

OEA/Ser.L/V/II.172  
Doc. 65  
May 4 2019  
Original: Spanish

## **REPORT No. 56/19**

### **CASE 13.392**

REPORT ON ADMISSIBILITY AND MERITS

JULIEN-GRISONAS FAMILY  
ARGENTINA

Approved by the Commission at its session No. 2150 held on May 4, 2019  
172 Regular Period of Sessions

**Cite as:** IACHR, Report No. 56/19, Case 13.392. Admissibility and Merits. Julien-Grisonas Family. Argentina. May 4, 2019.



**INDEX**

<b>I.</b>	<b>INTRODUCTION</b> .....	<b>3</b>
<b>II.</b>	<b>POSITION OF THE PARTIES</b> .....	<b>4</b>
	A. Petitioner .....	4
	B. State.....	6
<b>III.</b>	<b>ADMISSIBILITY</b> .....	<b>8</b>
	A. Competence and duplication of procedures and international <i>res judicata</i> .....	8
	B. Exhaustion of domestic remedies and timeliness of the petition .....	9
	C. Colorable claim .....	9
<b>IV.</b>	<b>FINDINGS OF FACT</b> .....	<b>10</b>
	A. Context.....	10
	1. On the serious human rights violations committed during the Argentine dictatorship.....	10
	2. On the coordination of repression by Argentina and Uruguay in the context of Operation Condor.....	11
	3. On the “Automotores Orletti” clandestine detention center.....	13
	4. On the kidnapping and appropriation of children in the context of “Operation Condor” .....	14
	B. Relevant legal framework.....	14
	C. On the Julien-Grisonas family .....	17
	D. Facts of the case.....	18
	1. On the operation carried out on September 26, 1976.....	18
	2. On the detention at “Automotores Orletti” and the transfers to Uruguay and Chile .....	19
	3. On the family members’ search .....	20
	4. On the recovery of the identity of the Larrabeiti Yáñez siblings .....	21
	E. On administrative reparations.....	21
	F. On the civil proceedings .....	22
	1. Case No. 24,518/98.....	23
	2. Case File No. 14.846/96.....	24
	G. Criminal proceedings.....	25
	1. Case No. 1627 “Guillamondegui, Néstor Horacio and others on the unlawful and aggravated deprivation of freedom, torture, and felony murder” .....	26
	2. Case No. 2637/04 “Vaello, Orestes, and others for unlawful and aggravated deprivation of liberty and felony murder” .....	26
	3. Criminal case No. 1351 “Nicolaidés Cristino and others on the abduction, detention, and concealment of minors” .....	29
<b>V.</b>	<b>ANALYSIS OF LAW</b> .....	<b>29</b>
	A. Preliminary considerations .....	29
	B. Rights to recognition as a person before the law, to personal liberty, to humane treatment, to life, to a fair trial, and to judicial protection (Articles 3, 7, 5, and 4 of the American Convention) in connection with the obligation to respect and guarantee rights (Article 1.1 of the same instrument); Article I, subparagraph a), of the Inter-American Convention on the Forced Disappearance of Persons (IACFDP); and the rights to recognition as a person before the law and civil rights, to protection against arbitrary	

	detention and to life, to liberty, to safety and integrity of the person (Articles XVII, XXV, and I of the American Declaration), in connection with the rights of the child (Article VII of the Declaration) .....	31
	1. General considerations on the forced disappearance of persons .....	31
	2. Analysis of the case.....	34
C.	Right to personal integrity and the prohibition of torture (Article 5.1 of the American Convention, in connection with its Article 1.1, and Article I of the American Declaration).....	36
	1. General considerations about the prohibition of torture and cruel, inhuman, or degrading treatment.....	36
	2. Analysis of the case.....	37
D.	Rights to protection of the family, to private and family life, to a nationality, and to residence and freedom of movement (Articles VI, V, XIX, and VIII of the American Declaration), in connection with its Article VII.....	38
	1. General considerations about the rights to an identity, to a name, to a private life, to family, to a nationality, and to residence and freedom of movement.....	38
	2. Analysis of the case.....	40
E.	Rights to a fair trial, to judicial protection, and to the duty to investigate grave human rights violations (Article 8 and Article 25.1 of the American Convention), in connection with its Article 1.1 and the duty to adopt provisions under domestic law (Article 2 of the American Convention); and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (IACPPT) and Article I, subparagraph b), and Article III of the Inter-American Convention on the Forced Disappearance of Persons (IACFDP) .....	42
	1. General considerations about the rights to a fair trial and judicial protection and about the duty to investigate possible forced disappearance and torture.....	42
	2. Analysis of the case.....	45
F.	Right to due process of law and effective judicial custody regarding Article 280 of the Code of Civil and Commercial Procedure of the Nation.....	48
G.	Rights to a fair trial and judicial protection regarding reparations for grave human rights violations (Articles 8.1 and 25.1 of the Convention, in connection with its Articles 1.1 and 2).....	49
	1. General considerations on the absence of statute of limitations for civil proceedings relative to grave human rights violations.....	49
	2. Analysis of the case.....	50
	3. General considerations about administrative reparation mechanisms in cases of grave human rights violations.....	51
	4. Analysis of the case.....	52
<b>VI.</b>	<b>CONCLUSIONS AND RECOMMENDATIONS .....</b>	<b>53</b>

**REPORT No. 56/19**  
**CASE 13.392**  
ADMISSIBILITY AND MERITS  
JULIEN-GRISONAS FAMILY<sup>1</sup>  
ARGENTINA  
MAY 4, 2019

## I. INTRODUCTION

1. On November 11, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by Eduardo Marques Iraola (hereinafter “the petitioner” or “Mr. Marques Iraola”) alleging the international responsibility of the Argentine Republic (hereinafter “the Argentine State,” “the State,” or “Argentina”) to the detriment of Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez (hereinafter “the Larrabeiti Yáñez siblings” or “Anatole and Victoria”)<sup>2</sup> for the failure to make reparation in relation to a military activity carried out on September 26, 1976 at the house where they lived with their family in the province of Buenos Aires when they were four years old and 16 months old respectively. Subsequently, the petitioner also alleged the responsibility of the State for the death of Mario Roger Julien Cáceres (hereinafter “Mario Julien”), and the unlawful deprivation of liberty and subsequent forced disappearance of Victoria Lucía Grisonas (hereinafter “Victoria Grisonas”), the biological father and mother of the Larrabeiti Yáñez siblings, which occurred in the same operation. Also alleged is the unlawful deprivation of liberty of the siblings at a clandestine detention center and their clandestine transfer to Uruguay and subsequently to Chile, where they were abandoned in a public plaza. It also alleges failure to conduct an adequate investigation, impose punishment, and make reparation.

2. On November 21, 2017 the Commission notified the parties of the application of Article 36(3) of its Rules of Procedure, since the petition falls within the criteria established in its Resolution 1/16, and it placed itself at the parties’ disposal to pursue a friendly settlement. The parties had the time periods provided for in the Rules of Procedure to submit their additional observations on the merits. All the information received was duly transmitted between the parties.<sup>3</sup>

---

<sup>1</sup> During the processing of the instant case before the Inter-American Commission it had the name “Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez.” Bearing in mind that the report encompasses events that impacted the couple Mario Roger Julien and Victoria Lucía Grisonas and their son and daughter, the name has been changed to “Julien-Grisonas Family.”

<sup>2</sup> The first names and last names correspond to their status as adoptive son and daughter. Based on their biological filiation, their names are Anatole Boris Julien Grisonas and Victoria Eva Julien Grisonas.

<sup>3</sup> The Commission considers it relevant to make reference to two aspects related to the processing of this case and to other petitions related to its subject matter:

On January 8, 1997 Mr. Marques Iraola lodged a petition with the IACHR alleging violations of the human rights of the Larrabeiti Yáñez siblings because of lack of access to the information with respect to the fourth preambular paragraph of Decree No. 1025/96, which will be mentioned in this report. That petition was registered under number P-13-97. In the wake of the State being notified of that petition, the then-Undersecretary for Human Rights responded to the request for information; accordingly, the petitioner considered the search for information to have concluded, and abandoned the petition before the IACHR on October 27, 1997.

On November 11, 2005 Mr. Marques Iraola lodged the petition that is the subject of this report with the IACHR. On April 30, 2008, while the petition was in the initial review stage, the petitioner filed a petition that it characterized as “new and different” from the one filed on November 11, 2005. The Executive Secretariat of the IACHR, after analyzing that petition, determined that since it addressed facts intrinsically linked to those referred to in the petition filed in 2005, the second petition should be considered part of the first. On December 15, 2010, the Commission transmitted to the State the original petition received in 2005 along with the information filed during the stage of initial review, including that received on April 30, 2008.

During the admissibility phase the parties pursued a friendly settlement, beginning in 2010 and ending in 2017, at the request of the petitioner. By note transmitted on June 15, 2017, the IACHR informed the parties that it was considering its participation in the friendly settlement process to have concluded. As indicated above, on November 21, 2017 the Commission notified the parties that it would apply Article 36(3) of its Rules of Procedure.

## II. POSITION OF THE PARTIES

### A. Petitioner

3. The petitioner alleges that the facts in the instant case illustrate the most emblematic expression of the action of “Plan Cóndor” in connection with the kidnapping and appropriation of children in the context of coordinated repressive actions by the dictatorships of the Southern Cone. He indicates that Mario Roger Julien, of Uruguayan nationality, and Victoria Lucía Grisonas, an Argentine who acquired Uruguayan nationality, lived in Montevideo, Uruguay, where in September 1972 their child Anatole Boris was born. In 1973, after the civic-military coup in Uruguay, Mario Julien, like many opponents of the Uruguayan dictatorship, had to go into exile in Buenos Aires, Argentina. In 1974 he was joined by his wife and son; on May 7, 1975, their daughter Victoria Eva was born in Buenos Aires. The military coup in Argentina was carried on March 24, 1976.

4. Petitioner indicates that on September 26, 1976 Argentine and Uruguayan military forces carried out a violent joint operation at the home of the Julien-Grisonas family, situated in the city of San Martín, province of Buenos Aires. He indicates that Mario Julien placed his son and daughter in the bathtub to protect them and that he was then seen dead outside the house. His body never appeared. Victoria Grisonas was separated from her son and daughter, brutally beaten, and placed in the trunk of a police car. Petitioner notes that Anatole and Victoria, 4 years old and 16 months old, respectively, heard the shots, saw their father fall, dead, and saw how they were brutally carrying their mother, leaving profound marks on their lives. Subsequently, they were taken, along with their mother, to the “Automotores Orletti” clandestine detention center. He indicates that there Victoria Grisonas was definitively separated from her son and daughter, so as to then be savagely tortured by Argentine and Uruguayan military personnel. Ever since, she has been disappeared. In October 1976 Anatole and Victoria were taken clandestinely to Montevideo, where they continued to be kidnapped at a clandestine detention center that belonged to Uruguay’s Defense Intelligence Service (SID: Servicio de Inteligencia de Defensa). At both centers they were seen by several detained persons. In late 1976 they were taken by plane to Chile. Days before Christmas 1976 they were abandoned in the Plaza O’Higgins of the city of Valparaíso and then found, alone and undocumented, by members of the Carabineros police force.

5. According to the petitioner, after spending time in an orphanage, they were turned over to the custody of the Chilean husband and wife Jesús Larrabeiti and Silvia Yáñez, who did not have ties with the repressive apparatus. While the adoption process was under way, the paternal grandmother, María Angélica Cáceres de Julien, by a fortuitous circumstance, was able to find Anatole and Victoria. In August 1979 she signed a document with Larrabeiti and Yáñez by which, among other things, the biological filiation of both was established and they were given both their biological names (Anatole Boris and Victoria Eva Julien Grisonas) and their adoptive names (Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez).

6. He indicates that on August 22, 1995, the Larrabeiti Yáñez siblings initiated the administrative procedures in Argentina to be able to receive the extraordinary benefit of Law No. 24,411, for the successors of the victims of forced disappearance. In addition, he notes that due to the “Full Stop” law (No. 23,492) and the “Due Obedience” law (No. 23,521), as well as the pardons decreed by President Carlos Menem (No. 1002/98 and others), after the return to democracy it was not possible to investigate the facts in order to identify, prosecute, or punish the direct perpetrators and masterminds, or to learn the fate of Mario Julien and Victoria Grisonas or, if they have died, to locate their remains. He alleges that therefore they only had the civil action as the sole legal means available to get to the truth. And so on May 22, 1996, the siblings filed a civil action against the Argentine State (Case No. 14,846/96) for the damages caused them both as son and daughter of parents who were disappeared and for the suffering caused them personally. On filing that civil action, the procedures for recognition of the extraordinary benefit of Law No. 24,411 were suspended.

7. The petitioner notes that the Executive assigned the matter to Office of the Attorney General for the Treasury by Decree No. 1025/96, signed by then-President of the Nation Carlos Menem and Interior Minister Carlos Corach, for it to assume the defense of the State in that dispute. The fourth preambular paragraph of that Decree established: “That the father of the minor children may have been transferred to the Oriental

Republic of Uruguay and have remained detained at the 'Libertad' Military Prison Establishment." The petitioner alleges that while it was anomalous for a decree assigning a matter for legal defense of the State to include such conjecture, which in turn clashed with the fragmented and incomplete information that the Larrabeiti Yáñez siblings had at that time, the high-level positions of those who signed the decree "gave them the anguishing hope that one or perhaps both parents might still be alive." Given the lack of response to the requests for information put to the signers of the decree and the staff members who would have worked on it to learn the information that led to such a conjecture, the siblings brought a writ of *habeas corpus*, which was rejected, including all appeals. After the notice of a petition before the Commission, filed in the wake of the lack of a response (referred to in foot note 3 of this report), the then-Undersecretary for Human Rights recognized that said preambular paragraph "establishes a hypothesis that is by no means proven," with which the petitioner stopped searching for information.

8. The petitioner indicates that on August 26, 1998 he brought a new judicial action against the State (Case No. 24,518/98) for the damages caused the Larrabeiti Yáñez siblings for the expectation created by the negligence and irresponsibility of the conjecture at the fourth preambular paragraph of Decree No. 1025/96. That action was rejected in first instance and on appeal. The petitioner alleges that both judgments lacked sufficient reasoning and did not take into account arguments and evidence presented by the plaintiffs. On September 27, 2005, the Supreme Court of Justice of the Nation ("Supreme Court") found inadmissible the extraordinary appeal filed based on Article 280 of the Federal Code of Civil and Commercial Procedure. In this respect, the petitioner alleges that this provision is at odds with the rights to due process and effective judicial protection since it authorizes not stating grounds and grants wide discretion. Finally, he indicates that these damages are part of the petition filed in 2005 before the IACHR, which is the subject matter of this report on the merits.

9. As regards the civil case captioned Case No. 14,846/96, the petitioner indicates that on October 15, 2002 Federal Court No. 4 of First Instance for Contentious-Administrative Matters ordered the State to pay US\$ 600,000 plus US\$ 90,000 in attorneys' fees and costs. He indicates that in response to a motion for appeal (*recurso de apelación*), on November 4, 2004, the Federal Court of Appeals for Contentious-Administrative Matters recognized that Victoria Larrabeiti had the right to be compensated in the amount of approximately US\$ 3,300,000 and declared that the action with respect to her brother was time-barred since more than two years had elapsed since he had reached majority of age. On October 30, 2007, the Supreme Court found that the action was time-barred in respect of both plaintiffs given that the adoptive parents were in a position to act on their behalf as of 1986, the date of publication of the final report of the National Commission on Forced Disappearance of Persons ("CONADEP"), whose annex includes the case corresponding to their biological parents. The judgment indicated that the plaintiffs continue to have a right to reparation under Law 24,411 and Law 25,914. The petitioner alleges, among other arguments, that "the mere - and hypothetical - knowledge of the CONADEP report was not by any means sufficient to make a judicial action possible." He notes that at no point does it mention the disappeared parents nor does it make any reference to the annex. It indicates that the voluminous annex that was published separately and was much less widely disseminated than the report devotes only two short lines to the victims' parents. He notes, in this respect, that "the hypothetical reading of those two lines obviously did not meet the need to know, with a minimum of precision, the constituent elements of any judicial action." He also alleges that the limitations period could not have run since the forced disappearance has not ceased.

10. With respect to the laws on reparation, the petitioner alleges that they do not respond to the instant case and that the path to follow is not "the administrative procedure with a reparations schedule but rather a judicial action with extensive evidence and without a predetermined ceiling." In the first place, he indicates that Law No. 24,411 excludes from its scope those who, as occurred in the case of the Larrabeiti Yáñez siblings, have disappeared and later reappeared, such that it only makes reparation for the harm stemming from the parents' disappearance, but not for the gross violations of which the siblings were the victims. He notes that Law No. 25,914, or the "law on children," was just passed in August 2004 when there had already been favorable judgments at trial and on appeal in the civil case. Petitioner notes that the siblings' main concern was to find out the truth of what happened and to determine their parents' fate, which cannot be done through laws on reparations. He argues that the abandonment of the administrative procedure under Law No. 24,411, which instituted scheduled and limited reparations, as well as the option to proceed

judicially, turned out to be clearly the right move and fully justified. Specifically, he alleges that through the civil action it was possible to locate key witnesses and learn a large part of what happened on September 26, 1976, many years before one could bring criminal actions. He also argues that the siblings were victims of other grave damages that go beyond the offenses contemplated in those laws. He also indicates that Law 24,411 and Law 25,914 offered doubts and misgivings stemming from the uniform treatment to be accorded very diverse situations, and that the ups and downs of the Argentine economy provoked brusque fluctuations in the real value of the reparations actually received. In addition, he argues that those laws in no way prohibit, impede, or limit the recognition of “fair compensation” as per Article 63 of the American Convention nor the integral or full reparations enshrined in the inter-American case-law.

11. The petitioner indicates that in 2012 they learned of two criminal cases under way with respect to two former inspectors of the Argentine Federal Police for the crimes of aggravated illegal deprivation of liberty to the detriment of Victoria Grisonas and for aggravated homicide to the detriment of Mario Julien. He indicates that in those cases the initial thesis that Mario Julien had committed suicide was discarded. He also indicates that the Larrabeiti Yáñez siblings filed a brief seeking to have the matter proceed to oral trial and they asked that evidence be collected aimed at locating their parents’ remains. He notes that on September 11, 2017, Federal Oral Court No. 1, in the context of Case No. 2,261, convicted Rolando Oscar Nerone and Oscar Roberto Gutiérrez and sentenced them to six years in prison as co-perpetrators of the crime of unlawful deprivation of liberty to the detriment of Victoria Grisonas, and absolved them of the crime of aggravated homicide to the detriment of Mario Julien.

12. He adds that on September 18, 2017, the Larrabeiti Yáñez siblings filed a motion for recusal against Federal Criminal and Correctional Judge Daniel Rafecas, in the context of Case No. 2,637/04, for malicious omission and denial of justice, on not having included in the charges for oral trial the crimes of which they were the direct victims. In addition, the petitioner indicates that Anatole had to become a private accuser (*querellante particular*) given the “total lack of interest, inaction, and passivity” of the Secretariat for Human Rights of the Ministry of Justice and Human Rights of the Nation. He argues that it was thanks exclusively to the action by Anatole that some substantial advances followed, such as locating the building that was the family home, which was appropriated by members of the military. The home, along with the car and all other property of the Julien-Grisonas family, was considered part of a major “war bounty,” causing harm to the family’s property rights.

13. Based on the facts described the petitioner alleges that the Argentine State violated the rights established at Articles 4, 5, 7, 8(1), 11, 17, 18, 19, 21, 22, 24, and 25 of the American Convention, in relation to its Articles 1(1) and 2, as well as those established at Articles I, V, VII, VIII, IX, XVIII, and XXIV of the American Declaration of the Rights and Duties of Man.

## **B. State**

14. The State argues that the transmittal of the petition by the Commission more than four years after it was filed runs to the detriment of legal certainty and juridical stability, and deprives the Argentine State of the ability to mount an adequate defense.

15. In addition, it notes that the petition filed in 1997 referring to the doubts sparked by the fourth preambular paragraph of Decree No. 1025/96 is excluded from this analysis, since it was abandoned by the petitioner on October 27, 1997. It understands that the facts that are the basis of the case “are those that occurred on September 26, 1976, related to the forced disappearance of the petitioners’ parents, their unlawful deprivation of liberty at a clandestine detention center when children, then their appropriation, transfer to Uruguay, and subsequent abandonment in Chile.”

16. As regards the criminal investigation into the facts, it notes that the Argentine State has given impetus, without interruption, to “public policies of Memory, Truth, and Justice ... in relation to the crimes against humanity perpetrated during the *de facto* military government of 1976 to 1983.” In particular, it indicates that there is a mega case with respect to the crimes committed at the “Automotores Orletti” clandestine detention center. It states that at least three oral and public trials have been held whose victims



were the Larrabeiti Yáñez siblings and their parents, in two of which there have already been guilty verdicts; the other case is fully under way.

17. In this respect, the State notes that in the phase of the investigation known colloquially as “Orletti I,” captioned “Guillamondegui, Néstor Horacio and one other re: aggravated deprivation of liberty, aggravated imposition of torments, and aggravated homicide,” on May 11, 2011 Federal Oral Court No. 1 convicted Eduardo Alfredo Ruffo, Raúl Antonio Guglielminetti, Honorio Carlos Martínez Ruiz, and Eduardo Rodolfo Cabanillas to sentences ranging from 20 years in prison to life in prison for the illegal deprivation of liberty of and imposition of torments on Victoria Grisonas. That judgment was upheld by the Supreme Court, so it is a firm judgment. The State indicates that while it was not part of the procedural subject matter of the case, that judgment mentioned that along with Victoria Grisonas, her son and daughter were illegally deprived of liberty, and that her husband was killed in that operation, and that since then and to this day he has been disappeared. It states in this regard that the case is fully under way in relation to the facts related to the kidnapping and unlawful deprivation of liberty of Victoria Grisonas and her son and daughter; several evidentiary steps are still pending, many of them requested in the private complaint filed by Anatole Larrabeiti Yáñez.

18. In addition, the State notes that on September 11, 2017 Rolando Oscar Nerone and Oscar Roberto Gutiérrez, who worked in the Department of Foreign Affairs of the Federal Superintendency of Security of the Argentine Federal Police, were convicted by Federal Oral Tribunal No. 1 in the case known as “Orletti III,” and sentenced to six years in prison for the kidnapping of Victoria Grisonas, and absolved in the homicide of Mario Julien. It also indicates that the case “Vallejo, Orestes et al. re/Aggravated illegal deprivation of liberty,” which is before Federal Court No. 3 of Investigation of Criminal and Correctional Matters, Secretariat No. 6, is in the investigative phase.

19. According to the State, the Secretariat for Human Rights and Cultural Pluralism is a complainant in most of the cases in which crimes against humanity are being investigated, including those referring to “Automotores Orletti.” It indicates that the Secretariat for Human Rights asked that Oscar Rolando Nerone and Oscar Roberto Gutiérrez be sentenced to life in prison as co-perpetrators for the kidnapping of Victoria Grisonas and the homicide of Mario Julien, characterizing them as crimes against humanity. It also notes that the victims have the right to bring a private accusation, as private accusers, which in no way can be understood as an obligation, as the exercise of this right is voluntary.

20. The State also indicates that in Criminal Case No. 1351 “Nicolaidis Cristino et al. re/kidnapping, holding, and concealing minors,” known colloquially as “Systematic Plan,” captioned “Franco, Rubén O. et al. re/kidnapping of children under 10 years of age,” on July 6, 2012 Federal Oral Tribunal No. 6 convicted Jorge Rafael Videla as perpetrator of the crimes of kidnapping, holding, and hiding children under 10 years of age, in the case of the Larrabeiti Yáñez siblings.

21. With respect to damages for the suffering inflicted on the Larrabeiti Yáñez siblings and their parents, the State indicates that the Supreme Court declared the action time-barred because no reasons were given for why the adoptive parents would have been temporarily impeded from filing the action at least as of 1986, the year in which the CONADEP report was published. It states that in that judgment the Supreme Court indicated that a favorable ruling on the objection according to which the limitations period had run does not mean one cannot secure reparation for the harm through the reparation laws, Law 24,411 and Law 25,914. The State mentions that the Supreme Court has upheld the criterion according to which the imprescriptibility of civil actions derived from crimes against humanity does not apply to cases in which the limitations period was running at the time the new Civil and Commercial Code came into force; it made that ruling on March 28, 2017, in a case not related to the case of the Larrabeiti Yáñez siblings.

