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CASE 12.935

MERITS REPORT (PUBLICATION)

HEBE SÁNCHEZ AMÉNDOLA AND DAUGHTERS
ARGENTINA

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I. INTRODUCTION¹

1. On December 14, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition from Hebe Sánchez de Améndola and Ingrid Elizabeth Améndola, represented by CORREPI Coordinator Against Police and Institutional Repression (“the petitioner”). The petition claims that the Republic of Argentina (“the State of Argentina,” “The State,” or “Argentina”) is internationally responsible to the detriment of the alleged victims because a judgment was issued declaring the lapse of the statute of limitations on a civil claim for reparation for the damages caused by the death of Ricardo Osvaldo Améndola, husband and father of the alleged victims, at the hands of two officers of the Argentine Federal Police.

2. The Commission approved Admissibility Report No. 103/13 on November 5, 2013.² On January 15, 2015, the Commission notified the parties of this report and placed itself at their disposal to reach a friendly settlement of the matter, yet the conditions were not such as to begin that procedure. The parties enjoyed the periods established in the IACHR Rules of Procedure for submitting additional observations on the merits. The information submitted by each party was duly transmitted to the opposing party.

II. POSITION OF THE PARTIES

A. The petitioner

3. The petitioner claims that on January 27, 1989, Ricardo Osvaldo Améndola, husband and father of the alleged victims, was killed at the hands of two officers of the Argentine Federal Police. It says that on September 14, 1995, the conviction against Sergeants Eduardo Samuel Leiva and Néstor Roberto Juárez, as the perpetrator and the accessory after the facts, respectively, became final. The petitioner holds that in those proceedings Hebe Sánchez Améndola, acting on her behalf and that of her underaged daughters, appeared as the plaintiff.

4. The petitioner expresses that on November 29, 1996, Hebe Sánchez Améndola filed a civil claim for damages, against those convicted for the homicide and the State given its civil liability for the acts of those convicted since when the crime took place, Eduardo Samuel Leiva and Néstor Roberto Juárez were acting in the course of their duty as law enforcement agents and using their Federal Police service weapons.

5. The petitioner holds that on June 24, 1998, Federal Criminal and Correctional Tribunal No. 1 of San Martín decided, in the framework of the civil suit for damages, to sustain the Attorney General’s Office preliminary objection that, under Article 4037 of the Civil Code, the statute of limitations on the civil action against the State had expired because more than two years had passed since the homicide of Ricardo Osvaldo Améndola.

6. It alleges arbitrariness in the judgment in that this did not apply to the State the effects of Art. 3982 *bis* of the Civil Code, which specifies that filing a criminal complaint against the parties responsible for the crime suspends the statute of limitations on a civil claim until the criminal complaint is withdrawn or the criminal proceedings conclude.

7. The petitioner expresses that according to scholarly legal opinion and local case law, the scope of the suspension should not have been limited to those found criminally responsible for the death—like the above judgment did—but been extended to those persons who without being accused in the criminal proceedings were civilly responsible. Even more so when it is impossible to criminally accuse the party answerable to the civil jurisdiction, as it happens here with the State.

8. The petitioner explains that although a criminal complaint was filed only against Eduardo Samuel Leiva and Néstor Roberto Juárez, it is understood that this should have suspended the statute of limitations on the civil claim against them and the State as a party civilly responsible for Mr. Améndola’s death.

¹ Pursuant to Article 17.2 of the Commission’s Rules of Procedure, Commissioner Andrea Pochak, an Argentine national, did not participate in the debate or decision in this case.

² IACHR. Report No. 103/13. Petition 643-00. Report on Admissibility. Hebe Sánchez Améndola and Daughters. Argentina. November 5, 2013. In that report, the Commission declared the petition admissible regarding Articles 8 and 25 of the American Convention, in accordance with Article 1.1 thereof.

9. The petitioner also claims that regarding civil suits for damages caused by criminal acts, Article 1101 of the Civil Code precludes the issuing of civil judgments until the criminal conviction against the accused has become final. Consequently, the petitioner understands that filing a civil claim against the State while the relevant criminal proceedings were still ongoing would have been useless.

10. The petitioner argues that the alleged victims appeared as the plaintiff in the criminal proceedings on October 4, 1989, which was long before the two years had passed since Ricardo Osvaldo Améndola's death, and that from that moment, and until the criminal convictions became final, was the suspension of the statute of limitations on the civil claim effective.

11. The petitioner indicates that the statutory periods started running again on September 14, 1995, and that the civil claim for damages was filed on November 29, 1996—long before time had run out and the deadline under Art. 4037 had expired. Because of this, it alleges that the claim was timely filed and that the application of the institute of the statute of limitations in favor of the State is inadmissible.

12. The petitioner expresses that the alleged victims appealed to the Federal Chamber of Appeals of San Martín against the decision of declaring the lapse of the statute of limitations on the civil claim against the State. It says that on November 23, 1999, the appeal was rejected, with which the lower court's judgment was upheld. It reports that, accordingly, a special federal remedy was filed, but the Federal Chamber of San Martín rejected it as well. In the end, on May 31, 2000, the National Supreme Court of Justice dismissed the appeal of complaint where the alleged victims disputed the decision of declaring the lapse of the statute of limitations on the civil compensation claim against the State.

