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REPORT No. 147/18
CASE 12.950
REPORT ON MERITS

RUFINO JORGE ALMEIDA
ARGENTINA

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I. SUMMARY

1. On July 3, 2000, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by Rufino Jorge Almeida, Myriam Carsen, and Octavio Carsen (hereinafter, “the petitioners”) alleging the international responsibility of the Republic of Argentina (hereinafter, “the Argentine State,” “the State,” or “Argentina”), to the detriment of Rufino Jorge Almeida.

2. The Commission adopted Admissibility Report No. 45/14 on July 18, 2014.¹ On August 26, 2014, the Commission notified the parties of the report, and placed itself at their disposal with the aim of reaching a friendly settlement.² The parties enjoyed the time periods provided for in the IACHR’s Rules of Procedure to present additional observations on the merits. All of the information furnished was duly transmitted between the parties.

3. The petitioners alleged that the State, in denying Mr. Almeida compensation under Law 24.043 for the time he was subjected to a “release-under-surveillance” (*libertad vigilada*) regime during the dictatorship, violated his right to equal treatment vis-à-vis other individuals who, in his same situation, did receive reparations on the basis of that regime.

4. The State alleged that Mr. Almeida had been unable to prove that his situation fell within the provisions of Law 24.043 and therefore, the denial of compensation does not constitute a violation of his right to equal protection. The State further indicated that the law itself does not violate that right.

5. Based on the arguments of fact and law, the Inter-American Commission concluded that the State is responsible for violation of the rights to: receive a duly founded decision (Article 8.1), equal protection (Article 24), and judicial protection (Article 25.1) of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”), in connection with the obligations set forth in Articles 1.1 and 2 thereof, to the detriment of Rufino Jorge Almeida. The Commission made its respective recommendations.

II. POSITIONS OF THE PARTIES

A. The petitioners

6. The petitioners alleged that Rufino Jorge Almeida and his wife were illegally detained on June 5, 1978, by members of the security forces loyal to the military dictatorship established in 1976, and held for 54 days in a detention camp known as “*El Banco*,” where they were tortured. They indicated that when the two were released by the armed forces, Mr. Almeida was delivered to the custody of his father—who was to serve as “guarantor” that his son would comply with the conditions imposed by his kidnappers—and kept under a system of control similar to the release-under-surveillance regime, which required him to

¹ IACHR. Report No. 45/14. Case 12.950. Admissibility. Rufino Jorge Almeida (Argentina). July 18, 2014. Admissible articles: 2, 8, 24, and 25 of the American Convention.

² The petitioners expressed their willingness to pursue a friendly settlement in this case since the admissibility stage, and reiterated this request at the merits stage via letters dated July 18 and December 18, 2014. Although the State has, throughout the process, repeatedly affirmed that it is evaluating the request, it never provided a definitive response and therefore no friendly settlement process was ever initiated.

receive random visits from military or police at his home; endure insults and threats if he interacted with politicians or human rights defenders; report periodically to federal police phone numbers; provide photographs; answer questions; etc. According to the petitioners, this situation persisted until April 30, 1983, and the measures were never justified in any executive or judicial order.

7. The petitioners stated that Mr. Almeida filed a suit against the State in 1995 for payment of compensation under Law 24.043 for the time he was detained and under the release-under-surveillance regime. They stated that the Secretariat for Human Rights of the Ministry of Interior issued administrative decision 2638/96 in 1996, recognizing compensation for the 54 days of detention, but denying compensation for the 4 years and 10 months during which Mr. Almeida claimed he was kept under the release-under-surveillance regime.

8. They reported that Mr. Almeida filed an appeal with the National Court of Appeals for Federal Administrative Matters (hereinafter, “CNACAF”) in 1996. In 1999, CNACAF upheld the earlier decision after determining that Mr. Almeida’s situation was not included under the conditions one had to show to be entitled to compensation for release under surveillance, which required a declaratory mitigation (*declaración de atenuación*) of the terms of the arrest by presidential decree. The petitioners indicated that Mr. Almeida “[had been] detained unlawfully, and because the situation was illegal, it [was] absurd to ask him to provide the written order for his release under surveillance.” They noted that Mr. Almeida filed a complaint appeal (*recurso de queja*) with the Supreme Court of Justice of the Nation (hereinafter, the “CSJN”) on July 7, 1999, which was rejected on December 2, 1999.

9. The petitioners claimed that subsequent to its decision on Mr. Almeida’s case, CNACAF did recognize reparations for release under surveillance—even when no order had come from the national Executive Branch (hereinafter, “the Executive”)—in its judgment in the *Robasto* case (2003). They argued that since the *Robasto* case, the Secretariat for Human Rights amended its criterion for interpreting the scope of Law 24.043, including cases of release under surveillance ordered by a competent authority under color of law as compensable. They argued that in other similar cases, favorable decisions have since been issued by the Ministry of Justice and Human Rights (hereinafter, “Ministry of Justice”).

10. The petitioners claimed that based on this change, Mr. Almeida filed an appeal with the Ministry of Justice on December 27, 2004, extended on March 28, 2006, to have decision 2638/96 amended so as to bring it in line with the new criteria being applied to identical situations. They reported that the Ministry of Justice issued Decision 1243/2006, rejecting the request on the basis that Mr. Almeida was seeking review of a final judicial decision. Lastly, they reported that in 2015, in response to her first-time request, the Ministry of Justice ordered reparations for Mr. Almeida’s wife “for the same events, which occurred simultaneously,” via Decision 1176/2015.

11. In view of the foregoing, the petitioners argued that the State, through its laws and legal bodies, does not protect all individuals equally inasmuch as it uses different criteria for identical cases. Specifically, they claimed that the unlawful restriction of personal liberty through the imposition of a *de facto* release-under-surveillance regime was not repaired in timely fashion by the State. They argued violation of the **right to equal protection** on the basis of two aspects: (i) that in its legislation, the State does not expressly recognize release under surveillance without a judicial order for purposes of reparations; and (ii) that in other cases, reparations have been ordered for release under surveillance.

12. The petitioners alleged that Mr. Almeida’s case demonstrated a “clear lack of equal protection under the law vis-à-vis other victims of unlawful repression—no internal agency reviewed the evidence, meaning the legal truth was dispensed with as the State limited itself to examining the case from an overly formal standpoint, in obvious contradiction to the obligations it has undertaken internationally and to [other] internal decisions—” inasmuch as reparations have been made in similar circumstances, in view of the express will of Congress, in passing the law, to make reparation in equity to all those deprived of their liberty during the time of the dictatorship.

13. The petitioners alleged that in some cases, the legal provisions governing reparation are insufficient, incomplete, and arbitrary and therefore, violate the right to equal protection. They noted that the IACHR is not being asked to rule on the constitutionality of Argentine domestic law, but rather that the claim has to do with the right to receive fair and appropriate reparation, like the other victims of “State terrorism.”