22. As regards the alleged lack of adequate reparation, the State concludes that the laws on reparation are the adequate mechanisms for a satisfactory response to pecuniary claims. It notes that they recognized a special benefit for those persons who had not brought the respective actions for damages in the general limitations period, which is why the State responded in keeping with the principles of distributive justice to avoid a situation in which the victims would be deprived of any relief. The State reports that in the instant



case the administrative procedures established in Law 24,411 and Law 25,914 were instituted in the name of Mario Julien and Victoria Grisonas. Initially they were archived, given that there was a trial against the State; in response to filings by the representative of the Larrabeiti Yáñez siblings, in 2016 they were reactivated. In its last communication filed in 2018 the State indicates that if to date the siblings have not had access to these benefits, it is due to the existence of a claim against the Argentine State for the same facts. In response to the petitioner’s argument that Law No. 24,411 contemplates only those cases of forced disappearance followed by death, or that continue as disappearances, the State indicates that in the cases of illegal detentions the appropriate path for reparations is Law No. 24,043. It also notes that Law No. 25,914 provides an adequate response to those children who were born in captivity or who were deprived of their liberty along with their parents.

23. Therefore, based on the progress in the judicial cases mentioned, the State concludes that “it has not violated the right to an investigation for the crimes against humanity suffered by the Larrabeiti Yáñez siblings and their parents.” It also concludes that the reparation laws are an adequate response to the Larrabeiti Yáñez siblings’ claims, and are respectful of the criteria of objectivity, reasonableness, and effectiveness, thus, as the possibility exists that they will receive adequate reparation, the request for the IACHR to declare that the State has violated that right is out of order.

**III. ADMISSIBILITY**

**A. Competence and duplication of procedures and international *res judicata***

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Declaration of the Rights and Duties of Man (deposited instrument of ratification of the OAS Charter on April 10, 1956); American Convention on Human Rights (deposited instrument of ratification on September 5, 1984); Inter-American Convention on Forced Disappearance of Persons (deposited instrument February 28, 1996); and Inter-American Convention to Prevent and Punish Torture (deposited instrument March 31, 1989)
<b>Duplication of procedures and international <i>res judicata</i>:</b>	No

24. With respect to competence *ratione loci*, the Commission clarifies that while the facts alleged took place in the territory of three states in the context of Operation Condor, the petition before the IACHR was filed exclusively against the State of Argentina. Therefore, in the instant report the Commission will not get into an analysis of the possible international responsibility for the events that occurred in Uruguay and Chile, without prejudice to effectuating determinations of fact with regard to events in those countries in order to understand in their entirety the events suffered by the alleged victims and the complete scope of the international responsibility of the State of Argentina.

25. In relation to competence *ratione temporis* and *ratione materiae*, the Commission will analyze the facts of the instant case in light of the obligations established in the American Convention, the Inter-American Convention on Forced Disappearance of Persons (“IACFDP”), and the Inter-American Convention to Prevent and Punish Torture (“IACPPT”) with respect to those facts that occurred after their entry into force or that continued after the entry into force of those instruments for the State of Argentina. The Commission will analyze the facts consummated prior to the entry into force of the American Convention for the State in light of the obligations derived from the American Declaration. In this respect, the Commission recalls that the Inter-American Court explicitly recognized the binding nature of the American Declaration on indicating that “Articles 1(2)(b) and 20 of the Commission's Statute define the competence of that body with respect to the

human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization.”<sup>4</sup>

## **B. Exhaustion of domestic remedies and timeliness of the petition**

26. As regards the requirement of exhaustion of domestic remedies, the Commission has established that in cases such as the instant case, involving allegations of serious human rights violations, the domestic remedies that should be taken into account for purposes of admissibility are those related to the criminal investigation and possible punishment of the persons responsible, which should be promoted by the State at its own initiative. The Commission observes that according to the information produced, in the instant case three oral trials have been held. In two of them state agents have been convicted and given prison sentences for their participation in the illegal deprivation of liberty, kidnapping, and torment of Victoria Grisonas. Those judgments in turn absolved the agents in relation to the allegations regarding the homicide of Mario Julien. With respect to the facts relating to the Larrabeiti Yáñez siblings, according to the information available, the case continues. In addition, on July 6, 2012 Jorge Rafael Videla, was convicted as perpetrator of the crimes of kidnapping, holding, and concealing the cases of the Larrabeiti Yáñez siblings, among other children.

27. Therefore, while there are firm criminal convictions with respect to some of the facts alleged in the instant case, 42 years after these facts the truth has not been clarified and no one responsible has been convicted of the disappearance of Mario Julien, and the case in relation to the Larrabeiti Yáñez siblings continues. With respect to Victoria Grisonas, based on the information available it does not appear that her alleged forced disappearance has been fully clarified, including a judicial determination as to her fate and whereabouts. Based on that information the Commission concludes that the exception to the prior exhaustion rule provided for at Article 46(2)(c) applies in the instant case, noting that the causes and the effects that have impeded the exhaustion of domestic remedies in the instant case will be analyzed, as relevant, in the analysis on the merits that the Commission will set forth in this report.

28. As regards the requirement of timely filing, the petition before the IACHR was received on November 11, 2005, the events that are the subject matter of the claim date to 1976, some of the alleged facts have not ceased, and the alleged effects of the others, including the purported impunity in relation to most of them, extend to the present day. Therefore, in view of the context and characteristics of the instant case, and taking into account the continuity of the alleged forced disappearance, as well as the fact that one of the criminal cases continues, the Commission considers that the petition was filed within a reasonable time, and that the admissibility requirement related to the timeliness of the petition should be deemed satisfied.

29. With respect to the civil action for damages, the Commission has considered that in cases that involve allegations such as those in the instant case, it is not necessary to bring or exhaust a civil action before turning to the inter-American system. Nonetheless, as autonomous violations are alleged in the context of the civil action one should analyze whether domestic remedies have been exhausted in relation to those specific arguments. In this respect, the Commission observes that on October 30, 2007 the Supreme Court found the civil action brought by the Larrabeiti Yáñez siblings to be time-barred, such that as of this pronouncement on admissibility the requirements established at Article 46(1)(a) and (b) of the Convention have been met.

## **C. Colorable claim**

30. The Commission considers that if proven the facts alleged by the petitioner would tend to establish violations of the rights established at Articles I, V, VI, VII, VIII, XVII, XIX, and XXV of the American Declaration; Articles 3, 4(1), 5(1), 5(2), 7(1), 8(1), and 25(1) of the American Convention, in relation to its Articles 1(1) and 2; Articles I(a) and (b) and III of the Inter-American Convention on Forced Disappearance of Persons; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mario Julien, Victoria Lucía Grisonas, and Anatole and Victoria Larrabeiti Yáñez.

<sup>4</sup> I/A Court HR, Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89, July 14, 1989. Series A No. 10, para. 45.

31. With respect to the alleged violation of Article 24 of the American Convention, from the arguments of the petitioner and the documentation available there is not sufficient information to conclude that the facts in the instant case tend to establish a violation of the right to equality before the law. As regards the alleged violation of Article 21 of the American Convention, the IACHR does not have sufficient information to enable it to make detailed determinations on the possible violation of that article, without prejudice to the need to take this issue into account in the recommendations made in this report, particularly as regards fair compensation.

#### **IV. FINDINGS OF FACT**

##### **A. Context**

##### **1. On the serious human rights violations committed during the Argentine dictatorship**

32. On March 24, 1976 the Argentine Armed Forces carried out a coup d'état that overthrew the constitutional government of María Estela Martínez de Perón, who had assumed the presidency after the death of President Juan Domingo Perón on July 1, 1974. As a result, a civic-military dictatorship was established that lasted more than seven years, characterized by serious and systematic human rights violations.

33. After receiving several complaints of serious human rights violations in Argentina before and after the coup d'état, the IACHR decided to make an onsite visit to the country, which took place from September 6 to 20, 1979. During that visit the Commission met with the highest-level public authorities, former presidents of the republic, representatives of different religious creeds, human rights organizations and relatives of persons disappeared, representatives of political organizations, professional associations, and trade unions, among others. In addition, it received 4,153 individual petitions denouncing human rights violations. The Commission visited the city of Buenos Aires and other localities, including Córdoba, Tucumán, La Plata, Trelew, and Resistencia. It also visited six prisons, two military detention centers, the Superintendency of Federal Security or Federal Coordination, Police Station No. 9 of Buenos Aires, and the Navy's engineering school Escuela de Mecánica de la Armada.

34. After that visit the IACHR found the existence of serious human rights violations, such as the systematic use of torture, the forced disappearance of thousands of persons, and the existence of clandestine graves in cemeteries. It also verified the existence of a large number of persons who were detained for indefinite times, without precise charges, without process, and without an effective defense. In its report published in April 1980 the IACHR concluded that from 1975 to 1979, "numerous serious" violations of the fundamental rights and freedoms recognized in the American Declaration were committed in Argentina.<sup>5</sup> This visit took on great importance and represented a key moment for the family members of the disappeared and other victims, for it was the first time that an international organization verified *in situ* the existence of gross and systematic human rights violations and gave visibility to the situation internationally.

35. After the return of democracy on December 10, 1983, President Raúl Alfonsín created the National Commission on the Disappearance of Persons (CONADEP: Comisión Nacional sobre la Desaparición de Personas), an initiative that was recognized by the IACHR<sup>6</sup>, whose objective was to investigate the crimes committed during the dictatorship. The CONADEP prepared 7,380 files of complaints, and in September 1984 published its historic report, called "Nunca Más" ("Never Again").<sup>7</sup> That report identified the existence of approximately 340 clandestine detention centers in Argentina and 8,960 persons disappeared, a figure that the report did not consider definitive since many cases had not been reported. At present the human rights

<sup>5</sup> IACHR. Report on the Situation of Human Rights in Argentina. OEA/Ser.L/V/II.49. April 11, 1980. Conclusions and Recommendations.

<sup>6</sup> IACHR. Report No. 28/92. Cases 10,147, 10,181, 10,240, 10,262, 10,309, and 10,311. Argentina. October 2, 1992, para. 42.

<sup>7</sup> Informe de la Comisión Nacional sobre la Desaparición de Personas. Nunca Más. Editorial Eudeba. September 1984. Available at: <http://www.desaparecidos.org/arg/conadep/nuncamas/>

organizations calculate that 30,000 persons were disappeared.<sup>8</sup> In addition, the Secretariat for Human Rights of the Nation subsequently identified 762 places “used by the repressive forces of the State systematically or occasionally for clandestinely or illegally keeping persons deprived of liberty for political reasons since late 1974, and especially as of the application of the systematic plan of extermination carried out by the last civic-military dictatorship throughout the national territory.”<sup>9</sup>

36. In addition, several judicial resolutions issued by Argentine courts have accredited that “from 1976 to 1983 the *de facto* government imposed a systematic illegal plan of repression” that made it possible for members of the Armed Forces and security forces “to kidnap, torture, assassinate, create clandestine centers of detention and torture, with a veil of impunity and under the direction of those who controlled – by usurpation of power – all the State’s mechanisms of control.”<sup>10</sup>

## 2. On the coordination of repression by Argentina and Uruguay in the context of Operation Condor

37. The facts that are the subject matter of the instant case unfolded in the context of what was called “Operation Condor.” In the Case of Goiburú et al. v. Paraguay and subsequently in the Case of Gelman v. Uruguay, the Inter-American Court of Human Rights recognized their existence in the following terms<sup>11</sup>:

Most of the Southern Cone’s dictatorial governments assumed power or were in power during the 1970s<sup>12</sup>, and this permitted the repression of the so-called “subversive elements” at the inter-State level. The ideological basis of all these regimes was the “national security doctrine,” which regarded leftist movements and other groups as “common enemies,” whatever their nationality. Thousands of citizens of the Southern Cone sought to escape repression in their country of origin, taking refuge in bordering countries. The dictatorships therefore created a common “defense” strategy.

This was the context of the so-called “Operation Condor,” a code name given to the alliance of the security forces and intelligence services of the Southern Cone dictatorships in their repression of and fight against individuals designated “subversive elements.” The activities deployed as part of this Operation were coordinated basically by the military personnel of the countries involved. The Operation systematized and improved clandestine coordination between the “security forces and military personnel and intelligence services” of the region.... The system of codes and communications had to be efficient for “Operation Condor” to function, and so that the lists of “most wanted subversives” could be managed easily by the different States

... In other words, the grave acts took place in the context of the flagrant, massive and systematic repression to which the population was subjected on an inter-State scale, because State security agencies were let loose against the people at a transborder level in a coordinated manner by the dictatorial Governments concerned.

The Court observes that, during the 1970s, in absolute contradiction to the principal objects and purposes of the organization of the international community established universally in the Charter of the United Nations<sup>13</sup> and the regional community in the Charter of the Organization of American

<sup>8</sup> Ministry of Culture. Presidency of the Argentine Nation. “El Nunca Más y los crímenes de la dictadura.” Edición Cultura Argentina, p. 12. Available at: [https://librosycasas.cultura.gob.ar/wp-content/uploads/2015/11/LC\\_NuncaMas\\_Digital1.pdf](https://librosycasas.cultura.gob.ar/wp-content/uploads/2015/11/LC_NuncaMas_Digital1.pdf)

<sup>9</sup> Ministry of Justice and Human Rights. Secretariat for Human Rights and Cultural Pluralism of the Nation. Informe de Investigación sobre Víctimas de Desaparición Forzada y Asesinato, por el accionar represivo del Estado y centros clandestinos de detención y otros lugares de reclusión clandestina. Annex V. List of clandestine detention centers and other places used for illegal imprisonment by State terrorism in Argentina from 1974 to 1983. P. 1574.

<sup>10</sup> Annex XX. Judgment handed down May 19, 2011, in Case No. 2637/04 captioned “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, p. 2. Annex to the petitioner’s brief of August 3, 2012.

<sup>11</sup> I/A Court HR. Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, paras. 61.5 to 61.8; and I/A Court HR. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 44.

<sup>12</sup> Uruguay, 1973; Chile, 1973; Argentina, 1976; Brazil, 1964; Bolivia, 1971; Paraguay, 1954; and Peru, 1968 and 1975.

<sup>13</sup> “We the peoples of the United Nations determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ... to establish conditions under which justice and respect ... can be maintained.” (Preamble)

States<sup>14</sup> and the American Convention itself, the intelligence services of several countries of the Southern Cone of the Americas established a criminal inter-State organization with a complex assemblage, the scope of which is still being revealed today; in other words, there was a systematic practice of “State terrorism” at an inter-State level.

This operation also benefited from the general situation of impunity of the grave human rights violations that existed at the time, promoted and tolerated by the absence of judicial guarantees and the ineffectiveness of the judicial institutions to deal with or contain the systematic human rights violations. This is closely related to the obligation to investigate the cases of extrajudicial executions, forced disappearances and other grave human rights violations.<sup>15</sup>

38. While “Operation Condor” was formally concretized in November 1975 in Santiago, Chile, the coordination of repression began to be evidenced in Argentina in late 1973, and stepped up as of February 1974 after a meeting in Buenos Aires between Commissioner Alberto Villar of the Immigration Division of the Argentine Federal Police, and the Commissioner of Intelligence of the Uruguayan Police, Hugo Campos Hermida. The coordination of repressive activities found expression in arrests, kidnappings, and assassinations of leftist activists by members of military and paramilitary forces.<sup>16</sup>

39. Most of the victims of the coordinated repression of the dictatorships of the Southern Cone, and in particular of “Operation Condor,” were of Uruguayan nationality. Of the 496 cases recorded to date of coordinated repression in the Southern Cone countries from 1970 to 1981 in the context of “Operation Condor” or in operations that followed the same *modus operandi*, the majority (247) were nationals of Uruguay, accounting for 50% of the total.<sup>17</sup> In addition, of the 109 victims of “Operation Condor” whose cases were prosecuted in Argentina, the largest share (44%) were of Uruguayan nationality, followed by Chileans (20%), Argentines (15%), Paraguayans (12%), Bolivians (8%), and Peruvians (1%).<sup>18</sup>

40. As of the coup d’états in Chile and Uruguay in 1973, many people went to Argentina due to the military repression in those countries. As of the coup d’état in Argentina in 1976, the number of disappearances and extrajudicial executions of exiles and refugees in Argentina increased significantly. From July to October 1976 joint operations were carried out by Argentine and Uruguayan military units in which more than 60 persons of Uruguayan nationality were kidnapped in Buenos Aires, most of them activists of the organization Partido por la Victoria del Pueblo (“PVP”).<sup>19</sup> According to the “Historical Investigation into Persons Detained and Disappeared” published by the Secretariat for Human Rights for the Recent Past of Uruguay<sup>20</sup>:

On March 28, 1976, a motor home was inspected at the Port of Colonia which in its subfloor was transporting propaganda of the P.V.P. Its crew, two men and one woman, were detained by the Office of the Mayor of Colonia and transferred to the FUSNA barracks in Montevideo [and then] to the “300 Carlos” Clandestine Detention Center..., where the OCOA operated [remaining] disappeared for almost seven months.... The consequences of these detentions were major for the P.V.P., which from March to October of the same year was harshly repressed.... The joint intelligence work in Argentina made

<sup>14</sup> “The American States establish by this Charter the international organization that they have developed to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence.” (Article 1)

<sup>15</sup> I/A Court HR. Case of Goiburú et al v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, paras. 61.5, 61.6, 62, 72, and 73.

<sup>16</sup> I/A Court HR. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, paras. 46-50; and Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned “Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide,” Oral Tribunal for Federal Criminal Matters No. 1, p. 566. Annex to the petitioner’s brief of August 3, 2012.

<sup>17</sup> Francesca Lessa, “Operation Condor, Accountability for Transnational Crimes in South America.” Available at: <https://sites.google.com/view/operationcondorjustice/data?authuser=2>

<sup>18</sup> Report of the Office of the Prosecutor for Crimes against Humanity, La Judicialización de la Operación Cóndor. Buenos Aires, November 2015, p. 6. Available at: <https://www.fiscales.gob.ar/wp-content/uploads/2015/11/Informe-ProcuLesa-Op-C%C3%B3ndor-Final.pdf>

<sup>19</sup> I/A Court HR. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 56.

<sup>20</sup> Secretariat for Human Rights for the Recent Past. Persons detained/disappeared due to responsibility and/or acquiescence of the State. File related to JULIEN CACERES, Mario Roger. Available at: <https://www.gub.uy/secretaria-derechos-humanos-pasado-reciente/sites/secretaria-derechos-humanos-pasado-reciente/files/documentos/publicaciones/JULI%C3%89N%20C%C3%81CERES%2C%20Mario%20Roger%20ficha%20accesible.pdf>



possible the arrest, from June 9 to July 15, 1976, of 26 P.V.P. activists ... From August 26, 1976 to October 4, 1976, another 29 adults (24 of them disappeared to this day) and eight children were kidnapped in Argentina.

### 3. On the “Automotores Orletti” clandestine detention center

41. The clandestine detention and torture center known as “Automotores Orletti” (“Orletti”) was one of the centers used in the context of “Operation Condor.” It was situated in the Flores neighborhood of the city of Buenos Aires and operated from May to November 1979, when it was closed due to the escape of two persons who were detained there. “Orletti” depended operationally on the Secretariat for State Intelligence (“SIDE”) and had a vertical structure with “a ‘Boss’ [‘Jefe’] of the Argentine personnel in the person of Aníbal Gordon.”<sup>21</sup>

42. It was corroborated that the “Argentine Anticomunist Alliance” (“Alianza Anticomunista Argentina”), also known as the “Triple A,” was present at “Orletti.” That organization was established prior to the coup d’état, in 1974, by José López Rega, then the Minister of Social Wellbeing in the government of President María Estela Martínez de Perón. The “Triple A” was “the expression of terror established in those years and the years to come in the context of kidnappings, assassinations, attacks on political dissidents; having had armed personnel from different walks of life, including police agents, military agents, and non-public servants officers and staff of the intelligence services.”<sup>22</sup> The membership of Aníbal Gordon in that organization was a matter of public knowledge.<sup>23</sup>

43. In addition to the Argentine personnel under the SIDE, also active at “Orletti” were agents of Uruguayan nationality who belonged to the Defense Information Services (SID: Servicio de Información de Defensa), under the Ministry of Defense of Uruguay or under the Coordinating Body for Antisubversive Operations (OCA: Organismo Coordinador de Operaciones Antisubversivas). The joint action of Argentine and Uruguayan personnel at this center has been invoked repeatedly by the surviving witnesses. According to the testimony of several witnesses, Lt. Col. José Nino Gavazzo, a member of the SID and the OCA, Col. Manuel Cordero, and Commissioner Campos Hermida were seen at “Orletti.” One of the particularities of “Orletti” was also the number of foreign persons detained, especially Uruguayans.<sup>24</sup> Most of them were active in Uruguayan politics, in particular the PVP. This party was formed in Argentina in July 1975 by Uruguayan activists from the Federación Anarquista Uruguaya (FAU), which subsequently formed the organizations Resistencia Obrero Estudiantil (ROE) and Organización Popular Revolucionaria 33 Orientales (OPR 33). Therefore, “Orletti” operated as a principal base of the SIDE and Uruguayan intelligence agents operating in Argentina in the context of the massive coordination of “Operation Condor.”<sup>25</sup>

44. Regarding the conditions of detention at “Orletti” the Argentine courts have established that “victims were generally subjected to various situations of captivity or subhuman living conditions.” The accounts of several victims have coincided in noting the routine of torture that each person detained had to undergo. By turns, and almost always at night, they were taken to the upper part of the center to be interrogated. There they were handcuffed with their hands behind them, hung from a “hook” until their feet were 20 cm to 30 cm from the floor, and a sort of belt was placed on their waists that produced an electric shock throughout the body. Water and coarse salt were placed on the floor, and when the victim could resist no more their feet would reach the floor and the electricity was conducted upwards. Meanwhile, buckets of cold water were

<sup>21</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, pp. 3 and 23-25. Annex to the petitioner’s brief of August 3, 2012.

<sup>22</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, pp. 32 and 33. Annex to the petitioner’s brief of August 3, 2012.

<sup>23</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, p. 33. Annex to the petitioner’s brief of August 3, 2012.

<sup>24</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, pp. 32-38. Annex to the petitioner’s brief of August 3, 2012.

<sup>25</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, pp. 34-39. Annex to the petitioner’s brief of August 3, 2012.



thrown on them so that the sensation of the electric shock would become intensified in the extreme.<sup>26</sup> Most of the Uruguayans detained at “Orletti” were transferred to Uruguay. The first transfer occurred in June 1976 in a military aircraft, and involved 26 persons. A second flight took 22 persons; other transfers followed in smaller groups.<sup>27</sup>

#### 4. On the kidnapping and appropriation of children in the context of “Operation Condor”

45. The clandestine repressive operations carried out in the context of “Operation Condor” often included the kidnapping and appropriation of children after their parents were disappeared or executed. With respect to the practice carried out in Argentina during the dictatorship, the Inter-American Court of Human Rights established the following<sup>28</sup>:

Argentine jurisprudence has signaled in a number of orders that, “in the self-denominated period of National Reorganization, minors [of age] were abducted from the custody of their parents[, and this practice constituted] a public and evident act.” The pregnant women detained in this context of counterinsurgency were left alive until they had given birth, to then abduct their children, while, in many cases, the children were handed over to families of military and police officers, after their parents were disappeared or executed.

Generally, the [policy] of “abduction of minors” took place in the following stages: (a) the children were abducted “from their parents when they could be suspected of having ties to subversive or dissident politicians of the *de facto* regime, pursuant to the intelligence reports, or were abducted during the clandestine detention of their mother;” (b) later they were taken to “places situated within the grounds of the armed force, or under their control;” (c) the “abducted minors ... were given to members of the armed or security forces, or to third parties, with the intention that they remain hidden from their legitimate guardians;” (d) “in the framework of the ordered abductions, and with the intention of hindering the reestablishment of the family bond, the civil status of the children was suppressed, registering them as children of those who had them or were hiding them;” and (e) “false information was stated in the documents and birth certificates of the minors [of age] to accredit their identities.”