13. Lastly, the petitioner alleges that since this is a police crime, the death of Ricardo Osvaldo Améndola represents a crime committed by the State of Argentina, meaning that this should be assimilated to a crime against humanity. In this regard, it concludes no statute of limitations applies to civil claims based on a crime against humanity, like the suit filed in this case.

14. As for the law, the petitioner argues that the State violated the **right to a fair trial** and the **right to judicial protection** because, through excessive formal requirements, it has denied the alleged victims access to an effective remedy to obtain full redress for the death of Mr. Améndola at the hands of two officers of the Argentine Federal Police.

B. The State

15. For its part, the State alleges that the petition fundamentally expresses the petitioner's dissatisfaction with the judgment by the Federal Criminal and Correctional Tribunal No. 1 of San Martín and its disagreement with the criterion that the local courts of law used in interpreting Article 3982 *bis*.

16. The State expresses that this recourse to the inter-American system as a fourth-instance court is explained by an intention that the Commission will review, in the manner of a court of appeals, decisions that national courts adopted under due process of law and within their scope of jurisdiction. In short, it asserts that the alleged victims presented their case in the framework of proceedings held without irregularities or hindrances to judicial independence and impartiality.

17. The State claims that the alleged victims had at their disposal legal remedies adequate to seek full reparation for the damages caused by the death of Mr. Ricardo Osvaldo Améndola. Indeed, it contends that the domestic legal system provides for the claim for non-contractual liability and that this is available for filing within the two years following the commission of the injurious act.

18. The State argues that owing to the alleged victims' negligence, that possibility was canceled, as they let the statute of limitations on the civil claim against the State expire. It explains that filing a criminal complaint suspends the statute of limitations on the civil claim only regarding the parties found criminally responsible for the crime. Thus, the State stresses that most scholarly legal opinion and preponderant case law on this

subject agree that it is unnecessary to extend this suspension to persons who without being a party to the criminal proceedings are later sued in the civil jurisdiction.

19. The State contends that although it is impossible to criminally accuse the State, this does not preclude the possibility of filing a civil claim for damages caused by its servants. It explains that an ongoing criminal action only precludes civil courts from issuing a convicting sentence but it does not exclude the possibility that a civil claim is filed to stop the statute of limitations from running.

20. The State also contends that the local courts declared the lapse of the statute of limitations only regarding the civil action against the State but that it continued the judicial proceedings against Eduardo Samuel Leiva and Néstor Roberto Juárez, the persons responsible for the death of Mr. Améndola. In the opinion of the State, this means that the alleged victims have not fully lost the opportunity to obtain reparation.

21. As for the law, the State argues that it did not violate the **right to a fair trial** or the **right to judicial protection** protected by the American Convention. About this, the State says that the declaration of the lapse of the statute of limitations is the outcome of a lack of procedural skill attributable to the alleged victims, who, until then, had at their disposal adequate remedies to seek full redress for Mr. Améndola's death.

III. FINDINGS OF FACT

A. Regarding the civil compensation claim for the homicide of Ricardo Osvaldo Améndola

22. On October 4, 1989, Hebe Sánchez Améndola appeared as the plaintiff in the criminal proceedings against Eduardo Samuel Leiva and Néstor Roberto Juárez, sergeants of the Argentine Federal Police, for the homicide of her husband, Ricardo Osvaldo Améndola, perpetrated on January 27, 1989.³ On September 14, 1995, their criminal conviction as the perpetrator and the accessory after the facts, respectively, became final.⁴

23. On November 29, 1996, Hebe Sánchez Améndola filed a civil claim for the damages caused by the death of Mr. Améndola, against those criminally responsible for the act and the State as well as a party civilly responsible for the acts committed by the former while acting in their duty as law enforcement officers.⁵

24. On June 24, 1998, Federal Criminal and Correctional Tribunal No. 1 of San Martín dismissed the preliminary objections raised by Eduardo Samuel Leiva and Néstor Roberto Juárez and considered that, regarding them, the statute of limitations on the civil action had been suspended from the moment the criminal complaint was filed until the criminal proceedings concluded.⁶ Moreover, the tribunal sustained the preliminary objection raised by the Attorney General's Office and considered that the statute of limitations on the civil claim against the State had lapsed because more than two years had passed since Mr. Ricardo Osvaldo Améndola's death.⁷ Thus, the tribunal argued that the ongoing criminal proceedings did not preclude the timely filing of a compensation claim against the State, which, not being the accused party in the criminal proceedings, was not affected by the suspensive effect established by Article 3982 *bis* of the Civil Code.⁸

25. Concerning this, the Argentine Civil Code⁹ establishes as follows:

³ Annex 1. Judgment by Federal Criminal and Correctional Tribunal No. 1 of San Martín. June 24, 1998. Annex to the petitioner's communication dated September 10, 2001.

⁴ Annex 1. Judgment by Federal Criminal and Correctional Tribunal No. 1 of San Martín. June 24, 1998. Annex to the petitioner's communication dated September 10, 2001.

⁵ Annex 1. Judgment by the Federal Chamber of Appeals of San Martín. November 23, 1998. Annex to the petitioner's communication dated September 10, 2001.

⁶ Annex 1. Judgment by Federal Criminal and Correctional Tribunal No. 1 of San Martín. June 24, 1998. Annex to the petitioner's communication dated September 10, 2001.

