. With regard to the duty to provide grounds, the Inter-American Court has established that the grounds “are the exteriorization of the reasoned justification that allows a conclusion to be reached.”²⁸ It has stated that the obligation to found decisions is a guarantee related to the correct administration of justice, which protects the right of the people to be tried for the reasons established by law and grants credibility to judicial decisions in a democratic society. For this reason, decisions made by domestic bodies that can affect human rights must be duly founded; otherwise they would be arbitrary decisions.²⁹

32. In this regard, the considerations of a ruling and certain administrative decisions must reveal the facts, grounds and laws on which the authority based itself to make its decision in order to eliminate any sign of

¹⁹ Record No. 204 of the Supreme Court of Justice of the Province of Cordoba, August 10, 1998. Appendix to the communication of the petitioner of January 3, 2019.

²⁰ Judgement of Argentina’s Supreme Court of Justice, March 9, 1999. Appendix to the communication of the petitioner of January 3, 2019.

²¹ Appendix to the communication of the petitioner of November 11, 2016.

²² Article 8.1. 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.

²³ Article 25.1. 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.

²⁴ Article 7.1. Every person has the right to personal liberty and security. 7.3. No one shall be subject to arbitrary arrest or imprisonment.

²⁵ Article 1.1. 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.

²⁶ IACHR. *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights*, September 7, 2007, para. 177.

²⁷ IACHR. Report No. 26/09. Case 12,440. Wallace de Almeida. Brazil. March 20, 2009; para. 119.

²⁸ IACHR Court. *Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2007. Series C No. 170, para. 107.

²⁹ IACHR Court. *Chocrón Chocrón v. Venezuela*. Preliminary objections, merits, reparations and costs. Judgment of July 1, 2011. Series C No. 227, para. 118; and *Yatama v. Nicaragua*. Preliminary objections, merits, reparations and costs. Judgment of June 23, 2005. Series C No. 127, paras. 152 and 153.

arbitrariness.³⁰ Furthermore, the justification demonstrates to the parties that they have been heard and, in those cases where the decision can be appealed, allows them to contest the decision and to obtain another examination of the matter before a higher court.³¹

33. In a similar sense, the IACHR has indicated that there is an intrinsic relationship between the existence of sufficient grounds and the possibility of challenging resolutions and preparing an adequate defense within the framework of subsequent remedies.³²

34. In accordance with the foregoing, the IACHR emphasizes that, pursuant to Article 25 of the American Convention, States have a duty to offer, all people submitted to its jurisdiction, an effective judicial remedy against acts that violate their fundamental rights.³³ This implies that the judicial remedy must be suitable to combat the violation, and therefore the competent authority must examine the grounds invoked by the person lodging the remedy and decide on them. In this regard, the Court has established that the analysis of a judicial remedy by the competent authority cannot be a mere formality and cannot leave out the arguments of the parties, since it must assess their reasons and express its view on them in accordance with the parameters set forth in the American Convention.³⁴

2. Analysis of the instant case

35. In a preliminary manner, the IACHR highlights the following:

When establishing the international responsibility of the State for the violation of the human rights embodied in Articles 8.1 and 25 of the American Convention, a substantial aspect of the dispute before the Court is not whether judgments or administrative decisions were issued at the national level or whether certain provisions of domestic law were applied with regard to the violations that are alleged to have been committed to the detriment of the alleged victims of the facts, but whether the domestic proceedings ensured genuine access to justice, in keeping with the standards established in the American Convention, to determine the rights that were in dispute.³⁵

36. Based on the foregoing, the Commission notes that its analysis in this matter will focus on determining whether or not administrative and judicial proceedings brought by the victim to challenge the unification of the sentences respected the rights to fair trial (duty to provide grounds and fully review the ruling) and judicial protection, and whether his deprivation of liberty was arbitrary.

37. In the instant case, the IACHR notes that there is no dispute that on July 30, 1997, a resolution was issued to unify the sentences of two criminal proceedings against Mr. Guarino. He was given a single sentence of seven years and six months in prison. These criminal proceedings were conducted before (i) Federal Court No. 2 of the Province of Córdoba; and (ii) the Second Criminal Chamber of the Province of Córdoba. The IACHR also notes that the sentence issued by the Federal Court had allegedly been served by September 29, 1996, that is, ten months before the decision to unify sentences was issued. The Commission notes that, among the documentation presented, there is a record of the Federal Court confirming that the sentence imposed on Mr. Guarino was served by September 29, 1996.

38. The IACHR stresses that the resolution of July 30, 1997 to unify the sentences of both criminal proceedings did not take into account that one of the sentences had already been served by Mr. Guarino by September 1996, as it was recognized by the court that had issued said judgement. The Commission also notes that Mr. Guarino presented various remedies to challenge that decision.