As of the results achieved by the illegal kidnapping and abductions, these could correspond (a) to a form of trafficking for the irregular adoption of children, (b) to a form of punishment for their parents or grandparents due to an ideology that opposed the authoritarian regime or, (c) a deeper, ideological motivation, in relation to a willingness to forcefully transfer the children of members of opposition groups, in that way [keeping] the families of the disappeared persons [from] develop[ing] “potentially subversive elements.”

#### B. Relevant legal framework

46. Law 23,492, called the “Full Stop” (“Punto Final”) Law, promulgated on December 24, 1986, established as follows at the pertinent parts:

Article 1. [The time period for bringing] Criminal action with regard to any person for their alleged involvement in any capacity in the offences referred to in Art. 10 of Law 23,049, who is not a fugitive, has not been declared to have absconded and who has not been summoned to make a statement in answer to charges by a competent court, shall expire within sixty days from the date of enactment of this law.

<sup>26</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, p. 38. Annex to the petitioner’s brief of August 3, 2012.

<sup>27</sup> I/A Court HR. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 57; Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, pp. 43-45. Annex to the petitioner’s brief of August 3, 2012; and Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned “Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide,” Oral Tribunal for Federal Criminal Matters No. 1, p. 570. Annex to the petitioner’s brief of August 3, 2012.

<sup>28</sup> I/A Court HR. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, paras. 61-63.

The same conditions apply to criminal action brought against any person who may have committed offences connected with the use of violent forms of political action prior to 10 December 1983.

...

Article 5. This law does not extinguish the criminal actions in the cases of the crimes of falsification of civil status and of kidnapping and hiding of minors.

Article 6. The extinction provided for in Article 1 does not include civil actions.

47. Law 23,521, called "Due Obedience," promulgated on June 8, 1987, established as follows at the relevant parts:

Article 1. Unless evidence has been admitted to the contrary, it is presumed that those who at the time the act was committed held the position of commanding officers, subordinate officers, noncommissioned officers and members of the rank and file of the Armed Forces, security forces, police force and prison force are not punishable for the offences referred to in article 10 point 1 of law number 23,049 on the grounds that they were acting by virtue of due obedience.

The same presumption shall apply to superior officers who did not hold the position of commander-in-chief, area head, sub-area head or head of a security, police or prison force unless it has been legally determined within 30 days of the enactment of this law that they had decision-making powers or were involved in the drawing up of orders.

In such cases the persons mentioned shall automatically be deemed to have acted in a state of coercion under the subordination of the superior authority and in compliance with orders, without the power or possibility of inspecting, opposing or resisting them in so far as their timeliness or legitimacy were concerned.

Article 2. The presumption established in the previous article shall not apply with respect to the crimes of rape, kidnapping, and hiding minors or falsification of their civil status and extensive appropriation of real property.

48. Law 25,779 promulgated on September 2, 2003 established:

ARTICLE 1. Laws 23,492 and 23,521 are hereby declared incurably null.

49. The Commission observes that the parties make reference to the application and scope of the so-called "reparations laws" as well as domestic procedural provisions. In this regard, the Commission observes that in the wake of the first friendly settlement of the inter-American system – regarding a complaint against Argentina filed by a group of persons detained and placed at the disposal of the Executive branch during the dictatorship, and who had not received reparations because the limitations period for the civil action had run<sup>29</sup>– Decree No. 70/91 was issued, providing for compensation for those persons covered by it. Law 24,043, approved in December 1991, expanded the spectrum of beneficiaries upon including those who had been placed at the disposal of the Executive as of December 10, 1983, and those who had suffered detention by virtue of orders emanating from military tribunals. Law 24,043, promulgated on December 23, 1991, indicates:

ARTICLE 1. Those persons who during the state of siege were placed at the orders of the National Executive Branch, by its decision, or who, being civilians, suffered detention because of orders of military tribunals, have or have not instituted a proceeding for damages, may avail themselves of the benefits of this law, so long as they have not received any compensation pursuant to a court judgment based on the facts contemplated herein.

ARTICLE 2. To avail oneself of the benefits of this law, the persons mentioned in the previous article shall meet at least one of the following requirements:

---

<sup>29</sup> IACHR. Report No. 1/93. Report on friendly settlement with respect to cases 10,288, 10,310, 10,436, 10,496, 10,631, and 10,771. Argentina. March 3, 1993.

- (a) To have been placed under the orders of the National Executive Branch before December 10, 1983.
- (b) As civilians, having been deprived of liberty due to orders emanating from military tribunals, independent of whether there was a guilty verdict in that jurisdiction.

...

ARTICLE 5. The rights granted by this law may be exercised by the persons mentioned in Article 1 or, if they are deceased, by their successors.

...

ARTICLE 9. The payment of the benefit entails the waiver of any right to compensation for damages because of the deprivation of liberty, arrest, being placed at the orders of the Executive Branch, death, or injuries and it will exclude any other benefit or compensation for the same events.

50. This law, in turn, fits within the State's policy of making reparation for the victims of state terrorism under the last civic-military dictatorship. In this connection, the State has approved various laws that provide for compensation for several groups of beneficiaries, laws whose relevant parts are transcribed next.

51. Law 24,321, promulgated May 11, 1994, establishes:

ARTICLE 1. Absence due to forced disappearance may be declared in respect of any person who as of December 10, 1983, had disappeared involuntarily from the place of their domicile or residence, without any news of his or her whereabouts.

ARTICLE 2. For the purposes of this law, forced disappearance of persons is said to occur when a person is deprived of his or her personal liberty and the act is followed by the disappearance of the victim, or if he or she had been kept in clandestine places of detention, or deprived, in any other way, of the right to access justice. It must be justified by complaint already lodged with a competent judicial authority, the former National Commission on the Disappearance of Persons (Decree 158/83), or the Office of the Undersecretary for Human and Social Rights of the Ministry of Interior or the former National Directorate for Human Rights.

52. Law 24,411, promulgated on December 28, 1994, amended by Law 24,823 promulgated on May 23, 1997, indicates:

ARTICLE 1. Persons who at the time of the promulgation of this law are in a situation of forced disappearance shall have the right to receive, through their successors, an extraordinary benefit equivalent to the monthly remuneration of Level A agents in the salary schedule for the civilian personnel in the federal public administration approved by Decree 993/91, by the coefficient of 100.

For the purposes of this law, forced disappearance of persons is said to occur when a person is deprived of his or her personal liberty and the act is followed by the disappearance of the victim, or if he or she had been kept in clandestine places of detention, or deprived, in any other way, of the right to access justice.

ARTICLE 2. The successors of any person who died as a result of the action of the armed forces, security forces, or any paramilitary group prior to December 10, 1983, shall have the right to receive the benefit established in Article 1.

...

ARTICLE 5. In the event of the appearance of the persons mentioned in Article 1, this circumstance should be communicated to the competent judge, but there will not be an obligation to refund the benefit if it had already been obtained.

...

ARTICLE 7. The request for the benefit shall be made, lest it lapse, within one hundred eighty (180) days of the entry into force of this law.

53. Law 25,914, promulgated August 25, 2004, indicates:

ARTICLE 1. The persons who were born during the deprivation of liberty of their mother or who, being minors, were in any circumstance detained in relation to their parents, so long as the latter were detained and/or detained-disappeared for political reasons, either upon orders of the National Executive Branch and/or military tribunals and/or military areas, independent of their judicial situation, may avail themselves of the benefits instituted in this law.

Those persons who due to any of the circumstances established herein have been victims of change in identity shall receive the reparations determined by this law.

This benefit is incompatible with any compensation received by court judgment based on the facts contemplated herein.

ARTICLE 2. To avail oneself of the benefits of this law, the persons mentioned in the foregoing article must show, before the implementing authority, that they meet the following requirements:

(a) For those born during the detention and/or captivity of their mother, certification of the date of birth, prior to December 10, 1983, and accreditation, by any means of proof, that their mother was detained and/or disappeared for political reasons at the orders of the National Executive Branch and/or military tribunals and/or military areas, independent of her judicial situation;

(b) In the case of minors born outside of prisons and/or establishments for captivity, showing by any means of proof that they were there, and the conditions required in Article 1 of this law in respect to either of their parents;

(c) Court judgment rectifying the identity in the cases indicated in the second paragraph of Article 1. Exempted from having to attach that judgment are those who, being in this situation, have been adopted fully and in good faith; they must prove by any means the forced disappearance of their parents.

...

ARTICLE 5. The payment of the benefit entails the waiver of any right to compensation for damages based on the grounds provided for in this law, and is exclusive of any other benefit or compensation for the same events.

54. Law 26,679, promulgated on May 5, 2011, establishes:

ARTICLE 1. The following text shall be incorporated as Article 142 *ter* of the Criminal Code:

Article 142 *ter*: A prison sentence of TEN (10) to TWENTY-FIVE (25) years and absolute and perpetual disqualification from holding any public office and from private security tasks, on the public servant or the person or member of a group of persons who, acting with the authorization, support, or acquiescence of the State, in any way deprives of liberty one or more persons, when this action is followed by the lack of information or the refusal to recognize said deprivation of liberty or to report the person's whereabouts.

The sentence shall be life in prison if the victim dies or if the victim is a pregnant woman, a person under EIGHTEEN (18) years of age, a person over SEVENTY (70) years of age, or a person born during the forced disappearance of his or her mother.

The penalties provided for in this article may be reduced by one-third of the maximum and by one-half of the minimum with respect to those perpetrators or participants who release the victim alive or who provide information that makes possible the victim's effective appearance alive.

55. Article 280 of the Federal Code of Civil and Commercial Procedure, which regulates the extraordinary appeal (*recurso extraordinario*) before the Supreme Court of Justice of the Nation establishes:

When the Supreme Court takes cognizance of an extraordinary appeal, the Court, at its own reasoned discretion and merely by invoking this provision, may deny the motion for leave to appeal, due to lack of sufficient grounds for federal appeal or when the issues raised prove to be insubstantial or lacking consequence.

56. On August 1, 2015, the Federal Civil and Commercial Code entered into force; its Article 2561, last paragraph, establishes: "Civil actions stemming from crimes against humanity are imprescriptible." In addition, Article 2537, first paragraph, of that Code establishes: "The limitations periods running at the moment of the entry into force of a new law are governed by the previous law."

### C. On the Julien-Grissonas family

57. According to the information available, Mario Roger Julien Cáceres was born in Montevideo, Uruguay, on April 29, 1943, where he worked as a potter and graphic worker. He was also a student at the Escuela de Bellas Artes and a member of the Sindicato de Artes Gráficas (Graphic Arts Union). Due to his political activism in the FAU and the OPR 33, in August 1970 he was tried for "subversive activities" and incarcerated at the Puntas Carretas Prison in Montevideo, from which he escaped in September 1971 in the context of a massive escape of activists. In 1973 he obtained refugee status from the United Nations High Commissioner

for Refugees (UNHCR) in the Argentine Republic, on political grounds.<sup>30</sup> He worked in Buenos Aires as a dental technician.<sup>31</sup> Mario Julien lost his life in the context of a military operation on September 26, 1976; to date his remains have been disappeared.<sup>32</sup>

58. Victoria Lucía Grisonas Andrijauskaite was born in Buenos Aires, Argentina, on April 16, 1945 and subsequently obtained Uruguayan citizenship by naturalization. She was the daughter of Anatolio Grisonas, *chargés d'affaires* of the Legation of Lithuania in Uruguay, and Lucía Andrijauskaite. Victoria Grisonas married Mario Julien in Uruguay. On August 1, 1970 she was detained along with her husband for “subversive activities” and in the context of the Prompt Security Measures she was held at the “Dr. Carlos Nery” School of Nurses. In 1974 Victoria Grisonas reunited with her husband in the city of Buenos Aires. She was detained in the context of the military operation carried out on September 26, 1976, and taken to “Orletti”; to this day she has been disappeared.<sup>33</sup>

59. Anatole Boris Julien Grisonas, the son of Mario Julien and Victoria Grisonas, was born in Montevideo on September 25, 1972. In 1974 he emigrated with his mother to the city of Buenos Aires. Victoria Eva Julien Grisonas, the second child of Mr. Julien and Ms. Grisonas, was born in Buenos Aires on May 7, 1975. Both siblings were detained along with their mother in the operation of September 26, 1976, taken to “Orletti,” and then transferred clandestinely to Uruguay and subsequently to Chile, where they were abandoned in the Plaza O’Higgins of Valparaíso on December 22, 1976. After spending time in an orphanage they were adopted in 1979 by a Chilean couple, Jesús Larrabeiti and Silvia Yáñez; they were registered as Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez. That same year the biological paternal grandmother determined the whereabouts of the siblings who, while they remained with their adoptive family, reassumed their identity and their ties with their biological family.<sup>34</sup> Anatole and Victoria currently live in Chile, where they exercise the profession of prosecutor and psychologist, respectively.<sup>35</sup>

#### **D. Facts of the case**

##### **1. On the operation carried out on September 26, 1976**

60. On Sunday, September 26, 1976 a police and military operation was carried out at the home of the Julien-Grisonas family, located at calle Mitre 1050 corner with calle Carlos Gardel in the locality of San Martín, province of Buenos Aires. The operation began in the early afternoon and continued until dusk. It is considered shown that the SIDE and the Federal Police were in charge of the operation, and also that Army personnel participated. The deployment of the repressive apparatus included a large number of heavily armed forces, most in uniform, a large number of vehicles, and two armed personnel carriers that cut off the traffic at both ends of the block. The area was literally taken by military and police forces, who are said to have cut the electricity and the phone lines on that square block.<sup>36</sup> According to an administrative proceeding initiated the day after the operation due to a wound suffered by police inspector Rolando Oscar Nerone, the

<sup>30</sup> Annex XX. File No. 2,951 (Julien Cáceres, Mario Roger) of the final report by CONADEP, p. 5. Annex 10 of the initial petition of November 11, 2005.

<sup>31</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, p. 86. Annex to the petitioner’s brief of August 3, 2012.

<sup>32</sup> Secretariat for Human Rights for the Recent Past. Persons detained/disappeared due to responsibility and/or acquiescence of the State. File related to JULIEN CACERES, Mario Roger. Available at: <https://www.gub.uy/secretaria-derechos-humanos-pasado-reciente/sites/secretaria-derechos-humanos-pasado-reciente/files/documentos/publicaciones/JULI%C3%89N%20C%C3%81CERES%2C%20Mario%20Roger%20ficha%20accesible.pdf>;

Annex XX. Brief by Anatole Alejandro Larrabeiti Yáñez filed November 19, 2012 in the context of Case No. 2,637/04 captioned “Vaello, Orestes et al. on aggravated illegal deprivation of liberty and aggravated homicide,” pp. 1-2. Annex to petitioner’s brief of November 21, 2012.

<sup>33</sup> Secretariat for Human Rights for the Recent Past. Persons detained/disappeared due to responsibility and/or acquiescence of the State. File relating to GRISONAS ANDRIJAUSKAITE de JULIEN, Victoria Lucía. Available at: <file:///C:/Users/abanfi/Downloads/GRISONAS%20ANDRIJAUSKAITE,%20Victoria%20Lucia%20accesible.pdf>

<sup>34</sup> Annex XX. Brief by Anatole Alejandro Larrabeiti Yáñez filed November 19, 2012 in the context of Case No. 2,637/04 captioned “Vaello, Orestes et al. on aggravated illegal deprivation of liberty and aggravated homicide,” pp. 2-3.

<sup>35</sup> Petitioner’s brief of July 19, 2011, p. 2.

<sup>36</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal Matters No. 3, Secretariat No. 6, pp. 74-75 and 89. Annex to the petitioner’s brief of August 3, 2012.



objective of the operation was “the destruction of the military sector of the subversive organization O.P.R.33 (ORGANIZACIÓN POPULAR REVOLUCIONARIA 33 ORIENTALES).”<sup>37</sup>

61. Due to the intense and continuing number of shots fired at the home, Mario Julien apparently decided to escape through the rear of the adjoining lots; he was then detained at a house situated at the same corner. One of the neighbors stated that Julien “left the house detained by [the] soldiers, who took him to the corner where the bar is, and there he fell to the ground, though I could not say for sure he was already dead at that moment. His body fell into the street.”<sup>38</sup> One of the hypotheses initially mentioned was that Julien had committed suicide at the moment he was detained by ingesting a cyanide pill. The same witness also recounted that “immediately after the man fell down dead ... they removed the woman and their two children from the fourth house, one could see that she too had exited through the rear. What they did to her was terrible, they took the children from her, they took them away, they beat her badly, I remember that the soldiers grabbed her by the arms and legs, lifted her up, and threw her to the ground; it was terrible what they did to that woman.”<sup>39</sup> He indicated that the children were taken to a YPF gas station that was at a corner and sat them on the counter.<sup>40</sup> Another resident declared that he saw when some soldiers who were coming from the house of the Julien-Grisonas family were bringing the children, who were crying, and that a neighbor told him that when the children were shouting for their mother the soldiers told them “*la yegua de tu madre ya no está más*” (“your stupid mother is no more”).<sup>41</sup> Anatole recalls “walking with someone, taken by the hand, who [was] also taking his sister, in their arms, and when he looked back he observed his parents laid out face down on the ground, hands apart, while persons pointed weapons at them, one of them near his mother, with uniform, helmet, and machine gun.”<sup>42</sup>

## 2. On the detention at “Automotores Orletti” and the transfers to Uruguay and Chile

62. It has been shown that Victoria Grisonas and her son and daughter were subsequently transferred to “Orletti,” where they were seen by several witnesses, who also indicated they saw the children with María Claudia García pregnant with Macarena Gelman<sup>43</sup>, they being victims in the Case of Gelman v. Uruguay, decided by the Inter-American Court. It has also been shown that Victoria Grisonas was subjected to torture.<sup>44</sup> According to the witnesses, Victoria Grisonas was taken up to the second floor of “Orletti” and was not seen again. According to one detainee who spoke with Anatole at “Orletti,” Anatole mentioned to him that “there were several persons, among which he mentioned his mother – saying that she had been dragged by the hair and he made a gesture indicating that – his sister, and approximately 15 other persons” and friends of his parents.<sup>45</sup>

63. In October 1976, the siblings were transferred to Montevideo, Uruguay, and taken to the headquarters of the Defense Information Service (SID: Servicio de Información de Defensa), situated at

<sup>37</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal Matters No. 3, Secretariat No. 6, p. 105. Annex to the petitioner’s brief of August 3, 2012.

<sup>38</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, pp. 95-96. Annex to the petitioner’s brief of August 3, 2012.

<sup>39</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, pp. 95-96 and 569-691. Annex to the petitioner’s brief of August 3, 2012.

<sup>40</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, p. 100. Annex to the petitioner’s brief of August 3, 2012.

<sup>41</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, p. 96. Annex to the petitioner’s brief of August 3, 2012.

<sup>42</sup> Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned “Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide,” Oral Tribunal for Federal Criminal Matters No. 1, p. 619. Annex to the petitioner’s brief of August 3, 2012.

<sup>43</sup> Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned “Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide,” Oral Tribunal for Federal Criminal Matters No. 1, p. 235. Annex to the petitioner’s brief of August 3, 2012.

<sup>44</sup> Annex XX. “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” National Court for Federal Criminal and Correctional Matters No. 3, Secretariat No. 6, p. 73. Annex to the petitioner’s brief of August 3, 2012.

<sup>45</sup> Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned “Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide,” Oral Tribunal for Federal Criminal Matters No. 1, pp. 463, 690-691. Annex to the petitioner’s brief of August 3, 2012.



Boulevard Artigas y Palmar. According to witnesses, the vast majority of the persons detained were in the basement level whereas on the ground level were the children along with María Claudia García, who had also been transferred to Uruguay. The siblings stayed at the SID until December 1976, when they were transferred to Chile. There is no record of a legal entry to the country, but it is known that they travelled in an airplane, according to Anatole's account; he recalls "being in a small airplane, where they gave him permission to see the cockpit, which was open, it being the first time that he saw the steering wheel of an airplane and mountains, which he later found out was the Andean Cordillera."<sup>46</sup>

64. The siblings were abandoned in the Plaza O'Higgins in Valparaíso on December 22, 1976, where they were found by the Carabineros police force. According to the petitioner, and as reflected in the judicial record, an article published in the newspaper "El Mercurio," described the details about these facts and of how they were found. The reason why the siblings were taken to Chile is unknown. According to some testimony before the courts, there was an idea of "war bounty" ("*botín de guerra*"), that "the children were re-educated, in principle, by the family of military and police officers, an effort to erase the identity and nationality of those small children, that explains the exchanges, and when these children reached Chile, based on the age of the older one, the person who was going to receive them did not want to take charge of them."<sup>47</sup> According to statements made by Victoria, "as Argentine and Uruguayan soldiers acted and ... her brother was able to recognize someone, they left them in a country other than those mentioned. Perhaps something went wrong in the family that might receive them, or they were simply going to be left there anyway."<sup>48</sup>

65. After spending a few months in an orphanage they were separated and taken to different houses until they were turned over to the custody of the Chilean husband and wife Jesús Larrabeiti and Silvia Yáñez, he a dental surgeon and she a teacher; they had no ties with the repressive apparatus. In 1979, when they were about to sign the adoption certificate, suspicions arose that they were the son and daughter of disappeared persons from Uruguay, thus the couple did not sign the certificate and waited to clarify the situation.<sup>49</sup>

### 3. On the family members' search

66. After the disappearance of the Julien-Grisonas families, Ms. Angélica Cáceres and Ms. Lucía Andrijauskaite, the paternal and maternal grandmothers, respectively, undertook an intensive search for the Julien-Grisonas family, nationally and internationally, distributing photos of their grandson and granddaughter in various countries.<sup>50</sup> In addition, they denounced the facts to the UNHCR and made various approaches to military and governmental agencies in Argentina and Uruguay.<sup>51</sup>

67. On June 8, 1977, a writ of *habeas corpus* was filed on behalf of Victoria Grisonas, Mario Julien, and their children before the National Court No. 2 for Federal Criminal and Correctional Matters (Juzgado Nacional en lo Criminal y Correccional Federal No. 2), thereby initiating Case No. 11,407. In addition, on August 4, 1977, Case No. 41,803 was initiated in the 6<sup>th</sup> Criminal Court of the Judicial Department of La Plata, captioned "Cáceres de Julien, María Angélica files writ of *habeas corpus* on behalf of Julien Cáceres, Mario

<sup>46</sup> Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned "Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide," Oral Tribunal for Federal Criminal Matters No. 1, pp. 514 y 620. Annex to the petitioner's brief of August 3, 2012.

<sup>47</sup> Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned "Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide," Oral Tribunal for Federal Criminal Matters No. 1, p. 524. Annex to the petitioner's brief of August 3, 2012.

<sup>48</sup> Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned "Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide," Oral Tribunal for Federal Criminal Matters No. 1, p. 634. Annex to the petitioner's brief of August 3, 2012.

<sup>49</sup> Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned "Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide," Oral Tribunal for Federal Criminal Matters No. 1, pp. 559-631. Annex to the petitioner's brief of August 3, 2012.

<sup>50</sup> Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned "Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide," Oral Tribunal for Federal Criminal Matters No. 1, p. 622. Annex to the petitioner's brief of August 3, 2012.

<sup>51</sup> Annex XX. File No. 2,951 (Julien Cáceres, Mario Roger) of the final report of the CONADEP, p. 7. Annex 10 of the initial petition of November 11, 2005.

Roger.” On October 16, 1979 Case No. 14,711 was initiated, captioned “Julien Cáceres, Mario Roger and Grisonas, Victoria Lucía re/unlawful deprivation of liberty” before the National Court of First Instance for Criminal Investigation No. 14.<sup>52</sup> There is no information about the actions taken by the authorities in the context of those cases.