⁷ Annex 1. Judgment by Federal Criminal and Correctional Tribunal No. 1 of San Martín. June 24, 1998. Annex to the petitioner's communication dated September 10, 2001.

⁸ Annex 1. Judgment by Federal Criminal and Correctional Tribunal No. 1 of San Martín. June 24, 1998. Annex to the petitioner's communication dated September 10, 2001.

⁹ Law 340 as amended, Civil Code, passed on September 29, 1869.

Article 1101. When a criminal complaint has been filed before the filing or during the processing of a civil claim, no judgment shall be issued in the civil proceedings until the accused is convicted, except in the following cases: 1. When the accused dies before a judgment is passed in the criminal proceedings, in which case, the civil action may be pursued or continued against the heirs; 2. When the accused is absent, in which case, the criminal action cannot be pursued or continued.

Article 3982 *bis*.- When the victim of an illegal act has filed a criminal complaint against those responsible for the act, this suspends the running of the statute of limitations on the civil action even when damages have not been claimed in the criminal jurisdiction. This suspension ends with the conclusion of the criminal proceedings or the withdrawal of the criminal complaint.

Article 4037.- The statute of limitations on the civil action for non-contractual liability lapses within two years.

26. On November 23, 1998, the Federal Chamber of Appeals of San Martín rejected Hebe Sánchez Améndola's appeal against the declaration of the lapse of the statute of limitations on the civil claim against the State.¹⁰ The tribunal held that the criminal complaint filed against Leiva and Juárez in no way affected the State because different obligations were involved and that, accordingly, never was the statute of limitations on the civil action regarding the latter suspended.¹¹

27. On March 25, 1999, the Federal Chamber of San Martín dismissed the special federal remedy pursued by the alleged victims on account that this raised a dispute strange to a federal matter that could otherwise warrant recourse to this extraordinary jurisdiction.¹² Finally, the alleged victims filed an appeal of complaint with the Supreme Court of Justice, but it was found inadmissible on May 23, 2000.¹³

IV. ANALYSIS OF LAW

A. The right to judicial protection¹⁴ and the right to a fair trial¹⁵

1. General considerations

28. The violation of a right protected by the American Convention entails the State's duty to repair that human rights violation. Regarding this, the Inter-American Court has considered that "the existence of the legal and institutional mechanisms that allow those affected to claim reparation must exist."¹⁶ According to the Court, "[t]his generally relates the obligation to make reparation to the existence of appropriate administrative or judicial mechanisms and, therefore, to the right of the victims to have access to justice, which has its treaty-based foundation in the rights to judicial guarantees and judicial protection established in Articles 8 and 25 of the American Convention."¹⁷ The Court has stated that "the effectiveness of the domestic remedies must be assessed comprehensively taking into account [...] whether, in the specific case, domestic mechanisms existed

¹⁰ Annex 2. Judgment by the Federal Chamber of Appeals of San Martín. November 23, 1998. Annex to the petitioner's communication dated September 10, 2001.

¹¹ Annex 2. Judgment by the Federal Chamber of Appeals of San Martín. November 23, 1998. Annex to the petitioner's communication dated September 10, 2001.

¹² Annex 3. Judgment by the Federal Chamber of Appeals of San Martín. March 25, 1999. Annex to the petitioner's communication dated September 10, 2001.

¹³ Annex 4. Judgment by the National Supreme Court of Justice. May 23, 2000. Annex to the petitioner's communication dated September 10, 2001.

¹⁴ 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.

¹⁵ Article 8.1 of the Convention establishes as follows: 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 against him or for the determination of his rights and obligations of a civil, labor, fiscal or any other nature.

¹⁶ I/A Court H.R. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits, and Reparations. Judgment of August 28, 2013. Series C No. 267, par. 182.

¹⁷ I/A Court H.R. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits, and Reparations. Judgment of August 28, 2013. Series C No. 267, par. 182.

that ensured real access to justice to claim the reparation of the violation.”¹⁸ The Court has also established that:

[...] the obligation to make reparation is an inherent duty of the State, so that, even though the victims or their next-of-kin must have extensive opportunities to seek fair compensation, this duty cannot rest exclusively on their procedural initiative or the contribution of probative elements by private individuals.” [...] This must be understood bearing in mind that, in this type of case, the reparation owed involves the State’s obligation to investigate ex officio the violations that have been committed [...]. In accordance with the foregoing, in the respective cases, there is a relationship between the obligation to investigate, the possibility of access to adequate reparation, and the rights of the victims of violations to have access to justice.¹⁹

29. The I/A Court H.R. has highlighted several international instruments that explicitly recognize that victims of violations enjoy the human right to remedy and individual reparation “such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Set of principles for the protection and promotion of human rights through action to combat impunity, and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Similarly, in line with this Court’s opinion, the European Court of Human Rights recognizes the compatibility between collective and individual measures.” The Court has established that “these mechanisms must meet the standards of objectivity, reasonability, and effectiveness to make adequate reparation for violations of rights.”²⁰

30. Based on the foregoing, the Inter-American Court has considered that “it is admissible to examine whether, independently of the investigation of the facts and the claims that could be made in this context, [the victims] had access to other mechanisms for making their claims.”²¹

31. Particularly, regarding civil reparation, in its judgment in the case of *Órdenes Guerra et al. v. Chile*, the Inter-American Court recapitulates the developments that have taken place at the international level concerning the application of the legal institute of the statute of limitations on these compensation claims for gross violations of human rights. According to it, “since 1989 the United Nations Working Group on Enforced or Involuntary Disappearances has established, in its General Comment on Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, that “civil claims for compensation shall not [...] be made subject to statutes of limitation.”²² The Court also refers to the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, adopted in 2005 by the United Nations Commission on Human Rights,²³ whose Principles 23 and 32 specifically establish restrictions on prescription, especially prescription of reparation procedures.²⁴

32. In its judgment in the case of *Vera Vera v. Ecuador*, the Court emphasizes that, according to its case law, “the inadmissibility of statutes of limitations [...] has usually been declared due to the particularities of cases

¹⁸ I/A Court H.R. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits, and Reparations. Judgment of August 28, 2013. Series C No. 267, par. 182.

