INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF MENDOZA *ET AL. v.* ARGENTINA

JUDGMENT OF MAY 14, 2013

(Preliminary objections, merits and reparations)

In the *Case of Mendoza et al.*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:[1]

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice President
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge, and
Alberto Pérez Pérez, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court[2] (hereinafter also "the Rules of Procedure"), delivers the following Judgment.

[1] According to Article 17(1) of the Court's Rules of Procedure, approved at its eighty-fifth regular session held from November 16 to 28, 2009, "[j]udges whose terms have expired shall continue to exercise their functions in cases that they have begun to hear and that are still pending. […]." Judge Leonardo A. Franco, an Argentine national, did not participate in this case in keeping with Article 19(1) of the Rules of Procedure. Also, for reasons beyond his control, Judge Eduardo Vio Grossi did not participate in the deliberation and signature of this Judgment.

[2] Rules of Procedure of the Court approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court*: On June 17, 2011, pursuant to the provisions of Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Court's jurisdiction the case of *César Alberto Mendoza et al. v. the Argentine Republic* (hereinafter "the State" or "Argentina"). The case of *Mendoza et al. v. Argentina* refers to the supposed imposing of life sentences ("life imprisonment" [*privación perpetua de la libertad*] on César Alberto Mendoza, Lucas Matías Mendoza, Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal, and "reclusion for life" [*reclusión perpetua*] on Claudio David Núñez), "for facts that occurred when they were children […] in application of a juvenile justice system that allowed them to be treated as adult offenders." The case also refers to supposed "restrictions in the scope of the review by means of the remedies of cassation filed by the [presumed] victims" and to "a series of [presumed] violations that occurred while they were serving their sentences in the custody of the State." Thus, the Commission argued that Saúl Cristian Roldán Cajal and Ricardo David Videla were subjected to detention conditions that were "incompatible with their human dignity," which led to the latter's death and which has not been investigated effectively; that Claudio David Núñez and Lucas Matías Mendoza were victims of "acts of torture," and that the latter lost his sight "without the State providing [adequate] medical care."

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

a. *Petitions.* Between April 9, 2002, and December 30, 2003, the presumed victims, through Fernando Peñaloza representing Ricardo David Videla Fernández, and the Ombudsperson, Stella Maris Martínez, representing Guillermo Antonio Álvarez, César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal submitted several petitions regarding the application of life sentences for crimes committed while under 18 years of age. "Given the close similarity between the factual and legal arguments," the Commission decided to joinder the said petitions in a single case file, with the exception of the case of Guillermo Antonio Álvarez, which will be processed under a separate case file.

b. *Admissibility report*. On March 14, 2008, the Inter-American Commission approved Admissibility Report No. 26/08,[3] in which it concluded that it was competent to examine the claims presented by the petitioners concerning the presumed violations of Articles 5, 7, 8, 19 and 25 of the Convention, in relation to Article 1(1) and 2 of this instrument. In addition, it indicated that the petition was admissible because it met the requirements established in Articles 46 and 47 of the Convention.

[3] Report on admissibility No. 26/08 of March 14, 2008 (file of the case before the Commission, tome VI, folios 3270 to 3285).

c. *Merits report*. Under the terms of Article 50 of the Convention, on November 2, 2010, the Commission issued Report on merits No. 172/10 (hereinafter "the Merits Report" or "Report No. 172/10"), in which it reached a series of conclusions and made several recommendations to the State:

(i) *Conclusions*. The Commission concluded that the State was responsible for the violation of the rights recognized in the following Articles of the American Convention:

- to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, Articles 5(1), 5(2), 5(6), 7(3) and 19, as well as Article 8(2)(h)) of the Convention, all in relation to Articles 1(1) and 2 thereof;
- to the detriment of César Alberto Mendoza and Saúl Cristian Roldán Cajal, Article 8(2)(d) and (e) of the Convention, in relation to Article 1(1) thereof;
- to the detriment of Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, Article 5(1) and 5(2) of the Convention, in relation to Article 1(1) thereof;
- to the detriment of Ricardo David Videla Fernández, Articles 4(1) and 5(1) of the Convention, and to the detriment of their next of kin, Articles 8(1) and 25(1) thereof, all in relation to Article 1(1) of this instrument;
- to the detriment of Lucas Matías Mendoza, Articles 5(1), 5(2) and 19 of the Convention, in relation to Article 1(1) thereof;
- to the detriment of Lucas Matías Mendoza and Claudio David Núñez, Articles 5(1), 5(2), 8(1) and 25(1) of the Convention, in relation to Article 1(1) thereof, as well as non-compliance with the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and
- to the detriment of the next of kin of the presumed victims, Article 5(1) of the Convention.

ii. *Recommendations.* Consequently, the Commission recommended that the State:

- "Take the necessary measures so that César Alberto Mendoza, Claudio David Nuñez, Lucas Matías Mendoza and Saúl Cristián Roldán Cajal are able to file an appeal to obtain a broad review of the sentences convicting them in compliance with Article 8(2)(h) of the American Convention [… during which] the international standards for juvenile criminal justice are applied as described in the [… Merits R]eport and that the victims' legal situation is established observing those standards";
- "Ensure that, while they are deprived of liberty, they have the medical attention they require;
- "Prescribe the legislative and other measures to ensure that the criminal justice system applicable to adolescents, for crimes committed while under 18 years of age, is compatible with the international obligations concerning the special protection for children and the purpose of the punishment, in keeping with the parameters set out in the […Merits R]eport";
- "Prescribe the legislative and other measures to ensure effective compliance with the right recognized in Article 8(2)(h) of the Convention […] in keeping with the standards described in the […Merits R]eport";
- "Conduct a complete, impartial and effective investigation, within a reasonable time, to clarify the death of Ricardo Videla Fernández and, as appropriate, impose the corresponding punishments. This investigation must include the possible responsibility for omissions or failures to comply with the obligation of prevention of the officials who were in charge of the custody of the [presumed] victim";
- "Conduct a complete, impartial, and effective investigation, within a reasonable time, to clarify the acts of torture suffered by Lucas Matías Mendoza and Claudio David Nuñez and, as appropriate, impose the corresponding punishments";
- "Organize measures of non-repetition that include training programs for prison personnel on international human rights standards, in particular on the right of persons deprived of liberty to be treated with dignity, as well as on the prohibition of torture and other cruel, inhuman or degrading treatment";

- "Take the necessary measures to ensure that the detention conditions in the Mendoza Provincial Prison meet the relevant inter-American standards, and";
- "Provide adequate compensation for the human rights violations declared in the [… Merits R]eport" for both the pecuniary and the non-pecuniary aspects.[4]

d. *Notification to the State.* The Merits Report was notified to the Argentine State on November 19, 2010, and the State was granted two months to report on compliance with the recommendations. In response to Argentina's requests and its express waiver of the possibility of filing preliminary objects with regard to the time frame established in Article 5(1) of the American Convention, the Commission granted three extensions so that the State could adopt the corresponding measures.

e. *Submission to the Court.* Once the above-mentioned time frame and the extensions had expired, the Commission submitted the instant case to the Inter-American Court "in order to obtain justice for the victims owing to the Argentine State's failure to make any substantial progress in complying with the recommendations." The Commission appointed Commissioner Luz Patricia Mejía and then Executive Secretary, Santiago A. Canton, as delegates, and Deputy Executive Secretary Elizabeth Abi-Mershed, and María Claudia Pulido, Silvia Serrano Guzmán and Andrés Pizarro, Executive Secretariat lawyers, as legal advisors.

3. *Request of the Inter-American Commission.* Based on the foregoing, the Inter-American Commission asked the Court to declare the international responsibility of the Argentine State for the violation of:

> a. "The rights recognized in Articles 5(1), 5(2), 5(6), 7(3) and 19 of the American Convention in relation to the obligations established in Articles 1(1) and 2 of the Convention, to the detriment of César Alberto Mendoza, Claudio David Nuñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández";
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> b. "The right recognized in Article 8(2)(h) of the American Convention in relation to the obligations established in Articles 1(1) and 2 of the Convention, to the detriment of César Alberto Mendoza, Claudio David Nuñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández";
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> c. "The rights recognized in Article 8(2)(d) and (e) of the American Convention in relation to the obligations established in Articles 1(1) of the Convention, to the detriment of César Alberto Mendoza and Saúl Cristian Roldán Cajal";
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> d. "[…the] rights recognized in Articles 5(1) and 5(2) of the American Convention in relation to the obligations established in Article 1(1), to the detriment of Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández;"
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> e. "[… the] rights recognized in Articles 4(1) and 5(1) of the American Convention to the detriment of Ricardo David Videla Fernández, and 8(1) and 25(1) of the American Convention to the detriment of his next of kin, all in relation to the obligations established in Article 1(1) of this instrument";

[4] *Cf.* Merits Report No. 172/10 of November 2, 2010 (merits file, tome I, folios 83 and 84).

f. "[… the] rights recognized in Articles 5(1), 5(2) and 19 of the American Convention in relation to the obligations established in Article 1(1), to the detriment of Lucas Matías Mendoza;"

g. "[… the] rights recognized in Articles 5(1), 5(2), 8(1) and 25(1) of the American Convention in relation to the obligations established in Article 1(1) [of this instrument], to the detriment of Lucas Matías Mendoza and Claudio David Nuñez." Also, the obligations contained in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture," and

h. "The right recognized in Article 5(1) [of the American Convention] to the detriment of the next of kin of the victims."