68. In addition, in 1984, Ms. María Angélica Cáceres denounced the disappearance of her son and daughter-in-law to the CONADEP. In the wake of those complaints, the Final Report of the CONADEP, published in 1986, included File No. 2950 and File No. 2951, related to those forced disappearances.<sup>53</sup> The first printing of 40,000 copies ran out in the first 48 hours of sale.<sup>54</sup>

#### **4. On the recovery of the identity of the Larrabeiti Yáñez siblings**

69. In 1979, María Bernabela Herrera Sanguinetti, a Uruguayan who was then in charge of the UNHCR office in Chile, received a letter from the president of La Cimade, a French organization that worked with migrants and refugees, indicating that a Chilean social worker who had reached the city of Caracas, Venezuela, on seeing a photo of the Larrabeiti Yáñez siblings, indicated that they could be two children she saw in Valparaíso. Ms. Herrera asked Clamor, a Brazilian organization that worked with UNHCR and that had an office in Valparaíso, to verify the information. On verifying that the information was accurate they contacted Ms. Angélica Cáceres, who travelled to Valparaíso in July 1979. The grandmother, along with Ms. Herrera, went to the school where Anatole was studying and the director called in the adoptive father, who went to the school to meet with Ms. Cáceres. After talking in private, they became convinced that they were the grandchildren that Ms. Cáceres had been looking for the past three years.<sup>55</sup>

70. On August 2, 1979 Ms. Cáceres, in the name of her husband and Ms. Andrijauskaite, signed a notarial certificate with Mr. Larrabeiti and Ms. Yáñez, establishing the biological filiation of the children, setting forth both their biological names (Anatole Boris and Victoria Eva Julien Grisonas), and their adoptive names (Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez). Ms. Cáceres also consented to the adoption and it was agreed that the siblings would maintain ties with their biological family.<sup>56</sup>

#### **E. On administrative reparations**

71. On August 22, 1995 the Larrabeiti Yáñez siblings applied for the benefits of Law No. 24,411 and, at their request, on June 2, 1997, the judgment was handed down of absence due to forced disappearance of Mario Julien and Victoria Grisonas in the terms of Law No. 24,321.<sup>57</sup> Based on the information provided by the State, the Larrabeiti Yáñez siblings began the administrative process established in Law 24,411 for obtaining reparations for the forced disappearance of their biological parents (Case No. 33,011/12 in the name of Grisonas, Victoria Lucía, and Case No. 30,246/12 in the name of Julien, Mario Roger). Given the existence of a civil action against the State, which will be described below, those cases were apparently provisionally archived, and then were reactivated on November 27, 2017.<sup>58</sup> There is no information in the

<sup>52</sup> Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned “Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide,” Oral Tribunal for Federal Criminal Matters No. 1, p. 1108. Annex to the petitioner’s brief of August 3, 2012.

<sup>53</sup> Annex XX. File No. 2.951 (Julien Cáceres, Mario Roger) of the final report of the CONADEP. Annex 10 of the initial petition of November 11, 2005; Fallos de la Corte Suprema de Justicia de la Nación, tome 330, volume 4. Anatole Alejandro Larrabeiti Yáñez and one other v. Argentine Nation of October 30, 2007, p. 4595. Available at: <https://sj.csjn.gov.ar>

<sup>54</sup> Ministry of Culture. Presidency of the Argentine Nation. “El Nunca Más y los crímenes de la dictadura.” Edición Cultura Argentina, p. 12. Available at: [https://librosycasas.cultura.gob.ar/wp-content/uploads/2015/11/LC\\_NuncaMas\\_Digital1.pdf](https://librosycasas.cultura.gob.ar/wp-content/uploads/2015/11/LC_NuncaMas_Digital1.pdf)

<sup>55</sup> Annex XX. Judgment handed down May 31, 2011 in Case No. 1627 captioned “Guillamondegui, Néstor Horacio et al. re/aggravated illegal deprivation of liberty, imposition of torments, and aggravated homicide,” Oral Tribunal for Federal Criminal Matters No. 1, pp. 559-560. Annex to the petitioner’s brief of August 3, 2012.

<sup>56</sup> Annex XX. Brief of Anatole Alejandro Larrabeiti Yáñez filed November 19, 2012 in the context of Case No. 2,637/04 captioned “Vaello, Orestes et al. re/aggravated illegal deprivation of liberty and aggravated homicide,” p. 3. Annex to petitioner’s brief of November 21, 2012.

<sup>57</sup> Fallos de la Corte Suprema de Justicia de la Nación, tome 330, volume 4. Anatole Alejandro Larrabeiti Yáñez and one other v. Argentine Nation, October 30, 2007, p. 4595. Available at: <https://sj.csjn.gov.ar/sj/tomosFallos.do?method=siguiente>

<sup>58</sup> Brief of the State, July 11, 2018, p. 5.

record before the IACHR that indicates that the Larrabeiti Yáñez siblings have continued the process or obtained the respective reparations.

72. In addition, according to the information available, Victoria and Anatole Larrabeiti Yáñez began the administrative procedure established in Law No. 25,914 for obtaining reparations for their own detentions at “Orletti” (Cases No. 66,255/17 and No. 55,600/16 respectively). Initially these procedures were archived because of the existence of a civil action against the State over the same facts; they were reactivated in 2016.<sup>59</sup> Nor is there any information in the record before the IACHR that indicates that the Larrabeiti Yáñez siblings have continued the process or obtained the respective reparations.

#### F. On the civil proceedings

73. On June 9, 1996 the Larrabeiti Yáñez siblings filed a civil action against the State before the National Court of First Instance No. 4 for Federal Contentious-Administrative Matters), which was captioned “Larrabeiti Yáñez, Anatole and one other v. National State re/damages” (Case No. 14,846/96) for the damages caused them and their parents as a result of the military operation of September 26, 1976. On September 6, 1996 the then-President of the Republic, Carlos Saúl Menem, issued Decree No. 1025/96 authorizing the Office of the Attorney General for the Treasury to assume the defense of the National State in that trial. The third, fourth, and fifth preambular clauses of that decree established<sup>60</sup>:

That the plaintiffs recognize implicitly, based on the documentary proof they attach, that the procedure of which they were victims was carried out by joint forces of the Uruguayan and Argentine armies.

That the father of the minors may have been transferred to the Oriental Republic of Uruguay and been detained at the Military Establishment for Imprisonment No. 1 “Libertad” (Establecimiento Militar de Reclusión No. 1 “Libertad”).

That mindful of the connotations of this action, which may require summoning as a third party a foreign State (the Oriental Republic of Uruguay) and, fundamentally because of the connectedness with other cases in which, in due course, the defense of the National State has been entrusted to the Office of the Attorney General for the Treasury, one should adopt the same criterion in this case, so as to provide a better defense for the National State and thereby put forward a uniform position.

74. On September 26, 1996 Mr. Marques Iraola, petitioner and representative of the Larrabeiti Yáñez siblings in the civil action, sent a communication to President Menem requesting “all serious information that exists, so to attempt, if possible, to locate [Mario Julien] alive, or [to determine] what actually came of him according to the version of the decree.”<sup>61</sup> As that communication met with no response, on August 15, 1997, Mr. Marques Iraola sent a communication to the Minister of Interior Carlos V. Corach requesting a “concrete, well-founded, and detailed explanation of said fourth preambular paragraph of Decree No. 1025/96, to allow [his] clients to learn about the fate of their biological parents (even though with respect to their mother the decree is ominously silent), even if it is no more than to pursue the multiple inquiries attempted without success, and at least find out more about what happened to them, and try to locate their remains.”<sup>62</sup> In addition, the Larrabeiti Yáñez siblings brought a writ of *habeas corpus* that was rejected, and then appealed to the Supreme Court, without success (Case M 1,981/96).<sup>63</sup>

<sup>59</sup> Brief of the State, July 11, 2018, pp. 5 y 6.

<sup>60</sup> Annex XX. Decree of the Federal Executive Branch No. 1025/96 of September 6, 1996, published in the Official Bulletin. Annex 2 of the initial petition of November 11, 2005.

<sup>61</sup> Annex XX. Registered letter of September 26, 1996 to the President of the Republic Dr. Carlos Saúl Menem, p. 2. Annex 3 of the initial petition of November 11, 2005.

<sup>62</sup> Annex XX. Registered letter of August 15, 1997 to the Minister of Interior Dr. Carlos V. Corach, p. 2. Annex 4 of the initial petition of November 11, 2005.

<sup>63</sup> Annex XX. Judgment of the Second Chamber of the National Court of Appeals for Federal Contentious-Administrative Matters, Case 24,518/98 “Larrabeiti Yáñez Anatole Alejandro and one other v. State-Interior re/Damages” of November 16, 2004, p. 3. Annex 11 of the initial petition of November 11, 2005.

75. On September 3, 1997 the Office of the Undersecretary for Human and Social Rights of the Ministry of Interior sent a communication to Mr. Marques Iraola indicating that the only information at the Ministry was in the CONADEP archive, and that “the fourth preambular paragraph of decree 1025/96 establishes a hypothesis that in no way is borne out, as appears clearly from the decree itself.”<sup>64</sup>

### 1. Case No. 24,518/98

76. On August 26, 1998, the Larrabeiti Yáñez siblings brought a civil action against the Ministry of Interior “for the damages suffered, primarily moral damages, for the unexpected and vital hope that their father might be found alive, and possibly their mother as well,”<sup>65</sup> sparked by the fourth preambular paragraph of Decree 1025/96 (case captioned “Larrabeiti Yáñez, Anatole Alejandro and one other v. National State (Ministry of the Interior) re/damages,” Case 24,518/98). That action was rejected on August 13, 2003, because the judge considers that the expressions contained in the fourth preambular clause were based on the underlying information contained in File No. 2951 of the CONADEP report, presented by the plaintiffs<sup>66</sup>:

...RECOGNITION OF THE DETENTION BY WRITING OR OTHERWISE: The mission to Uruguay by Professor Robert Goldman of the United States, Senator Martínez Bjorkman of Spain, and Jean-Louis Weil, of France, December 12 to 18, 1977, to investigate the situation of political prisoners and persons disappeared, yielded the following result on the case of Mr. JULIEN: in an interview with Col. Silva Ledesma, President of the Supreme Military Tribunal, he confirmed Roger JULIEN was detained and indicted as of October 1976 (the date coincides with the kidnappings and disappearances of the JULIEN family and other persons) and that he was detained at the Military Establishment for Imprisonment No. 1 “Libertad.” Despite the approaches by his family members to the authorities of the prison, they always denied having detained him. The Uruguayan government committed to offering additional information about the persons disappeared in Argentina and Paraguay, which it never did. (See circular of the S.I.J.A.U., February 1, 1978)...

77. On October 28, 2003, the Larrabeiti Yáñez siblings filed an appeal alleging that File No. 2951 of the CONADEP report contains the statement by Ms. Cáceres de Julien indicating that her son died in the military operation. They also alleged that the folios of the file taken into account in the judgment are not signed and have no indication of the person who drafted them, that “the statements by Col. Silva Ledesma were a bald lie which members of the military usually turned to in order to ‘legalize’ the disappeared,” and that the foreign delegates were never given any “proof of life.”<sup>67</sup>

78. On June 22, 2004, the Second Chamber of the National Court of Appeals for Federal Contentious-Administrative Matters upheld the judgment of first instance on the same basis used by the court below. In this respect, it established that<sup>68</sup>:

- 1) the decree in question was an act of the administration that was not intended to have effects on third persons, i.e. outside of the scope of its jurisdiction, but only at giving power-of-attorney to the Office of the Attorney General for the Treasury...
- 2) that preambular clause ... cannot be interpreted in isolation from the context in which it is inserted, which implies that it should necessarily be related to the preambular clauses that precede it and those that follow it, and note that it refers to the action and documentation in the case file that has motivated it – ... copy of File No. 2951 -

<sup>64</sup> Annex XX. Ministry of Interior. Communication from Ms. Alicia B. Pierini of September 3, 1997, p. 1. Annex 5 of the initial petition of November 11, 2005.

<sup>65</sup> Annex XX. Judgment of the Second Chamber of the National Court of Appeals for Federal Contentious-Administrative Matters, Case 24,518/98 “Larrabeiti Yáñez Anatole Alejandro and one other v. State-Interior re/Damages” of June 22, 2004, p. 1. Annex 7 of the initial petition of November 11, 2005.

<sup>66</sup> Annex XX. Appellate brief of October 28, 2003 filed by the plaintiffs against the judgment of first instance in Case 24,518/98 “Larrabeiti Yáñez Anatole Alejandro and one other v. State-Interior re/Damages,” para. 3. Annex 8 of the initial petition of November 11, 2005.

<sup>67</sup> Annex XX. Appellate brief of October 28, 2003 filed by the plaintiffs against the judgment of first instance in Case 24,518/98 “Larrabeiti Yáñez Anatole Alejandro and one other v. State-Interior re/Damages,” paras. 4 and 5. Annex 8 of the initial petition of November 11, 2005.

<sup>68</sup> Annex XX. Judgment of the Second Chamber of the National Court of Appeals for Federal Contentious-Administrative Matters, Case 24,518/98 “Larrabeiti Yáñez Anatole Alejandro and one other v. State-Interior re/Damages” of June 22, 2004, pp. 3-4. Annex 7 of the initial petition of November 11, 2005.

3) ... the hope invoked by the plaintiffs originates from File No. 2951 [of the CONADEP report] and not decree 1025/96.

79. On August 3, 2004 the Larrabeiti Yáñez siblings filed an extraordinary appeal (*recurso extraordinario*) against the judgment handed down on appeal, arguing that it was arbitrary.<sup>69</sup> That appeal was denied on November 16, 2004 on the following basis<sup>70</sup>:

... the doctrine of arbitrariness is not aimed at correcting mistaken judgments or those that may be considered such, but rather addresses only exceptional situations in which breakdowns of logical reasoning on which the judgment is based, or a manifest failure to establish the legal basis, keep the ruling appealed from being upheld as a valid judicial act (Judgments C.C. 304:267; 279; 375, among many others). The appellant does not show such an exceptional situation in the instant case, for the discrepancy with the decision is not sufficient for that purpose.

80. On December 10, 2004, the Larrabeiti Yáñez siblings filed a complaint appeal (*recurso de queja*) before the Supreme Court alleging, *inter alia*, that the judgment appealed lacks any elements of proof that were expressly invoked.<sup>71</sup> On September 27, 2005 the Supreme Court found the appeal inadmissible based on Article 280 of the Federal Code of Civil and Commercial Procedure. The single preambular paragraph of that decision stated: "That the extraordinary appeal, whose denial gives rise to this appeal, is inadmissible (Article 280 of the Federal Code of Civil and Commercial Procedure). Therefore, the appeal is dismissed. Notice shall be given and, in due course, it is archived."<sup>72</sup>

## 2. Case File No. 14.846/96

81. According to the allegations by the parties, on October 15, 2002, the Federal Court of First Instance for Administrative Disputes convicted the national state to payment of US\$600,000 in damages, in addition to payment of US\$90,000 for professional fees and costs. Regarding this, the judgment established that "the incident leading to the damage never came to an end [...] Actually, the incident producing the damage is precisely the disappearance, which is one single circumstance that reaches up to the present."<sup>73</sup>

82. In the court of second instance, on November 4, 2004, the Third Chamber of the Federal Court for Administrative Disputes partially ruled on the complaint in favor of Victoria Larrabeiti Yáñez and convicted the national state to pay 250,000 pesos, plus interest since September 26, 1976, as compensation for the damages stemming from the forced disappearance of her father and mother.<sup>74</sup> According to the petitioner, in view of interest accruing from September 26, 1976 to the year 2004, compensation amounted to about US\$3.3 million.<sup>75</sup> This judgment also ruled the applicability of the statute of limitations for the action filed regarding Anatole because two years had elapsed since he had become of legal age, which is the delay indicated in Article 4037 of the Civil Code.<sup>76</sup>

83. Against this decision, the siblings filed an extraordinary appeal before the Supreme Court of Justice of the Nation (*Corte Suprema de Justicia de la Nación*, hereinafter CSJN) and the state filed an ordinary appeal with the same Court on the basis of the legal framework in force at the time, which made it possible to file an

<sup>69</sup> Annex XX. Extraordinary Appeal of August 3, 2004 filed in Case No. 24,518/98 before the Second Chamber of the National Court of Appeals for Federal Contentious-Administrative Matters. Annex 9 of the initial petition of November 11, 2005.

<sup>70</sup> Annex XX. Judgement of the Second Chamber of the National Court of Appeals for Federal Contentious-Administrative Matters, Case 24,518/98 "Larrabeiti Yáñez Anatole Alejandro and one other v. State-Interior re/Damages," November 16, 2004. Annex 11 of the initial petition of November 11, 2005.

<sup>71</sup> Annex XX. Complaint Appeal of December 10, 2004, filed in Case No. 24,518/98 before the Supreme Court of Justice of the Nation. Annex 12 of the initial petition of November 11, 2005.

<sup>72</sup> Annex XX. Judgment of the Supreme Court of the Nation Case 24,518/98 "Larrabeiti Yáñez Anatole Alejandro and one other v. State-Interior re/Damages" of September 27, 2005. Annex 13 of the initial petition of November 11, 2005.

<sup>73</sup> Brief from the petitioner, July 19, 2011, p. 5.

<sup>74</sup> Rulings of the Supreme Court of Justice of the Nation, Ledger 330, Volume 4. Anatole Alejandro Larrabeiti Yáñez et al. v. Nation of Argentina, October 30, 2007, p. 4594. Available at: <https://sj.csjn.gov.ar>

<sup>75</sup> Brief from the petitioner, July 19, 2011, p. 6.

<sup>76</sup> Rulings of the Supreme Court of Justice of the Nation, Ledger 330, Volume 4. Anatole Alejandro Larrabeiti Yáñez et al. v. Nation of Argentina, October 30, 2007, p. 4596. Available at: <https://sj.csjn.gov.ar>



ordinary appeal with the CSJN on behalf of the national state when it was the respondent and when it involved a compensation above a certain amount.<sup>77</sup> In this appeal, the siblings Larrabeiti Yáñez alleged that:<sup>78</sup>

[...] the delay for the two-year statute of limits can only be calculated as of June 2, 1997, the date on which the judgment of absence of forced disappearance was issued in accordance with the terms of Law 24.321, [...] which the civil lawsuit cannot begin to prescribe because the offenses that gave rise to it are crimes against humanity for which there is no statute of limitations, [...] that the compensation amount recognized by the court in favor of Claudia Victoria Larrabeiti Yáñez is arbitrary because it was set without substantiation in the briefs of the case when it omitted, among other items, the material damage caused by the seizure of the family home [and] that Law 24.411 constitutes partial reparation, which in particular does not include moral suffering personally experienced by the complainants as a result of the events that led to the case.

84. On October 30, 2007, the CSJN admitted the ordinary appeal filed by the national state and dismissed the one filed by the complainants rendering the judgment being challenged null and void, declaring the applicability of the statute of limitations for the action regarding both Victoria and Anatole Larrabeiti Yáñez, without detriment to the right of claiming reparations as recognized in Laws Nos. 24.411 and 25.914. The Court considered that the adoptive parents should have inferred the complaint “at least as of 1986, the year in which the final report drawn up by the National Commission on the Disappearance of Persons was published by the University Press of Buenos Aires (*Editorial Universitaria*), under the title “Never Again” (*Nunca Más*), and in whose annex appears the list of persons detained and missing, and the docket numbers pertaining to the biological parents of the stakeholders.” In the judgment, it was also established that:<sup>79</sup>

[...] the argument is not admissible because the action to claim property compensation has no statute of limitations because it arises from crimes against humanity, which have no statute of limitations from the perspective of criminal punishment. That is because the former involves a matter that is available and waivable, whereas the latter, regarding the prosecution of crimes against humanity, is based on the need for crimes of this kind to never go unpunished, that is, because they go beyond the property interests of the individuals impacted.

85. According to available information, to date, the case law criterion of the CSJN is that the absence of a statute of limitations for civil lawsuits arising from crimes against humanity as set forth in Article 2561 of the new Civil and Commercial Code of the Nation, does not govern cases of forced disappearance taking place during the dictatorship, because Article 2537 of said Code indicates that the delays for the statute of limitations that were applicable when the Code came into force are governed by the previous law. The CSJN, in a judgment issued in 2018 in a case of forced disappearance, pointed out that “it would [not] be applicable to the case of the absence of statute of limitations set in Article 2561 *in fine* of the Civil and Commercial Code, by virtue of the provision expressly set forth in Article 2537 of the same legal corpus.”<sup>80</sup> In the same decision, the Court reiterated the criterion according to which, in cases of forced disappearance of persons, “the starting point for the delay of the statute of limitations can be situated—among other possibilities—on the date when, by means of a court judgment, the alleged death of the victim of the crime is determined.”<sup>81</sup>

## G. Criminal proceedings

86. On December 24, 1986, Law No. 23.492, referred to as the “Full Stop,” was passed, whereas on June 8, 1987, Law No. 23.521, referred to as “Due Obedience,” was enacted. Both these laws and the pardons decreed by President Carlos Menem (No. 1002/98 and others) brought to a standstill a large number of criminal cases

<sup>77</sup> Rulings of the Supreme Court of Justice of the Nation, Ledger 330, Volume 4. Anatole Alejandro Larrabeiti Yáñez et al. v. Nation of Argentina, October 30, 2007, p. 4596. Available at: <https://sj.csjn.gov.ar>

<sup>78</sup> Rulings of the Supreme Court of Justice of the Nation, Ledger 330, Volume 4. Anatole Alejandro Larrabeiti Yáñez et al. v. Nation of Argentina, October 30, 2007, p. 4596. Available at: <https://sj.csjn.gov.ar>

<sup>79</sup> Rulings of the Supreme Court of Justice of the Nation, Ledger 330, Volume 4. Anatole Alejandro Larrabeiti Yáñez et al. v. Nation of Argentina, October 30, 2007, p. 4598. Available at: <https://sj.csjn.gov.ar>

<sup>80</sup> Rulings of the Supreme Court of Justice of the Nation, Ledger 340, Volume 1. Villamil, Amelia Ana v. National State on Damages, October 30, 2007, p. 360. Available at: <https://sj.csjn.gov.ar>

<sup>81</sup> Rulings of the Supreme Court of Justice of the Nation, Ledger 340, Volume 1. Villamil, Amelia Ana v. National State on Damages, October 30, 2007, p. 363, citing the decisions in “Tarnopolsky” (Rulings: 322: 1888). Available at: <https://sj.csjn.gov.ar>



that had been filed after democracy was restored for the purpose of investigating the crimes committed during the dictatorship. On September 3, 2003, by means of Law No. 25.779, National Congress declared these laws null and void. On June 14, 2005, in the case of “Simón, Julio Héctor,” the CSJN declared that Laws Nos. 23.492 and 23.521 were unconstitutional and that Law No. 25.779 was valid.<sup>82</sup> On the basis of these decisions, a large number of cases filed for grave human rights violations during the dictatorship were opened and processed.<sup>83</sup> Among the “mega-cases” processed by Argentina’s justice sector, there is the one relative to “Automotores Orletti,” which has been divided into four sections, labeled Orletti I, II, III, and IV.

**1. Case No. 1627 “Guillamondegui, Néstor Horacio and others on the unlawful and aggravated deprivation of freedom, torture, and felony murder”**

87. On September 6, 2006, an order was issued for the prosecution, with pre-trial detention, of Néstor Horacio Guillamondegui, Rubén Víctor Visuara, Eduardo Rodolfo Cabanillas, Honorio Carlos Martínez Ruiz, and Raúl Antonio Guglielminetti, former agents of the SIDE, for 65 cases of unlawful deprivation of freedom and torture taking place in “Orletti.” On November 23 of that same year, an order was issued for the prosecution, with pre-trial detention, of Eduardo Alfredo Ruffo, and on September 4, 2008, the proceedings were taken to trial.<sup>84</sup>

88. On May 31, 2011, Federal Criminal Oral Court No. 1, in the framework of case No. 1627 labeled “Guillamondegui, Néstor Horacio and others for the unlawful and aggravated deprivation of liberty, torture, and felony murder,” labeled as Orletti I,” convicted Eduardo Rodolfo Cabanillas and sentenced him to life imprisonment, convicted Eduardo Alfredo Ruffo and Honorio Carlos Martínez Ruiz and sentenced them to 25 years of prison, and convicted Raúl Antonio Guglielminetti and sentenced him to 20 years of prison, for the crimes committed in “Orletti,” including the illegal deprivation of liberty and torture of Victoria Grisonas.