B. State

14. The State denied that the rights to **due process** or **equal protection** had been violated in the instant case inasmuch as “[the case] was handled with the utmost consistency and respect for the law, in both form and substance, with everything corroborated judicially in the context of a process carried out in full adherence to the law;” it further held that the legal decisions issued in the case were duly founded. Specifically, regarding the arguments “according to which in similar cases the Judiciary had supposedly ruled differently,” the State contended that “in Mr. Almeida’s case there were no probative elements that substantiated the existence of release under surveillance at the time his situation was ruled upon by the administratively or in the courts, nor do those exist currently [...]” The State noted, in this regard, that in his domestic case, Mr. Almeida “never managed to exceed the threshold for proving he had been subject to some type of restriction to his liberty (except that for which he had already been compensated).”

15. The State argued that Article 24 of the American Convention “involves the obligation to ensure equal treatment under the law to those who are in reasonably like circumstances; accordingly, that guarantee does not prevent a legislator from treating differently situations he or she deems to be different, so long as such distinctions are not formulated using arbitrary criteria.” In this connection, the State recalled the position taken by the IACHR in the *Hanríquez* case (discussed below).

16. The State claimed that the legislature, in approving Law 24.043, decided to include under the law’s conditions, release under surveillance by order of the Executive, but omit from its scope “*de facto* release under surveillance.” The State added that “bestowing [to the Executive] the power to extend a legislator’s wishes to conditions not provided for in the law”³ would run contrary to the constitutional separation of powers, further noting that, along these lines, “the petitioner lodged an appeal and the competent legal authority promptly examined the merits, and based on sound legal reasoning, issued a ruling on the matter [rejecting the petition].” In other words, the State maintained that, by the time domestic remedies had been exhausted in his case, the petitioner had not experienced any unequal treatment inasmuch as the criteria provided for under the law were objectively applied; and the law is not itself discriminatory.

17. Regarding the similar cases cited by the petitioners, the State “believe[ed] it important to highlight the fact that the legal decisions invoked by the petitioners to paint as arbitrary the decision adopted by the administrative authority, besides not being fully factually identical to the facts they state, as they are attempting to claim, were also issued subsequent to the decision being challenged.” In this regard, the State “point[ed] out that the *res judicata* in Mr. Almeida’s case cannot be changed by a subsequent change in jurisprudence; indeed, it is clear that his case is not comparable to the other cases he cites.”

III. DETERMINATIONS OF FACT

A. Context of reparations for human rights violations during the dictatorship in Argentina and relevant legal framework

18. In 1980, a group of persons who had been detained by order of the Executive Branch during the state of exception (*estado de sitio*) and had never received reparations from the Argentine government owing to the fact that the criminal suit was time-barred, lodged a petition with the IACHR. The petition was

³ The State maintained that the house arrests or release under surveillance mentioned in Law 24.043 “refer to one of the possible scenarios citizens unlawfully deprived of their liberty could have faced. This scenario consisted of orders formally and specifically issued by the Executive Branch via decree to mitigate the terms of arrest and confine the individual in question to house arrest or release under surveillance.” Thus, “the law stipulated that the release-under-surveillance scenario was arranged by express order of [the Executive] calling for restriction of an individual’s liberty [...]”

settled under the first friendly settlement agreement in the history of the inter-American system,⁴ and reflected domestically in Decree 70/91, which ordered compensation to the individuals covered under its terms.⁵ Law 24.043, passed in December 1991, expanded the spectrum of beneficiaries to include those whose liberty had been curtailed by the Executive until December 10, 1983, as well as those who had been detained by order of the military courts.⁶

19. Law 24.043 itself forms part of the government's policy to provide reparation to victims of State terrorism during the last civil-military dictatorship. In this regard, the State passed a number of laws that provide for compensation or other benefits to, *inter alia*, the heirs of victims of forced disappearance (Law 23.466); children born in detention, who were detained along with their parents, and/or whose identities were changed (Law 25.914); victims of forced disappearance (Law 24.411); in addition to *ex gratia* pensions for those who were detained on political grounds (Law 26.913).⁷

20. With respect to the instant case, the relevant portions of Law 24.043 stipulate:

ARTICLE 2 — To avail themselves of the benefits of this law, the individuals referred to in the preceding article must meet at least one of the following requirements:

- a) Having been held under the supervision of the national Executive Branch prior to December 10, 1983.
- b) As civilians, having been deprived of their liberty by order of a military court, whether or not convicted by such court.

ARTICLE 4 — The benefit established herein shall be equal to one-thirtieth of the monthly remuneration [...], for each day the order referred to in Article 2(a) and (b) lasted, with respect to each beneficiary [...]

To calculate the period of time referred to in the preceding paragraph, the following should be considered: the Executive act ordering the measure, or an arrest not directed by order of a competent judicial authority; and the order that overturned it specifically or as a result of the end of the *estado de sitio*.

House arrests or release under surveillance shall not be construed as an order having been rescinded. [...]

B. What happened to Mr. Almeida during the dictatorship

21. Rufino Jorge Almeida was born on May 4, 1956 in La Plata and is a carpenter by trade.⁸ He is married to Claudia Graciela Esteves, with whom he has at least two children.⁹ The account of the facts contained in this section comes from a statement Mr. Almeida gave in another criminal case having to do with the alleged homicide of an individual he met while detained in 1978, as well as from the information furnished by the petitioners in the initial petition. In this regard, it has been noted that Mr. Almeida made the statement in question in 1987, years before Law 24.043 and the possibility of compensation provided for therein existed.

22. According to Mr. Almeida's statement, he and his wife Claudia Graciela Esteves were kidnapped by members of Argentina's military and security forces on June 5, 1978.¹⁰ He then spent 54 days in custody/disappeared in a clandestine detention camp known as "*El Banco*," where he was tortured.¹¹ Mr.

⁴ IACHR. Report No. 1/93. Report on the Friendly Settlement Procedure in Cases 10.288, 10.310, 10.436, 10.496, 10.631, and 10.771. Argentina. March 3, 1993.

⁵ See Annex XX. Decree 70/1991. Annex to the initial petition.

⁶ Observations of the State regarding the initial petition, p. 6; see also Annex XX. Law 24.043. Annex to the initial petition.

⁷ State's brief on the merits.

⁸ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition.

⁹ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition.

¹⁰ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition.

¹¹ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition.

Almeida alleges that upon release from custody, he was kept under “a type of ‘release-under-surveillance,’ which, like his detention, was secret and unlawful,” until April 30, 1983.¹²

23. Mr. Almeida reported that prior to his release from *El Banco*, he had a conversation with an individual who the petitioners claimed was the then-Colonel Guillermo Minicucci, who told Mr. Almeida “that there was a new theory that people, young people, had to be recovered, and so, if they released them (him and his wife) they would have to behave, not make any statements or get involved with the human rights people or in politics, and that if he found out they had, they would be *boleta* (killed).”¹³

24. According to Mr. Almeida’s account, on the day he was released, Daniel Adolfo Almeida, his father, “was summoned by another security agent, Julio Héctor Simón, known as *El Turco Julián* [...] because [his son and daughter-in-law] were going to be released.” When he [Daniel Adolfo Almeida] arrived, *El Turco Julián* asked him to put on a blindfold and he was taken to *El Banco*, where he witnessed an interrogation of his son.¹⁴ Mr. Almeida was unaware of his father’s presence at that interrogation as he was also blindfolded, but his father later told him about it.¹⁵ Mr. Almeida added that when his father was returned from the detention camp, “the security agent told him he would be releasing (his son and daughter-in-law) into his custody and that was why he had to witness the interrogation.”¹⁶