¹⁹ I/A Court H.R. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits, and Reparations. Judgment of August 28, 2013. Series C No. 267, par. 183.

²⁰ I/A Court H.R. Case of Almeida v. Argentina. Merits, Reparations, and Costs. Judgment of November 17, 2020. Series C No. 416, par. 48. In particular, regarding the ECHR caselaw, the I/A Court H.R. cites the following: ECHR, Case of Broniowski v. Poland, No. 31443/96. Judgment of July 22, 2004, par. 36.

²¹ I/A Court H.R. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits, and Reparations. Judgment of August 28, 2013. Series C No. 267, par. 184.

²² Cfr. Working Group on Enforced or Involuntary Disappearances, General Comment on Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, E/CN.4/1998/43, par. 73. Cited on: I/A Court H.R. Case of Órdenes Guerra et al. v. Chile. Merits, Reparations, and Costs. Judgment of November 29, 2018. Series C No. 372, par. 79.

²³ Cfr. UNCHR. Diane Orentlicher, Independent expert to update the Set of principles to combat impunity, E/CN.4/2005/102, February 8, 2005. Cited on: I/A Court H.R. Case of Órdenes Guerra et al. v. Chile. Merits, Reparations, and Costs. Judgment of November 29, 2018. Series C No. 372, par. 81.

²⁴ Principle 23. Restrictions on prescription. Prescription - of prosecution or penalty - in criminal cases shall not run for such period as no effective remedy is available. Prescription shall not apply to crimes under international law that are by their nature imprescriptible. When it does apply, prescription shall not be effective against civil or administrative actions brought by victims seeking reparation for their injuries. [...] Principle 32. Reparation procedures. All victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings subject to the restrictions on prescription set forth in principle 23.

that involve serious human rights violations, such as forced disappearance, the extrajudicial killing of persons, and torture. In some of those cases, the human rights violations occurred in a context of massive and systematic violations.”²⁵ In particular, the Commission notes that the Inter-American Court has considered the statute of limitations on a criminal claim to be inadmissible when a serious human rights violation is involved—even when it is not a crime against humanity—whenever this violation results from the State’s failure to investigate with due diligence. Thus, in its Order on the Monitoring Compliance with Judgment in the case of *Bueno Alves v. Argentina*, the Inter-American Court states “that the judicial authorities, when reviewing whether to apply the statute of limitations to the crime of torture, given its seriousness, should declare the applicability of the statute of limitations, where applicable, only after an investigation has been carried out with due diligence.” In that sense, this Court asserts that, “as a general rule, the procedural [institute] that is the statute of limitations must be applied when it so corresponds, unless, as in this case, there is a clear lack of due diligence in the investigation and, consequently, a denial of access to justice [...]”²⁶ Moreover, the Court has considered that “the application of the statute of limitations cannot be excluded [when] the requirements therefor set in international instruments are not met.”²⁷

33. Specifically about the institute of the statute of limitations on civil claims, the IACHR and the Inter-American Court have established that just like criminal claims of serious human rights violations like crimes against humanity are not to be made subject to the statute of limitations, so should be the case of civil compensation claims for those violations. In its Merits Report on the case of *Órdenes Guerra*, the IACHR underlines that:

Bearing in mind the standards described in the foregoing sections, the Commission considers that there is clarity in inter-American jurisprudence that applying the statute of limitations to criminal proceedings in cases of grave human rights violations is incompatible with the American Convention. The Commission is of the view that the reason for that prohibition has to do with the fundamental need for victims of grave human rights violations to throw light on the facts and see justice done. The Commission sees no reasons to apply a different standard to an equally fundamental aspect, namely reparation in these kinds of cases. Moreover, that is consistent with the above-mentioned developments in the United Nations system and comparative law, to the effect that judicial actions for reparation of harm done by international crimes, such as crimes against humanity, should not be subject to prescription.²⁸

34. For its part, the I/A Court H.R., in its judgment in the case of *Órdenes Guerra*, underlines that:

(...) Because the acts giving rise to the civil claims for reparation have been classified as crimes against humanity, these claims should not be made subject to the statute of limitations. The Court highlights that, like the State said, the illegal act that triggered its international responsibility was the national tribunals’ denial of the civil compensation filed by victims of acts classified as crimes against humanity, based on the preliminary objection that the institute of the statute of limitations was applicable, raised by the National Attorney General’s Office on behalf of the Chilean Office of the Public Prosecutor. This prevented tribunals from assessing in the merits the possibility of determining pecuniary compensation for the damage caused to the victims, restricting, thus, the possibility of just reparation. That is to say, there is no doubt that in this case, the violations of rights recognized by the Convention were due to a series of decisions adopted by the judicial bodies of the State which prevented the victims from having access to justice to claim their right to reparation.²⁹

35. Moreover, the Commission has established that the foregoing considerations regarding the prescription of the crimes related to the case of *Órdenes Guerra* do not represent a uniform opinion on that institute.³⁰ Thus,

²⁵ I/A Court H.R., Case of Vera Vera v. Ecuador. Preliminary Objection, Merits, Reparations, and Costs. Judgment of May 19, 2011, Series C No. 226, par. 117.