89. This judgment “fully substantiated the illegal deprivation of liberty sustained by Victoria Lucía Grisonas, as well as her stay in the detention center called “Automotores Orletti,” her torture, and the inhuman conditions of her detention.”<sup>85</sup> Likewise, the judgment requested that testimonies be extracted from the relevant evidence of the proceedings in order to investigate the possible criminal participation of Rolando Nerone and other related persons, at the time of the incidents, from the Department of Foreign Affairs of Argentina’s Federal Police “in the kidnapping of the Grisonas family” and that the testimonies be referred for review by the Judge of First Instance of Federal Criminal and Correctional Matters under the National Court in Federal Criminal and Correctional Matters, Courtroom No. 3.<sup>86</sup> On October 7, 2013, the Fourth Chamber of the Federal Court for Criminal Cassation upheld the conviction and dismissed the cassation appeals filed by the defense.

**2. Case No. 2637/04 “Vaello, Orestes, and others for unlawful and aggravated deprivation of liberty and felony murder”**

90. On May 19, 2011, in the framework of case No. 2637/04 labeled “Vaello, Orestes, and others on the unlawful and aggravated deprivation of liberty and felony murder,” the National Court on Federal Criminal and Correctional Matters, Courtroom No. 3, ordered the prosecution of retired Inspector Commissioner

<sup>82</sup> Judgment of the CSJN, June 14, 2005, on the remedy filed in case No. 17.768, “Simón, Julio Héctor et al. on the unlawful deprivation of liberty.” Available at: <https://www.mpf.gov.ar/Institucional/UnidadesFE/Simon-CSJN.pdf>

<sup>83</sup> Judicial Information Center. General description of trials in Argentina. Crimes against Humanity. Available at: <https://www.cij.gov.ar/lesa-humanidad.html>

<sup>84</sup> Judicial Information Center. Automotores Orletti. Available at: <http://cij.gov.ar/nota-1190.html>

<sup>85</sup> Annex XX. Judgment issued on May 31, 2011 in case No. 1627 identified as “Guillamondegui, Néstor Horacio et al. on the unlawful and aggravated deprivation of liberty, torture, and felony murder,” Federal Criminal Oral Court No. 1, pp. 1112-1113. Annex to the brief of the petitioner, August 3, 2012.

<sup>86</sup> Annex XX. Judgment issued on May 31, 2011 in case No. 1627 identified as “Guillamondegui, Néstor Horacio et al. on the unlawful and aggravated deprivation of liberty, torture, and felony murder,” Federal Criminal Oral Court No. 1, p. 1265. Annex to the brief from the petitioner, August 3, 2012.

Rolando Oscar Nerone and Deputy Commissioner Oscar Roberto Gutiérrez of the Department of Foreign Affairs of the Federal Police of Argentina.<sup>87</sup>

91. On June 28, 2012, in the framework of said case, the judge requested the Director of the General San Martín Municipal Cemetery, Province of Buenos Aires, to provide information about the precise location of the burial of “a male corpse, with no name (NN), about 30 years of age, deceased on September 26, 1976” according to the death certificate issued on September 27, 1976, and to indicate “if at present his remains are located there or have been transferred to another location,” as well as “any record about the persons who had participated in transferring the body to that cemetery.”<sup>88</sup>

92. In response to this request, the Director of the Municipal Cemetery reported that, on September 27, 1976, a coffin identified as “no name” bearing a person about 30 years of age who had died the preceding day was buried in Section 14. He pointed out that said “no name” was the only person deceased for that day. He indicated that, on January 30, 1984, on the basis of a court order, it was forbidden to disinter the “no names” since 1973 “[b]ut after various disinterments on June 19, 1986, Judge Carlos Alberto Currais released the graves, authorizing their transfer to the General Ossuary” because of which “in Section 14 there are currently no “no names” currently buried there.” He reported, in addition, that, on the basis of an order of May 2001 from the Federal Court of Appeals in Criminal and Correctional Matters of the Federal Capital instructing that there be no disinterment of any “no names,” Argentina’s Forensic Anthropology Team conducted various disinterments.<sup>89</sup> According to file No. 2.810 of the Ledger of “Corpse files,” the cause of death was “shot by military authorities.”<sup>90</sup> The death certificate also establishes that “no name died of a traumatic cardiac arrest. Acute hemorrhaging. Gunshot wounds.”<sup>91</sup>

93. On November 19, 2012, Anatole Larrabeiti Yáñez, in the framework of Case No. 2637/04, submitted a request for him to be presented as a complainant. In this brief, he indicated, regarding his transfer and that of his sister to “Orletti,” that, although “it does not strictly constitute the target of the charges brought against those prosecuted,” the “narrative of said incidents is also useful to secure a complete overview of the totality of the outcomes of the operation.” He also pointed out that, although the participation and criminal liability of Nerone and Gutiérrez have been confirmed in the prosecution documents, they are not the only ones responsible or the highest-ranking ones either.<sup>92</sup> Afterwards, around the end of 2012, Anatole Larrabeiti submitted a petition for the case to be brought to trial. He also requested “continuing with the investigation in [the] cemetery because there does not seem to be any doubt that this is where the remains of Mario Roger Julien can be found,” on the basis of what is indicated in the cemetery’s response according to which there was a 1986 court order authorizing the transfer of “no names” since 1973 to the General Ossuary. Furthermore, he requested securing certified photocopies of the relevant parts of the case in order to investigate: “the crimes of which [he] and his sister were the victims,” “crimes against property of which the Julien-Grisonas family was a victim,” “the fate of Victoria Grisonas,” and “to individually identify the other troops who participated in the operation of September 26, 1976.”<sup>93</sup>

<sup>87</sup> Annex XX. Judgment issued on May 19, 2011 in case No. 2637/04 identified as “Vaello, Orestes et al. on the unlawful and aggravated deprivation of liberty and felony murder,” National Federal Criminal and Correctional Court No. 3, Secretariat No. 6. Annex to the brief from the petitioner, August 3, 2012.

<sup>88</sup> Annex XX. Request for information from Justice Daniel Eduardo Rafecas to the Director of the General San Martín Municipal Cemetery, Province of Buenos Aires, Mr. Juan Baric, June 19, 2012, received on June 28, 2012. Annex 4 to the brief from the petitioner, November 12, 2012.

<sup>89</sup> Annex XX. Response from the Director of the General San Martín Municipal Cemetery, Province of Buenos Aires, June 29, 2012 to the request for information from Justice Daniel Eduardo Rafecas. Annex 5 to the brief from the petitioner, November 12, 2012.

<sup>90</sup> Annex XX. Ledger “Corpse File,” File No. 2.810, p. 82. Annex 1 to the brief from the petitioner, November 12, 2012.

<sup>91</sup> Annex XX. Death certificate of “no name” (NN). Certificate No. 1169. Annex 3 to the brief from the petitioner, November 12, 2012.

<sup>92</sup> Annex XX. Brief from Anatole Alejandro Larrabeiti Yáñez requesting that he be registered as complainant in Case No. 2.637/04. No date, p. 4. Annex to the brief from the petitioner, November 21, 2012.

<sup>93</sup> Annex XX. Brief from Anatole Alejandro Larrabeiti Yáñez requesting that Case No. 2.637/04 be taken to trial. No date, pp. 12, 16, and 17. Annex to the brief from the petitioner, December 12, 2012.

94. On September 11, 2017, Federal Criminal Oral Court No. 1, in the framework of this case known as “Orletti III,”<sup>94</sup> convicted Rolando Nerone and Oscar Gutiérrez as co-perpetrators criminally responsible for the crime of unlawful deprivation of liberty committed by a civil servant, with abuse of their powers and without the formalities required by law, aggravated by violence or threats, to the detriment of Victoria Grisonas, and sentenced them to six years of prison.<sup>95</sup> The court confirmed that both former police officers spearheaded the illegal operation carried out on September 26, 1976. It also established that data from civil lawsuit No. 14.846/96 filed by the Larrabeiti Yáñez siblings “shed light on the circumstances of the time, mode, and place that the operation being examined took place.” Although the court was able to prove that Mario Julien was killed in the framework of this operation, it acquitted both former police officers for the crime of felony murder with malice aforethought to his detriment, because there was no “evidence in the documents to substantiate that [...] they had participated directly in the homicide.”<sup>96</sup> This was because, according to the court, there was a “deviation” from the “common plan” designed by the state’s machine of repression, which “after the kidnapping, consisted of transferring the victim to the clandestine detention center so that, by means of interrogations and torture, information could be secured to destroy the other members of the political organization to which they belonged and then to decide on their final fate; all the more so because it involved a “highly profitable target,” that is Julién [sic] Cáceres, because he belonged to the military sector of the Uruguayan P.V.P.”<sup>97</sup>

95. On September 18, 2017, Anatole Larrabeiti, as a complainant, requested the recusal of the judge from the case because he would not be impartial and independent, because of the alleged “evident, multiple, reiterated, inexplicable, and conscious delays and omissions incurred by [the judge] when investigating the gravest crimes against humanity.” In this request, there is a list of five briefs submitted over a period of four years to urge the judge “to fulfill his primary and essential obligation to investigate. Not only extremely grave crimes of which the passive parties were minors, but also others referred to as “war booty”: usurpation and looting perpetrated by the “patotas” (gangs) who plundered and took over all the assets of the Julien-Grisonas family.” According to the petition, the judge in the case “kept silent or provided late and insufficient responses” to the successive petitions for investigation, and it was only after a complaint was filed with the Council of Magistrates that an order was issued to investigate the case of the Larrabeiti Yáñez siblings, although with a partial and incomplete scope.<sup>98</sup> Likewise, in said brief Anatole Larrabeiti pointed out that, when the court in charge of the investigation received the evidence for Case No. 1627 in order to investigate “the crimes of deprivation of liberty and torture perpetrated against Anatole and Victoria”.<sup>99</sup>

[t]he prosecution of Nerone and Gutiérrez, in which the [the judge] provided detailed accounts of the heinous behavior to which the children were also subjected to, had just been ordered. But, without any explanations, he failed to indict the persons being prosecuted for the crimes of which Anatole and Victoria were the victims, letting them go, and without any explanation, safe and removed from being brought to trial regarding their parents.

[...]

<sup>94</sup> Case No. 2637/04 was consolidated with the following cases for the purpose of joining the cases: No. 2.261 identified as “Ferrer, José Néstor; Nerone, Rolando Oscar; and Gutiérrez, Oscar Roberto on the unlawful and aggravated deprivation of liberty involving violence or threats and felony murder with malice aforethought” and No. 2.390 identified as “Enciso, César Alejandro on the unlawful and aggravated deprivation of liberty involving violence or threats.” Judicial Branch of the Nation. Judgment of the Federal Criminal Cassation Appeal Court, Chamber IV, February 27, 2019, p. 4. Available at: <https://www.cij.gov.ar/nota-33494-Anulan-absoluciones-en-una-causa-por-delitos-de-lesa-humanidad.html>

<sup>95</sup> Judicial Branch of the Nation. Judgment of the Federal Criminal Cassation Appeal Court, Chamber IV, February 27, 2019, p. 4. Available at: <https://www.cij.gov.ar/nota-33494-Anulan-absoluciones-en-una-causa-por-delitos-de-lesa-humanidad.html>

<sup>96</sup> Judicial Branch of the Nation. Judgment of the Federal Criminal Cassation Appeal Court, Chamber IV, February 27, 2019, pp. 4, 5, 95, 164, 167, and 168. Available at: <https://www.cij.gov.ar/nota-33494-Anulan-absoluciones-en-una-causa-por-delitos-de-lesa-humanidad.html>

<sup>97</sup> Judicial Branch of the Nation. Judgment of the Federal Criminal Cassation Appeal Court, Chamber IV, February 27, 2019, p. 169. Available at: <https://www.cij.gov.ar/nota-33494-Anulan-absoluciones-en-una-causa-por-delitos-de-lesa-humanidad.html>

<sup>98</sup> Annex XX. Brief from Anatole Alejandro Larrabeiti Yáñez entitled “Peremptory challenge” submitted in Case No. 2.637/04. No date, pp. 3-5. Annex 2 to the brief from the petitioner, September 18, 2017.

<sup>99</sup> Annex XX. Brief from Anatole Alejandro Larrabeiti Yáñez entitled “Peremptory challenge” submitted in Case 2.637/04. No date, pp. 6-7. Annex 2 to the brief from the petitioner, September 18, 2017.

The exclusion of the case of the minors from the objective of prosecuting the “Plan Condór” case, which was added to the identical exclusion of the “Guillamondeguy” case, highlights, on the one hand, **their unexplainable marginalization** and, on the other hand, a **severe deviation from the precise guidelines of the TOF1**. And, above all, a **flagrant failure to fulfill the essential and primary obligation of investigating** what was incumbent upon [the judge] [the highlighted parts are from the original text].

96. Against the judgment of September 11, 2017, the defense attorney, the Attorney General’s Office, and the complainants filed an appeal. On February 27, 2019, the Fourth Chamber of the Federal Criminal Court of Cassation partially overturned the judgment being challenged, sending back the proceedings to the lower court (*a quo*) for its substantiation. Among the aspects overturned by the Federal Court, there is the acquittal of the death of Mario Julien, which it qualified as arbitrary. Regarding this, it indicated that “the circumstance in which the victim was shot down in his home or in the streets, as in the case of Julién [sic] Cáceres, does not prevent reaching the conclusion that his physical elimination was not part of one of the potential ends of the systematic plan of repression.”<sup>100</sup>

### 3. Criminal case No. 1351 “Nicolaides Cristino and others on the abduction, detention, and concealment of minors”

97. On July 5, 2012, Federal Oral Court No. 6 of the Capital convicted Jorge Rafael Videla, *de facto* President of Argentina between 1976 and 1981, to 50 years of prison in the case known as the “Systematic Plan for the Abduction of Children,” as the mastermind behind the crime of abducting, detaining, and concealing the 10-year old minors, Anatole and Victoria, among other children abducted during the dictatorship.<sup>101</sup>

## V. ANALYSIS OF LAW

### A. Preliminary considerations

98. Before engaging in the analysis of law, the Commission deems it is relevant to clarify two preliminary aspects: i) ascertainment of the facts that are the subject of the instant case; and ii) the state’s allegation about the delay in forwarding the petition.

99. Regarding the first item, because there is a dispute between the parties about the scope of the subject of the instant case, it pertains to the Commission to clarify this aspect. As indicated in the section above relative to the processing of the case, on October 27, 1997, the petitioner withdrew the petition he had submitted to the IACHR on behalf of the Larrabeiti Yáñez siblings relative to the failure to respond to requests for information aimed at learning about the grounds for the fourth *whereas* clause of Decree No. 1025/96. On November 11, 2005, the petitioner submitted a new petition regarding the failure to provide reparations for the damage caused by the fourth *whereas* clause of Decree 1025/96. Afterwards, while said petition was in the initial review stage, on April 30, 2008, the petitioner submitted a petition that he described as “new and different,” relative to the failure to provide reparations for the grave human rights violations committed against the Larrabeiti Yáñez siblings and their biological parents as a result of a military operation carried out on September 26, 1976. The Executive Secretariat determined that, because it dealt with incidents intrinsically linked to the petition submitted in 2005, it would make sense to examine it as a part of the latter. Because of this, when forwarding the petition to the state, it sent the original petition received in 2005 along with the information submitted during the initial review stage, including the one received on April 30, 2008.

100. The state points out that the allegations referring to the concerns that emerged from the fourth *whereas* clause of Decree No. 1025/96 are excluded from the present analysis, because the petition regarding this aspect was withdrawn by the petitioner. It understands that the facts that substantiate the instant case

<sup>100</sup> Judicial Branch of the Nation. Judgment of the Federal Criminal Cassation Appeal Court, Chamber IV, February 27, 2019, pp. 211-214. Available at: <https://www.cij.gov.ar/nota-33494-Anulan-absoluciones-en-una-causa-por-delitos-de-lesa-humanidad.html>

<sup>101</sup> Judicial Branch of the Nation. Judgment of Federal Oral Court No. 6 of the Capital, July 5, 2012. Available at: <https://www.cij.gov.ar/nota-9856-Difundieron-los-fundamentos-de-la-condena-a-lorge-Rafael-Videla-a-50-a-os-de-prisi-n-por-el-robo-de-beb-s.html>

“are those that took place on September 26, 1976, in connection with the forced disappearance of the parents of the petitioners, the illegitimate deprivation of their liberty in a clandestine detention center when they were children, then their abduction, transfer to Uruguay, and subsequent abandonment in Chile.” In turn, the petitioner alleges that the harm caused by this decree is an integral part of the petition filed in 2005.

101. The Commission concludes that the incidents that are excluded from the subject of the instant case are those regarding the failure to respond to the requests for information that were filed in order to learn about the background to the fourth *whereas* clause of Decree No. 1025/96, which is the subject of the petition that was withdrawn on October 27, 1997. The allegations regarding the failure to provide reparations for the alleged harm caused by said *whereas* clause, as well as the alleged violations that took place in the framework of the civil lawsuit filed on August 26, 1998 (case file No. 24.518/98), are an integral part of the subject of the petition submitted in 2005. Therefore, these facts, as well as the military operation that took place on September 26, 1976 and what subsequently happened to the Julien-Grisonas family, are an integral part of the instant case.

102. Finally, in connection with the state’s allegation about the delay in forwarding the petition, the Commission has established that the application by analogy of Article 46.1 b) of the American Convention to initiating proceedings is not supported in said instrument, because this delay has no connection with the time-limits for processing said petitions by the Inter-American Commission.<sup>102</sup> The Inter-American Court has concluded, in the same vein, that the excessive delay in initiating proceedings does not constitute an indirect violation of the standard set forth in Article 46.1 b) of the American Convention.<sup>103</sup>

---

<sup>102</sup> I/A Court H.R. Case of *Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 22, 2013. Series C No. 265, para. 24

<sup>103</sup> I/A Court H.R. Case of *Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 22, 2013. Series C No. 265, para. 33.



**B. Rights to recognition as a person before the law, to personal liberty, to humane treatment, to life, to a fair trial, and to judicial protection (Articles 3, 7, 5, and 4 of the American Convention) in connection with the obligation to respect and guarantee rights (Article 1.1 of the same instrument);<sup>104</sup> Article I, subparagraph a), of the Inter-American Convention on the Forced Disappearance of Persons (IACFDP);<sup>105</sup> and the rights to recognition as a person before the law and civil rights, to protection against arbitrary detention and to life, to liberty, to safety and integrity of the person (Articles XVII, XXV, and I of the American Declaration<sup>106</sup>), in connection with the rights of the child (Article VII of the Declaration<sup>107</sup>)**

### 1. General considerations on the forced disappearance of persons

103. The inter-American system's case law has consistently indicated that, in cases of forced disappearance of persons, it constitutes a multiple and steady violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, implying other related violations, particularly grave when said harm forms part of a systematic pattern or practice which is applied or tolerated by the state.<sup>108</sup> According to its settled case law, the Commission considers that forced disappearance is a complex human rights violation that persists over time as long as the whereabouts of the victim or his or her remains continue to be unknown. Disappearance as such only comes to end when the victims appears or when his or her remains are located so that his or her identity can be determined with certainty<sup>109</sup>.

104. Regarding the rights violated, forced disappearance breaches the right to personal liberty and places the victim in a grave situation of risk of suffering from irreparable harm to his or his rights to personal integrity and life. The Court has indicated that forced disappearance violates the right to humane treatment since "the mere subjection of an individual to prolonged isolation and deprivation of communication is in

<sup>104</sup> Article 3 of the American Convention: Every person has the right to recognition as a person before the law.

Article 7.1 of the American Convention: Every person has the right to personal liberty and security.

Article 5.1 and 5.2 of the American Convention: 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Article 4.1 of the American Convention: 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

Article 8. Fair Trial. 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

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

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

<sup>105</sup> Hereinafter the IACFDP. The States Parties to this Convention undertake: a. Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees.

<sup>106</sup> Article XVII of the American Declaration: Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.

Article XXV of the American Declaration: No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. [...] Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.

Article I. Every human being has the right to life, liberty and the security of his person.

<sup>107</sup> Article VII of the American Declaration: All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

<sup>108</sup> IACHR. Application lodged before the Inter-American Court, Case No. 12.517, Gregoria Herminia Contreras et al., El Salvador, June 28, 2010, para. 131; I/A Court H.R., Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 74.

<sup>109</sup> IACHR. Application lodged before the Inter-American Court, Case No. 12.529, Rainer Ibsen Cárdenas and José Luis Ibsen Peña, Bolivia, May 12, 2009, para. 206; and IACHR. Report on the Merits No. 60/18. Case 12.709. Juan Carlos Flores Bedregal and family, Bolivia, May 8, 2018, para. 78.



itself cruel and inhuman treatment.”<sup>110</sup> The Commission and the Court have established that it is evident that victims of this practice feel violated in all dimensions of their personal integrity.<sup>111</sup> The Court has also indicated that, even if incidents of torture and deprivation of the life of the person victim of a disappearance cannot be proven in a concrete case, subjection of those detained to state agents or to individuals who act with their acquiescence or tolerance and who practice torture and killing with impunity represents, in itself, an infringement of the rights to personal integrity and life.<sup>112</sup>

105. According to the case law of both bodies of the inter-American system, the practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the Convention.<sup>113</sup> Case law has also established that the fact that a person is missing for a long period of time and in a context of violence it is a reasonable presumption to conclude that the person was killed.<sup>114</sup>

106. In addition, the Commission has consistently pointed out that, in cases of forced disappearance, with respect to the multiple and complex nature of this grave human rights violation, its execution creates a specific violation of the right to recognition as a person before the law.<sup>115</sup> That is how the Inter-American Court has also recognized it.<sup>116</sup> This is because the disappeared person can no longer enjoy and exercise the rights to which he or she is entitled and forced disappearance is “not only one of the most serious forms of placing the person outside the protection of the law but it also entails denying that person’s existence and to place him or her in a kind of limbo or uncertain legal situation before the society, the State.”<sup>117</sup> The Commission considers that forced disappearance also involves a violation of the rights to a fair trial and judicial guarantees regarding the missing person, in terms of the absence of actions to search for his or her whereabouts by means of efficient investigations and the impossibility of filing remedies in his or her favor because of the state’s denial of the incident in its custody.<sup>118</sup>

107. In the case of the Santa Bárbara Campesino Community v. Peru, the Court recapitulated its case law regarding forced disappearance, specifically in cases where the legal qualification of the incidents as such occurred because of “[...] what state agents did after they killed the victims, that is, the adoption of measures aimed at concealing what had really happened or erasing all traces of the bodies to prevent their identification or ascertaining their fate or whereabouts.”<sup>119</sup> The Court also referred to the standards of the United Nations Working Group on Forced and Involuntary Disappearance with respect to what differentiates

<sup>110</sup> I/A Court H.R. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, para. 85.

<sup>111</sup> I/A Court H.R. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 58; and IACHR, Report No. 5/16, Cases 11.053, 11.054, 12.224, 12.225, and 12.823. Merits. Peru. April 13, 2016, para. 167.

<sup>112</sup> I/A Court H.R. Case of Ticona Estrada v. Bolivia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 59; and Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 154.

<sup>113</sup> I/A Court H.R. Case of 19 Merchants. Judgment of July 5, 2004. Series C No. 109, para.154; and IACHR, Report No. 44/00. Case 10.820. Américo Zavala Martínez. Peru. April 13, 2000, para. 41.

<sup>114</sup> I/A Court H.R. Case of Velásquez Rodríguez. Judgment of July 29, 1988. Series C No. 4, para. 188; and IACHR. Application lodged before the Inter-American Court. Case No. 12.529. Rainer Ibsen Cárdenas and José Luís Ibsen Peña v. Bolivia. May 12, 2009, para. 248.

<sup>115</sup> IACHR. Applications lodged before the Inter-American Court in the following cases: Renato Ticona Estrada et al. (12.527), paras. 153-165; Rosendo Radilla Pacheco (12.511), paras. 138-145; Kenneth Ney Anzualdo Castro (11.385), paras. 167-176; Julia Gómez Lund et al. (11.552), paras. 208-220; Florencio Chitay Nech (12.599), paras. 136-146; Rainer Ibsen Cárdenas and José Luís Ibsen Peña (12.529), paras. 251-262; and Narciso González Medina et al. (11.324), paras. 138-149.