4. In addition, the Inter-American Commission asked the Court to order the State to undertake certain measures of reparation that will be described and analyzed in the corresponding chapter (*infra* Chap. XIII).

II
PROCEEDINGS BEFORE THE COURT

5. The State and the representative of the presumed victims were notified of the submission of the case by the Inter-American Commission on October 12, 2011. On December 20, 2011, Stella Maris Martínez, in her capacity as Argentina's national Ombudsperson and as representative of the presumed victims in this case (hereinafter "the representative"), submitted her brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief") under Articles 25 and 40 of the Rules of Procedure. The representative concurred, in general, with the facts and human rights violations alleged by the Inter-American Commission. However, she also underscored that "[…] it is unacceptable that the some of the details of life in detention that placed the fundamental rights of [the presumed victims] at risk are excluded." In this regard, the representative advised the Court of incidents that had occurred while the presumed victims were serving their sentences. The representative agreed with human rights violations alleged by the Commission, and added other rights violations.[5]

[5] The representative alleged that the State had violated: (a) Articles 1(1), 2, 5(6), 7(3), 19 and 24 of the American Convention, in light of Articles 3, 37(a), 37(b), 40(1), 40(3)(b) and 40(4) of the Convention on the Rights of the Child, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernandez; (b) Articles 1(1), 2, 5(1), 5(2), 5(6), 19 and 24 of the American Convention, in light of Articles 3 and 40(1) of the Convention on the Rights of the Child, due to the life sentences handed down to César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernandez; (c) Articles 1(1), 4, 5(1), 5(6), 17(1), 19, 24 and 26 of the American Convention, and 6, 7, 13 and 15 of the Protocol of San Salvador, in light of Articles 3, 8(1), 28(1), 29(1)(a), 29(1)(d) and 40 of the Convention on the Rights of the Child, to the detriment of César Alberto Mendoza; (d) Articles 1(1), 4, 5(1), 5(2), 5(6), 8(1), 17(1), 19, 24, 25 and 26 of the American Convention, Articles 6, 7, 13 and 15 of the Protocol of San Salvador, and the obligations established in Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, in light of Articles 3, 8(1), 28(1), 29(1)(a), 29(1)(d) and 40 of the Convention on the Rights of the Child, to the detriment of Claudio David Núñez; (e) Articles 1(1), 4, 5(1), 5(2), 5(6), 8(1), 17(1), 19, 24, 25 and 26 of the American Convention, Articles 6, 7, 10, 13 and 15 of the Protocol of San Salvador Protocol, and the obligations established in Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, in light of Articles 3, 8(1), 8(1), 24(1), 28(1), 29(1)(a), 29(1)(d) and 40 of the Convention on the Rights of the Child, to the detriment of Lucas Matías Mendoza; (f) Articles 1(1), 5(1), 5(2), 5(5), 5(6), 19 and 24 of the American Convention, in light of Articles 3, 37(a), 37(c) and 40 of the Convention on the Rights of the Child, to the detriment of Saúl Cristian Roldán

6. Lastly, the representative asked that the Court order the State to undertake different measures of reparation and that the Court authorize the presumed victims to access the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter "the Court's Assistance Fund" or "the Fund") to ensure the presence of two witnesses and two expert witnesses during the public hearing and to cover the expenses incurred in producing some expert evidence and for the testimony of the presumed victims.

7. On April 20, 2012, the State filed its brief with preliminary objections, answering the brief submitting the case, and with observations on the pleadings and motions brief (hereinafter "the answering brief"). In this brief, the State filed five preliminary objections, two indicating that the representative had raised 'for the first time" issues that had supposedly not been included in the Merits Report; one alleging the existence of international *res judicata*; one alleging that the procedural claims of the representative with regard to Saúl Cristian Roldán Cajal had become moot and another alleging that the representative should have presented her pecuniary claims before the organs of the State. Also, in general terms, it acknowledged that there had been a "error of judgment" in the specific case of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, because "the courts involved […] sentenced them to life imprisonment, a punishment that was prohibited under the principle of *nulla poena sine culpa*." The State also challenged most of the facts and human rights violations alleged in this case. Argentina designated Alberto Javier Salgado as its Agent, and Julio César Ayala and Andrea G. Gualde as deputy agents.

8. On May 8, 2012, the President of the Court (hereinafter "the President") issued an Order declaring admissible the request presented by the presumed victims, through their representative, to access the Court's Assistance Fund (*supra* para. 6).

9. On July 6 and 7, 2012, the representative and the Inter-American Commission, respectively, presented their observations on the preliminary objections filed by the State and on its partial acknowledgement of responsibility (*supra* para. 7).

10. On August 1, 2012, the President of the Court issued an Order in which he required that affidavits be received from 16 presumed victims and two expert witnesses proposed by the representative, and two expert witnesses proposed by the Inter-American Commission. The President of the Court also convened the Commission, the representative, and the State to a public hearing to receive the testimony of one presumed victim and one expert witness proposed by the representative, and one expert witness proposed by the Commission; as well

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Cajal; (g) Articles 1(1), 4, 8(1), 19 and 25 of the American Convention, in the light of Articles 3 and 6 of the Convention on the Rights of the Child, to the detriment of Ricardo David Videla Fernández; (h) Articles 1, 2, 8(1), 8(2)(h) 19 and 25 of the American Convention to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández; (i) Articles 1(1), 8(2)(d), 8(2)(e) and 19 of the American Convention, in relation to Article 40(2) of the Convention on the Rights of the Child, to the detriment of César Alberto Mendoza and Saúl Cristian Roldán Cajal, and (j) Articles 1(1) and 5(1) of the American Convention to the detriment of the next of kin of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández.

as to hear the final oral arguments of the representative and the State, and the final oral observations of the Commission on the preliminary objections and eventual merits, reparations and costs in this case.[6]

11. On August 10, 2012, the representative asked that the testimony of Stella Maris Fernández, presumed victim called on to testify during the public hearing (*supra* para. 10), be received by audiovisual means during the hearing or, failing that, by affidavit, because she was unable to attend the hearing for health reasons. On August 13, 2012, the Secretariat of the Court asked the Inter-American Commission and the State to submit their observations on this matter. There being no opposition to this request, by an Order dated August 23, 2012, the President of the Court authorized the presumed victim to provide her testimony by videoconference during the public hearing.

12. The public hearing was held on August 30, 2012, during the Court's ninety-sixth regular session.[7] During the hearing, the Court asked the parties and the Inter-American Commission to submit certain clarifications, additional information, and useful evidence when presenting their final written arguments and observations.

13. On August 29 and September 6, 11, 13 and 14, 2012, respectively, a group of researchers from the Center for the Study of Sentence Execution,[8] the Brazilian Institute of Criminal Science,[9] the *Asociación por los Derechos Civiles,*[10] Amnesty International,[11] the *Colectivo de Derechos de Infancia y Adolescencia de Argentina,*[12] and the Human Rights Institute of the University of Columbia Law School, Lawyers for Human Rights together with

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6 *Cf. Case of Mendoza et al. v. Argentina.* Order of the President of the Inter-American Court of Human Rights of August 1, 2012 (merits file, tome II, folio 1098 to 1113). Available at: http://www.corteidh.or.cr/docs/asuntos/mendoza_01_08_12.pdf.

7 At this public hearing the following appeared: for the Inter-American Commission on Human Rights: Rosa María Ortíz, Commissioner, and Silvia Serrano Guzmán, Specialist of the Executive Secretariat; for the presumed victims: Mariana Grasso, Deputy Ombudsman before the National Criminal Cassation Chamber, Nicolás Laino, Deputy Legal Secretary of the National Ombudsman's Office, and Stella Maris Fernández, alleged victim; for the Republic of Argentina: Javier Salgado, Agent, Director of International Disputes, Gabriel Lerner, National Secretary for Children, Adolescents and the Family; María Julia Loreto, from the International Disputes Directorate, Yanina Berra Rocca, from the Legal Affairs Directorate, María José Ubaldini, from the Deputy Secretariat for Human Rights of the province of Mendoza, and Enrique Castillo Barrantes, Minister for Foreign Affairs and Worship.