²⁶ I/A Court H.R. Case of Bueno Alves v. Argentina. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 5, 2011. Considerations 45 and 46.

²⁷ I/A Court H.R. Case of Albán Cornejo et al. v. Ecuador. Merits, Reparations, and Costs. Judgment of November 22, 2007. Series C No. 171, par. 111. I/A Court H.R., Case of Vera Vera v. Ecuador. Preliminary Objection, Merits, Reparations, and Costs. Judgment of May 19, 2011, Series C No. 226, par. 117-118.

²⁸ IACHR, Report No. 52/16, Case 12.521. Merits. Maria Laura Órdenes Guerra et al. Chile. November 30, 2016, par. 127.

²⁹ I/A Court H.R. Case of Órdenes Guerra et al. v. Chile. Merits, Reparations, and Costs. Judgment of November 29, 2018. Series C No. 372, par. 89-90.

³⁰ IACHR, Report No. 52/16, Case 12.521. Merits. Maria Laura Órdenes Guerra et al. Chile. November 30, 2016. Par. 129. I/A Court H.R.,

according to the Inter-American Court, the statute of limitations also applies to cases not involving serious violations of rights under international law.³¹

36. Accordingly, regarding the connection between claims for measures of reparation and the statute of limitations on civil actions for “serious human rights violations,” the Inter-American Court has emphasized that “it should be taken into account that, in the ambit of the United Nations, the Set of principles for the protection and promotion of human rights through action to combat impunity indicates: ‘[...] Prescription shall not apply to crimes under international law that are by their nature imprescriptible. When it does apply, prescription shall not be effective against civil or administrative actions brought by victims seeking reparation for their injuries.’”³²

37. In cases where the statute of limitations applies to a civil action, the European Court of Human Rights has considered that the prescription or lapse of the statute of limitations on the action may be a lawful restriction on the right of access to justice in which authorities should strike a balance amid the tension between reparation for the victim and legal certainty for the respondent person or entity,³³ so that the limitations applied do not restrict or reduce the access to justice to the point of being detrimental to the very essence of the right.³⁴ This Court has highlighted the importance of verifying compatibility between the interpretation of the application of prescription and the European Convention, to identify whether the interpretation made was foreseeable and reasonable without being an obstacle to the effective access to justice for the person seeking reparation.³⁵ Thus, for instance, in the case of *Eşim v. Turkey*, where the applicant had been shot in 1990 and only in 2007 did the doctors find the bullet lodged in his head, the Court considered that at the moment that the injurious act was committed, it was not reasonable to expect that a civil complaint would have had to be filed against the responsible for that damage.³⁶

38. The Commission highlights that in that analysis concerning human rights violations, “the obligation to make reparation is an inherent duty of the State, so that, even though the victims or their next-of-kin must have extensive opportunities to seek fair compensation, this duty cannot rest exclusively on their procedural initiative or the contribution of probative elements by private individuals.”³⁷

³¹ I/A Court H.R. Case of Albán Cornejo et al. v. Ecuador. Merits, Reparations, and Costs. Judgment of November 22, 2007. Series C No. 17; I/A Court H.R. I/A Court H.R., Case of Vera Vera v. Ecuador. Preliminary objection, Merits, Reparations, and Costs. Judgment of May 19, 2011. Series C No. 226.

³² I/A Court H.R. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits, and Reparations. Judgment of August 28, 2013. Series C No. 267. Footnote 218. United Nations. Economic and Social Council. Commission on Human Rights. Sixty-first session. Item 17 of the provisional agenda. Promotion and Protection of Human rights. Impunity. Diane Orentlicher, Independent expert to update the Set of principles to combat impunity. Addendum. Updated Set of principles for the protection and promotion of human rights through action to combat impunity. E/CN.4/2005/102/Add.1. February 8, 2005. Principle 23

³³ ECHR, Case of Sanofi Pasteur v. France, June 13, 2020, par. 56 and 57).

³⁴ ECHR, Case of Ashingdane v. the United Kingdom, May 28, 1985, par. 57.

³⁵ ECHR, Case of Kurşun v. Turkey, October 30, 2018, par. 95.

³⁶ ECHR, Case of Eşim v. Turkey, September 17, 2013.

³⁷ I/A Court H.R. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits, and Reparations. Judgment of August 28, 2013. Series C No. 267, par. 183.

2. Analysis of the case

39. The Commission considers that, in this case, in light of the State's duty to make reparation for human rights violations and its connection with the rights to a fair trial and judicial protection, a determination must be made about whether the alleged victim could access remedies to claim measures of reparation given that state officers were involved in the death of Mr. Ricardo Osvaldo Améndola. The Commission observes that the extent of that reparation must be that of just compensation by the State of Argentina, regarding which the national legal system provides a civil claim to demand non-contractual liability in such cases.