<sup>116</sup> I/A Court H.R. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, paras. 91-92; Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 157.

<sup>117</sup> I/A Court H.R. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, para. 90. See also: IACHR, Report No. 5/16, Cases 11.053, 11.054, 12.224, 12.225, and 12.823. Merits. Peru. April 13, 2016, para. 166.

<sup>118</sup> IACHR. Report on the Merits No. 60/18. Case 12.709. Juan Carlos Flores Bedregal and family, Bolivia, May 8, 2018, para. 69.

<sup>119</sup> The Court referred to the review of the cases of Rodríguez Vera et al. (the Disappeared from the Palace of Justice), Ibsen Cárdenas and Ibsen Peña, La Cantuta, Gómez Palomino, the 19 Merchants, Bámaca Velásquez and Castillo Páez. See: I/A Court H.R. Case of Santa Bárbara Campesino Community v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 299, para. 164.

forced disappearance from an extrajudicial killing, indicating that it is the refusal of the *de facto* perpetrators, as state agents or with their acquiescence, “or even after the execution was carried out, State officials refuse to disclose the fate or whereabouts of the persons concerned or refuse to acknowledge the act having been perpetrated at all.”<sup>120</sup> In that respect, the Court reasserted that “the existence of more or fewer clues on the death of the victims” does not change the characterization of the facts as a forced disappearance.<sup>121</sup>

108. Furthermore, the phenomenon of the disappearance of children in contexts of violence, both dictatorships and armed conflicts, and their connection with the concept of forced disappearance, have been the target of attention of the international community.<sup>122</sup> Regarding this, the Inter-American Court has established that abduction and separation of children from their parents, as well as the fact of remaining under the control of military troops in the course of a military operation, exert an impact on the mental, physical, and moral integrity of the children, producing feelings of loss, abandonment, intense fear, uncertainty, anguish, pain, which can vary and become more intense depending on the age and the specific circumstances.<sup>123</sup>

109. Likewise, in the Gelman Case, the Court deemed that:<sup>124</sup>

[...] the abduction and suppression of the identity of María Macarena Gelman García as a consequence of the detention and subsequent transfer of her pregnant mother to another State can be qualified as a particular form of enforced disappearance of persons, for having the same purpose or effect, upon leaving her clueless due to the lack of information regarding the fate or whereabouts or the denial of acknowledgment, in the terms of the mentioned Inter-American Convention. This is consistent with the concept and the constituent elements of enforced disappearance already addressed (*supra* paras. 64 to 78), amongst these, the definition contained in the International Convention for the Protection of all Persons from Enforced Disappearance from 2007 which in its Article 2 refers to “and other form of deprivation of liberty.”

110. Furthermore, the Court has established that the situation of a child whose family identity has been illegally altered and caused by the forced disappearance of his or her father or mother “ceases only when the truth about said identity is revealed by any medium and the victim is guaranteed the factual and juridical means to recover a true identity and, where appropriate, a family relationship, with the relevant legal effects to follow.”<sup>125</sup>

111. The concurrent and constitutive elements needed to ascertain that, in a given case, there was a forced disappearance are as follows: i) deprivation of liberty; ii) the direct intervention of state agents or their authorization, support, or acquiescence; and iii) the refusal to recognize the detention or to disclose the fate or whereabouts of the disappeared person.<sup>126</sup>

<sup>120</sup> I/A Court H.R. Case of Santa Bárbara Campesino Community v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 299, para. 164, quoting, among others: Working Group on Forced or Involuntary Disappearances, Report of the Working Group on Forced or Involuntary Disappearances, General Comments on the definition of forced disappearances, A/HRC/7/2, January 10, 2008, p. 12, para. 10.

<sup>121</sup> The Court referred to the review of the cases of Rodríguez Vera et al. (the Disappeared from the Palace of Justice), Ibsen Cárdenas and Ibsen Peña, La Cantuta, Gómez Palomino, the 19 Merchants, Bámaca Velásquez and Castillo Páez. See: I/A Court H.R. Case of Santa Bárbara Campesino Community v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 299, para. 163.

<sup>122</sup> IACHR. Application lodged before the Inter-American Court. Case No. 12.517. Gregoria Herminia Contreras et al., El Salvador, June 28, 2010, para. 136.

<sup>123</sup> I/A Court H.R. Case of Contreras et al. v. El Salvador. Merits, Reparations, and Costs. Judgment of August 31, 2011. Series C No. 232, para. 85.

<sup>124</sup> I/A Court H.R. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 132.

<sup>125</sup> I/A Court H.R. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 131.

<sup>126</sup> IACHR. Report No. 111/09. Case 11.324. Merits. Narciso González Medina. Dominican Republic. November 10, 2009, para. 130; and I/A Court H.R. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, para. 60.

## 2. Analysis of the case

112. Below, the Commission shall ascertain if what happened to Victoria Grisonas, Mario Julien, and their son and daughter constituted force disappearances. Regarding this, the Commission observes that there is a great deal of information regarding the existence of a systematic plan of unlawful repression drawn up by the members of the armed and security forces, as well as a practice of forced disappearances during Argentina's dictatorship, which has been established by the Commission in its Report on the Situation of Human Rights in Argentina and by the domestic courts in many judgments. Furthermore, it is a proven fact that the instant case took place in the framework of repressive coordination of "Operation Condor," whose principal victims were Uruguayan nationals, most of them refugees in Argentina. It has also been proven that there was, at the time of the incidents, a systematic plan for the abduction of newborn children or in early childhood, after their parents had been disappeared or executed. There is therefore enough evidence to contend that these crimes perpetrated in the context of Argentina's dictatorship constitute crimes against humanity, with the legal consequences that this codification entails. This characterization was recognized by the state itself in its briefs to the IACHR in the framework of the instant case.

113. In connection with Victoria Grisonas, there is no dispute about the existence of the three constitutive elements of forced disappearance. Victoria Grisonas was unlawfully deprived of her liberty in an operation carried out on September 26, 1976, in the full light of day and in front of neighbors, by a large number of heavily armed servicemen and police officers. Afterwards she was taken to a clandestine detention center called "Automotores Orletti," where she was seen by various witnesses. There she was tortured and disappeared. Despite the intense search undertaken by her mother and mother-in-law and the filing of writs of habeas corpus, the authorities did not acknowledge that she had been detained nor did they disclose her whereabouts, which to this day continues to be unknown.

114. Regarding Mario Julien, regarding the first and second elements, referring to the deprivation of liberty and direct intervention or acquiescence by state agents, there is no dispute over the fact that Mario Julien was arrested by state agents in the same military operation in which his wife was detained. As for the third element, in connection with the refusal to recognize the detention or to disclose the fate or whereabouts of the disappeared person, the Commission observes that Mario Julien was seen for the last time on the day of the military operation, apparently dead, stretched out on the ground at the corner of his house surrounded by servicemen. Since then, his body continues to be disappeared. Just like what was indicated regarding Victoria Grisonas, the search carried out at the time by his next of kin, as well as the steps taken with the authorities to learn about his whereabouts, have not yielded any results whatsoever.

115. The Commission observes that, in 2012, in the framework of criminal case No. 2637/04, it was reported that, on September 27, 1976, a coffin identified as "no name" (NN) deceased the preceding day, of about 30 years of age, was brought to the graveyard of the General San Martín Municipal Cemetery. The cause of death was recorded as shot down by military authorities and in the death certificate it was indicated that the person died of a "traumatic cardiac arrest. Acute hemorrhaging. Gunshot wound." On the basis of this information, the judicial authorities who are currently investigating the facts have ascertained that Mario Julien died in the military operation on September 26, 1976. Nevertheless, to date there has been no full clarification of what happened, including the whereabouts of his mortal remains.

116. Because of the above, the Commission deems that the third constitutive element of forced disappearance is also present and that the existence of clues about Mario Julien's death does not alter this legal characterization. To date, his son and daughter have not had access to his mortal remains so that they can be sure about his fate. As indicated previously, in line with inter-American case law, this is the element that differentiates an extrajudicial killing from a forced disappearance.

117. Furthermore, according to the body of evidence available, at the time of his disappearance, Mario Julien held the status of refugee from UNHCR in Argentina, which he obtained in 1973. Therefore, bearing in mind that the Inter-American Court has considered international protection by means of the refugee status as

a category banning discrimination and requiring special measures from the state, the Commission considers that the forced disappearance of Mario Julien is especially aggravated by the fact that he is a refugee.<sup>127</sup>

118. Regarding Anatole and Victoria Larrabeiti Yáñez, the Commission must examine if the facts that have been established in the instant case match the concept of forced disappearance. The Commission observes that there is no dispute about their illegal detention by state agents in the operation of September 26, 1976 when they were 4 years old and 16 months of age, respectively, at the time. It has also been confirmed that they were taken together with their mother to “Orletti,” where they remained until October, at which time they were transferred secretly to Uruguay and afterwards to Chile in December 1976 and were abandoned in a public square in the city of Valparaíso on December 22. The Commission considers that, as in the Case of Gelman previously cited in the present report, in this case the purpose or effect of the abduction of the siblings was “to let the incident be unknown for the lack of information about their fate or whereabouts or the refusal to acknowledge it.” The Court has made similar rulings in a series of cases in El Salvador, characterizing similar situations as forced disappearance.<sup>128</sup>

119. Therefore, the Commission concludes that the situation of Anatole and Victoria Larrabeiti Yáñez must also be characterized as forced disappearance, which came to an end when they recovered their identities and their biological kinship was reestablished on August 2, 1979. The Commission notes that, regardless of whether or not the fate and whereabouts of the siblings were ascertained a posteriori and that, for a significant part of their forced disappearance, they were outside Argentina’s territory, their forced disappearance had its initial start and was carried out in Argentina, and its perpetration and continuity was possible because of the actions of agents of the state of Argentina, as a result of which it can be held liable for what happened, even outside its jurisdiction but as a consequence of said actions. This is all the more evident, taking into account that, according to the consolidated approach of the bodies of the inter-American system in the matter, the forced disappearance, because of its complex and continuous character, must not be fragmented.

120. Regarding this, the IACHR notes that agents of the state of Argentina were involved in the design and implementation of the military operation that led to their illegal detention, as well as in their transfer and stay in a clandestine detention center. Likewise, Argentinian agents participated or at least permitted or covered up the clandestine transfer of the minors abroad, forcing them to leave their country of residence without any kind of border controls. As indicated, the multiple and complex nature of forced disappearance does not make it possible to split up this type of crime, especially considering that the goal of Argentina’s authorities when transferring the siblings abroad was to leave them in a kind of limbo or indeterminate legal situation and erase all traces of their existence, as well as the atrocities perpetrated against their family. As established by the above-mentioned case law, in this type of case, forced disappearance only ceases when the victim is guaranteed the legal and factual possibility of recovering his or her true identity. Therefore, in the instant case, that ceased when the Larrabeiti Yáñez siblings recovered their identity on August 2, 1979.

121. Finally, the IACHR wishes to highlight the emblematic nature of the instant case, as well as its extreme gravity, because it deals with one of the most unimaginable and reproachable forms of violence against a child. The Larrabeiti Yáñez siblings were the first disappeared children who were recovered, and this occurred at a time when the dictatorships of the Southern Cone were still in force. Because of this case, the magnitude and horror of the systematic repression of human rights and the repressive coordination of the Southern Cone dictatorships were revealed for the first time, a system that did not show the least respect for most basic human rights of those persons who, like the siblings Anatole y Victoria, were in a situation of total defenselessness. As established in the above-mentioned inter-American case law, the aggravated situation of vulnerability is all the more intense when it encounters a systematic pattern of human rights

<sup>127</sup> I/A Court H.R. Case of *I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 329, para. 240.

<sup>128</sup> I/A Court H.R. Case of *Contreras et al. v. El Salvador*. Merits, Reparations, and Costs. Judgment of August 31, 2011. Series C No. 232, paras. 80-94; and *Rochac Hernández et al. v. El Salvador*. Merits, Reparations, and Costs. Judgment of October 14, 2014. Series C No. 285, paras. 92-97.

violations and involves children, because their unlawful abduction from their biological parents jeopardizes their life, survival, and development.

122. Therefore, the Commission concludes that the state of Argentina violated, and continues violating, the rights to recognition as a person before the law, to life, to personal integrity and humane treatment, to personal liberty, to a fair trial, and to judicial protection as set forth in Articles XVII, XXV, and I of the American Declaration and Articles 3, 4.1, 5.1 and 5.2, and 7.1 of the American Convention, in connection with the obligations set forth in its Article 1.1, to the detriment of Victoria Lucía Grisonas and Mario Roger Julien. The Commission also concludes that the state violated Article I a) of the Inter-American Convention on the Forced Disappearance of Persons (IACFDP), because at the time of the ratification of said instrument by the state of Argentina and to date, the forced disappearance continues to be perpetrated. Furthermore, the Commission concludes that the state violated Articles XVII, XXV, and I of the American Declaration, in connection with its Article VII, to the detriment of Anatole and Victoria Larrabeiti Yáñez.

### **C. Right to personal integrity and the prohibition of torture (Article 5.1 of the American Convention, in connection with its Article 1.1, and Article I of the American Declaration<sup>129</sup>)**

#### **1. General considerations about the prohibition of torture and cruel, inhuman, or degrading treatment**

123. The IACHR has stressed that the American Convention forbids the use of torture or cruel, inhuman, or degrading treatment or punishment against persons regardless of the circumstance. The Commission has indicated that “an essential aspect of the right to personal security is the absolute prohibition of torture, a peremptory norm of international law creating obligations *erga omnes*.”<sup>130</sup> The IACHR has also qualified the prohibition of torture as a norm of *jus cogens*.<sup>131</sup> As for the Court, it has pointed out repeatedly that “International Human Rights Law strictly prohibits torture and cruel, inhuman, or degrading punishment or treatment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international *jus cogens*.”<sup>132</sup>

124. According to the case law of the inter-American system, so that a conduct can be characterized as torture, there must be the following concurrent elements: i) it must be an intentional act perpetrated by a state agent or with his or her authorization or acquiescence; ii) it must cause severe physical or mental suffering; and iii) it must be committed for a given purpose or aim.<sup>133</sup> Regarding the second element, the Inter-American Court has established that “upon determining the degree of suffering endured by the victim, the Court must take into account the specific circumstances of each case, in view of objective and subjective factors. The former refer to the characteristics of mistreatment, such as the duration, the method or manner used to inflict harm, and the physical and psychological effects such harm may cause. The latter refer to the characteristics of the individual undergoing mistreatment, including age, gender, health condition, and any other personal circumstance.”<sup>134</sup>

<sup>129</sup> Article XXVI of the American Declaration, in its relevant part, establishes that: Every person accused of an offense has the right [...] not to receive cruel, infamous or unusual punishment.

<sup>130</sup> IACHR, Report on Terrorism and Human Rights, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Quoting: IACHR, Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, para. 118.

<sup>131</sup> IACHR, Report on Terrorism and Human Rights, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Quoting: IACHR, Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, para. 154.

<sup>132</sup> I/A Court H.R. Case of Bueno Alves v. Argentina. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C No. 164, para. 76; I/A Court H.R. Case of del Penal Miguel Castro Castro Vs. Peru. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 271; and I/A Court H.R. Case of Baldeón García v. Peru. Merits, Reparations, and Costs. Judgment of April 6, 2006. Series C No. 147, para. 117.

<sup>133</sup> IACHR, Report No. 5/96, Case 10.970, Merits. Raquel Martín Mejía, Peru, March 1, 1996, Section 3; and I/A Court H.R. Case of Bueno Alves Vs. Argentina. Merits, Reparations, and Costs Judgment of May 11, 2007. Series C No. 164, para. 79.

<sup>134</sup> I/A Court H.R. Case of Bueno Alves v. Argentina. Merits, Reparations, and Costs Judgment of May 11, 2007. Series C No. 164, para. 83.



## 2. Analysis of the case

125. Below, the Commission shall examine whether or not, in the instant case, there are the three constitutive elements of torture with respect to Victoria Grisonas and her children. First of all, it will examine whether or not they were subjected to intense physical or mental suffering; afterwards it will examine whether or not there was the direct participation or authorization or acquiescence of state agents; and finally it will ascertain whether it intended to achieve a given purpose or aim.

126. Regarding Victoria Grisonas, there is no dispute among the parties that, on the basis of the above-mentioned context and the case file, it clearly emerges that state agents participated intentionally in the incidents. In that respect, on May 31, 2011, Federal Criminal Oral Court No. 1 convicted four former agents of the Army for the crimes committed in "Orletti," a judgment which is final. This judgment deems it has been "confirmed, with full certainty, that Victoria Lucía Grisonas was subjected to the unlawful deprivation of her liberty, as well as confinement in the detention center called "Automotores Orletti," sustained torture and inhuman detention conditions." Therefore, there is no dispute about the state's participation in these actions, because of which the Commission finds that the element of participation by state agents has been fulfilled.

127. In connection with the intense physical or mental suffering, the Commission finds that the evidence appearing in the case file are consistent amongst each other and show that the victim sustained intense physical and mental suffering. According to witness statements, the day of the operation, the agents of the armed forces "took [Victoria Grisonas] and her children from the fourth house [and] [...] they took the children from her and carried them away, they hit her forcefully, I remember that the servicemen took her by the arms and legs lifted her up and then threw her on the ground." When she arrived at "Orletti," she was dragged by her hair to the second floor where the torture room was located, which was the last time she was seen. According to information provided in the framework of the court cases, there was a routine of torture through which every detained person in "Orletti" had to pass. Likewise, the courts of Argentina have established that, in general, the victims detained in this center were subjected to different stages of captivity or subhuman conditions of detention. This is fully proven by the many sources invoked in the context section of the present report.

128. As a result, the Commission concludes that Victoria Grisonas was subjected to multiples forms of physical and psychological mistreatment. The Commission deems that the abuses described are grave and are liable to cause profound physical pain and extreme fear. Thus, the second constitutive element of the torture has also been fulfilled.

129. Finally, in connection with the given purpose or aim, the Commission observes that, according to the existing body of evidence and judicial rulings issued by domestic courts, the actions of the state agents were deliberate and were aimed at obtaining information to dismantle the political organization to which Victoria Grisonas and her husband belonged. Therefore, this requirement has also been met.

130. Regarding the Larrabeiti Yáñez siblings and in connection with the participation of state agents, there is no dispute that those who conducted the operation in which they were unlawfully detained and subsequently transferred to "Orletti" were military and police agents. Therefore, the Commission finds that the element of participation by state agents is also fulfilled.

131. As for the second element regarding intense physical or mental suffering, on the base of the above-mentioned case law, the IACHR must take into account exogenous factors, such as the age of the persons sustaining the suffering. From the body of evidence, it appears that, when in the operation the siblings wept and called for their mother when they were taken away from her by the military agents, one serviceman told them "your bitch of a mother no longer exists." In addition, Anatole remembers "walking with someone holding his hand, who was also carrying his sister in his arms and when he looked back he saw his parents stretching on the ground face down, with their hands open, while persons were pointing at them with firearms, one of them close to his mother, wearing a uniform, a helmet, and holding a machine gun." Furthermore, when they arrived at "Orletti," the children saw how the servicemen took away their move dragging her by her hair, probably the last image they had of her.

132. Likewise, from the body of evidence referred to above, it emerges that the persons detained in “Orletti” were subjected to torture and various stages of captivity or subhuman conditions of detention. Therefore, it is a fact that, while the siblings stayed in that center, they were in a grim place, surrounded by detained persons living in subhuman conditions, listening to screams, and witnessing various kinds of scenes of violence. To this must be added the extreme anguish and uncertainty produced by their violent separation from their father and mother. Bearing in mind the young age of the victims, that is, 4 years old and 16 months of age, the Commission deems that the sole fact of remaining in said circumstances in a place of those characteristics is, in itself, an intense suffering, which is second constitutive element of torture.

133. As for the existence of a determined purpose or aim, the Commission observed that the siblings, after their unlawful detention during the operation, suffered the same fate as their mother with regard to their transfer to “Orletti.” Once they were in the detention center and their mother had disappeared, the state agents chose to keep them there instead of looking for another alternative, such as returning them to their family, as was their obligation in order to safeguard other rights that shall be examined separately in the present report, including the right to identity. For reasons unknown, probably because of what Anatole had witnessed, as he was at an age allowing him to be a living witness to all of the savagery of the repression that the dictatorships wished to conceal, the objective was to get rid of the siblings to eliminate whatever trace of the gruesome series of events which finally ended with the decision to secretly take them abroad. The Commission therefore considers that this purpose is sufficient to fulfill the third constitutive element of torture.

134. Furthermore, on the basis of inter-American case law, the Commission concludes that the state also violated the right to personal integrity recognized in Article 5.1 of the American Convention to the detriment of the Larrabeiti Yáñez siblings for the suffering caused by the disappearance of their father and mother and the search for justice, bearing in mind that, in cases involving forced disappearances, the very fact of disappearance causes, in direct next of kin, severe suffering to their right to mental and moral integrity, which is heightened, among other factors, by the refusal of state authorities to provide information about the whereabouts of the victim or to initiate an effective investigation to ascertain what happened.<sup>135</sup>

135. On the basis of what has been described, the Commission concludes that the state of Argentina is responsible for the perpetration of acts of torture, which violated Article I of the American Declaration, to the detriment of Victoria Grisonas and the Larrabeiti Yáñez siblings, in connection with its Article VII. In addition, the Commission concludes that Article 5.1 of the American Convention was violated with respect to the siblings because of the suffering caused by the forced disappearance of their father and mother, which persists to date, as well as the prolonged denial of justice and reparations for these events.

**D. Rights to protection of the family, to private and family life, to a nationality, and to residence and freedom of movement (Articles VI, V, XIX, and VIII of the American Declaration<sup>136</sup>), in connection with its Article VII**

**1. General considerations about the rights to an identity, to a name, to a private life, to family, to a nationality, and to residence and freedom of movement**

136. The Court has established that “the abduction of children by State agents in order for them to be illegitimately delivered and raised by another family, modifying their identity and without informing their

<sup>135</sup> I/A Court H.R. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 133.

<sup>136</sup> Article VI of the American Declaration: Every person has the right to establish a family, the basic element of society, and to receive protection therefore.

Article V of the American Declaration: Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.

Article XIX of the American Declaration: Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.

Article VIII of the American Declaration: Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

biological family about their whereabouts [...] constitutes a complex act that involves a series of illegal actions and violations of rights to conceal the facts and impede the restoration of the relationship of the minors of age and their family members.”<sup>137</sup>

137. Regarding the right to an identity, although it is not expressly envisaged in the American Declaration or in the American Convention, it is possible to ascertain it on the basis of the provisions of Article 8 of the Convention on the Rights of the Child, which establishes that this right includes, among others, the right to a nationality, to a name, and to family relationships. The Inter-American Court has conceptualized the right to an identity as “the collection of attributes and characteristics that allow for the individualization of the person in a society, and, in that sense, encompasses a number of other rights according to the subject it treats and the circumstances of the case.”<sup>138</sup> Furthermore, reference has been made to statements by the General Assembly of the Organization of American States and the Inter-American Juridical Committee:<sup>139</sup>

In accordance, the General Assembly of the Organization of American States (hereinafter “the OAS”) indicated “that the recognition of the identity of persons is one of the means through which observance of the rights to juridical personality, a name, nationality, civil registration, and family relationships is facilitated, among other rights recognized in international instruments, such as the American Declaration of the Rights and Duties of Man and the American Convention on Human Right.<sup>140</sup> Likewise, it established “that failure to recognize one’s identity can mean that a person has no legal proof of his or her existence, which makes it difficult to fully exercise his or her civil, political, economic, social, and cultural rights.”<sup>141</sup> In the same sense, the Inter-American Juridical Committee expressed that the right to identity is consubstantial to the attributes and human dignity. Consequently, it is an enforceable basic human right *erga omnes* as an expression of a collective interest of the overall international community that does not admit derogation or suspension in cases provided in the American Convention on Human Rights.”