8 *Cf. Amicus curiae* submitted by the Group of Researchers, Center for the Study of Sentence Execution, composed of Silvana Di Vincenzo, Ariel Sebastian Garin, Nvard Nazaryan and Adalberto Polti (merits file, tome III, folios 1856 to 1888).

9 *Cf. Amicus curiae* submitted by the Brazilian Institute of Criminal Science, signed by Marta Cristina Cury Gimenes (merits file, tome II, folios 1788 to 1828).

10 *Cf. Amicus curiae* submitted by the *Asociación por los Derechos Civiles*, signed by José Miguel Onaidia (merits file, tome III, folios 1905 to 1963).

11 *Cf. Amicus curiae* presented by Amnesty International, signed by Michel Bochenek, Paola García and Marianne Mollmann (merits file, tome III, folios 1967 to 1991).

12 *Cf. Amicus curiae* submitted by the *Colectivo de Derechos de Infancia and Adolescencia*, signed by Nora Pulido (merits file, tome III, folios 1997 to 2018).

the Center for Law and Global Justice of the University of San Francisco,[13] submitted *Amicus curiae* briefs in this case.

14. On September 26, 28 and 30, 2012, the representative, the State and the Inter-American Commission submitted their respective final written arguments and observations. Together with these briefs, the Commission, the representative, and the State forwarded the clarifications and documents requested during the public hearing (*supra* para. 12).

15. On September 21, 2012, the State forwarded a copy "of the decision issued by Oral Juvenile Court No. 1 of the Federal Capital, in the context of the incidental plea filed for the release of César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza."

16. On October 3 and 4, 2012, respectively, the representative and the Commission, submitted their observations on the decision issued by the State regarding the "incidental plea for release" (*supra* para. 15).

17. On October 17 and 25, 2012, the representative and the State, respectively, submitted their observations to the annexes to the final written arguments. On October 25, 2012, the Commission indicated that it had no observations to make on the annexes to the final written arguments.

18. On October 26, 2012, on the instructions of the President of the Court, the representative and the State were asked to advise the Court by November 2, 2012, at the latest, whether a remedy of complaint filed before the Federal Criminal Cassation Chamber by the Prosecutor General had been decided and, if so, to send the Court the corresponding ruling. Also, based on Article 58(b) of the Court's Rules of Procedure, on the instructions of the President of the Court, the Inter-American Commission, the representative, and the State were asked to forward, by November 2, 2012, at the latest, the legislation applicable to *amparo* proceedings in force at the time of the facts of this case, in the province of Mendoza and in the Autonomous City of Buenos Aires.

19. On November 2, 2012, the representative and the Inter-American Commission submitted a copy of the legislation requested by the President of the Court (*supra* para. 18). The same day, the State requested an extension of the time frame for presenting this documentation. On November 8, 2012, the State presented a copy of the legislation requested by the President of the Court (*supra* para. 18).

20. On November 19 and 23, 2012, the representative and the State submitted their observations on the legislation requested by the President of the Court (*supra* para. 18). On November 20, 2012, the Inter-American Commission indicated that it did not have any observations to make on this legislation.

[13] *Cf. Amicus curiae* from the Human Rights Institute of the University of Colombia Law School, signed by JoAnn Kamuf (merits file, tome III, folios 2084 to 2106).

21. On November 23, 2012, the representative requested that the identity of one of the victims of the case be kept confidential. On December 13 and 21, 2012, respectively, the Inter-American Commission and the State submitted their observations in this regard. On May 14, 2013, the Inter-American Court of Human Rights issued an Order in which it rejected this request.

III

PRELIMINARY OBJECTIONS

A. Preliminary objection concerning the procedural purpose of the case

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

22. The State filed two preliminary objections concerning the procedural purpose of the case. First, it maintained that the pleadings of the representative of the presumed victims "introduce, for the first time, issues concerning […] the juvenile criminal regime," relating to the sentences to life imprisonment, sentence execution, and observance of the guarantee of review of convictions, which should have led to their rejection *in limine,* because they exceeded the procedural purpose on which the case before the Commission was based. In addition, the State argued that a proceeding is pending before the Inter-American Commission – namely Petition P-668-09 *Leonardo Ariel Rosales et al.* – "which addresses the situation of the treatment of children under the age of criminal responsibility" and the issues alleged by the representative. Second, the State affirmed that the detention conditions of Claudio David Núñez, Lucas Matías Mendoza, and César Alberto Mendoza in juvenile institutions and establishments belonging to the Federal Prison Service, as well as the supposed negative consequences of the transfers on their resocialization process alleged by the representative, exceeded the procedural purpose of the case.

23. The Commission indicated that in addition to the human rights violations alleged in this specific case, the State had also failed to comply with the obligation determined in Article 2 of the American Convention, as established in the Merits Report of the case, owing to the persistence of a legal framework incompatible with this international instrument as regards both the treatment of juvenile offenders pursuant to the provisions of Law 22,278, on the Juvenile Criminal Regime, and the remedies regulated in other relevant laws. Therefore, the Commission considered that, pursuant to the Court's case law, autonomous legal claims could be filed based on the said factual framework. The Commission also indicated that it did not have sufficient elements to derive any specific human rights violation under the American Convention from the supposed transfers of the presumed victims. However, it confirmed that this allegation had been submitted and debated in the proceedings before the Commission and analyzed in the Merits Report.

24. The representative argued that the State had not indicated how the first preliminary objection would prevent the case from moving forward with regard to matters relating to the merits, because, even in if the Court understood that there was an overlap between this case and Petition P-668-09 *Leonardo Ariel Rosales et al.,* being processed before the Commission, or some common aspects, the State had not explained why the Court must refuse to hear this case. The representative also argued that the purpose of the opportunity given to the representatives of the presumed victims to submit their own arguments is to make their procedural right of *locus standi in judicio,* recognized in the Court's Rules of Procedure, effective.

A.2. Considerations of the Court

25. The State is using these preliminary objections to challenge pleadings made by the representative that supposedly exceed the factual framework submitted by the Inter-American Commission in its Merits Report. Thus, the State's arguments seek a determination of the factual framework of the case. The Court recalls that preliminary objections are acts that seek to prevent the analysis of the merits of a matter in dispute by objecting to the admissibility of a case or the competence of the Court to hear a specific case or any of its aspects, based on either the person, the subject matter, the time or the place, provided that these assertions are of a preliminary nature.[14] If these assertions cannot be considered without a prior analysis of the merits of the case, they cannot be analyzed by means of a preliminary objection.[15] In this case, the Court finds that it is inappropriate to rule in a preliminary manner on the factual framework of the case, given that this analysis corresponds to the merits (*infra* paras. 57 to 61). Thus, the arguments submitted by the State when filing these preliminary objections will be considered at the appropriate procedural moment.

B. Preliminary objection arguing the existence of international res judicata

B.1. Arguments of the Commission and pleadings of the parties

26. The State indicated that the arguments of the Commission and the representative about the detention conditions of Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández in the Mendoza Prison, as well as the death of the latter, should not be taken into account by the Court, because they substantially reproduce a previous petition that the Inter-American Commission had examined under case No. 12,532, *Inmates of the Mendoza Prisons*. It affirmed that the said case concluded with a friendly settlement agreement signed by the petitioners and the State, dated August 28, 2007, approved by Provincial Decree No. 2740 and

[14] Cf. Case of Las Palmeras v. Colombia. Preliminary objections. Judgment of February 4, 2000. Series C No. 67, para. 34, and Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary objections, merits, reparations and costs. Judgment of November 28, 2012. Series C No. 257, para. 40.

[15] Cf. Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs. Judgment of August 6, 2008. Series C No. 184, para. 39, and Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica, para. 40.

ratified by Provincial Law No. 7930 of September 16, 2008, in compliance with section B.2.D of the settlement agreement. The friendly settlement agreement was endorsed by the Inter-American Commission on October 12, 2007, and this was recorded in Report No. 84/11 of July 21, 2011, adopted pursuant to the provisions of Article 49 of the American Convention on Human Rights. Argentina also argued that, under the friendly settlement agreement, the government of the province of Mendoza had accepted its responsibility for the detention conditions in the Mendoza Prisons, as well as for the death of Ricardo David Videla Fernández, because it had failed to guarantee the minimum conditions of safety, custody and physical integrity of the inmates; it had also assumed its responsibility for the facts and their legal consequences. The State also indicated that, under the friendly settlement agreement, the province of Mendoza had undertaken to comply with a wide range of measures of reparation, most of which it had already fulfilled, and other were starting to be implemented.