25. In this context, a *de facto* release-under-surveillance regime, which “is not recognized by the Argentine State,” allegedly began the day Mr. Almeida’s detention ended¹⁷ when he was placed into a car with his wife and they were driven to Calles 13 and 32 in the city of La Plata [...] where they were “released” into “the custody” of his father by a security agent named Samuel Miara, known as *Cobani*.¹⁸

26. The petitioners maintained that “that was when the control that [would] equate [Mr. Almeida’s] situation to that of detainees released under surveillance began, which was aggravated by his powerlessness in the face of the clandestine nature of the measure.”¹⁹ Mr. Almeida claimed that *El Turco Julián* and another security agent, Juan Antonio del Cerro, nicknamed *Colores*, showed up at his house on a number of occasions between 1978 and 1981 to “check on him personally.”²⁰ *El Turco Julián* and *Colores* were guards Mr. Almeida recognized from the clandestine camp, *El Banco*.²¹ According to his account, these visits initially took place each week and then became more spread out.²² Mr. Almeida was told that there was no schedule for the checks. Once the visits ended, “he was given a telephone to call and check-in [...], and ask for Julián Gimenez,” until one day when he was told “not to call any more because they had stopped coming by.” But thereafter, an individual who said his name was “Juan Carlos” would occasionally come by the house asking for his and his wife’s personal information.²³

27. Lastly, Mr. Almeida alleged that in April 1983 he received calls from *Colores*, who gave him a phone number that ended up belonging to the Federal Police, telling him to “make an appointment to fill out some forms;” the appointment never happened.²⁴ He stated that this release-under-surveillance situation came to end on April 30, 1983.²⁵

¹² Initial petition, p. 2.

¹³ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition; *see also* initial petition, p. 3.

¹⁴ Initial petition, p. 3; *see also* Annex XX. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition.

¹⁵ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition.

¹⁶ Initial petition, p. 4.

¹⁷ Initial petition, p. 3.

¹⁸ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition; *see also*, Initial petition, p. 3.

¹⁹ Initial petition, p. 4.

²⁰ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition; *see also*, Initial petition, p. 3.

²¹ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition.

²² Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition.

²³ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition.

²⁴ Annex 1. Statement by Rufino Almeida, March 13, 1987. Annex to the initial petition.

²⁵ Initial petition, p. 4.

C. Administrative procedure under Law 24.043

28. In 1995, Mr. Almeida filed an administrative petition on the basis of the facts described above, pursuant to Law 24.043. By means of Decision 2638/96, of October 3, 1996, the Ministry of the Interior recognized his right to compensation—in the amount of 4031.64 Argentine pesos—for the 54 days he was illegally detained; he was notified of this on October 8, 1996.²⁶

29. Mr. Almeida appealed Decision 2638/96 “given that it attributes just 54 days to him, starting on June 5, 1978, as compensable, but not the period from the time he was turned over ‘to the custody of his father’ by *El Turco Julián* until April 30, 1983, that is, the 1,795 days he was held under a type of release under surveillance.”²⁷ He contended that, “although he had not been in the custody of [the Executive], nor tried and convicted by any military court, he had been detained at [...] *El Banco*,” and thereafter “lacked full freedom of movement” because of his situation, which was similar to release under surveillance, and should therefore receive equitable reparation, in accordance with the will expressed by the Executive in issuing Law 24.043.²⁸ Mr. Almeida expressly alleged that the denial of his request for reparations constituted a violation of the right to equal protection under the law prescribed by the Argentine constitution, the American Declaration, and the International Covenant on Civil and Political Rights “inasmuch as it constitutes an arbitrary exclusion from the scope of historic reparation sought by the Law,” and “arbitrarily and restrictively determine[s] whether or not to grant the benefit to an individual who was *de facto* deprived of full liberty while the state of exception was in place.”²⁹

30. On March 25, 1999, the CNACAF upheld the first instance decision given that Law 24.043 “was meant to recognize reparation for those individuals who had been under the supervision of [the Executive] prior to December 10, 1983 or who were, as civilians, deprived of their liberty by order of a military court, whether or not they had been convicted by such courts,” noting that “it is not possible by interpretation to extend the compensation rate set forth in that law to conditions different from those established therein.”³⁰ Specifically, CNACAF considered that Law 21.650 defined release-under-surveillance, and it “provided for a regime to mitigate the terms of arrest (release-under-surveillance regime), ordered via decree by the President of the Nation [...]”³¹ In light of the above,

The petitioner’s claim, which posits that the time of detention should be computed through April 30, 1983 because, from the time of his release on July 27, 1978 until then, he allegedly had to report to *Colores*, Javier, and *El Turco Julián*, should be dismissed because, *whatever the truth of his assertions, his situation is not provided for under Law 21.650*, to which, Law 24043 implicitly refers where it stipulates that release under surveillance should not be construed as termination of the measure restricting freedom and, as a result, authorizes extension of the period of detention subject to compensation until the achievement of full freedom.³² (italics added)

31. Lastly, the CNACAF indicated in its decision that “persons who were subjected to the release-under-surveillance regime prescribed by Law 21.650 were in a situation different from that of the petitioner. Accordingly, from a legal standpoint, the Court did not find that the decision being challenged infringed the

²⁶ Annex 2. Notification of compensation. October 8, 1996. Annex to the initial petition.

²⁷ Annex 3. Written appeal to CNACAF. Annex to the initial petition.

²⁸ Annex 3. Written appeal to CNACAF. Annex to the initial petition. Mr. Almeida indicated that “the Secretariat for Human and Social Rights of the Ministry of the Interior, in this case file and in other similar cases, has ruled that: ‘It is clear that the aim of Law 24.043 – stemming from the parliamentary debate (sessions held on 10/30/91 and 11/21/91 in the Senate and in the Chamber of Deputies, respectively) – was historical reparation for those who were detained during the last military government (specifically during the state of siege imposed from November 6, 1974 to December 10, 1983). The Executive’s aim is ‘... to offer an equitable solution to cases in which the strict and objective application of laws leads to non-equitable outcomes’ (pursuant to the ‘whereas clauses’ of Decree 70/91 of [the Executive]), as stated by the State to the [IACHR].”

²⁹ Annex 3. Written appeal to CNACAF. Annex to the initial petition.

³⁰ Annex 4. CNACAF Decision (March 25, 1999). Annex to the initial petition.

³¹ *Idem*.