138. Furthermore, the Court has referred to Argentina’s jurisprudence, which has determined that the illicit abduction and appropriation of children “affected the right to identity of the victims every time that the children’s civil status had been changed and there had been an attribution of birth information that hindered knowing the true identity, eliminating any indication of the true origin and preventing contact with the true family members.”<sup>142</sup>

139. Although the American Declaration does not expressly envisage the right to a name, it has been recognized in Article 18 of the American Convention and in various international instruments.<sup>143</sup> Likewise, the European Court of Human Rights (ECHR) has stated that the right to a name, although it has not been expressly recognized by the European Convention on Human Rights, is protected under the right to private and family life as set forth in its Article 8.<sup>144</sup> In turn, the Inter-American Court has pointed out that the given name and surname are “essential to establish formally the connection that exists between the different

<sup>137</sup> I/A Court H.R. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 120.

<sup>138</sup> I/A Court H.R. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 122.

<sup>139</sup> I/A Court H.R. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 123.

<sup>140</sup> OAS, “Inter-American Program for Universal Civil Registry and ‘Right to Identity,’” Resolution AG/RES. 2286 (XXXVII-O/07) of June 5, 2007; Resolution AG/RES. 2362 (XXXVIII-O/08) of June 3, 2008, and Resolution AG/RES. 2602 (XL-O/10), on follow-up on the program, of June 8, 2010. On that aspect, the Inter-American Juridical Committee considered that the American Convention on Human Rights, although it does not enshrine the right to identity expressly under that name, it does include, as indicated, the right to a name, the right to a nationality, and the right to the protection of family. Regarding this, the Inter-American Juridical committee, Opinion “on the scope of the right to identity,” resolution CJI/doc. 276/07 rev. 1, of August 10, 2007, paras. 11.2 and 18.3.3, ratified by means of resolution CJI/RES.137 (LXXI-O/07), of August 10, 2010.

<sup>141</sup> OAS, “Inter-American Program for Universal Civil Registry and ‘Right to Identity,’” Resolution AG/RES. 2286 (XXXVII-O/07) of June 5, 2007; Resolution AG/RES. 2362 (XXXVIII-O/08) of June 3, 2008; and Resolution AG/RES. 2602 (XL-O/10), on follow-up on the program, of June 8, 2010.

<sup>142</sup> I/A Court H.R. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 124.

<sup>143</sup> Article 24.2 of the International Covenant on Civil and Political Rights; Article 7.1 of the Convention on the Rights of the Child; Article 6.1 of the African Charter on the Rights and Welfare of the Child; Article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and Article 18.2 of the Convention on the Rights of Persons with Disabilities.

<sup>144</sup> ECHR, Case of Stjerna v. Finland, Judgment of November 25, 1994, para. 37; and ECHR, Case of Burghartz v. Switzerland, Judgment of February 22, 1994, para. 24.

members of the family” and that the right to a name “constitutes a basic and essential element of the identity of each individual, without which he cannot be recognized by society or registered before the State.”<sup>145</sup> This right implies, therefore, that states must guarantee that the person is registered with the name chosen by him or her or by his or her parents without any type of constraint or interference.<sup>146</sup> In that respect, the IACHR understands that the right to a name is included in Article V of the American Declaration.

140. Furthermore, in the case of *Gelman*, the Inter-American Court established that the state’s grave illegal interference in the family violated the right to protection of the family when preventing or obstructing permanence with the nuclear family and the reestablishment of relationships with it.<sup>147</sup> Likewise, the Inter-American Commission has considered that, in cases such as the present one, there is a double violation of the right to a family. On the one hand the breakup of the family triggered in the context of grave and systematic human rights violations and, on the other hand, depriving children of their right to enjoy a family life as a result of forced disappearance.<sup>148</sup>

141. Regarding the right to a nationality, the Inter-American Commission has pointed out that the right of all persons to keeping their nationality is the obligation stemming from the absolute prohibition of arbitrarily depriving them of their nationality.<sup>149</sup> The IACHR notes regarding this that, although Article XIX of the American Declaration does not expressly forbid the arbitrary deprivation of nationality, this obligation is a necessary corollary of the state’s duty to guarantee the right of every person “to the nationality that legally corresponds to him or her.” Likewise, the Commission has established that international recognition of nationality as a human right of all persons imposes on states the obligation to prevent and eradicate statelessness, a legal situation in which all persons who are not recognized by any state as nationals are found.<sup>150</sup>

142. According to the Inter-American Court, the right to a nationality, as a legal link between a person and a state, is a prerequisite for anyone to exercise certain rights. As a result, the right to nationality involves the state’s duty to protect the person against arbitrary deprivation of his or her nationality and, therefore, the totality of his or her political rights and those civil rights that depend on it.<sup>151</sup>

143. Finally, Article VIII of the American Declaration expressly establishes that all persons have the right to abandon the state of which they are the nationals only when they wish to do so. The Inter-American Court has established, regarding this, that “it also imports, when children are involved, the obligation to consider the specific protection that is involved, for example, that they not be arbitrarily denied a family medium and that they not be retained and illicitly transferred to another State.”<sup>152</sup>

## 2. Analysis of the case

144. In section B above, the Commission concluded that there was a forced disappearance with respect to the Larrabeiti Yáñez siblings from September 26, 1976 to August 2, 1979, the date on which they recovered their identities and reestablished their biological kindship. The Commission shall examine below whether or not, during the almost three years that the siblings remained disappeared, another series of violations were committed relative to their right to an identity, especially the rights to a family, to a name, to private life, and

<sup>145</sup> I/A Court H.R. Case of the Girls *Yean y Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, paras. 182 and 184.

<sup>146</sup> I/A Court H.R. Case of *Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 127.

<sup>147</sup> I/A Court H.R. Case of *Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 135.

<sup>148</sup> IACHR. Application lodged before the Inter-American Court. Case No. 12.517. *Gregoria Herminia Contreras et al., El Salvador*, June 28, 2010, para. 118.

<sup>149</sup> IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II.Doc.46/15. December 2015, para. 467.

<sup>150</sup> IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II.Doc.46/15. December 2015, para. 470.

<sup>151</sup> I/A Court H.R. Case of the Girls *Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, para. 137-139.

<sup>152</sup> I/A Court H.R. Case of *Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 128.

to a nationality. Likewise, the Commission shall examine whether or not the facts of the instant case constitute, in addition, a violation of the right to residence and freedom of movement.

145. First of all, the Commission observes that, after the unlawful deprivation of liberty of the Larrabeiti Yáñez siblings and their stay in “Orletti,” they were transferred secretly without the consent of their next of kin and without any type of border control, which according to the above-mentioned case law is tantamount to the unlawful transfer of children to another state and a forced exit from the country of which Victoria was a national and of which Anatole was a resident in addition to being the son of a refugee. The Commission also notes that there is no dispute about said secret transfer and the fact that it was carried out by state agents. This therefore constitutes a violation of the right to residence and freedom of movement recognized by the American Declaration and, in particular, a violation of the prohibition of the involuntary abandonment of the territory of the state of origin.

146. While the siblings were disappeared, they lost all contact with their biological family, thus the state was able to obstruct any possibility for them to reestablish family relationships, and they were found only thanks to steps taken by individual persons after a ceaseless national and international search conducted by their biological grandmothers. In this way, owing to illegal interference by the state of Argentina, Anatole and Victoria were deprived of the protection of their family, a basic protection without which, owing to their young age, their lives, survival, and physical, emotional, and social development were endangered. At only 4 years old and 16 months of age, the only emotional support that the siblings had was each other. This sudden and illegal separation of the family therefore constitute a violation of their right to protection and family, as well as the right to a private and family life, as protected by the Declaration. As indicated in the previous section, the right to private and family life, also implies a protection of the right to first and last names. Although, thanks to Anatole’s age at the time, it was possible for him and his sister to keep their own birth names (at least one for her) during their disappearance, the same did not occur with their last names, an essential element to formally establish a relationship with next of kin.

147. Furthermore, the unlawful transfer of the siblings outside the country, which led to a new transfer to a third country totally alien to their origins, implied *de facto* an arbitrary deprivation of nationality for almost three years, while they remained disappeared. This led to an arbitrary deprivation of Anatole’s Uruguayan nationality and of Victoria’s Argentinian nationality, as well as of the possibility of obtaining the other nationality because he was the son of an Argentinian mother and she was the daughter of a Uruguayan father, respectively. As a consequence of the unlawful disappearance and transfer abroad, the Larrabeiti Yáñez siblings acquired the Chilean nationality because of an arbitrary situation.

148. Therefore, the Commission concludes that the state’s illegal interference in the rights to protection of the family, to a private life, to a name, and to a nationality, constituted an impact on the right to identity of Anatole and Victoria Larrabeiti Yáñez and a violation of Articles VI, V, and XIX of the American Declaration, in connection with the obligation to protect children as recognized in its Article VII. The unlawful transfer abroad also constitutes a violation of the right to residence and freedom of movement as set forth in Article VIII of the American Declaration, in connection with its Article VII.



**E. Rights to a fair trial, to judicial protection, and to the duty to investigate grave human rights violations (Article 8<sup>153</sup> and Article 25.1<sup>154</sup> of the American Convention), in connection with its Article 1.1 and the duty to adopt provisions under domestic law (Article 2 of the American Convention<sup>155</sup>); and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (IACPPT)<sup>156</sup> and Article I, subparagraph b), and Article III of the Inter-American Convention on the Forced Disappearance of Persons (IACFDP)<sup>157</sup>**

**1. General considerations about the rights to a fair trial and judicial protection and about the duty to investigate possible forced disappearance and torture**

149. The Court has expressed that states are obliged to provide effective judicial remedies to the victims of human rights violations, which must be substantiated pursuant to the rules of due process of law, all of which is part of the general obligation, to be fulfilled by the states themselves, to guarantee the free and full exercise of the rights recognized by the Convention to all persons who are under their jurisdiction. Likewise, it has pointed out that the right to access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin to do all that is necessary to know the truth of what happened and to investigate, try, and, if appropriate, punish those who are eventually proven to be responsible.<sup>158</sup> Regarding the guarantee of reasonable time envisaged in Article 8.1 of the American Convention, the Inter-American Court has established that three elements need to be established in order to ascertain the reasonability of the time-limits for the development of a proceeding: a) the complexity of the case, b) the procedural activity of the party concerned, and c) the conduct of judicial authorities.<sup>159</sup> Likewise, the Commission and the Court have considered that it is also necessary to take into consideration the interest that was impacted.<sup>160</sup>

150. The Court has already established that the obligations to investigate acquires a particular and crucial intensity and importance in view of the gravity of the crimes perpetrated and the nature of the rights that were violated, as in cases of grave human rights violations occurring as part of a systematic pattern or

<sup>153</sup> Article 8 of the American Convention: "1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. [...]"

<sup>154</sup> Article 25.1 of the American Convention: 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.

<sup>155</sup> Article 2 of the American Convention: 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.

<sup>156</sup> Article 1 of the IACPPT: The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention. Article 6 of the IACPPT: In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Articles 8 of the IACPPT: The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

<sup>157</sup> Article I, subparagraph b) of the IACFDP: To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.

Article III of the IACFDP, first paragraph: The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

<sup>158</sup> I/A Court H.R. Case of Gutiérrez and family v. Argentina. Merits, Reparations, and Costs Judgment of November 25, 2013. Series C No. 271, para. 97.

<sup>159</sup> I/A Court H.R. Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006. Series C No. 148, para. 289.

<sup>160</sup> I/A Court H.R. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155.

practice applied or tolerated by the state, because the imperative need to prevent the repetition of said events depends, to a large extent, on preventing them from going unpunished and on meeting the expectations of both the victims and society as a whole of gaining access to knowledge of the truth of what happened. The elimination of impunity by all legal means available is a basic element for the elimination of extrajudicial killings, torture, and other grave human rights violations.<sup>161</sup>

151. According to inter-American case law, it turns out that, when there is a report on the disappearance of a person, there is an integral linkage between the state's response and the protection of the life and integrity of the person who is reported missing. The Commission reiterates that, when there are reasonable reasons for suspecting that a person has been subjected to disappearance, it is indispensable for prosecution and judicial authorities to act quickly and immediately by ordering timely and necessary measures aimed at ascertaining the whereabouts of the victim or the place where he or she might be found deprived of liberty.<sup>162</sup>

152. In the words of the Inter-American Court, so that an investigation of an alleged forced disappearance can be conducted effectively and with due diligence:<sup>163</sup>

the authorities in charge of the investigation must use all necessary means to take those measures and make those inquiries that are essential and opportune to clarify the fate of the victims. On numerous occasions, this Court has ruled on the obligation of States to conduct a genuine search, using the appropriate administrative or judicial mechanism, during which every effort is made, systematically and rigorously, with the adequate and appropriate human, technical and scientific resources, to establish the whereabouts of the persons disappeared. The return of the body of a disappeared person is extremely important for their next of kin, because it allows them to bury him or her in keeping with their beliefs, and also to close the mourning process that they have been experiencing throughout these years. In addition, the remains are evidence of what happened and, together with the place where they are found, can provide valuable information on the perpetrators of the violations or the institution to which they belong.

153. Likewise, in the case of forced disappearances, the codification of the crime of forced disappearance must have priority in the investigations that need to be launched or continued at the domestic level. Because it involves a crime that is prolonged in time, when the codification of the crime of forced disappearance of persons comes into force, the new law applies, although this does not mean it can be applied retroactively.<sup>164</sup>

154. Furthermore, pursuant to Article 1.1 of the American Convention, the obligation of guaranteeing the rights recognized in Articles 5.1 and 5.2 of the American Convention entails the state's duty to investigate possible acts of torture or other cruel, inhuman, or degrading treatment. This obligation to investigate is reinforced by the provisions of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture which requires the state to "take effective measures to prevent and punish torture in the sphere of its jurisdiction," as well as to "prevent and punish [...] other cruel, inhuman, or degrading treatment."<sup>165</sup>

155. According to inter-American case law, it is clear that, by virtue of Articles 8 and 25 of the Convention, when the authorities are apprised of a possible case of forced disappearance or torture, they have the reinforced duty of promoting and conducting the investigation, which includes the following relevant matters for the instant case: (i) to start *ex officio* the investigation as long as there is a complaint or well-founded reason for suspecting that said crimes have been committed; (ii) to order and bring forward the relevant evidence in line with the duty of due diligence; (iii) to guarantee independence and impartiality in the

<sup>161</sup> I/A Court H.R. Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, Reparations, and Costs. Judgment of October 25, 2012. Series C No. 252, para. 244.

<sup>162</sup> I/A Court H.R. Case of Ibsen Cárdenas e Ibsen Peña v. Bolivia. Merits, Reparations, and Costs. Judgment of September 1, 2010. Series C No. 217, para. 167.

<sup>163</sup> I/A Court H.R. Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 14, 2014. Series C No. 287, para. 480.

<sup>164</sup> I/A Court H.R. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 236.

<sup>165</sup> IACHR. Report on the Merits No. 74/15. Mariana Selvas Gomez et al. Mexico. October 28, 2015, para. 378; I/A Court H.R. Case of J. v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 27, 2013. Series C No. 275, para. 341.

investigation; and (iv) to remove the obstacles that jeopardize the adequate development of the investigation, among others.

156. Regarding the duty to initiate *ex officio* the investigation, the system's bodies have constantly pointed out that "whenever there are reasonable grounds to suspect that a person has been subjected to enforced disappearance, a criminal investigation must be opened." This obligation is regardless of whether or not a complaint has been filed, because, in cases of forced disappearance, international law and the general obligation of guarantee impose the obligation to investigate the case *ex officio*, immediately and in a genuine, impartial, and effective manner; hence, it does not depend on the procedural initiative of the victim or his next of kin or on the provision of evidence by private individuals.<sup>166</sup> The same actions are required when authorities are apprised of alleged incidents of torture.<sup>167</sup>

157. Regarding the duty to order and bring forward the relevant evidence in line with the duty of due diligence, the Commission and the Court have specified that, in cases of human rights violations, the investigation must be aimed at exploring all possible lines of investigation, which would make it possible to identify the perpetrators of said violation.<sup>168</sup> The Court has also established that, in complex cases, "the obligation to investigate entails the duty to use the efforts of the State apparatus to clarify the structure that permitted these violations, the causes, the beneficiaries, and the consequences; hence an investigation can only be effective if it is conducted based on a comprehensive vision of the facts that takes into account the background and the context in which they occurred and that seeks to reveal the structures of participation."<sup>169</sup>

158. Furthermore, the Court has pointed out that states must remove all obstacles and mechanisms of fact and law that uphold the impunity, as well as use all measures within their reach to pursue prosecution.<sup>170</sup> Regarding the obstacles represented by Laws No. 23.492 and No. 23.521, as well as Decree No. 1002/98, for the investigation and punishment of human rights violations perpetrated during Argentina's dictatorship, the Inter-American Commission concluded in 1992 that they were incompatible with Article XVIII of the American Declaration and Articles 8 and 25 of the American Convention, in connection with its Article 1.1. This was because the legal consequence of their passage was that they "denied the victims their right to obtain a judicial investigation in a court of criminal law to determine those responsible for the crimes committed and punish them accordingly."<sup>171</sup>

159. Likewise, since the Case of Barrios Altos, the Inter-American Court has pointed out that:<sup>172</sup>

all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.

<sup>166</sup> I/A Court H.R. Case of Osorio Rivera and family members v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 26, 2013. Series C No. 274, para. 178.

<sup>167</sup> I/A Court H.R. Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations, and Costs. Judgment of October 30, 2008. Series C No. 187, para. 92.

<sup>168</sup> IACHR. Report No. 25/09. Merits. Sebastião Camargo Filho. Brazil, March 19, 2009, para. 109; I/A Court H.R. Case of J. v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 27, 2013. Series C No. 275, para. 344.

<sup>169</sup> I/A Court H.R. Case of Rodríguez Vera et al. (the Disappeared from Palace of Justice) vs. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 14, 2014. Series C No. 287, para. 500.

<sup>170</sup> I/A Court H.R. Case of Carpio Nicolle et al. v. Guatemala. Merits, Reparations, and Costs. Judgment of November 22, 2004. Series C No. 117, para. 134.

<sup>171</sup> IACHR. Report No 28/92. Cases 10.147, 10.181, 10.240, 10.262, 10.309 y 10.311. Argentina. October 2, 1992, para. 50.

<sup>172</sup> I/A Court H.R. Case of Barrios Altos v. Peru. Judgment of March 14, 2001. Series C No. 75, para. 41.

## 2. Analysis of the case

160. Below, the Commission shall examine the actions carried out by the state in connection with the criminal investigation of the crimes of forced disappearance and torture against the Julien-Grisonas family, namely: (i) the existence of obstacles in the investigation while Laws 23.492 and 23.521 were in force; (ii) the efforts made by the state after the above were repealed; (iii) the criminal investigation of the crimes committed to the detriment of Victoria Grisonas and Mario Julien; (iv) the search for their remains; (v) the investigation into the crimes committed to the detriment of the Larrabeiti Yáñez siblings; and (vi) the reasonable delay in conducting the criminal investigations.

161. As indicated in the section on the determination of the facts, on December 24, 1986, Law No. 23.492, called “Full Stop,” was passed and, on June 8, 1987, Law No. 23.521, called “Due Obedience,” was passed. Along with the pardons decreed by President Carlos Menem (No. 1002/98 et al.), these laws led to a large number of criminal cases, which were filed after the restoration of democracy to investigate incidents committed during the dictatorship, came to a standstill. These laws were then repealed by Law 25.779 and afterwards declared unconstitutional by the CSJN on June 14, 2005.

162. Therefore, for more than 18 years, the “Full Stop” and “Due Diligence” laws were in force and led to a situation of total impunity regarding the crimes against humanity perpetrated against the Julien-Grisonas family, which, according to the inter-American system’s consistent case law, are not eligible to benefit from amnesty because they involve grave human rights violations. During this long period of time, any attempt by the Larrabeiti Yáñez siblings to seek justice was thwarted. Therefore, by adopting, implementing, and enforcing the laws called “Full Stop” and “Due Obedience,” both of which exerted a direct impact on the possible clarification of the facts, the state violated Articles 8.1 and 25 of the Convention, in connection with its Articles 1.1 and 2 and with Article I, subparagraph b), of the IACFDP, to the detriment of the Larrabeiti siblings and their biological mother and father.

163. The Inter-American Commission recognizes the importance of the judgment of unconstitutionality issued on June 14, 2005 by the CSJN in the case of “Simón, Julio Héctor.” It also recognizes and stresses the efforts made by the state of Argentina in terms of public policies for memory, truth, and justice after the repeal of Laws Nos. 23.492 and 23.521, and in particular the numerous criminal cases filed for grave human rights violations promoted since then. With this turnabout, Argentina once again became a historical milestone as a result of the Trial of the Juntas in 1985, a trial that is the cornerstone for Argentina’s transition to democracy and that is also especially important internationally for being the first country in the world to bring its senior military commanders to trial for human rights violations after the restoration of democracy. The Commission stresses that Argentina has been recognized globally as a model regarding memory, truth, and justice.

164. Nevertheless, despite these major efforts, in the instant case, the Commission must examine, on the basis of available information, whether or not the grave human rights violations, which in addition were crimes against humanity according to the terms indicated in the context and recognized by the state of Argentina, perpetrated against the Julien-Grisonas family, were adequately investigated and punished, in line with the state’s international obligations as already summed up in the present report.

165. According to proven facts, on May 31, 2011, Federal Criminal Oral Court No. 1, in the framework of the case known as “Orletti I,” convicted four former agents of the SIDE and sentenced them to life imprisonment and to 25 and 20 years of prison, for various crimes committed in “Orletti,” among which the unlawful deprivation of liberty and torture of Victoria Grisonas. This judgment confirmed her unlawful deprivation of liberty in this secret detention center, as well as the suffering of torture and inhuman detention conditions. The judgment was upheld on appeal on October 7, 2013.

166. The Commission stresses that, on the basis of the above-mentioned judgment of conviction, the state conducted an effective and diligent investigation in accordance with the inter-American standards previously cited. In particular, said judgment reflected a comprehensive vision of the facts, because it took into account the background and context in which they occurred, revealing structures of participation. Nevertheless, the

IACHR observes that, although long prison sentences were given, proportional to the gravity of the crimes, the codified crime of forced disappearance was not applied. This was incorporated into Article 142ter of the Criminal Code by means of Law 26.679 enacted on May 5, 2011. As set forth in the previously cited inter-American case, in cases of forced disappearance, it is this codified criminal category that must be applied. Therefore, the Commission concludes that, because Argentina had not codified the crime of forced disappearance until the year 2011, it violated Article III of the IACFDP and was therefore responsible for the late codification of the crime.

167. Furthermore, on September 11, 2017, Federal Criminal Oral Court No. 1, in the framework of the case known as “Orletti III,” convicted two former agents of Argentina’s Federal Police and sentenced them to six years of prison as the co-perpetrators of the crime of unlawful deprivation of liberty, aggravated by the use of violence and threats, to the detriment of Victoria Grisonas. The court confirmed that both former police officers spearheaded the operation carried out on September 26, 1976. Although it was confirmed that Mario Julien was killed in the framework of this operation, the court acquitted the former police officers for the crime of felony murder with malice aforethought with respect to Mario Julien because of the absence of evidence regarding their direct participation in the homicide. On February 27, 2019, the Fourth Chamber of the Federal Criminal Court of Cassation partially overturned this judgment and sent back the proceedings to the lower court (*a quo*). The court overturned the acquittal of Mario Julien because it deemed it was arbitrary.

168. As established in Section B above, in the case of Mario Julien the three constitutive elements of evidence for forced disappearance are present, and the existence of clues to his death does not alter this legal characterization, because his mortal remains have not as yet been found, identified, or delivered to his next of kin. Therefore, bearing in mind the impunity prevailing to date regarding these incidents, the Commission establishes that the failure of domestic courts to consider the above-mentioned elements constitutes a violation of the state of Argentina’s international obligation to punish all forced disappearance of persons in accordance with the rights established in Articles 8.1 y 25, in connection with Article 1.1 of the Convention, and with the obligation established in Article I b) of the IACFDP. In any case, the Commission observes that what happened to Mario Julien continues to go unpunished.