³⁰IACHR Court. *Claude Reyes et al. v. Chile*. Merits, reparations and costs. Judgement of September 19, 2006. Series C No. 151, para. 122.

³¹IAHR Court. *Chocrón Chocrón v. Venezuela*. Preliminary objections, merits, reparations and costs. Judgement of July 1, 2011. Series C No. 227. para. 118.

³²IACHR. Report No. 42/14. Case 12,453. Merits. Olga Yolanda Maldonado Ordóñez. Guatemala. July 17, 2014; para. 98.

³³IACHR. Report No. 21/17. Case 11,738. Merits. Elba Clotilde Perrone and Juan José Preckel. Argentina. March 18, 2017; para. 73.

³⁴Inter-American Court. *Perrone and Preckel v. Argentina*. Preliminary objections, merits, reparations and costs. Judgment of October 8, 2019. Series C No. 384, para. 121.

³⁵IAHR Court. *Dismissed Congressional Workers (Aguado Alfaro et al.) v. Peru*. Judgement of November 24, 2006. Series C No. 158, para. 106.

39. First, Mr. Guarino wrote “I appeal the decision in it” on the notice he received concerning the court’s decision. However, the judicial authority did not take this into consideration and took no steps to follow up on this matter.

40. Secondly, Mr. Guarino presented an extraordinary remedy “in pauperis”. The Second Criminal Chamber dismissed this remedy and issued an interlocutory order confirming the unification of the sentences. The IACHR notes that the Chamber did not take into account the Federal Court’s decision confirming that the sentence had been already served. The Chamber only referred to the application of Law No. 24,390 in order to establish the term of the accumulated sentences.

41. Thirdly, Mr. Guarino submitted a letter requesting the above-mentioned interlocutory order to be rectified. The IACHR does not have information on whether this brief was replied.

42. Fourthly, Mr Guarino’s public defender filed a cassation appeal against the interlocutory order. This appeal was dismissed by the Supreme Court of Justice of the Province of Cordoba. The IACHR notes that the Supreme Court of Justice of the Province of Cordoba did not take into account the Federal Court’s decision confirming that the sentence had been already served. Moreover, it concluded that the resolution to unify the sentences challenged by Mr. Guarino was *res judicata*, and that the deadline to contend that decision had already expired.

43. Fifthly, Mr. Guarino presented an extraordinary remedy “in pauperis”, which was confirmed by his public defender. The Criminal Division of the Supreme Court of Justice of the Province of Cordoba dismissed said remedy. The IACHR notes that the Criminal Division stated that the defendant did not provide grounds on “the arbitrariness” of the ruling. However, said Division did not take into account the Federal Court’s decision confirming that the sentence had been already served.

44. Sixth, Mr. Guarino filed a complaint, which was denied by Argentina’s Supreme Court of Justice. The Supreme Court merely pointed out that since the Criminal Division had found the previous remedy inadmissible, the present complaint “needed to be dismissed.”

45. In light of the foregoing, the Commission notes that Mr. Guarino filed several judicial remedies to challenge the decision to unify the sentences of the two criminal proceedings for which he had been found guilty. The IACHR stresses that Mr. Guarino’s main argument focused on the fact that he had already served one of the sentences before the resolution to unify the sentences, and it was therefore inappropriate to perform such unification. Mr. Guarino also submitted a record of the Federal Court confirming that the sentence had already been served. In spite of this, none of the several judicial authorities involved in the proceedings pronounced with regard to this situation. In those decisions, the judicial authorities did not provide sufficient grounds to account for the dismissal of Mr. Guarino’s allegations. On the contrary, they merely confirmed the decision to unify the sentences without further analysis of the merits of the case. The IACHR stresses that it was important that the judicial authorities took into account the Federal Court’s order when issuing their rulings.

46. In light of the foregoing, the IACHR concludes that the judicial authorities violated the right to sufficient and adequate justification, enshrined as one of the due process guarantees set forth in Article 8.1 of the American Convention in relation to Article 1.1 of the same instrument, to the detriment of Ramón Nicolás Guarino. Consequently, since this guarantee of due process had been violated in the decisions made by domestic judicial authorities, the Commission concludes that the same authorities also violated the right to judicial protection, established in Article 25.1 of the Convention, in relation to Article 1.1 of the same instrument.