³² Annex 4. CNACAF Decision (March 25, 1999). Annex to the initial petition.

guarantee [of equal protection under the law],” “without prejudice to any assessment that might be made in the future, on the basis of those facts, by government authorities in exercise of their own powers.”³³

32. On April 22, 1999, Mr. Almeida filed a special appeal with the Supreme Court of Justice, challenging the CNACAF decision in a brief substantially equivalent to the appeal lodged with CNACAF.³⁴ He added that “he [had been] detained unlawfully, and because his situation was illegal, it [was] absurd to ask him to provide the written order that directed his release under surveillance; in this case, as in many others, the release under surveillance was the product of an ongoing threat to not only his own physical safety, but also to that of his immediate relatives, since it was a specific way of operating within the policy of unlawful repression, and not an isolated incident resulting from the actions of some members of the armed forces.” He contended that the CNACAF decision constituted a violation of his right to equal protection under the law “since situations that are essentially identical are being treated differently based on a narrow interpretation of Law 24.043.”³⁵

33. Regarding these alleged “essentially identical situations,” Mr. Almeida noted two types of cases. He first cited the Supreme Court decision in the case of *Horacio José Noro* (1997), who “once the decree had been issued [...] that overturned [his] arrest under [the Executive] [...] was placed in a situation in which his personal liberty was limited;” this was held to fall under the conditions described in Article 4 of Law 24.043, since, pursuant to his account and to the archives from the army command in the city of Paraná, Noro was required to “request authorization—at least over the phone—when he was leaving the city, ‘indicating dates of departure and return, where he was going, and the vehicle in which he would be making the trip’.”³⁶ Given these facts, the Supreme Court stated:

The aim of Law 24.043 was to grant financial compensation to persons deprived of the constitutional right to liberty, not by virtue of an order by a competent authority, but rather pursuant to unlawful acts—whatever their formal expression—which emanated in certain circumstances from military tribunals and from those who exercised [the Executive authority of the Nation] during the last *de facto* government. Essentially, it is not the form the act of authority took—and even less so its adherence to the requirements of Article 5 of Law 21.650—but rather the evidence of the effective impairment of liberty in the different degrees provided for under Law 24.043.

[...] In light of the fact that the aim was fairness and justice, and given that the law contains no definition whatsoever, it is fitting to include under the construct of “release under surveillance,” both the cases that were in line with the government regulations themselves, as well as those others in which the person was subject to a situation of control and powerlessness without guarantees—or without full enjoyment of guarantees—verifiable in the facts, that represented a comparable impairment of their liberty.³⁷

34. The State, for its part, argued that the *Noro* case was not comparable to this case, both because the specific facts are different and because of the nature of the evidence furnished. Specifically, the State noted that in *Noro* “the requirement to produce the specific administrative order was dispensed with and instead, the evidence contained in court documents was taken into consideration to establish the veracity of claims of restrictions on liberty outside the types expressly covered in Law 24.043.” In the Almeida case, however, “not only was there no formal or express order to mitigate the terms of detention imposed via a specific administrative order, no evidence at all was provided—at any level—beyond [Mr. Almeida’s] own accounts, that he had been subjected to any restriction of his liberty [...]”³⁸

³³ Annex 4. CNACAF Decision (March 25, 1999). Annex to the initial petition.

³⁴ Annex 5. Special notice of appeal (April 22, 1999). Annex to the initial petition.

³⁵ Annex 5. Special notice of appeal (April 22, 1999). Annex to the initial petition.

³⁶ Annex 6. CSJN, “*NORO, Horacio José c/Ministerio del Interior art. 3 - Ley 24,043*” (July 15, 1997). Annex to the initial petition.

³⁷ Annex 6. CSJN, “*NORO, Horacio José c/Ministerio del Interior art. 3 - Ley 24,043*” (July 15, 1997); cited in Annex XX. Special notice of appeal (April 22, 1999). Annex to the initial petition.

³⁸ State’s brief on the merits.

35. In this connection, the State emphasized the lack of sufficient evidence to support Mr. Almeida's allegations in the legal proceeding. It noted that the "alleged situation of 'informal release under surveillance' indeed could have been investigated and settled in the course of the proceeding under Law 24.043, which would have allowed for the presentation of all sorts of evidence to prove the existence of said situation."³⁹ Accordingly, the State alleged "that the case had failed to prove to the competent authorities—administrative and legal—that Mr. Almeida had effectively been subject to the "release under surveillance" he was alleging, and that his witness statement alone—given in another case—was not suitable and/or sufficient for endorsing payment of the financial compensation sought by the petitioner."⁴⁰

36. Secondly, Mr. Almeida cited CNACAF and CSJN cases of persons who had been detained and subsequently escaped or were exiled from Argentine territory—even though they had no order from the Executive to that effect—and remained in exile until their respective cases were resolved.⁴¹ The cases in question used generous criteria to grant compensation, bearing in mind that the aim of Law 24.043 "was to grant financial compensation to persons deprived of the constitutional right to liberty based on unlawful acts—whatever their formal expression—which emanated, in certain circumstances, from military tribunals or from those who exercised the [Executive authority of the Nation] during the last *de facto* government."⁴²

37. The State, for its part, emphasized the factual differences between the *Bufano* case and the other cases of exile and Mr. Almeida's case; the specificity of the opinion issued by the Office of the Inspector General of the Nation, which cites the Court in *Bufano*, stating "each case should be subject to a detailed individual examination because no two cases are exactly identical, factually speaking;" and that the facts of the *Bufano* case "were more than sufficiently substantiated in those court documents; this is what the judge drew on to apply the provisions of Law 24.043."⁴³

38. The special appeal was denied on June 8, 1999, as it did not prove an exceptional situation "in which the judgment's reasoning was based on faulty logic or a clear lack of legal grounds, which would have made it impossible to consider the appealed decision a valid legal act."⁴⁴ Mr. Almeida filed a complaint appeal (*recurso de queja*) on July 7, 1999, substantially reiterating his arguments;⁴⁵ such appeal was declared inadmissible on December 2, 1999.⁴⁶

D. Developments at a domestic level subsequent to Mr. Almeida's appeal and special appeal, and the presentation of his petition to the IACHR.

39. By letter dated March 1, 2004, the plaintiff forwarded the case of Jorge Enrique Robasto. Mr. Robasto had been provided compensation for "a situation of *de facto* release under surveillance" that had lasted from the time he was released from the detention facility "El Olimpo" in 1978 until December 10, 1983,

³⁹ State's brief on the merits.

⁴⁰ State's brief on the merits.

⁴¹ The cases are *Bufano*, *Arrastia*, and *Quiroga*, cited in Annex XX. Special notice of appeal (April 22, 1999). Annex to the initial petition. In the "*BUFANO, Alfredo*" case (CNACAF, 1998), the court held that "the refusal to address situations similar to the appellant's [who had escaped the day after being arrested, thereby avoiding being murdered—which is what happened to the friend with whom he was kidnapped—ending up in Mexico where he currently lives in exile] under the same terms as the situations of those who were only able to return to the country once the state of siege had ended with nothing more than a formal action issued by [the Executive], would mean a break with the equal treatment the victims or their rights-holders deserve given the similar circumstances." See Annex XX. Decision in the *Bufano* case. Annex to the initial petition.

The "*ARRASTIA MENDOZA, Ana María*" case (CNACAF, 1997) has to do with a person forced to flee the country and who, when the case was resolved, was still in exile, though lacked an order from the Executive to this effect; this case, in turn, cites the evidence from *Bufano* and *Noro*. See Annex XX. Decision on the *Arrastia Mendoza* case. Annex to the initial petition.