27. In addition, the State indicated that the issue of the death of Ricardo David Videla Fernández was included in a document signed by the government of the province of Mendoza on August 28, 2007, in the context of Case No. 12,532 on the *Inmates of the Mendoza Prisons*, and that the State had even undertaken to take all the necessary steps within its sphere of competence to ensure that the investigations continued into all the human rights violations that led to the granting of provisional measures by the Inter-American Court, including the death of Ricardo David Videla. It concluded that the Court could not exercise its competence with regard to the alleged violations of the rights contained in Articles 4 and 5 of American Convention to the detriment of Ricardo David Videla Fernández, as well as of Articles 8 and 25 of this instrument, to the detriment of his next of kin, because, if it did so, it would be breaching the principle of "international *res judicata*."

28. The Commission indicated that when it issued its ruling on the merits of this case, the specific list of presumed victims in case 12,532 on the *Inmates of the Mendoza Prisons* had not yet been defined, and that it was not unusual for certain general situations, such as problems of a structural nature in detention centers, to be analyzed in the context of different petitions, provided that the presumed victims were different. It emphasized that, in case 12,532 on the *Inmates of the Mendoza Prisons*, which culminated in a friendly settlement, the list of presumed victims was not closed, nor were all the victims individualized. Meanwhile, this case refers to the specific situation of Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal during the time they spent in the Mendoza Prisons, as well as the violations of the American Convention arising from this. In particular, regarding the death of Ricardo David Videla Fernández, the Commission indicated that "although the name of the youth Videla Fernández was included when addressing the issue of violent deaths in the prisons, his death was not discussed during the adversarial proceedings, and neither was the component concerning the obligation of prevention and investigation, matters that are analyzed in this case." Therefore, the Commission indicated that this preliminary objection was inadmissible.

29. The representative argued that the objection of international *res judicata* was clearly inadmissible. With regard to Saúl Cristian Roldán Cajal, the representative stated that he had never been included as a victim in case No. 12,532, and did not appear in the official record acknowledging State responsibility dated August 28, 2007. The facts and human rights

violations discussed in this case had never been debated or determined in that international proceeding. As regards Ricardo David Videla Fernández, the representative stated that he was included on the list of victims regarding whom the State admitted its international responsibility within the framework of the friendly settlement procedure in case 12,532 on the *Inmates of the Mendoza Prisons*. However, regarding his death and threats to his physical integrity and health, the State's acknowledgement was partial. Argentina only acknowledged some human rights violations concerning the detention conditions he suffered that led directly to his death, but not other circumstances related to the treatment he received during his detention while serving an unlawful sentence. She underscored that, in the friendly settlement agreement, the State had not acknowledged its international responsibility for the errors or delay in the investigations into the deaths and serious attacks on physical integrity committed against the inmates of the Mendoza Prisons.

B2. Considerations of the Court

30. Based on the arguments of the Commission and the pleadings of the parties, first, the Court observes that the Commission's Merits Report included a section on general facts related to the "detention conditions in the Mendoza Provincial Prison." However, in section IV on "proven facts" of the Merits Report submitted to the Court, the Commission did not establish specific facts regarding the presumed detention conditions of Saúl Cristian Roldán Cajal in this prison. Therefore, this Court finds that the State's argument on this point is invalid. Consequently, henceforth the Court will refer only to the situation of Ricardo David Videla Fernández.

31. The Court underscores that, pursuant to Article 47(d) of the American Convention, a petition shall be declared inadmissible when it is "substantially the same as one previously studied by the Commission or by another international organization." This Court has established that "[t]he phrase 'substantially the same' signifies that there must be similarity between the cases. For this similarity to exist, the presence of three elements is required, namely: that the parties are the same, that the purpose is the same, and that the legal grounds are identical."[16]

32. In Section IV of the Merits Report on the "proven facts," the Commission established, among other matters, that, "in the absence of a different explanation from the State", it could be inferred that "the inhuman detention conditions to which [Ricardo David Videla Fernández] was subjected" in the Mendoza Provincial Prison and "the absence of adequate medical care and monitoring in response to the specific mental health condition he suffered" were directly related to his death, which was not properly investigated. The Commission indicated that "his mental health problem and his intention to take his own life were aggravated by the persistence of the detention conditions he suffered." Therefore, the Commission concluded that the State had violated the rights to personal integrity and to life of Ricardo David Videla

[16] Cf. Case of Baena Ricardo et al. v. Panama. Preliminary objections. Judgment of November 18, 1999. Series C No.61, para. 53, and Case of the Saramaka People. v. Suriname. Preliminary objections, merits, reparations and costs. Judgment of November 28, 2007. Series C No. 172, para. 48.

Fernández recognized in Articles 5(1), 5(2) and 4(1) of the American Convention, in relation to Article 1(1) of this instrument. In addition, the Commission established that "the State did not provide the next of kin of Ricardo David Videla Fernández with an effective remedy to clarify what happened and to establish who was responsible." Therefore, it concluded that the State had violated the rights recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof. The Commission did not specify which of his next of kin would be victims of this supposed violation. However, in the Merits Report in this case, when referring, in general terms, to the next of kin of the five presumed victims condemned to life imprisonment and reclusion for life, who include Ricardo David Videla Fernández, it mentioned that his next of kin include his father, Ricardo Roberto Videla, and his mother, Stella Maris Fernández. The Commission did not establish other facts concerning the supposed general conditions of detention of Ricardo David Videla during the time he was deprived of his liberty in this prison.

33. In addition, the Court observes that Report 84/11, which records the above-mentioned friendly settlement agreement, was preceded by Admissibility Report 70/05 of October 13, 2005, in which the Inter-American Commission "concluded that it was competent to examine the petition regarding the supposed violations of the rights to life, personal integrity and health, contained in Articles 4 and 5 of the American Convention, in relation to the detention conditions of the inmates of the Mendoza Prison and the Gustavo André Lavalle Unit." The Commission also concluded that "it would analyze the possible violation of Articles 1, 2, 7 and 25 of the Convention in relation to [the] obligations to guarantee personal liberty, to respect rights, to adopt provisions of domestic law, and to ensure that the competent authorities complied with all decisions in which an appeal had been found admissible." Subsequently, on August 28, 2007, the parties signed a friendly settlement agreement and this was ratified by the Inter-American Commission on October 12, 2007. The agreement indicated that:

> 1. […] having considered the conclusions reached by the […] Inter-American Commission in Admissibility Report No. 70/05 […] and other evidence […], in particular, following the implementation of a cooperation agreement under which the national Ministry of Justice and Human Rights sent a team to work on site, the government of the province of Mendoza understands that there is sufficient evidence to indicate [its] objective responsibility […] in the case, and therefore decides to assume responsibility for the facts and their legal consequences, pursuant to the said conclusions of the Inter-American Commission on Human Rights.
>
> 2. Consequently […], the Government of the Argentine Republic states that it has no objection to endorsing this acknowledgement in the international sphere, in its capacity as a State Party to the Convention and, pursuant to the Constitution […], request[s] the Commission to consider that the facts that took place in the said jurisdiction are acknowledged in the terms set out in point 1.

34. The name of Ricardo Videla Fernández appears in friendly settlement report No. 84/11, in Annex I of the friendly settlement agreement dated August 28, 2007, on the "deaths in the Mendoza Prison for which claims were submitted" and it is indicated that he "was found hung in his cell in Unit 1.1 of the prison on June 21, 2005." Both a criminal suit and a civil suit filed by his parents are also mentioned. Under the said friendly settlement agreement, the State undertook to implement certain pecuniary and non-pecuniary measures of reparation, the

latter of a general nature. In the case of the former, the parties agreed to create an *ad hoc* court, which was formally installed on December 25, 2008. That court issued an award decision on November 29, 2010, which examined "the reparation amounts due to each victim indicated in the annexes to the [friendly settlement] agreement." With regard to the 10 deceased inmates of the Mendoza Prisons, including Ricardo David Videla Fernández, the *ad hoc* court established that the State must pay "1,413,000 United States dollars." This *ad hoc* court also established an amount for costs that included "the proceedings before the IACHR." Among the non-pecuniary measures of reparation, the "government of the province of Mendoza undert[ook] to take all the necessary steps […] to ensure the continuation of the investigations into all the human rights violations that led to the issue of the provisional measures by the […] Court." Furthermore, the award decision also established that "'the human rights violations that resulted in the intervention of the Arbitral Court had been committed in the context of severe shortcomings in the Mendoza provincial prison system."

35. Lastly, in friendly settlement report 84/11, the Commission indicated that it considered that the award decision met applicable international standards, expressed its appreciation of the Arbitral Court for its work and the decision handed down, received "the award decision as an important contribution to the settlement of this case," and awaited information from the parties on compliance with the measures of reparation established therein.

36. The foregoing reveals that case 12,532 on the *Inmates of the Mendoza Prisons* addressed the detention conditions of the inmates and the human rights violations committed by the State as a result of those conditions. Thus, the State's acknowledgement of responsibility included the violation of the rights to life, physical integrity, and health of Ricardo Videla Fernández contained in Articles 4 and 5 of American Convention, based on which the Arbitral Court established certain reparations (*supra* para. 34). Furthermore, although the State undertook to continue the investigations into all the human rights violations it had acknowledged, its acknowledgement of responsibility did not include facts or human rights violations related to the said investigations.