40. The Commission notes that Hebe Sánchez Améndola filed on November 29, 1996, a civil claim for reparation for the death of her husband, Ricardo Osvaldo Améndola, at the hands of two officers of the Argentine Federal Police. On June 24, 1998, Federal Criminal and Correctional Tribunal No. 1 of San Martín sustained the preliminary objection raised by the Attorney General's Office and declared the lapse of the statute of limitations on the civil action pursued by Ms. Sánchez Améndola against the State, as the tribunal calculated its running from the date of Mr. Améndola's death.

41. In this regard, the Commission underscores that States can establish admissibility principles and criteria for domestic remedies and that, accordingly, authorities are competent to verify whether the remedy pursued meets the formal requirements for admissibility.³⁸ Nevertheless, provisions governing the pursuit of those remedies must offer enough certainty in their application so that such remedies are compatible with the right of access to an effective remedy,³⁹ even more so when a State's fulfillment of its obligation to make reparation for a human rights violation depends on this. Thus, they must offer victims legal certainty about what judicial remedies are adequate for defending their rights and how these should be implemented in practice.⁴⁰ In the case of *Maldonado Ordóñez v. Guatemala*, the Court held that the lack of certainty and clarity about the remedies that the alleged victim should have pursued prevented their access to effective judicial protection.⁴¹ In short, the Court considered that, in this case, the confusion caused by the conflicting legal rules put the alleged victim in a state of defenselessness.⁴²

42. Moreover, although legal certainty about the time limits for filing claims is reasonable, the Commission believes that the concept of statutes of limitations and its application must take into account the tension that its application would cause regarding the State's obligation to make reparation for violations committed by its agents, considering the rights infringed and the circumstances proper of the matter. Concerning this part, the Commission recalls that the Inter-American Court has established that although "any human rights violation involves a level of severity by its own nature, because it implies a breach of certain State obligations to respect and guarantee the rights and freedoms for people," "this should not be confused with what the Court throughout its jurisprudence has deemed to be 'serious violations of human rights,' which, as is clear from the provisions above [...], have their own connotation and consequences".⁴³ (See *supra* par. 32)

43. The Commission recognizes that an extrajudicial killing by State agents constitutes a serious human rights violation. The IACHR notes that the illegal act that gave rise to the compensation claim was classified in the proceedings as voluntary manslaughter (*homicidio simple*). At the moment of the adoption of this report, the Commission does not have enough information on the circumstances or the context where the crime was

³⁸ I/A Court H.R. Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C No. 158, par. 126; Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, par. 94.

³⁹ ECHR. Case of Čonka v. Belgium. Application No. 51564/99, Final judgment of May 5, 2002, par. 83. I/A Court H.R. Case of López Lone et al. v. Honduras. Preliminary objection, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, par. 248 *et seq.*

⁴⁰ I/A Court H.R. Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, par. 110; Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C No. 158, par. 129 *et seq.* ECHR. Case of Akdivar and Others v. Turkey. Application No. 21893/93. Judgment of September 16, 1996. Par. 66 *et seq.*

⁴¹ I/A Court H.R. Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, Merits, Reparations, and Costs. Judgment of May 3, 2016. Series C No. 311, par. 120.

⁴² I/A Court H.R. Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, Merits, Reparations, and Costs. Judgment of May 3, 2016. Series C No. 311, par. 120.

⁴³ I/A Court H.R., Case of Vera Vera v. Ecuador. Preliminary Objection, Merits, Reparations, and Costs. Judgment of May 19, 2011, Series C No. 226, par. 118.

committed nor any additional elements to consider this act a crime against humanity under international law.⁴⁴ Additionally, the Commission observes that in this case, the State punished those responsible and no information indicates a delay attributable to the authorities' lack of due diligence. In this case, the affected legal right for which reparation has been claimed is the right to life, and this obligation is of utmost importance, even more so because the victim's death was at the hands of State agents, because of which the State is obligated to make reparation. As explained before, this obligation must not be made subject to the victims' procedural initiative exclusively.

44. In this specific case, the Commission observes that the authority that applied the institute of the statute of limitations did not consider the violation of which Mr. Améndola was a victim and that their considerations were exclusively based on the application of Article 3982 *bis* of the Civil Code. Moreover, the Commission notes that Article 3982 *bis* is not clear about whether filing a criminal complaint suspends the running of the statute of limitations on the civil claim regarding the parties found criminally responsible for the crime or whether, on the contrary, this also suspends it regarding those civilly responsible.

45. According to the information submitted by the parties, such indeterminacy of the rule has given way to conflicting case law on the suspension or non-suspension of the time limit for filing a civil claim for damages caused by illegal acts. The Commission observes that the petitioner has contributed proof in the form of judicial precedents and scholarly legal opinions on Article 3982 *bis* of the Civil Code that support the claim that, in this case, the suspension of the statute of limitations should have been extended to all those responsible for the crime, including those not accused in the criminal proceedings. The petitioner cites the following precedents on this subject:

The complaint filed (...) tolled the statute of limitations against [the doctors accused of the crime] of course, but it also tolled it against civil authorities that were not accused or were not likely to be accused.⁴⁵

Article 3982 *bis* of the Civil Code is to be interpreted [in such a way that] the criminal complaint brought against the perpetrator of the crime tolls the statute of limitations against the accused and all those civilly liable.⁴⁶