Lastly, the "*QUIROGA, Rosario Evangelina*" case (CSJN, 2000) has to do with an individual who was detained for 401 days in a clandestine naval detention center and was later "expelled from the country by the Navy—which provided her with plane tickets to Venezuela—," as confirmed in both the Naval archives and the case file. See Annex XX. CSJN, "*QUIROGA, Rosario Evangelina c/Ministerio del Interior art. 3 - Ley 24.043*" (June 1, 2000). Annex to the initial petition.

⁴² Annex 7. Decision in the *Arrastia Mendoza* case. Annex to the initial petition.

⁴³ State's brief on the merits.

⁴⁴ Annex 8. CNACAF Decision (June 8, 1999). Annex to the initial petition.

⁴⁵ Annex 9. Complaint appeal brief (July 7, 1999). Annex to the initial petition.

⁴⁶ Annex 10. Decision of the CSJN (December 2, 1999). Annex to the initial petition.

in application of the criteria of the Supreme Court in the *Noro* Case, which provided that Law 21.650 was not to be strictly applied and a *de facto* system of release under surveillance had existed in Robasto's case.⁴⁷ With regard to the "*de facto* release under surveillance," the Court deemed that:

[The plaintiff alleged that] *Colores* tells me that as from this moment (end of 1981) I am going to be officially contacting them. He gives me a number for army intelligence and tells me to call weekly until I am told otherwise and to ask for him or Juan Carlos. Every time I called a woman's voice would say 'federal police' and I would have to ask whether there was any news for Jorge Robasto. This continued until a week prior to Dr. Alfonsín taking power in 1993 [sic].

Thus, it has been sufficiently established in court documents that the plaintiff was in a situation that restricted his personal liberty, as provided for by legislators [in Law 24.043].⁴⁸

40. In this regard, the State argued that in the *Robasto* case, "the Court of Appeals deemed the plaintiff's release under surveillance to have been proven based on his own witness statement provided in another court case," and cited CNACAF's conclusion that "from that arose the obligation imposed on him—to say the least—to report his whereabouts by phone, which is why the decisions challenged must be overturned in that regard."⁴⁹ The State specified that the court "considered as a decisive factor [...] the existence of multiple witness statements that concurred on the existence of undeclared release under surveillance as a specific method used by security forces."⁵⁰

41. In this respect, pursuant to a brief dated March 25, 2007, the petitioner stated that, in keeping with the guidelines established in *Robasto*, compensation had been awarded for a regime of *de facto* release under surveillance in "other cases similar to mine. These cases included that of Mrs. Brull de Guillén, Gilberto Rengel Ponce (Case 277068/95), and Juan Agustín Guillén (Case 377031/95), where the petitioners had also been kidnapped, and once released, had to continue reporting to their captors by phone and receiving 'visits' from them until the beginning of democracy." He continued:

For this reason, when the criteria for awarding compensation changed, in an effort to obtain a solution to my situation within the domestic system, I sent petitions to the [Ministry of Justice] on December 27, 2004, amended on March 28, 2006; and to [the Ministry of Foreign Relations] on October 31, 2006, the copies of which are attached. These submissions may not be considered appeals in and of themselves, inasmuch as they are merely petitions that citizens can present to authorities, whose resolution does not allow for judicial review.

[The Ministry of Justice], although it does not deny that the Executive has the power to review its own acts provided it does not affect vested rights of the public, distorts my petition, which, together with a similar analysis from the Office of Legal Affairs, leads to an erroneous interpretation [...] that suggests my intention is for there to be a review of a judicial ruling (that I reiterate I never consented to and is still not final). The truth is that what I requested was that an administrative decision be modified to adapt it to the new criteria the Administration had been applying to identical situations under the new human rights policy, thus putting an end to a dispute that had dragged on for the last ten years. So the Minister of Justice issued Decision 1243/2006 rejecting my petition, a copy of which is also attached.

⁴⁷ Annex 11. CNACAF, "*ROBASTO, Jorge Enrique c/ Ministerio del Interior art. 3 - Ley 24.043*" (November 28, 2003). Annex to the petitioner's letter of March 1, 2004 (establishing, in keeping with *Noro*, that "for reasons of fairness and justice, it is fitting to include under the construct of "release under surveillance," both the cases that were in line with the government regulations themselves, as well as those others in which the person was subject to a situation of control and powerlessness without guarantees—or without full enjoyment of guarantees-verifiable in the facts, that represented a comparable impairment of their liberty.")

⁴⁸ Annex 11. CNACAF, "*ROBASTO, Jorge Enrique c/ Ministerio del Interior art. 3 - Ley 24.043*" (November 28, 2003). Annex to the petitioner's letter of March 1, 2004.

⁴⁹ The State's brief on the merits (citing, in the last part, CNACAF's judgment in *Robasto*).

⁵⁰ The State's brief on the merits.

[For its part, the Foreign Ministry indicated that the petition is subject to internal jurisdiction—e.g., of the Ministry of Justice.]

42. With regard to these proceedings, the State indicated that Mr. Almeida had filed an administrative appeal to have the initial decision, No. 2638/1996, set aside. This appeal was rejected by the Ministry of Justice pursuant to Decisions 1243 of August 14, 2006 and 1431 of September 25, 2006.⁵¹ The State also stated that in “successive judgments” since *Robasto* “formal requirements—above all evidentiary requirements—provided for under Law 24.043 in order to obtain compensation have taken a back seat to a duly substantiated impairment of the right to personal liberty at the hands of the State. In contrast [to these cases], in Mr. Almeida’s case there were no probative elements that substantiated the existence of release under surveillance at the time his situation was ruled upon by the administration or the courts, nor do those exist currently [...] Finally, it bears noting that the *res judicata* in Mr. Almeida’s case cannot be changed by a subsequent change in jurisprudence; indeed, it is clear that his case is not comparable to the other cases he cites.”⁵²

43. Finally, in a letter received by the IACHR on December 29, 2015, Mr. Almeida reported that “my wife, Claudia Graciela Esteves, filed a new administrative claim for compensation to cover the days her liberty was restricted by surveillance and inspections, and her claim was admitted. This decision (Ministry of Justice Case 0034439/14, Decision 1176 [Ministry of Justice]) was made about the same events that we endured together (my wife and myself), and therefore in identical and inseparable conditions and timeframes. The evidence taken as grounds for this decision were our own statements in Argentine courts, especially those made prior to any willingness or legislation on the part of the Argentine State to make reparations.”

44. In said decision, the Ministry of Justice and Human Rights provided that:

[The decision of January 18, 1999] had recognized 57 days of compensation to Dr. Claudia Graciela Esteves [under Law 24.043], corresponding to the period of detention spanning June 1 to July 27, 1978.

In October 2014, Dr. Esteves again requested compensation be awarded under Law 24.043, this time for deprivation of liberty she claimed to have endured during the period spanning June 4, 1978 to April 4, 1983.

[...] After analyzing the documents found in the case file, it was decided that the petitioner had been subjected to a regime of release under surveillance from July 28, 1978 to April 1, 1983, and was therefore entitled to have compensation awarded for that period. [The existence of this regime from April 2 to 4, 1983 was not deemed to have been proven.]⁵³

45. In light of the foregoing, Claudia Graciela Esteves has been granted the amount of \$1,019,914.11 Argentine pesos, corresponding to 1,709 days of compensation.⁵⁴

⁵¹ The State’s brief on the merits, June 19, 2017.