169. Regarding the search for the remains of Victoria Grisonas and Mario Julien, the Commission observes that, on the basis of available information, it does not emerge that all the necessary means have been used to promptly undertake the necessary actions and verifications to clarify the fate of the victims, in accordance with the above-mentioned inter-American case law. In the case of Mario Julien, according to what was investigated in the framework of Case No. 2637/04, there are clues indicating that his remains were transferred in 1986 to the General Ossuary of the General San Martín Municipal Cemetery. Nevertheless, despite the request filed by Anatole Larrabeiti Yáñez as the complainant in said case, on the basis of available information, it cannot be concluded that additional steps have been taken in order to locate the remains of Mario Julien and to proceed with his identification and delivery to his son and daughter.

170. The Commission stresses the importance for the Larrabeiti Yáñez siblings of receiving the bodies of their biological mother and father, an aspect deemed to be of the utmost importance for the inter-American system because it enables the next of kin to reach a closure in the process of bereavement, which in the instant case has extended for various decades. Likewise, the Commission highlights the importance, for the next of kin and society as a whole, to know the truth about what happened. As established by inter-American case law, in cases of forced disappearances, the right of next of kin to know the fate of their loved ones and, when appropriate, where their remains are located, is a constitutive part of the right to truth and is also included in the right to access to justice and the obligation to investigate as a way of providing reparations to know the truth in the concrete case.

171. In connection with the investigation of the crimes perpetrated against the Larrabeiti Yáñez siblings, in the framework of the judgment issued on May 31, 2011 in the case of “Orletti I,” the court requested that the first instance judge in charge of Case No. 2637/04 be provided with the relevant procedural elements needed to investigate the possible criminal participation of Rolando Nerone and other agents of the Federal Police of Argentina in the abduction of the Julien-Grisonas family. When said judgment was issued, Rolando Nerone and Oscar Gutiérrez had just been prosecuted. The Commission notes that, although in this order for



prosecution, the judge precisely detailed the actions perpetrated against the Larrabeiti Yáñez siblings, those being prosecuted for these crimes were not indicted, and they were therefore excluded from the judgment of September 11, 2017. As for the state itself, it indicated to the IACHR that the facts regarding the siblings are still being processed.

172. Furthermore, the Commission observes that, on July 5, 2012, Federal Oral Court No. 6 of the Capital convicted Jorge Rafael Videla shortly before his death to 50 years of prison in the case known as the “Systematic Child Abduction Plan” as the mastermind behind the crime of abduction, detention, and concealment of children under 10 years of age, among whom Anatole and Victoria. The Commission notes, however, that to date no material perpetrator or any other masterminds were punished for the illegal deprivation of liberty of the siblings during the operation, the torture to which they were subjected for having been unlawfully detained in a clandestine detention center and their subsequent unlawful transfer abroad, and the resulting forced disappearance for almost three years. Therefore, according to available information, to date the crimes against humanity against the Larrabeiti Yáñez siblings continue to go unpunished.

173. Below, the Commission shall examine whether or not the criminal investigations conducted in the instant case abided by the guarantee of reasonable time envisaged in Article 8.1 of the Convention on the basis of the four elements established by inter-American case law. With respect to the complexity of the process, bearing in mind that the incidents that are the subject of the investigations started in the seventies and involve four victims, various perpetrators and masterminds, as well as state agents from various state institutions, the Commission deems that it involved a complex investigation.

174. With respect to the prosecution activities of the parties concerned, the IACHR reiterates that, in cases of forced disappearance and torture such as the present one, international law and the general duty to guarantee impose the obligation to investigate the case *ex officio*, immediately and in a genuine, impartial, and effective manner; hence, it does not depend on the procedural initiative of the victim or his next of kin or on the provision of evidence by private individuals. Despite this, the Commission notes that, on November 19, 2012, Anatole Larrabeiti Yáñez became a complainant in Case No. 2637/04 and has filed various court proceedings.

175. Regarding the conduct of judicial authorities, the Commission must examine, on the basis of available information, the prosecution activities in the cases of “Orletti I” and “Orletti III,” as well as with respect to the search for the remains of Mario Julien and Victoria Grisonas.

176. The Commission does not have any information about the date on which these criminal investigations started. Nevertheless, it is a proven fact that the indictment in the case of “Orletti I” was issued on September 6, 2006, that the judgment of conviction in the court of first instance was adopted on May 31, 2011, and that the judgment in the court of second instance was issued on October 7, 2013. As for the case of “Orletti III,” on the basis of information provided by the parties, as well as information in the public domain, it has been ascertained that the indictment was issued on May 19, 2011, the judgment of conviction was issued on September 11, 2017, and the judgment in the court of second instance was issued on February 27, 2019.

177. From the body of evidence available to the IACHR, it was ascertained that, on September 18, 2017, Anatole Larrabeiti Yáñez, as a complainant in Case No. 2637/04, requested the judge’s recusal from the case because he had allegedly been responsible for many inexplicable delays in the investigations, and listed five briefs filed over four years to urge investigation of the case, in response to which the judge had remained silent or provided late and insufficient replies. Although the IACHR does not have documentation available that would enable it to confirm these specific omissions, it is an undisputable fact that the investigation of the crimes perpetrated against the Larrabeiti-Yáñez siblings is still being processed.

178. Furthermore, as indicated above, ascertainment of the responsibilities for the disappearance of Mario Julien continues to be pending, as the acquittal ruled in the court of first instance has been overturned and the actions sent back to the lower court (*a quo*). The search for the remains of Mario Julien and Victoria Grisonas is also pending. As indicated, on the basis of available information, there is no indication that, since the report by the Director of the General San Martín Municipal Cemetery was submitted in the framework of

Case No. 2637/04, actions have been taken to find the remains of Mario Julien. The IACHR concludes, therefore, that all of the above is sufficient to establish that the procedural conduct of the state of Argentina led to a delay that is beyond a reasonable period of time. The Commission believes it is important to specify, in addition, that in the review of reasonable time, the impact on the Larrabeiti Yáñez siblings because of the duration of the proceedings must be taken into account.

179. The Commission observes with concern that, although 42 years have elapsed since the incidents began, as well as 33 years since the restoration of democracy and 13 years since the legal obstacles to investigating and punishing these crimes were removed, those responsible for the forced disappearances of Mario Julien and children have not been punished, nor have the fate and whereabouts of Victoria Grisonas and Mario Julien been ascertained.

180. Therefore, the Commission concludes that the state of Argentina violated the rights recognized in Articles 8.1 and 25 of the Convention, in connection with its Article 1.1, as well as the obligation set forth in Article I b) of the IACFDP, because those responsible for the forced disappearance Mario Roger Julien Cáceres and the Larrabeiti Yáñez siblings have not yet been punished, nor have the fate and whereabouts of Victoria Grisonas and Mario Julien been ascertained. Likewise, the state violated Articles 1, 6, and 8 of the IACPPT because it has not, to date, investigated or punished the acts of torture perpetrated against the Larrabeiti Yáñez siblings. Furthermore, the enforcement of Laws Nos. 23.492 and 23.521 and the resulting obstruction of seeking justice, constituted a violation of the rights enshrined in Articles 8.1 and 25 of the Convention, in connection with its Articles 1.1 and 2, and Article I, subparagraph b) of the IACFDP, to the detriment of the Larrabeiti Yáñez siblings and their biological mother and father. Likewise, the late codification of the crime of forced disappearance violated Article III of the IACFDP.

#### **F. Right to due process of law and effective judicial custody regarding Article 280 of the Code of Civil and Commercial Procedure of the Nation**

181. On August 26, 1998, the Larrabeiti Yáñez siblings filed a civil lawsuit (Case File No. 24.518/98) against the Ministry of the Interior for damages sustained because of the hope that their biological father would be found alive, as a result of the fourth *whereas* clause of Decree 1025/96. As indicated in the Section on prior matters, the allegations on the failure to provide reparations for the damages caused by said *whereas* clause, as well as the alleged violations occurring in the framework of the lawsuit filed on August 26, 1998, are an integral part of the subject of the instant case.

182. This complaint was dismissed in the court of first instance on August 13, 2003, and this ruling was upheld in the court of appeals on June 22, 2004. On August 3, 2004, the Larrabeiti Yáñez siblings filed an extraordinary remedy because they believed this ruling was arbitrary, but this appeal was dismissed on November 16, 2004. On December 10, 2004, they filed a complaint appeal with the CSJN alleging, among other matters, that the judgment being appealed disregarded the evidence that was expressly invoked. On September 27, 2005, the CSJN ruled that the appeal was inadmissible on the basis of what is established in Article 280 of the Code of Civil and Commercial Procedure of the Nation (*Código Procesal Civil y Comercial de la Nación*, hereinafter CPCCN).

183. The petitioner alleges that Article 280 of the CPCCN clashes with the right to due process of law and the right to effective judicial protection, because it allows invoking non-substantiation and judicial discretion. Therefore, the IACHR must review this allegation in light of the guarantees enshrined in the American Convention.

184. Regarding this provision of the CPCCN, the Inter-American Court established that “the fact that the remedy had been rejected based on Article 280 of the Code of Civil and Commercial Procedure makes the accessibility of the recourse uncertain, since this provision enables the unsubstantiated denial of the recourse, so that those who turn to the justice system [...] do not know the reasons why they were unable to

have access to that procedural mechanism.”<sup>173</sup> Nevertheless, the Commission observes that said ruling of the Court was issued in a criminal case where the right to appeal a judgment of conviction was not guaranteed. In that regard, the Court considered that the remedy of complaint, “insofar as it safeguards access to [the ordinary appeal that would make it possible to review a judgment of conviction]” did not constitute, in the concrete case, an effective remedy to guarantee the right to a comprehensive remedy.

185. That is, in the above-mentioned case, the extraordinary remedy was the only one available to challenge the conviction, as a result of which the limitation referred to regarding accessibility to the remedy of complaint was analyzed in light of the requirements of Article 8.2 h) of the Convention, among which there is the element of accessibility to the remedy. It must also be pointed out that Article 8.2 of the Convention is exclusively applicable to criminal proceedings and, by virtue of case law extension, to proceedings of a punitive nature.

186. In the instant case, however, it involves a civil lawsuit for damages where there was a judgment from the courts of first instance and second instance. Therefore, the Commission does not consider that the conclusion of the Inter-American Court regarding Article 280 of the CPCCN should be applied by analogy in a case of the present nature.

## **G. Rights to a fair trial and judicial protection regarding reparations for grave human rights violations (Articles 8.1 and 25.1 of the Convention, in connection with its Articles 1.1 and 2)**

### **1. General considerations on the absence of statute of limitations for civil proceedings relative to grave human rights violations**

187. First of all, the Commission wishes to stress that Article 2 of the American Convention entails the adoption of measures along two main lines, namely: i) the annulment of norms and practices of any kind whatsoever that might imply the violation of the guarantees protected by the Convention, or that fail to recognize or else obstruct the rights recognized therein; and ii) the passing of laws and the development of practices conducive to effective observance of such guarantees. The first set of obligations is not fulfilled as long as the standard or practice violating the Convention is maintained in the legal system and, therefore, it is fulfilled when the standards or practices having such effects are amended, repealed, or somehow nullified or reformed, as the case may be.<sup>174</sup>

188. The Commission has considered that the application of the statute of limitations to civil lawsuits arising from crimes against humanity constitutes a disproportionate constraint on the possibility of obtaining reparations. This is because, although the principle of legal security is aimed at contributing to public law and order, the right to a judicial remedy to obtain reparations for crimes against humanity does not undermine this principle, rather it strengthens it and contributes to its optimization. In addition, reparations for crimes against humanity, because of the gravity of said crimes and their impact on society, beyond individuals, must be given greater weight compared to the weight given to legal security.<sup>175</sup>

189. The reasons for the absence of a treaty-based approach to enforcing the statute of limitations for a criminal proceeding in this kind of case is related to the fundamental nature of clarifying the facts and securing justice for the victims. Because of that, the Commission has contended that there are no reasons for applying a different standard to an aspect that is equally fundamental such as reparations in these cases, because of which judicial proceedings seeking reparations for harm caused as a result of grave human rights violations should not be subject to any statute of limitations.<sup>176</sup> The Inter-American Court has issued the same ruling when considering that “to the extent that the facts gave rise to civil lawsuits for reparations for

<sup>173</sup> I/A Court H.R. Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 23, 2012. Series C No. 255, para. 107.

<sup>174</sup> IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016, para. 109.

<sup>175</sup> IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016, paras. 130 and 131.

<sup>176</sup> IACHR. Report No. 52/16. Case 12.521. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016, para. 132.

damages that have qualified as crimes against humanity, said proceedings should not be the subject of any statute of limitations.”<sup>177</sup>

## 2. Analysis of the case

190. According to proven facts, on June 9, 1996, the Larrabeiti Yáñez siblings filed a civil lawsuit against the national state for harm caused to them and their biological mother and father. On October 15, 2002, the Federal Court of First Instance for Administrative Disputes convicted the national state to payment of US\$600,000 for damages. The judgment established that the incident producing the harm never came to an end because it involved a forced disappearance.

191. In the court of second instance, on November 4, 2004, the Third Chamber of the Federal Court for Administrative Disputes partially ruled admissibility of the complaint in favor Victoria Larrabeiti Yáñez and declared that the action regarding her brother was subject to the statute of limitations because two years had elapsed since he had become of legal age. On October 30, 2007, the CSJN admitted the ordinary remedy filed by the national state against the judgment of second instance, declaring that the proceedings of both siblings were subject to the statute of limitations. The Court considered that the adoptive parents should have inferred the complaint at least since the publication in 1986 of the final report drafted by CONADEP, in whose annex appear the numbers of the docket corresponding to the biological parents. The judgment also established that the statute of limitations was applicable for civil lawsuits arising from crimes against humanity, as they involve a matter that is available and waivable.

192. The Commission observes that Article 2561 of the Civil Code adopted in 2015 established that civil lawsuits arising from crimes against humanity cannot be subject to a statute of limitations. Nevertheless, according to available information, to date the jurisprudential criterion of the CSJN is that this non-applicability of a statute of limitations does not govern cases of forced disappearances taking place during the dictatorship, because Article 2537 of this Code establishes that the delays for the statute of limitations in force at the time of the entry into force of the Code are governed by the previous law. As indicated in the section relative to the establishment of the facts, according to this interpretation, “the starting point for the delay regarding the statute of limitations can be situated—among other possibilities—on the date when, by means of a court judgment, the alleged decease of the victim of the crime is determined.”

193. Therefore, taking into account the above-mentioned inter-American standards in the matter, the Commission considers that there is clarity about the absence of any treaty-based applicability of the statute of limitations in civil proceedings filed in cases of grave human rights violations. Furthermore, in addition to the indefeasible nature of the facts of the instant case because they involve grave violations, the Commission notes that, because forced disappearance is continuous by its very nature, there is no starting point from which one can begin to calculate the delay for the statute of limitations, because the declaration of an alleged death, contrary to the criterion applied by the CSJN in its jurisprudence, does not bring an end to the crime.

194. Furthermore, the Commission deems that the requirement set by the CSJN that the adoptive parents should have inferred the complaint at least as of the publication of the final report drafted by CONADEP, excessively limits the access to justice, rendering the right to obtain redress illusory. The Commission observes that, according to official information, the first printing of the Final Report of CONADEP published in 1986 amounted to 40,000 copies and it was sold out within 48 hours after its release. In addition, it must be kept in mind that the adoptive family lived in Chile, so that they did not necessarily know what was happening in Argentina, all the more so because it was a time when information was not as accessible and did not circulate as quickly as when the judgment was issued. Therefore, the Commission considers that the applicability of a civil statute of limitations in the instant case violated Articles 8.1 and 25.1 of the American Convention, in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument, to the detriment of the Larrabeiti Yáñez siblings.

<sup>177</sup> 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, para. 89.

### 3. General considerations about administrative reparation mechanisms in cases of grave human rights violations

195. The Commission reiterates that states have the obligation to offer full reparation to the victims of human rights violations. Regarding this, the Commission has recognized that “in grave, systematic, and prolonged situations of human rights violations, states may establish reparation programs that make it possible for the persons affected to be able to have recourse to expeditious and effective mechanisms.”<sup>178</sup> Nevertheless, the Commission has stressed, regarding this, that:<sup>179</sup>

the mechanisms of reparation offered by the State must be integral or full in the sense of taking into account all the components of reparation in accordance with the international obligations of states. In particular, the Commission considers that the determination of reparation whether determined judicially or administratively (with the two jurisdictions being mutually exclusive), does not exempt the State of its obligations related to the component of justice for the violations caused, which obligates the State to guarantee the victims that there will be an investigation into and punishment of the persons responsible for those violations, as per the requirements of international law.

196. Regarding the suitability of the administrative reparations mechanisms in situations of transitional justice such as that of Colombia, the Inter-American Court has considered that:<sup>180</sup>

In scenarios of transitional justice, where the states must fulfill their duty to provide massive reparations to large numbers of victims that might largely exceed the capacities and possibilities of domestic courts, administrative reparation programs constitute one of the legitimate ways of observing the right to reparations. In those contexts, these reparation measures must be understood together with other measures of truth and justice, as long as they meet a series of requirements associated, among others, with their legitimacy and effective capacity of comprehensive reparations for them.

197. Likewise, according to what is established by the IACHR, “the complementary nature of reparations ordered administratively and judicially, can be verified at the international level, where, for example, the Inter-American Court has established judicial reparation measures, even when the victims had already received compensation in the framework of general programs of reparation at the national level.”<sup>181</sup>

198. According to the Court, if “national mechanisms ... exist to determine forms of reparation, these procedures [and their results] should be evaluated” and, to this end, it must be examined whether or not they “satisfy standards of objectivity, reasonability, and effectiveness.”<sup>182</sup> In addition, the Court has considered, regarding this, that:<sup>183</sup>

the existence of administrative programs of reparation must be compatible with the State’s obligations under the American Convention and other international norms and, therefore, it cannot lead to a breach of the State’s duty to ensure the “free and full exercise” of the rights to judicial guarantees and protection, in keeping with Articles 1(1), 25(1) and 8(1) of the Convention, respectively. In other words, the administrative reparation programs and other measures or actions of a legal or other nature that co-exist with such programs, cannot result in an obstruction of the possibility of the victims, pursuant to the rights to judicial guarantees and protection, filing actions to claim reparations.

<sup>178</sup> IACHR. Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013, para. 467.

<sup>179</sup> IACHR. Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013, para. 467.

<sup>180</sup> 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, para. 98.

<sup>181</sup> IACHR. Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia. OEA/Ser.L/V/II. Doc. 49/13. December 31, 2013, para. 468.

<sup>182</sup> I/A Court H.R. Case of *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219, para. 303.

<sup>183</sup> 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, paras. 190 and 192.



[...] [A]ccording to treaty-based rights, the establishment of domestic administrative or collective reparation programs does not prevent the victims from filing actions to claim measures of reparation.

199. Likewise, regarding Chile, the Court has pointed out that the case law criterion on the complementary and non-exclusive nature of reparations granted administratively and judicially, “is reasonable with respect to the right of the victims of grave human rights violations to gain access to justice in order to request a judicial declaration of the state’s responsibility, so that an individual calculation of the damages can be made or, as the case may be, to question the sufficiency or effectiveness of the reparations received previously.”<sup>184</sup>

#### **4. Analysis of the case**

200. According to available information, on August 22, 1995, the Larrabeiti Yáñez siblings requested the benefits of Law No. 24.411 for the forced disappearance of their biological mother and father. Afterwards, they requested the benefits of Law No. 25.914 for the unlawful deprivation of liberty committed against them when they were children. In both cases, the cases were provisionally archived because of the existence of a civil complaint filed against the national state, and they were reopened in 2017 and 2017, respectively. There is no information in the case file with the IACHR indicating that they have proceeded with these cases or obtained the respective reparations.

201. The state alleges that reparations laws are adequate mechanisms to provide satisfactory responses to pecuniary claims because they recognized a special benefit for persons who had not filed the respective proceedings for damages within the general delay under the statute of limitations, and therefore the state provided a response in conformity with the principles of distributive justice to prevent the victims from being deprived of all compensation. The petitioner, in turn, contends that “the administrative proceeding with a rated compensation” does not provide any responses to the instant case but rather that the course to follow is that of a “judicial action with a large body of evidence and without any pre-established limits.” He points out that the principal concern of the victims was to know the true facts and to manage to establish the fate of their biological mother and father at a time when there was no possibility of conducting a criminal investigation, which is something that cannot be achieved by providing a rated and limited reparation. Regarding this, he indicates that the option of appealing for redress through the courts turned out to be completely successful because on the basis of a civil lawsuit, it was possible to locate key witnesses and to learn about a large part of the facts.

202. In the instant case, the Larrabeiti Yáñez siblings are determined to secure reparations ruled in a court of law in accordance with a broad concept of redress, set in accordance with the specific features of their case and not on the basis of previously established amounts and limitations. If the victims in this case, instead of giving priority to a simple administrative proceeding without any of the difficulties and costs of a litigation, prefer having recourse to a court of law with the demands that this entails (longer delays, higher costs, and stricter requirements in terms of evidence regarding damages) to secure a court ruling of responsibility, the state cannot undermine the free and full exercise of their rights to a fair trial and to judicial protection.

203. Nevertheless, in the instant case, the Commission observes that the recourse that the Larrabeiti Yáñez siblings gave priority to was not, in practice, obstructed by the provisions of Laws Nos. 24.411 and 25.914, which excluded seeking redress in the courts, to the extent that they were able to complete the civil proceedings in all instances, and ultimately the action was ruled inadmissible because of the application of the statute of limitations, a subject that has already been examined in the present report. In that respect, under the circumstances of this particular case, the Commission does not find any violations of the American Convention for the exclusion contained in the laws referred to.

<sup>184</sup> 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, para. 100.

## VI. CONCLUSIONS AND RECOMMENDATIONS

204. The Commission concludes that the state of Argentina is responsible for the violation of the rights to recognition as a person before the law, to life, to personal integrity and humane treatment, to personal liberty, to a fair trial, and to judicial protection as enshrined in Articles 3, 4.1, 5.1, 5.2, 7.1, 8.1, and 25.1 of the American Convention on Human Rights, in connection with its Articles 1.1 and 2; in Article I, subparagraphs a) and b), and Article III of the Inter-American Convention on the Forced Disappearance of Persons; in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; as well as in Articles I, V, VI, VIII, XVII, XIX, and XXV of the American Declaration of the Rights and Duties of Man, in connection with its Article VII, to the detriment of Mario Roger Julien, Victoria Lucía Grisonas Andrijauskaite, Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez.

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS MAKES THE FOLLOWING RECOMMENDATION TO THE STATE OF ARGENTINA:**

1. To investigate fully, impartially, and effectively the whereabouts of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite, and in such a case, to adopt the necessary measures to identify and deliver their mortal remains to their next of kin in accordance with their wishes.
2. To criminally investigate the human rights violations stated in the present report and to conduct the appropriate proceedings for the crime of forced disappearance of Mario Roger Julien Cáceres and for the crimes of forced disappearance and torture of Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez, in an impartial and effective manner and within a reasonable time, for the purpose of fully clarifying the facts, identifying all those responsible, and administering punishment as appropriate.
3. To provide adequate reparations for the human rights violations stated in the present report, in terms of both material and moral damages, including fair compensation and measures of satisfaction that include the establishment and dissemination of the historical truth of the facts, as well as other measures of a similar nature in consultation with Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez.
4. To implement an adequate physical or mental health services program for Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez, if that is their wish and in consultation with them. Bearing in mind that they are not under the jurisdiction of the state of Argentina, diplomatic and other kinds of measures must be adopted for the enforcement of this measure in the specialized services center of their choice or a calculation made for payment of a sufficient amount so that they themselves can cover the costs of a possible treatment.
5. To adopt necessary measures of non-repetition to prevent similar incidents from taking place in the future. The measures of non-repetition in the instant case must include legislative adjustments and change in the practices of national jurisprudence so that civil lawsuits relative to crimes against humanity, regardless of whether the actions were initiated prior to the effective date of the current regulations establishing the imprescriptibility. They should also include measures to continue to make the necessary efforts to ensure that investigations into crimes against humanity committed during the dictatorship move forward as quickly as possible and in accordance with the State's international obligations, and to re-establish the identity of children who disappeared during the dictatorship.