Given that the perpetrator and the legal owner or guardian of the hazardous thing with which harm was caused are indisputably united, the pending criminal proceedings against the former toll the statute of limitations of the civil action that is brought against the latter.⁴⁷

46. For its part, the State attaches a judgment issued in 2004 on this subject, in which the authorities assert that the suspension provided for in Article 3982 *bis* of the Civil Code should apply only to those criminally responsible for the crime. It cites:

It is improper to extend the effects of tolling the statute of limitations on the civil action, established in Art. 3982 *bis* of the Civil Code to all those criminally accused who were sued in the civil proceedings and even those who were not criminally accused or may not be so.⁴⁸

47. The Commission considers that the uncertainty caused by such diverse judicial interpretations conditioned the conduct of the alleged victims, who chose to follow the first precedents mentioned and understood that the suspensive effects specified in Article 3982 *bis* of the Civil Code affected the claim against those criminally responsible and those civilly responsible for the crime.

48. Because of this, it seems unreasonable to expect that the alleged victim would have known beforehand which of these interpretations of Article 3982 *bis* of the Civil Code the authorities would follow and, therefore, whether the authorities would understand that, in this case, the statute of limitations on the civil claim was

⁴⁴ See for instance Article 7 of the Rome Statute of the International Criminal Court.

⁴⁵ The petitioner cites: M.M. v. Barry, Federico et al. re.: damages. National Civil Court of Appeals of Buenos Aires, Courtroom F, December 16, 2002.

⁴⁶ The petitioner cites: Franco de Palomo, Sara v. Balentini, Carlos A. et al. National Civil Court of Appeals of Buenos Aires, Courtroom F, March 14, 2000.

⁴⁷ The petitioner cites: Isaach, Jorge S. v. Simonetti, Ramón. Court of Appeals for Civil and Business Matters of Dolores. June 9/981.

⁴⁸ The State cites: Maciel, Marcos v. Barry, Federico et al. re: damages. National Civil Court of Appeals of Buenos Aires. February 18, 2004.

suspended regarding the parties not criminally prosecuted. The Commission notes that since it was the criminal authorities who analyzed whether the acts by the State agents conformed to the guidelines on the use of force or whether the victim was arbitrarily killed, it was reasonable that, to initiate the civil action, the alleged victim was first notified of that criminal conviction—based on the legal framework, it is understood that while the criminal process took place, the statute of limitations on the civil claim was suspended.

49. In short, the Commission notes, firstly, that the courts did not assess the seriousness of the crime triggering the obligation to make reparation and, secondly, that the uncertainty caused by the lack of clarity about the statute of limitations and how it was applied to the case inevitably thwarted the alleged victims' possibility to support their claim for damages against the State.

50. Based on the above considerations, the Commission concludes that the State of Argentina violated the right to judicial protection embodied in Article 25.1 of the American Convention, in connection with Article 4 and the obligation established in Article 1.1 thereof, to the detriment of Hebe Sánchez Améndola and her daughters.

V. PROCEEDINGS SUBSEQUENT TO REPORT 99/21 AND COMPLIANCE INFORMATION

51. The Commission adopted Merits Report No. 99/21 on May 20, 2021, comprising paragraphs 1 to 50 above, and transmitted it to the State on July 20 of the same year. In this report the Commission recommended:

1. Provide full reparation to the victims of the case on account of the lack of an effective remedy to seek the civil compensation dealt with in this report.
2. Adopt the necessary measures to provide an effective judicial remedy so that the victims can file their claims and obtain a judgment in terms of reparation for the death of Ricardo Osvaldo Améndola.
3. Adopt measures of legislative or any other nature to ensure effective access to claims for non-contractual civil liability of the State for human rights violations according to paragraphs 41 and 42 of this report.

52. The Commission received reports from the State on compliance with the recommendations established and observations from the petitioner. During this period, the Commission granted 8 extensions to the State for the suspension of the time period provided for in Article 51 of the American Convention. Likewise, the State reiterated its willingness to comply with the recommendations and expressly waived its right to file preliminary objections with respect to compliance with the deadline established in the aforementioned Article, in accordance with the provisions of Article 46 of the Commission's Rules of Procedure.

53. The Commission notes that on February 4, 2022, the parties signed an "Agreement on Compliance with Recommendations". In addition, on November 8, 2022, an addendum to the agreement was signed so that Ms. Noelia Ximena, Ms. Ivana Soledad and Ms. Leticia Analía Améndola would also be entitled to the obligations contemplated in said agreement. This is for the purpose of its incorporation to the administrative file to continue with the corresponding processing of the draft decree approving the Agreement and its Addendum.

54. The Commission notes that in the compliance agreement, as measures of pecuniary reparation, the parties agree to constitute an ad-hoc Tribunal to determine the amount of the pecuniary reparations, as well as the costs of the process, both in the international process and in the arbitration process. The parties understand that the work of the Tribunal will make it possible to channel compliance with recommendations 1 and 2 of the Merits Report.

55. The Arbitral Tribunal shall be composed of three experts, who shall issue a final and non-appealable award indicating the amount and form of the agreed pecuniary reparations, expressed in US dollars or its value according to the sale price of this foreign currency established by the *Banco de Nación Argentina*, and shall be submitted to the IACHR for evaluation within the framework of the process of monitoring compliance with the agreement, in order to verify that it complies with the applicable international parameters.