37. Regarding the first element to determine whether the cases are similar (*supra* para. 31), the Court observes that in both the instant case and in friendly settlement report 84/11, Case 12,532 on the *Inmates of the Mendoza Prisons*, the parties are Ricardo David Videla, presumed victim, deceased, and Ricardo Videla and Stella Maris Fernández – that is, his father and mother - and the State of Argentina. For the Court, the fact that other victims are included in case 12,532 is not relevant; but rather that Ricardo David Videla Fernández was specifically and expressly considered one of them.

38. Regarding the second element (*supra* para. 31), the Court finds that there is a similarity between the purpose of this case and that of case 12,532 processed before the Inter-American Commission as regards the detention conditions of inmate Videla Fernández in the Mendoza Prison, which, as indicated in both cases, contributed to his death. However, on the other hand, the cases do not have similar purposes as regards the allegations concerning the supposed absence of a diligent investigation into his death. Neither the friendly settlement agreement ratified by the Inter-American Commission on October 12, 2007, nor friendly

settlement report No. 84/11, by which the Commission approved the agreement, record any acquiescence to the supposed absence of investigation into the death of Ricardo Videla and, therefore, nor is there any acknowledgement of the violation of the rights established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, as the Commission alleged in this case. The mere undertaking made by the State to continue the pertinent investigations, as indicated in the agreement and in the friendly settlement report, is not the same as a formal acknowledgement of the supposed absence of investigation and, thus, of the violation of the rights recognized in Articles 8(1) and 25(1) of the Convention.

39. As regards the third element (*supra* para. 31), the Court observes that some of the legal grounds are identical in both cases, because the friendly settlement report indicates that the State acknowledged its international responsibility for the violation of the rights recognized in Articles 4 and 5 of the American Convention. In the instant case, the Commission also asked the Court to declare a violation of those provisions to the detriment of Ricardo David Videla Fernández.

40. In conclusion, the Court considers that this preliminary objection is admissible, but only with regard to the detention conditions of Ricardo David Videla Fernández in the Mendoza Prisons that supposedly contributed to his death on June 21, 2005, and with regard to the violation of the rights established in Articles 4 and 5 of the American Convention, in relation to Article 1(1) thereof, to his detriment. The preliminary objection is not admissible as regards the supposed failure to investigate his death and the presumed violation of the rights established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of "his next of kin."

C. Preliminary objection on the procedural claims of the representative with regard to Saúl Cristian Roldán Cajal

C.1. Arguments of the Commission and pleadings of the parties

41. The State indicated that, on March 29, 2011, following the submission of this case to the Court, Saúl Cristian Roldán Cajal's official Public Defender filed an appeal for review against the judgment sentencing Saúl Cristian Roldán Cajal to life imprisonment. On September 22, 2011, the Mendoza Supreme Court of Justice admitted the appeal and ordered the installation of a chamber in order to review the sentence. In this regard, Argentina indicated that, on March 9, 2012, the Second Chamber of the Supreme Court of Justice of the Province of Mendoza decided to admit the appeal for review and, based on the content and scope of Report No. 172/10 issued by the Inter-American Commission in the instant case, the chamber decided to sentence Saúl Cristian Roldán Cajal to 15 years' imprisonment finding him guilty of the crimes of aggravated homicide together with aggravated robbery. Therefore, the State considered that the procedural claims with regard to Saúl Cristian Roldán Cajal had become moot.

42. The Commission indicated that the State was not objecting to the Court's competence for reasons of time, subject or place, nor was the objection preliminary in nature. It indicated

that the facts mentioned by the State were an updating of the procedural situation of Saúl Cristian Roldán Cajal, but that such supervening facts did not have the legal effect of limiting the Inter-American Court's competence. It emphasized that, although some progress may have been made, which must be examined with the merits, the facts, legal consequences and claims for reparations are not excluded, despite the fact that, as on previous occasions, the Court may take this progress into account and weigh the need to complement or specify the measures of reparation based of the progress made by the State.

43. The representative indicated that the review from which Saúl Cristian Roldán Cajal benefited does not prevent the Commission or the Court from continuing to hear this case. The representative argued that "[b]ased on the principle of international responsibility, a possible reparation made under domestic law when the hearing of the case had already begun under the American Convention […], does not prevent the Commission, and in particular the Court, from continuing to hear it, nor does it provide the State with a new procedural opportunity to question the admissibility or the examination of the petition or of one of the rights violated." In addition, she indicated that "the review from which Saúl Cristian Roldán Cajal benefited is merely a belated response that has in no way provided integral reparation for the violation of the right recognized in Article 8(2)(h)" of the American Convention. Therefore, the representative considered that the State's argument "does not constitute a true preliminary objection but merely a partial response to the violations of the rights of Saúl Cristian Roldán Cajal." Furthermore, the representative indicated that the decision of the Second Chamber of the Supreme Court of Justice of the province of Mendoza "was admitted on extremely narrow grounds that do not satisfy the requirement of 'comprehensive examination' derived from Article 8(2)(h) of the American Convention," because it "did not allow discussion of other relevant aspects of the case, such as the assessment of evidence and the accreditation of the facts for which [Saúl Cristian] Roldán Cajal was convicted, or elements relating to the legal framework of those facts, which should also be included as part of the purpose of a new 'comprehensive examination' by a superior court." In this regard, the State's argument relates to the merits of the case.

C.2. Considerations of the Court

44. The State has argued that, after Saúl Cristian Roldán Cajal's defense counsel had filed an appeal for review, on March 9, 2012, the Second Chamber of the Supreme Court of Justice of the province of Mendoza reduced his sentence to 15 years; thus, it considered that the procedural claims with regard to this presumed victim had become moot.

45. In this regard, the Court considers that a supervening fact, such as the said decision, does not prevent it from hearing a case that has already been initiated before it. Consequently, the Court will analyze the effects of the judgment of the Second Chamber of the Supreme Court of Justice of the province of Mendoza of March 9, 2012, in the pertinent parts of this Judgment (*infra* paras. 92, 164 and 257). Therefore, the Court does not admit the preliminary objection filed by State.

D. Claims for pecuniary reparation made by the representative of the presumed victims

D.1. Arguments of the Commission and pleadings of the parties

46. The State indicated that "none of the presumed victims (the young men sentenced and their next of kin) submitted pecuniary claims before the local justice system of the Argentine Republic," and "neither did they, at any time before the international jurisdiction, cite grounds that would have prevented them from having access to the jurisdictional instance based on those claims." It indicated that, based on the principle of good faith that should govern the interpretation and application of treaties, and in light of the reservation made by the State when ratifying the American Convention with regard to the limitation of the Court's competence to review the compensation awarded by the local courts, the admissibility of the claim being originated before the inter-American system infringes that reservation.

47. The Commission observed that the State's claim sought to extend the scope of the reservation in order to prevent the possibility of a victim of human rights violations requesting pecuniary reparations. This interpretation would run contrary to the object and purpose of the American Convention, especially the basic principle that all human rights violations generate the obligation to make reparation, pursuant to Article 63(1) of this instrument. It also indicated that the argument regarding a possible failure to exhaust domestic remedies is time-barred, as it was not presented at the proper moment before the Inter-American Commission.

48. The representative stated that neither the text of the American Convention nor the case law of the Court suggest that the victim is required to have filed pecuniary claims at the domestic level for the Court to be able to rule on pecuniary reparations in a particular case. The representative also found that the State's argument was not admissible as a supposed objection based on failure to exhaust domestic remedies, because this is not the appropriate procedural moment to submit that argument. In addition, the representative indicated that the term "fair compensation" included in the State's reservation to Article 21 of the Convention does not refer to any type of compensation in the abstract granted by any court but rather to compensation in the context of a restriction of the right to property.

D.2. Considerations of the Court

49. The Court observes that during the proceedings before the Commission, the State did not argue the presumed failure to exhaust domestic remedies with regard to claims for compensation for the presumed victims in this case. In this regard, pursuant to this Court's case law, the State's argument is therefore time-barred. Consequently, the Court concludes that the State tacitly waived the right to submit this defense at the proper procedural

moment.[17] Nevertheless, on ratifying the American Convention, the State made a reservation to Article 21.[18] However, in this case, the violation of the right to private property, recognized in Article 21 of the American Convention, was not alleged; nor was the economic policy of the Argentine Government questioned. Furthermore, no compensation of any kind has been awarded to the presumed victims at the domestic level, as the State itself has indicated. Therefore, the Court finds that the reservation cited by the State is not related to the facts of the case, or to the human rights violations alleged. Based on the foregoing, the Court does not admit the preliminary objection filed by the State.