⁵² The State’s brief on the merits, June 19, 2017.

⁵³ Annex XX. Ministry of Justice, Decision regarding Claudia Graciela Esteves (May 22, 2015). Annex to the petitioner’s letter dated April 1, 2016.

⁵⁴ *Idem*.

IV. LEGAL ANALYSIS

A. The right to equal protection,⁵⁵ the right to a duly founded decision,⁵⁶ and the right to judicial protection⁵⁷ in relation to Articles 1.1⁵⁸ and 2⁵⁹ of the American Convention

46. Based on the facts established and the parties' arguments, the Commission understands that the instant case raises at least three independent legal problems regarding the right to equal protection under the law, two of which must also be analyzed in light of the right to judicial protection and the right to receive a duly founded decision. Thus, the IACHR will undertake a joint analysis of the rights set forth under Articles 8.1, 24, and 25.1 of the Convention, in connection with Articles 1.1 and 2 thereof, in the following order: (i) General considerations on the rights to equal protection under the law, judicial protection, and to receive a duly founded decision; (ii) analysis of whether Law 24.043 and its application to Mr. Almeida was in and of itself a violation of the right to equal protection under the law; (iii) analysis of whether Mr. Almeida had an effective remedy with due guarantees vis-à-vis the alleged violation of the right to equal protection under the law in the first administrative proceedings and the judicial appeals; and (iv) analysis of whether Mr. Almeida had an effective remedy with due guarantees vis-à-vis the alleged violation of the right to equal protection in the framework of his claims subsequent to the *Robasto* case.

1. General considerations on the rights to equal protection under the law, judicial protection, and to receive duly founded decisions

47. The Inter-American Court has indicated that the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights that are accorded to others not so classified. The case law of the Court has indicated that in the current stage of development of international law, the fundamental principle of equality and non-discrimination has entered into the domain *ius cogens*. Upon this principle rests the legal architecture of national and international public order, which permeates the entire legal system.⁶⁰

48. The principle of equality and non-discrimination is to be understood as comprising two concepts: "(...) a negative concept related to the prohibition of arbitrary different treatment, and an affirmative concept related to the obligation of States Party to create real equal conditions towards groups who have been historically excluded or who are exposed to a greater risk of being discriminated against."⁶¹ The instant case comes under the first concept, in keeping with which not all differences in legal treatment are discriminatory as such, for not all differences in treatment are in themselves offensive to human dignity. In this sense a difference in treatment is only discriminatory when it "has no objective and reasonable

⁵⁵ Article 24 provides that: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

⁵⁶ Article 8.1 provides that: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, [...] for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

⁵⁷ Article 25.1 provides 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."

⁵⁸ Article 1.1 provides that: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

⁵⁹ Article 2 provides that: "Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

⁶⁰ I/A Court H.R. *Case of Flor Freire v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2016. Series C No. 315. Paragraph 109.

⁶¹ I/A Court H.R. *Case of Furlan and Family v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246. Paragraph 267.

justification,”⁶² which should be evaluated on a case-by-case basis and with greater or lesser intensity according to the rights or interests involved, or according to whether it is a group that has been historically subject to discrimination or exclusion.

49. The Inter-American Court has indicated that Article 25.1 of the Convention provides for, in broad terms, the State’s obligation to offer all individuals subject to its jurisdiction an effective judicial remedy for acts that violate their fundamental rights.⁶³

50. Furthermore, the Court has held that for a State to comply with the provisions set forth under Article 25 of the Convention, it is not enough for the remedies to exist formally, but, rather, such remedies must be effective; in other words, they must provide results or responses to violations of rights recognized—be that in the Convention, the Constitution, or the law. The foregoing means that the remedy must be suitable to counter the violation and the competent authority’s application thereof must be effective. An effective remedy likewise means that the competent authority’s analysis of a legal remedy may not just be a mere formality; rather, the authority must weigh the arguments invoked by the petitioner and must expressly rule on them. Those remedies which, due to the country’s general condition or even particular circumstances in a given case, are illusory, cannot be considered effective. This may happen, for example, when their uselessness has been demonstrated in practice, because means are lacking to execute decisions or due to any other situation that leads to the denial of justice. Thus, proceedings must lead to achieving protection of the right recognized in the legal decision through the proper implementation of said decision (quotes omitted).⁶⁴

51. The Court has pointed out that, in terms of Article 25 of the Convention, it is possible to identify two specific obligations of the States. The first is to normatively enshrine and ensure proper application of effective remedies before competent authorities, which protect all individuals under its jurisdiction from acts that violate their fundamental rights, or which entail determination of these individuals’ rights and obligations. The second is to guarantee the means to execute the respective decisions and judgments issued by such competent authorities such that stated or recognized rights are effectively protected. The right set forth under Article 25 is closely tied to the general obligation of Article 1.1 of the Convention, by attributing to the States Parties’ domestic law duties of protection. In light of the foregoing, the State has the responsibility not only to normatively design and enshrine an effective remedy, but also to ensure that legal authorities properly apply the remedy (quotes omitted).⁶⁵

52. Finally, with regard to the right to receive a duly founded decision, the Inter-American Court has pointed out that the grounds for decisions “are the exteriorization of the reasoned justification that allows a conclusion to be reached.” 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. 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 arbitrariness. 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. Based on the foregoing, the obligation to provide the

⁶² I/A Court H.R. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4. Paragraphs 55 and 56. Paragraph 56 makes reference to Eur. Court H.R., Case “Relating to certain aspects of the laws on the use of languages in education in Belgium” (Merits), Judgment of 23rd July 1968, page 34.

⁶³ I/A Court H.R. *Case of Maldonado Ordóñez v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 3, 2016. Series C No. 311. Paragraph 108.

⁶⁴ I/A Court H.R. *Case of Maldonado Ordóñez v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 3, 2016. Series C No. 311. Paragraph 109.

⁶⁵ I/A Court H.R. *Case of Maldonado Ordóñez v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 3, 2016. Series C No. 311. Paragraph 110.

grounds for a decision is one of the “due guarantees” included in Article 8.1 to safeguard the right to due process.⁶⁶

2. Analysis of whether Law 24.043 and its application with regard to Mr. Almeida was in and of itself a violation of equal protection under the law

53. In *Hanríguez v. Argentina* (2000), the Commission had the opportunity to rule on Law 24.043, and indicated that “the effect of Law 24.043 is not to establish a substantive right to a compensation for the persons it covers and preclude those not covered,” as ensuring reparation for the violation of an international obligation of the State—such as a restriction on personal liberty—is not optional, but mandatory.⁶⁷ In this sense, the IACHR considered that “Law 24.043 merely regulates a special procedure that will be used to determine: (a) whether compensation is owed, (b) the amount of the compensation, and (c) the manner of payment,”⁶⁸ in exchange for which the individuals who opt for this procedure “conced[e] certain rights, among them the right to bring or prosecute an action for damages and injuries, a right they would have otherwise retained.”⁶⁹

54. The IACHR noted in *Hanríguez* that Law 24.043 does not seek to cover all cases of human rights violations that occurred under the country’s last civil-military dictatorship, and therefore the exclusion of some kinds of cases from the terms of the law is not *per se* a violation of the right to equal protection under the law, provided that said exclusion responds to an objective and reasonable justification and is proportional to the aims sought.⁷⁰ This, taking into account that a civil suit is routinely available as another option for obtaining compensation.⁷¹

55. The Commission notes that the State has indicated that “it is crystal clear that the situation posed by Mr. Almeida, like that proposed [in *Hanríguez*] is not covered by the framework of scenarios that give rise to compensation under the application of the law in question, which features a *numerus clausus* system of hypotheses.”⁷² In this regard, the first legal problem that seems to be posed regarding the law is whether excluding situations of *de facto* release under surveillance from the possibility of receiving compensation under this law violates the principle of equality and non-discrimination. In this respect, the IACHR notes that the State did not provide an explanation about the objective and reasonable nature of the exclusion.