47. With regard to the right to personal liberty, the IACHR recalls that a violation of the right to fair trial or to judicial protection may have a negative impact on the criminal proceeding and the consequences thereof, including the detention of a person.³⁶ The Commission has also considered that, under certain circumstances,

³⁶ IAHR Court. *Usón Ramírez v. Venezuela*. Judgement of November 20, 2009. Series C No. 207, para. 148.

human rights violations might make a detention arbitrary as a result of the decisions made concerning a person's liberty.³⁷

48. The Commission thus notes that, although Mr. Guarino's deprivation of liberty was initially legal, it became arbitrary due to the conduct of the judicial authorities who did not make grounded decisions concerning the ruling to unify sentences.³⁸ The Commission stresses that, notwithstanding the fact that it lacks detailed information about the period of time during which Mr. Guarino was detained, the fact that the decision on the unification of the sentences was final and was not amended, even though there was the Federal Court's order that proved that Mr. Guarino had served one of the sentences, is a violation of his right to personal liberty. Based on the foregoing, the Commission concludes that the State violated Articles 7.1 and 7.3 of the American Convention, in relation to Article 1.1 thereof, to the detriment of Ramón Nicolás Guarino.

49. The Commission takes note of the allegations submitted by the petitioner regarding the violation of the rights to have proper legal defense and to challenge a ruling. The IACHR considers that it does not have sufficient grounds to pronounce on these aspects.

V. PROCEEDINGS SUBSEQUENT TO REPORT No. 98/21

50. The Commission adopted Merits Report No. 98/21 on May 20, 2021, comprising paragraphs 1 to 49 above, and transmitted it to the State on July 26 of the same year. In this report the Commission recommended:

1. Make full reparations for the human rights violations declared in this report, including fair compensation for material and non-material damage.

51. In the proceedings subsequent to the notification of the merits report, the Commission received several reports from the State and the petitioning party on compliance with the recommendations established by the IACHR. During this period, the Commission granted five extensions to the State for the suspension of the time-period provided for in Article 51 of the American Convention. In its extension requests, the Argentine State reiterated its willingness to comply with the recommendations. It also expressly waived the right to file preliminary objections for failure to comply with the deadline if the case was submitted to the Inter-American Court.

52. After evaluating the available information on the status of compliance with the recommendations, the Commission decided on October 26, 2022, not to send the case to the Inter-American Court and to proceed with the publication of the merits report as established in Articles 51 of the American Convention and 47 of the Rules of Procedure of the IACHR. In the section below, the Commission makes its determinations on the compliance with its recommendations.

VI. ANALYSIS ON COMPLIANCE WITH THE RECOMMENDATIONS

53. The IACHR notes that on December 28, 2021, the parties signed an "Agreement on Compliance with Recommendations". The Commission also notes that on September 9, 2022, Executive Decree No. 592 was approved and published on September 12, 2022, in the Official Gazette.

54. The Commission notes that the Agreement on Compliance with Recommendations states that the State will adopt the following measures:

1. Non-economic reparation measures: to publish the agreement in the "Official Gazette of the Argentine Republic".

³⁷ IACHR. Report No. 172/10. Case 12,561. Merits. César Alberto Mendoza *et al.* (prison and life imprisonment for adolescents). Argentina. November 2, 2000; para. 175.

³⁸ IACHR. Report No. 172/10. Case 12,561. Merits. César Alberto Mendoza *et al.* (prison and life imprisonment for adolescents). Argentina. November 2, 2000; para. 179.

2. Economic reparation measures: to constitute an ad-hoc Arbitral Tribunal to determine the economic reparations and the costs of the international and arbitration proceedings, in accordance with the international standards set by the Inter-American Court. The tribunal shall be formed no later than 45 days from the publication of the Decree. The arbitration process will begin once the IACHR approves the agreement and publishes the report provided for in Article 51.1 of the Convention. Such procedure shall be defined by mutual agreement between the parties, who shall draft their rules of procedure, while the costs shall be borne by the State. The award shall contain the amount and form of the pecuniary reparations agreed upon, expressed in U.S. dollars or their value according to the selling price of that currency established by the National Argentinian Bank at the time of its issuance, and shall be submitted to the IACHR for evaluation as part of the process of monitoring compliance with the agreement, to verify its compliance with the applicable international parameters. According to the death certificate attached to the agreement provided by the petitioner, it is proven that the victim is deceased, and therefore the reparations to be determined by the arbitration court shall be received by those who can reliably demonstrate their status as successor(s) of the deceased, by means of the corresponding declaration of heirs issued by the competent judicial authority, and in accordance with the procedural rules applicable in the jurisdiction where the succession proceeding was processed.

55. The IACHR values the measures adopted by the State to reach an agreement with the petitioner to comply with the recommendations. The Commission also notes the compliance with the agreed reparation measure, indicated in paragraph 54.1 above, with the publication of the Agreement in the Official Gazette.