IV
COMPETENCE

50. The Inter-American Court is competent to hear this case pursuant to Article 62(3) of the American Convention on Human Rights, because Argentina has been a State Party to this instrument since September 5, 1984, and accepted the contentious jurisdiction of the Court on that same date. Furthermore, Argentina has been a party to the Inter-American Convention to Prevent and Punish Torture since March 31, 1989.

V
EVIDENCE

51. Based on the provisions of Articles 46, 50, 57 and 58 of the Rules of Procedure, as well as on its case law relating to evidence and its assessment, the Court will examine and weigh the documentary probative elements submitted on different procedural occasions, the statements of the presumed victims and the opinions of the expert witnesses provided by affidavit and during the public hearing before the Court. To this end, the Court will abide by the principles of sound judicial discretion, within the applicable legal framework.[19]

A. Documentary, testimonial and expert evidence

52. The Court received different documents submitted as evidence by the Inter-American Commission, the representative, and the State with their main briefs, the helpful evidence requested by the President of the Court, and the testimony and expert opinions provided by affidavit of the following persons: César Alberto Mendoza, Claudio David Núñez, Lucas Matías

[17] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 88, and *Case of the Massacre of Santo Domingo v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012, para. 34.

[18] The text of the reservation is as follows: "The Argentine Government establishes that questions relating to the Government's economic policy shall not be subject to review by an international Court. Neither shall anything the domestic courts may determine to be matters of 'public purpose' and 'social interest,' nor anything they may understand by 'fair compensation' be subject to review."

[19] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits. Judgment of March 8, 1998. Series C No.37, para. 76, and Case of the Massacre of Santo Domingo v. Colombia, para. 41.

Mendoza, Saúl Cristian Roldán Cajal, Isolina del Carmen Herrera, Ana María del Valle Brito, Florinda Rosa Cajal, Romina Beatriz Muñoz, Jorgelina Amalia Díaz, Dora Noemí Mendoza, Yolanda Elizabeth Núñez, Omar Maximiliano Mendoza, Elizabeth Paola Mendoza, Yohana Elizabeth Roldán, Marilín Estefanía Videla and Marta Graciela Olguín, presented as presumed victims, and Laura Dolores Sobredo, Liliana Gimol Pinto, Alberto Bovino and Lawrence O. Gostin, expert witnesses. Also, during the public hearing, the Court received the testimony of Stella Maris Fernández, presumed victim, and Miguel Cillero Bruñol and Sofía Tiscornia, expert witnesses.[20]

B. Admission of the evidence

53. In this case, as in others, the Court admits those documents forwarded by the parties at the proper procedural opportunity that were not contested or opposed, and the authenticity of which was not challenged, exclusively to the extent that they are pertinent and useful for determining the facts and eventual legal consequences.[21]

54. In addition, the Court finds that the testimony of the presumed victims and the expert opinions provided by affidavit and during the public hearing are pertinent, only insofar as they abide by the purpose defined by the President of the Court in the Order requiring that they be received (*supra* paras. 10 and 11). They will be assessed in conjunction with the other elements of the body of evidence. Also, pursuant to this Court's case law, the testimony given by the presumed victims cannot be weighed in isolation; but rather, it will be examined together with the rest of the evidence in the proceedings, because it is useful to the extent that it can provide additional information on the presumed violations and their consequences.[22]

55. Regarding newspaper articles, this Court has considered that they can be assessed when they contain well-known public facts or declarations by State officials, or when they corroborate certain aspects of the case.[23] The Court decides to admit those documents that are complete or that, at least, allow verification of their source and date of publication, and will assess them, taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.

56. With regard to the videos submitted by the representative, which have not been contested and the authenticity of which has not been questioned, the Court will assess their

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[20] The purposes of the testimony and the expert opinions can be found in the Order of August 1, 2012, issued by the President of the Inter-American Court of Human Rights in this case *supra*, first and fifth operative paragraphs.

[21] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of the Massacre of Santo Domingo v. Colombia*, para. 43.

[22] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 22, para. 43, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 46.

[23] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, para. 146, and Case of the Massacre of Santo Domingo v. Colombia. Preliminary objections, merits and reparations, para. 44.

content within the context of the body of evidence, applying the rules of sound judicial discretion. [24]

VI
PRELIMINARY CONSIDERATIONS

A. Factual framework of the case

57. This Court has established that the factual framework of the proceedings before it is composed of the facts contained in the Merits Report submitted to the Court's consideration.[25] Consequently, the parties may not allege new facts that differ from those contained in this report, without prejudice to submitting facts that explain, clarify or refute the facts mentioned in the report and submitted to the Court.[26] The exception to this principle is constituted by facts that are considered supervening, provided they are related to the facts of the proceedings. In addition, the presumed victims and their representatives may claim the violation of rights other than those included in the Merits Report, provided they abide by the facts contained in this document, because the presumed victims are the holders of all the rights recognized in the American Convention.[27] In short, in each case, it is for the Court to decide on the admissibility of arguments regarding the factual framework in order to safeguard the procedural equality of the parties.[28]

58. In its submission brief, the Commission indicated that it "submit[ted] to the Court's jurisdiction all the facts […] described in Merits Report No. 172/10." Thus, in this case, the Merits Report constitutes the factual framework of the proceedings before the Court. In this regard, Argentina submitted a series of arguments on the facts presented by the representative that supposedly were not included in the Merits Report (*supra* paras. 22). The Court will now verify whether those facts explain or clarify the facts set out by the Inter-American Commission in the said report and whether they are related to the factual framework of the case.

59. In this regard, the Court observes that the Commission's factual determinations are found in section IV of the Merits Report entitled "Proven facts." Thus, even though in this

[24] *Cf. Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of January 28, 2009. Series C No. 194, para. 93, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012 Series C No. 248, para. 64.

[25] Cf. Case of the Five Pensioners v. Peru. Merits, reparations and costs. Judgment of February 28, 2003. Series C No. 98, para. 153, and Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica, para. 131.

[26] Cf. Case of the Five Pensioners v. Peru, para. 153, and Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica, para. 131.

[27] Cf. Case of the Five Pensioners v. Peru, para. 155, and Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica, para. 131.

[28] *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 58, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica,* para. 131.

section the Inter-American Commission referred to the legal framework "relevant to juvenile criminal justice," the specific factual and legal determinations relating to this legal framework address the supposed imposing of sentences of life imprisonment and reclusion for life on César Alberto Mendoza, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal, Ricardo David Videla Fernández and Claudio David Núñez, for crimes committed while they were still under 18 years of age, and the appeals filed against these sentences. In addition, the Court observes that, in the Merits Report, the Commission included a section on general facts relating to the "detention condition in the Mendoza Provincial Prison." However, in section IV on "Proven facts" of the Merits Report, the Commission did not establish specific facts concerning the presumed detention conditions of Saúl Cristian Roldán Cajal. The Commission only referred to the situation of Ricardo David Videla Fernández, who was also deprived of liberty in that prison at the time of his death. Additionally, the Court observes that, in section IV in the Merits Report on "Proven facts," the Inter-American Commission established facts relating to supposed loss of sight of Lucas Matías Mendoza while he was deprived of liberty in the "Luis Agote" Juvenile Center, and the supposed torture suffered by Lucas Matías Mendoza and Claudio David Núñez in Federal Prison Complex I on December 9, 2007. The Commission did not refer to the general conditions of detention in Federal Prison Complex. Moreover, in section IV on the proven facts, as already mentioned in this paragraph, the Commission referred to the "detention conditions in the Mendoza Provincial Prison," but not to the supposed detention conditions in Federal Prison Complex 1 or in juvenile institutions.

60. In her pleadings and motions brief, the representative submitted factual pleadings that were not included in the Merits Report on the treatment in custody and the detention conditions that the five above-mentioned youths supposedly suffered; other acts of torture that, according to the representative had been suffered by Lucas Matías Mendoza and Claudio David Núñez after the torture alleged in the Merits Report, and the supposed erroneous classification of Saúl Cristian Roldán Cajal as a repeat offender.

61. With the delimitation of the factual framework of the case in mind (*supra* para. 59), the Court finds that the additional facts alleged by the representative (*supra* para. 60) are not limited to explaining, clarifying or refuting the facts presented by the Inter-American Commission in its Merits Report and, therefore, introduce aspects that were not part of that framework. Consequently, based on this Court's consistent case law (*supra* para. 57), this series of facts alleged by the representative does not form part of the factual basis of the case submitted to the consideration of the Court by the Inter-American Commission.