56. The IACHR further notes that in the instant case, there is an underlying question which is whether Mr. Almeida indeed proved he had been in a situation of *de facto* release under surveillance. This argument was presented by the State in the inter-American proceedings; however, this point was not part of the central argument in the suit brought by the alleged victim under Law 24.043 and its respective appeals. In effect, as revealed in the section on facts, in the framework of said proceedings, his claim was denied because, “whatever the truth of his assertions, his situation is not provided for under Law 21.650, to which, implicitly Law 24.043 refers.” Thus, contrary to what the State asserts, the decision that was unfavorable to Mr. Almeida was not based on an alleged lack of evidence to demonstrate his *de facto* release under surveillance, but, rather, on the fact that the circumstances the alleged victim invoked were excluded from the law’s scope of application.

⁶⁶ I/A Court H.R. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2011. Series C No. 227. Paragraph 118.

⁶⁷ IACHR. Report No. 73/00. Case 11.784. Marcelino Hanríguez et al. Argentina. October 3, 2000, paragraphs 47-48.

⁶⁸ IACHR. Report No. 73/00. Case 11.784. Marcelino Hanríguez et al. Argentina. October 3, 2000, paragraph 48.

⁶⁹ IACHR. Report No. 73/00. Case 11.784. Marcelino Hanríguez et al. Argentina. October 3, 2000, paragraph 49.

⁷⁰ The specific case addressed the exclusion of the Hanríguez brothers from the scope of Law 24.043. The brothers were detained during the dictatorship pursuant to a court order and were prosecuted for “possession of subversive material,” in accordance with Law 20.840, repealed in 1985 by the Defense of Democracy Act. *Hanríguez*, paragraph 15. In this specific case, the IACHR considered that “the justification offered by the State to make the distinction, i.e., that the executive-ordered detention is *prima facie* vitiated whereas the detention ordered by federal judges is not, is objective and reasonable, given the fact that the effect of the law is to give persons who qualify under its provisions the right to pursue a special procedure to arrange compensation for human rights violations. It also finds proportionality between the means used and the aim sought.” *Hanríguez*, paragraph 53.

⁷¹ IACHR. Report No. 73/00. Case 11.784. Marcelino Hanríguez et al. Argentina. October 3, 2000, paragraph 48.

⁷² State’s brief on the merits.

57. Thus, the State's reasoning before the IACHR to justify the exclusion is inconsistent with the reasoning that was grounds for the exclusion in the domestic sphere and is therefore not helpful to its defense in international proceedings with respect to the right to equal protection under the law. Inasmuch as the exclusion occurred not due to lack of evidence, but, rather, because the interpretation applied to the alleged victim determined that *de facto* release under surveillance was not provided for under the law, the analysis the IACHR must conduct is whether said exclusion was objectively and reasonably justified. As stated previously, the State did not provide such justification. Furthermore, the IACHR considers that the exclusion's unreasonableness, given the aims the respective legislation was seeking, is evidenced by the subsequent change of criteria that led, as will be seen below, to other individuals who were in the same situation as that alleged by Mr. Almeida—such as his wife, for example—receiving reparations.

58. In keeping with the considerations above, the IACHR finds that the State did not provide an explanation that allows one to conclude that the exclusion imposed in the specific case of Mr. Almeida was objective and reasonable. The IACHR therefore considers that this exclusion violates the right to equal protection under the law set forth under Article 24 of the American Convention, in connection with Article 1.1 thereof.

59. Finally, the IACHR highlights that this analysis is conducted against a backdrop of recognition by both executive and judicial authorities in Argentina that gaps in the language of Law 24.043 have led to a failure to adequately protect the right to compensation of individuals who must be treated on equal terms as other individuals who are clearly covered by the provisions of the law. There is an expressed will in this sense to ensure “an equal treatment that victims or their rights-holders deserve given the similar circumstances.”⁷³ This occurred in the *Bufano* case with respect to situations of political exile, in *Robasto*, with respect to “*de facto* release under surveillance,” and in the very case of Mr. Almeida, in that he was awarded compensation due to his clandestine detention, although the letter of the law required an order from the executive branch or a military tribunal. The IACHR considers that in this regard, the State is also responsible for a violation of Article 2 of the American Convention for excluding *de facto* release under surveillance from the scope of Law 24.043, a situation that in general terms was subsequently corrected under the above-mentioned legal interpretation.

3. Analysis of whether Mr. Almeida had an effective remedy with due guarantees vis-à-vis the alleged violation of the right to equal protection under the law during the first administrative proceedings and judicial appeals.

60. The Commission notes that in his appeal and special appeal, Rufino Jorge Almeida alleged a violation of the right to equal protection under the law. The established facts show that the special appeal referred to situations that were, in his opinion, comparable to those situations in which the Supreme Court had interpreted the terms of Law 24.043 in a broad manner, allowing greater flexibility in the criteria for its application. In particular, Mr. Almeida referred to the *Noro* case, in which the concept of release under surveillance that was eligible for compensation under that Law was broadened. Mr. Almeida also referred to other cases of exile in which greater flexibility was allowed in the legal criteria.

61. Although Mr. Almeida presented an argument to the Commission regarding the fundamental right of equal protection before the law, the judicial authority's obligation to take said argument seriously and to rule on the merits thereof actually stemmed from the right to judicial protection. That is, to the extent that—as the European Court of Human Rights has recognized—it is reasonable to understand that at least *prima facie*, the existence of different judicial responses to comparable situations potentially gives rise to a case of violation of the right to equal protection under the law, the case then deserved a ruling on the merits with a duly founded decision about whether there effectively had been a difference in treatment, and if so, whether this was justified.⁷⁴ The Commission cannot but note that the *Noro* case in particular presents similarities to the facts alleged by Mr. Almeida; therefore, without entering into issue of the evidentiary matter of whether a situation of *de facto* release under surveillance existed or not in the instant case, the IACHR does consider that

⁷³ Annex 5. Decision in the *Bufano* case. Annex to the initial petition.

⁷⁴ Eur. Court H.R. Case of *Beian v. Romania* (30658/05), Judgment of December 6, 2007, paragraphs 33, 34-40.

the alleged victim was entitled to have his argument duly addressed on equal terms by domestic judicial authorities.