56. In view of the foregoing, both parties requested the IACHR to issue the final merits report in accordance with Article 51 of the American Convention, to give it full effect and make the measure of economic reparation possible.

57. On October 27, 2023, the State forwarded the arbitral award that was adopted the day before by the Arbitral Tribunal constituted on June 6, 2023. Paragraph 30 of said award establishes that it is submitted for the consideration of the IACHR in order for it to determine whether it complies with the international parameters of pecuniary reparation.

58. The Commission notes that, after analyzing the case, the evidence provided by the parties and their arguments, the Arbitral Tribunal issued its award establishing a compensation of USD 10,000 for consequential damages and lost profits and USD 35,000 for non-pecuniary damages, in addition to costs and expenses. Regarding the method of compliance with the award, it is established that the State has three months to comply with it from the day after “the petitioning party denounces the name or names of those who are declared legitimate heirs of the victim Ramón Nicolas Guarino [...] and provided that the award has been previously approved by the IACHR as established in the pertinent regulatory guidelines. Otherwise, it shall begin to run from the date of the IACHR's pronouncement in favor of its approval”.

59. The Commission values the award reached by the Arbitral Tribunal and considers that it complies with the Inter-American parameters of pecuniary reparation.

60. The Commission adopted Final Merits Report No. 256/23 on November 20, 2023 and transmitted it to the State on March 21, 2024, granting it a period of one month to inform the IACHR on the measures adopted to comply with its recommendations.

VII. ACTIONS SUBSEQUENT TO REPORT No. 256/23 AND COMPLIANCE INFORMATION

61. In the proceedings subsequent to the notification of the merits (final) report, the Commission received a State report and written submissions from the petitioner regarding compliance with the recommendations and informing it of the sensitive death of Mrs. Mariana Laura Guarino, the victim's daughter. These communications were forwarded to the parties.

62. The victim's representatives informed that the inheritance file of Mr. Ramón Guarino is being processed. Ramón Guarino is being processed at the Probate Proceedings Office of the city of Córdoba, under the case "Guarino, Ramon Nicolas - Elías, Alicia Beatriz s/ Declaratoria de Herederos", File No. 12922061, initiated for the specific purpose of having access to the compensation set. He indicated that the proceeding was in the stage immediately prior to the issuance of the judgment.

63. The victim's representative also reported that the succession proceeding of Mrs. Mariana Laura Guarino was initiated in the Civil, Commercial, Bankruptcy and Family Court, 1st nomination, 1st Section of the city of Cosquín, province of Córdoba, under the proceedings "Guarino, Mariana Laura s/ Declaratoria de Herederos", File N° 13011485 and that the victim's granddaughter, Florencia Gayol, requested them to urge the continuation of the claim for the payment of the compensation ordered by the Ad Hoc Arbitral Tribunal to her grandfather's estate and authorized them to take the necessary steps to that end.

64. For its part, the State indicated, in November 2024, that once the status of Mr. Guarino's successors has been reliably declared in the succession proceedings in Case No. 12922061, the judicial account must be opened on behalf of that estate. On March 7, 2025, the State informed that the declaration of heirs of Mr. Guarino was issued on December 6, 2024, which was sent to the National General Treasury so that the corresponding payments could be made.

VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS

65. Based on the findings of fact and law in this report, the Inter-American Commission concludes that the State is responsible for violating the rights to fair trial, judicial protection and personal liberty established in Articles 8.1, 25.1, 7.1 and 7.3 of the American Convention in relation to Article 1.1 of the same instrument, to the detriment of Ramón Nicolás Guarino.

66. The Commission recognizes the efforts of the parties to comply with the recommendation and given that the reparation determined in its Report has not yet been made, by virtue of the above conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE STATE OF ARGENTINA:

1. To provide full reparation for the violations of human rights detailed in this report, including fair compensation for both material and non-material aspects.

IX. PUBLICATION

67. Pursuant to the foregoing and in accordance with the provisions of Article 51(3) of the American Convention, the Inter-American Commission on Human Rights decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the norms established in the instruments that regulate its mandate, will continue to evaluate that the State of Argentina makes full reparations to the victim's estate in accordance with the provisions of the aforementioned recommendation, until it determines that it has been fully complied with.

Approved by the Inter-American Commission on Human Rights on the 20th day of March, 2025. (Signed): José Luis Caballero Ochoa, President, Arif Bulkan, Second Vice-President, Roberta Clarke; Carlos Bernal Pulido; Edgar Stuardo Ralón Orellana and Gloria Monique de Mees, members of the Commission.