B. Presumed victims

62. The Court observes that, in its Merits Report, the Inter-American Commission individualized 53 persons as presumed victims of violations of the American Convention. However, eight of them, all allegedly next of kin of the young men named previously, do not appear on the list of presumed victims forwarded by the representative in her pleadings and

motions brief.[29] In this regard, the Court observes that, in this case, none of the parties presented specific factual arguments in relation to the supposed suffering undergone by these eight persons, regarding which it would be possible to determine a violation of the American Convention. Furthermore, the Court does not have any evidence to prove such suffering. Therefore, the Court is unable to rule on the supposed violation of personal integrity perpetrated to the detriment of Gabriela Ángela Videla, Romina Vanessa Vilte, Junior González Neuman, Jazmín Adriadna Martínez, Emmanuel Martínez, Alejandra Garay, Carlos Roldan and Walter Roldan.

63. Similarly, the Court observes that none of the parties submitted factual arguments regarding 24 persons included in the group of 53 presumed victims mentioned in the preceding paragraph and individualized in the Merits Report, all of them brothers and sisters of Cesar Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández. Therefore, the Court will not rule on the supposed violations alleged to the detriment of these persons.[30]

64. Furthermore, the Court observes that in her pleadings and motions brief, the representative alleged the violation of Article 5(1) of the Convention, to the detriment of Jimena Abigail Puma Mealla, as a relative of Saúl Cristian Roldán Cajal, and of Lourdes Natalia Plaza and Daniel David Alejandro Videla Plaza, as relatives of Ricardo David Videla. However, these persons were not individualized as presumed victims in the Commission's Merits Report. In this regard, the Court recalls that its consistent case law in recent years has established that the presumed victims must be indicated in the report issued by the Commission under Article 50 of the Convention. In addition, pursuant to Article 35(1)(b) of the Rules of Procedure, it is for the Commission to identify the presumed victims in a case before the Court precisely and at the appropriate procedural opportunity.[31] Thus, the Court will not rule on the supposed violations of the Convention committed to the detriment of Jimena Abigail Puma Mealla, Lourdes Natalia Plaza and Daniel David Alejandro Videla Plaza.

65. Lastly, this Court has noted that, in its Merit Report, the Inter-American Commission individualized another eight persons as presumed victims of violations of Article 5 of the American Convention, as next of kin of the above-mentioned youths (*supra* para. 59), whose

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[29] Gabriela Ángela Videla, Romina Vanessa Vilte, Junior González Neuman, Jazmín Adriadna Martínez, Emmanuel Martínez, Alejandra Garay, Carlos Roldan and Walter Roldan.

[30] Siblings of Cesar Alberto Mendoza: María del Carmen Mendoza, Roberto Cristian Mendoza, Dora Noemí Mendoza and Juan Francisco Mendoza; siblings of Claudio David Núñez: Yolanda Elizabeth Núñez, Emely de Los Ángeles Núñez, María Silvina Núñez and Dante Núñez; siblings of Lucas Matías Mendoza: Omar Maximiliano Mendoza, Elizabeth Paola Mendoza (Paola Elizabeth Mendoza), Verónica Luana Mendoza (Verónica Albana Mendoza) and Daiana Salomé Olgupin (Diana Salome Olguín); siblings of Saúl Roldán Cajal: Evelyn Janet Caruso Cajal, Juan Ezequiel Caruso Cajal, Cinthia Carolina Roldan, María de Lourden Roldán, Rosa Mabel Roldan, Albino Abad Roldan, Nancy Amalia Roldan and Yohana Elizabeth Roldan, and siblings of Ricardo David Videla Fernández: Juan Gabriel Videla, Marilín Estefanía Videla, Esteban Luis Videla and Roberto Damián Videla.

[31] Cf. Case of García and family members v. Guatemala. Merits, reparations and costs. Judgment of November 29, 2012. Series C No. 241, para. 34, and Case of the Plan de Sánchez Massacre v. Guatemala. Merits. Judgment of April 29, 2004. Series C No. 105, para. 48.

names were recorded incorrectly. The Court observes, in this regard, that these names were corrected by the representative in her pleadings and motions brief, and that the evidence she provided proves that they are the same persons.[32]

66. Based on the above, the Court will consider the following 21 persons individualized in the Merits Report as presumed victims in this case: César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldan Cajal, Ricardo David Videla Fernández, Stella Maris Fernández, Ricardo Roberto Videla, Isolina del Carmen Herrera, Romina Beatríz Muñoz, Ailén Isolina Mendoza, Samira Yamile Mendoza, Santino Geanfranco Mendoza, Ana María del Valle Brito, Jorgelina Amalia Díaz, Zahira Lujan Núñez, Pablo Castaño, Marta Graciela Olguín, Elba Mercedes Pajón, Lucas Lautano Mendoza, Juan Caruso and Florinda Rosa Cajal.

C. Age of majority in Argentina

67. The representative argued that Ricardo Videla and Lucas Matías Mendoza should have been afforded special treatment as minors until they attained their majority at 21 years of age, in accordance with Argentine civil legislation in force at the time the alleged events took place.[33] Taking into account international standards and, in particular, the Convention on the Rights of the Child,[34] and its case law, the Court will understand "child" to mean any person who has not yet attained 18 years of age (*infra* para. 140),[35] unless the applicable domestic law stipulates a different age of majority. In this regard, the Court observes that, according to the information in the case file, in Argentina the adult criminal regime is applicable as of 18 years of age (*infra* paras. 74 and 75). The representative did not explain how and to what extent the civil legislation mentioned was applicable at the stage of execution of sentence when she alleged that Ricardo David Videla Fernandez and Lucas Matías Mendoza should have been considered children. Therefore, the Court does not have sufficient evidence to determine that these presumed victims should have received special treatment as minors until 21 years of age during the execution of the sentence.

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[32] Ailén Isolina Mendoza (Isolina Aylen Muñoz), Samira Yamile Mendoza (Sanira Yamile Muñoz), Santino Geanfranco Mendoza (Santino Gianfranco Muñoz), Zahira Lujan Núñez (Saída Lujan Díaz), Lucas Lautaro Mendoza (Lautaro Lucas Vilte), Elizabeth Paola Mendoza (Paola Elizabeth Mendoza), Verónica Luana Mendoza (Verónica Albana Mendoza) and Daiana Salomé Olguín (Diana Salome Olguín) *Cf.* Powers of attorney, Annex I to the pleadings and motions brief (file of annexes to the pleadings and motions brief, tome XI, folios 5682 to 5787), and Birth certificates, Annex II to the pleadings and motions brief (file of annexes to the pleadings and motions brief, tome XI, folios 5778 to 5804).

[33] In her brief with pleadings, motions and evidence, the representative cited article 126 of the Argentine Civil Code (Law 17,711) and Law 26,579 that amended the Civil Code, available at: http://www.infoleg.gov.ar/infolegInternet/Annexs/160000-164999/161874/norma.htm. However, the Court was not provided with a copy of these laws.

[34] Article 1 indicates that "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."

[35] *Cf. "Juridical Status and Human Rights of the Child."* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para.42. The word "child" also covers adolescents.

VII
PROVEN FACTS

A. Social and family background of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández during their childhood

68. The social reports in the case file reveal that César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández grew up in underprivileged neighborhoods, in conditions of considerable socio-economic vulnerability and exclusion, with a lack of material resources that shaped their overall development. Most of them came from broken families, which resulted in flawed models for the development of their behavior and identity. Another pattern that was common to all of them was that they abandoned their primary and secondary studies before completing them and had their first contact with the criminal justice system at an early age, which meant that they spent much of their childhood, up until 18 years of age, in juvenile institutions.

69. César Alberto Mendoza was born on October 17, 1978, and lived in a crisis neighborhood with "Unsatisfied Basic Needs (UBN)." According to the social reports and the psychological report in the case file, his father abandoned the family home when César Alberto was four years old, and his mother had to raise him alone. Subsequently, his mother found a companion and also abandoned the home. The youth left school at a very early age, interrupting his studies. At the age of 12 he was arrested for the first time for an attempted robbery; at the age of 14 he began to use marihuana and was again arrested for attempted robbery and, as a result, was interned in the Manuel B. Rocca Juvenile Institution. From then on, he was interned in different juvenile institutions.[36]

70. Claudio David Núñez was born on August 20, 1979, in Tucumán. When he was nine year old, his family moved to Buenos Aires, to the *Ejército de los Andes* neighborhood (known as *Fuerte Apache*) and he began to work in a bakery. According to the social report and the psychological report forwarded to the Court, Claudio David Núñez came into contact with the criminal justice system for the first time at the age of 14, when he was implicated in the murder of his father, who beat all the members of the family and who had raped one of his sisters. As of that time he was institutionalized in children's homes.[37]

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[36] *Cf.* Social report on Cesar Alberto Mendoza of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XII, folio 6694). See, also, the Psychological Report on Cesar Alberto Mendoza prepared by the Manuel B. Rocca Institution on October 18, 1995 (file of annexes to the pleadings and motions brief, tome XII, folio 6677), and the Social report on Cesar Alberto Mendoza of August 13, 1995 (file of annexes to the pleadings and motions brief, tome XII, folios 6648 and 6649).