62. The IACHR recalls that the Argentine State bases its defense on the factual differences between the cases cited by the alleged victim and his particular situation. However, the IACHR reiterates along the same lines as its analysis in the previous section, that these were the grounds presented by the State before the Commission; however, they were not the grounds on which the appeals filed by Mr. Almeida were denied. Again, the evidentiary matter of whether the release under surveillance of the alleged victim has been proven or not is irrelevant for the case's analysis. What is relevant is the evaluation of whether the judicial response provided was consistent with the right to judicial protection, read together with the right to equal protection under the law and the right to receive a duly founded decision.

63. As revealed by the Supreme Court's terse decision, this did not occur in the instant case. Consequently, the Commission concludes that the Argentine State is responsible for the violation of the right to judicial protection set forth under Article 25.1 of the American Convention, read together with the right to equal protection under the law provided for in Article 24, and the right to be assured a duly founded decision provided for under Article 8.1, in connection with Article 1.1 thereof.

4. Analysis of whether Mr. Almeida had an effective remedy with due guarantees vis-à-vis the alleged violation of the right to equal protection under the law in the framework of his claims subsequent to the *Robasto* case

64. The Commission recalls that the change of criteria the *Robasto* case brought about consisted of the recognition that it was not necessary to demonstrate compliance with the terms of Law 21.650 to prove a situation of *de facto* release under surveillance; that, in Mr. Robasto's particular case, "the obligation imposed on him—to say the least—to report his whereabouts by phone" constituted a restriction on his personal liberty that was compensable under Law 24.043; and that at the time of the dictatorship there was a practice or context of "undeclared release under surveillance as a specific method used by security forces."

65. In this sense, the petitioner alleged that awarding reparations in other cases of "*de facto* release under surveillance," but not doing so in Mr. Almeida's case, shows overtly unequal treatment. This argument was presented to domestic authorities in Mr. Almeida's claims following the change in criteria. In response, his claims were denied based on a procedural consideration based upon which in Mr. Almeida's case, there is a situation of *res judicata* that precludes new review of the merits of the case.

66. The Commission considers that the need for an effective remedy on this point was fundamental, not only because it is an argument about the right to equal protection under the law, but also because the difference in treatment due to the different criteria over time regarding *de facto* release under surveillance was related to a matter of the utmost importance—that of reparations for violation of human rights committed during the military dictatorship.

67. In this sense, the situation presented to the domestic courts was the following: Mr. Almeida alleged he had endured "*de facto* release under surveillance" during the dictatorship; as from the *Robasto* case in 2004, competent authorities made it clear that situations which *prima facie* seem similar to the one alleged by Mr. Almeida—e.g., that entailed surveillance through telephone calls or face-to-face visits from security forces without a judicial or executive order—are eligible for compensation under the procedure of Law 24.043; and according to the State itself, "in successive judgments" subsequent to the *Robasto* decision, "formal requirements—above all evidentiary requirements—provided for under Law 24.043 in order to obtain compensation have taken a back seat to a duly substantiated impairment of the right to personal liberty at the hands of the State." According to the State's arguments to the IACHR, the main defect Mr. Almeida's case presented is the lack of sufficient evidence to demonstrate the situation he alleges; however, the State itself recognized that it is understood that if Mr. Almeida had presented his claim after the *Robasto* decision in 2004, he might have been the beneficiary of compensation inasmuch as the "formal requirements" regarding evidence "had taken a back seat" after that date.

68. Without getting into ruling on these evidentiary matters and whether the *de facto* situation alleged by Rufino Jorge Almeida effectively took place, the Commission notes that the conflict domestic courts faced after the change in criteria and the new petitions from the alleged victim are related to the tension between the principle of legal certainty⁷⁵—specifically, with regard to final court decisions—and the right to reparations for violations of human rights. The IACHR considers that when these two enter into conflict, such as, for example, when an effective remedy is created or confirmed subsequent to denial of such an essential right as the right to reparations, a suitable and effective mechanism that properly weighs the important elements of that tension must be provided.

69. As part of that weighing, the fundamental nature of the matter at hand must especially be taken into account. In this case, the Commission considers that the grant of reparations for violations of human rights committed in a context like that of the Argentine dictatorship, which may be similar or analogous to other cases in which reparations have been awarded, cannot exclusively depend on the point in time in which the petition is presented. On the contrary, this weighing must consider possible modulations of the effects related to when judgments were issued, so that changes in criteria, such as those stemming from *Robasto*, may have retroactive effects in order to prevent unequal application of the law on matters of great importance such as reparations for violations of human rights.

70. In sum, the Commission considers that, in light of the State's pre-existing obligation to adequately compensate internationally wrongful acts committed by or attributable to the State, and the clarity provided by the change in criteria stemming from the *Robasto* case regarding suitability of the procedures under Law 24.043 to recognize compensation for situations of *de facto* release under surveillance, Mr. Almeida was entitled, in light of Article 25.1 of the Convention, read together with the right to equal protection under the law and the right to be assured a duly founded decision, set forth in Articles 24 and 8.1 thereof, to file his claim for compensation again and have that claim be decided on the merits and weighed in the manner mentioned previously. As seen in the responses Mr. Almeida's claim subsequent to the *Robasto* case received, it is obvious that this did not occur in the instant case.

71. Consequently, the Commission concludes that the Argentine State is responsible for the violation to the right to judicial protection set forth under Article 25.1 of the American Convention, read jointly with the right to equal protection under the law provided for in Article 24 and the right to be assured a duly founded decision provided for in Article 8.1, in relation to Article 1.1 thereof.

V. CONCLUSIONS AND RECOMMENDATIONS

72. Based on the findings of fact and law, the Inter-American Commission concluded that the State is responsible for the violation of the rights to be assured a duly founded decision (Article 8.1, equal protection under the law (Article 24), and judicial protection (Article 25.1) of the American Convention in relation to the obligations set forth under Articles 1.1 and 2 thereof, to the detriment of Rufino Jorge Almeida.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE ARGENTINE STATE:

1. Offer Mr. Rufino Jorge Almeida a suitable, effective, and expeditious mechanism for reconsideration of his request for compensation, taking into account the arguments he raised regarding the violation to the right to equal protection under the law, in the framework of both the first administrative proceedings and the subsequent judicial appeals, as well as the subsequent petitions filed after the precedent set by *Robasto* case. In said reconsideration, the Argentine State is obliged to comply with its international obligations regarding equal protection under the law; the situation of *res judicata* in the abstract may not be

⁷⁵ Eur. Court H.R. *Case of Pérez Arias v. Spain* (32978/03). Judgment of June 28, 2007, paragraph 27 (recognizing that “the extension of the principle of equal protection under the law with regard to subsequent decisions that would imply reviewing all previous final decisions that were in contradiction to the most recent laws, would be contrary to the principle of legal certainty” (unofficial translation)).

relied upon as an objection and Mr. Almeida should be allowed to present all the necessary information to prove his claim under Law 24.043.

2. Fully compensate the violations declared in this report, taking into account both material and immaterial damages that stem from the denial of justice to Mr. Rufino Jorge Almeida in the context of his claims, in light of the right to equal protection under the law.