56. As non-pecuniary reparation measures, the compliance agreement states that the State undertakes to:

1. Promote dissemination and awareness-raising activities, aimed primarily at judges and judicial officials, on the human rights standards arising from Report No. 99/21, and

2. Forward the compliance agreement and report No. 99/21 to the Supreme Court of Justice of the Nation and to the Federal Board of Courts, for their knowledge; and to publish the agreement on the web page of the Secretariat of Human Rights of the Nation.

57. In the agreement, the parties undertake that once the publication of the agreement in a Decree of the National Executive Branch is completed, they will request the IACHR to adopt the report contemplated in Article 51 of the American Convention.

58. The Commission notes that on June 11, 2023, Executive Decree No. 307 approved the agreement on compliance with the recommendations and its addendum, which were published on June 12, 2023, in the Official Gazette.

59. After evaluating this information on the status of compliance with the recommendations, the Commission decided on July 20, 2023, 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 IACHR Rules of Procedure. It also decided that it would follow up on compliance with the measures established in the agreement, including the creation of the Arbitral Tribunal and the non-pecuniary measures related to the application of the standards established in the Report on the Merits. In the section below, the Commission makes its determinations on compliance with its recommendations.

60. With regard to compliance with the agreed measures cited in paragraphs 56(1) and (2) above, on August 23, 2023, the State forwarded the notes sent to the Supreme Court of Justice of the Nation and to the Federal Board of Courts and Superior Courts of Justice of the Argentine Provinces and the Autonomous City of Buenos Aires (JUFEJUS), by which the dissemination and awareness-raising measures will be carried out. The State also reported on the publication of this agreement on the website of the Secretariat for Human Rights of the State.

61. On September 12, 2023, the State reported on the signing of the Rules of Procedure of the ad hoc Arbitral Tribunal on the same date. Likewise, on November 28, 2023, it reported on the formation of the ad-hoc Tribunal.

62. The IACHR appreciates the measures adopted by the State to reach an agreement with the petitioner to comply with the recommendations. The Commission notes that the State complied with the agreement regarding the formation of the ad-hoc Tribunal. However, the State has not yet reported on the establishment of the amount of pecuniary reparation for the victims or that it has been made effective. In view of this, the Commission considers that the State has not yet complied with the **first recommendation**, which refers to integral reparation.

63. With regard to the **second recommendation**, the Commission notes that the State has not reported on the work carried out by the ad-hoc Tribunal to channel its compliance, as agreed; or that it has specifically adopted the necessary measures to provide an effective judicial remedy so that the victims can present their claims and obtain a decision on reparations with respect to the death of Ricardo Osvaldo Améndola. Therefore, the Commission considers that the State has not yet complied with this recommendation.

64. With regard to the **third recommendation**, the Commission notes that the State has not carried out the dissemination and awareness-raising on human rights standards for magistrates, as agreed, nor has it adopted legislative or any other type of measures in the terms of the Merits Report. Therefore, the Commission considers that the State has not yet complied with this recommendation.

VI. ACTIONS FOLLOWING REPORT No. 43/25 AND INFORMATION ON COMPLIANCE

65. On April 11, 2025, the Commission adopted Merits Report No. 43/25, which includes paragraphs 1 through 64 above, and issued its final conclusions and recommendations to the State. On April 16 of that year, it transmitted the report to the State and the petitioner, giving them two weeks to inform the IACHR of the measures taken to comply with its recommendations. To date, the Commission has not received a response from the Argentine State regarding Report No. 43/25.

66. On April 17, 2025, the petitioner reported that on April 5, the Ad Hoc Arbitral Tribunal notified them of its award regarding reparations. On May 23, the IACHR forwarded this communication to the State and requested that it submit the aforementioned award. To date, the Commission has not received a response from the State.

67. The Commission has no additional information to assess progress in complying with the recommendations.

VI. CONCLUSIONS AND RECOMMENDATIONS

68. Based on the factual and legal considerations in this report, the Commission concludes that the State of Argentina is responsible for the violation of the right to a fair trial and the right to judicial protection embodied in Articles 8.1 and 25.1 of the American Convention, respectively, in connection with Article 1.1 and Article 4 thereof, to the detriment of Hebe Sánchez Améndola and her daughters.

69. Considering the analysis and the findings in the instant report,

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

1. Provide full reparation to the victims of the case on account of the lack of an effective remedy to seek the civil compensation dealt with in this report.
2. Adopt the necessary measures to provide an effective judicial remedy so that the victims can file their claims and obtain a judgment in terms of reparation for the death of Ricardo Osvaldo Améndola.
3. Adopt measures of legislative or any other nature to ensure effective access to claims for non-contractual civil liability of the State for human rights violations according to paragraphs 41 and 42 of this report.

VII. PUBLICATION

70. In accordance with the foregoing and pursuant to 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 rules established in the instruments that regulate its mandate, will continue to evaluate whether the State of Argentina has provided full reparation to the victims in accordance with the recommendations set forth above, until it determines that they have been fully complied with.

Approved by the Inter-American Commission on Human Rights on July 11, 2025. (Signed): José Luis Caballero Ochoa, President, Arif Bulkan, Second Vice President, Roberta Clarke; Carlos Bernal Pulido and Gloria Monique de Mees, Members of the Commission.