[37] *Cf.* Social report on Claudio David Núñez of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XII, folios 6769 and 6770). See, also, the Psychological Report prepared by the Agote Institution on March 11, 1997 (file of annexes to the pleadings and motions brief, tome XIII, folio 7178).

71. Lucas Matías Mendoza was born on September 24, 1980,[38] and lived in the *Ejército de los Andes* neighborhood *("Fuerte Apache")*, in the province of Buenos Aires. According to the social report presented to the Court, his father abandoned the family home when Lucas Matías Mendoza was 12 years of age, and he was raised by his mother and his grandmother. His mother was responsible for maintaining the whole family group, in very precarious socio-economic circumstances. Lucas Mendoza never completed his secondary studies. Regarding his neighborhood, the youth recounted that there, "all kinds of things happen[ed]" and that it was "a daily event […] that someone died." In 1997, Mendoza was arrested and, as of that time, his time in juvenile institutions began.[39]

72. Saúl Cristian Roldan Cajal was born on February 10, 1981, in the province of Santiago del Estero, and when he was seven years old, his family moved to the capital of the province of Mendoza where they established themselves in a house located in one of the city's most underprivileged neighborhoods. Roldán Cajal begged on the streets from a very young age, and his father died during his childhood. At that age, he was institutionalized in *Colonia 20 de Junio*, a center housing children separated from their family group. Subsequently, he spent time with different care families and in the Socio-educational Orientation Center (COSE), until finally, at the age of 18, he was arrested.[40]

73. Ricardo David Videla Fernández was born on September 17, 1984, and lived in the San Martín neighborhood, on the outskirts of Mendoza. His parents worked long hours, which meant that they were unable to "be present while their children were growing up," as Stella Maris Fernández, the young man's mother has recounted. At the age of 14, David Videla Fernández began to work at paid jobs. When he was 15 years old, his mother started to notice changes in his behavior and discovered that he was using drugs. When he was 16 and a half, he was arrested for the first time and interned in the COSE and, as of that time, his time in juvenile institutions began.[41]

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[38] In the case file before the Court, different documents provided by the representatives, refer to two dates of birth for Lucas Matías Mendoza. On the one hand, the brief with pleadings, motions and evidence (merits file, tome I, folio 291), and the Social report of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XII, folio 6933), establish September 4, 1980, as his date of birth; while, on the other hand, the Psychological report of the Agote Institution of July 7, 1997 (file of annexes to the pleadings and motions brief, tome XIII, folio 7151), the criminalistics technical report (file of annexes to the pleadings and motions brief, tome XIII, folio 7331), the power of attorney of December 22, 2010 (file of annexes to the pleadings and motions brief, tome XI, folio 5695), and the testimony of Lucas Matías Mendoza before Court of Sentence Execution No. 2 (file of annexes before the Commission, annex 26, tome X, folio 5591) establish his date of birth as September 24, 1980.

[39] *Cf.* Social report on Lucas Matías Mendoza of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folios 6933 to 6935). See also the Social report on Lucas Matías Mendoza of January 3, 1997 (file of annexes to the pleadings and motions brief, tome XIII, folios 7145 and 7146).

[40] The medical report of September 17, 2004, on Saúl Cristian Roldan Cajal indicates that his father died when he was 8 years old; however, the social report of November 30, 2011, states that his father died in 1991, when Saúl Cristian Roldan Cajal was 10 years of age. *Cf.* Social report on Saúl Cristian Roldán Cajal (file of annexes to the pleadings and motions brief, tome XIII, folios 6948 and 6949), and Medical report on Saúl Cristian Roldán Cajal of September 17, 2004 (file of annexes to the pleadings and motions brief, tome XIII, folio 7116).

[41] *Cf.* Social report on Ricardo David Videla Fernández, November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folios 7122 and 7123).

B. Law 22,278

74. Law 22,278 on the Juvenile Criminal Regime was published in the official gazette on August 28, 1980, and was last amended in 1989 by Law 23,742.[42] Thus, this law was "conceived and promulgated by the last military dictatorship, and not by the democratic institutions of government."[43] Owing to the federal structure of government in Argentina, Law 22,278 has nationwide scope, making it applicable in the provincial and national-federal jurisdictions, and in the jurisdiction of the Autonomous City of Buenos Aires.[44] Likewise, the federal organization of the Argentine State accords each province the task of regulating criminal proceedings and the organization of the judiciary.[45]

75. This law applies to adolescents who, at the time they commit the offense they are charged with, are under 18 years of age. As of 18 years of age, the adult criminal regime is applicable. This law makes a distinction between non-punishable and punishable individuals. The first group includes children under 16 years of age, while the second group covers children between 16 and 18 years of age at the time they commit the offense, if they are accused of an offense that is subject to public prosecution and punishable by more than two years' imprisonment.[46]

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42 *Cf.* Law 22,278 (file of annexes to the submission of the case, tome VII, folios 4071 to 4073).

43 *Cf.* expert opinion of Liliana Gimol Pinto (merits file, tome II, folio 1469).

44 *Cf.* expert opinion of Liliana Gimol Pinto (merits file, tome II, folio 1469).

45 *Cf.* UNICEF. National Secretariat for Children, Adolescents and the Family, *Adolescentes en el Sistema Penal. Situación actual and propuesta para un proceso de transformación*, 1st edition, September 2008. (annexes to the pleadings and motions brief, tome XI, folio 6214).

46 The pertinent parts of Law 22,278 establish:

Art. 1. The child who has not attained 16 years of age may not be punished. Nor may the child who has not attained 18 years of age in the case of offenses subject to private prosecution or punishable by imprisonment of no more than two years, a fine or loss of civil rights.
If a minor is accused of an offense, the judicial authority shall take charge of him provisionally, proceed to prove the offense, investigate the minor, his parents, tutor or guardian directly, and order reports and expert appraisals of the child's personality and of the family and the environmental situation.
When necessary, he shall place the minor in an appropriate place for a more thorough investigation, but only for as long as is essential.
If the studies that are carried out reveal that the minor has been abandoned, is without assistance, in physical or moral danger, or has behavioral problems, the judge shall take charge of him definitively by a court order, following a hearing with the parents, tutor or guardian.

Art. 2. The child from sixteen to eighteen years of age who commits any offense not listed in article 1 may be punished.
In such cases, the judicial authority shall submit him to the respective proceedings and take charge of him provisionally during its processing, in order to make it possible to exercise the powers granted by article 4.
Whatever the result of the proceedings, if the studies that are carried out reveal that the minor has been abandoned, is without assistance, in physical or moral danger, or has behavioral problems, the judge shall take charge of him definitively by a court order, following a hearing with the parents, tutor or guardian.

Art. 3. The decision shall establish:

76. Articles 2 and 3 of Law 22,278 empower judges to provide tutelary measures for a child who commits an offense during the investigation and the processing of the proceedings, regardless of his or her age.[47] No time frame or limit is established for the measures that are ordered, on a discretionary basis, for child offenders.[48] Upon attaining 18 years of age, and after tutelary treatment for at least one year, the judge may impose one of the punishments established in the national Criminal Code. One of the characteristics of this regime is that the application of the punishment is basically dependent on subjective indicators such as those resulting from the tutelary treatment period. As explained in the document signed by both the United Nations Children's Fund (hereinafter "UNICEF") and by the Argentine National Secretariat for Children, Adolescents and the Family, "some adolescents declared criminally responsible for the same act are sentenced to the punishments established for adults while others are acquitted as if they had not committed the act, which is a clear example of the degree of discretion accorded […] to the judges."[49]

C. The criminal sentences handed down in this case[50]

C.1. César Alberto Mendoza

77. On December 18, 1996, the investigating judge decreed that César Alberto Mendoza[51] be tried for his responsibility in the offenses of doubly aggravated robbery, together with

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a) The mandatory custody of the minor by the judge, in order to seek his appropriate upbringing by means of his integral protection. To achieve this objective, the judge may order the measures he considers appropriate for the minor, which may always be amended in the interests of the latter;
b) The resulting restriction of the exercise of parental authority or tutorship, within the limits imposed and complying with the indications provided by the judicial authority, without prejudice to the continuation of the obligations inherent in the parents or the tutor;
c) The decision on guardianship when this is appropriate.
The final decision may cease at any time by a court order and shall conclude *ipso jure* when the minor attains his majority.

Art. 3 bis. In the national jurisdiction, the technical and administrative authority with competence for child welfare shall be responsible for confinements decided by the judges in application of articles 1 and 3.
If appropriate, with adequate justification, the judges may order confinements in other public or private institutions.

47 *Cf.* UNICEF. National Secretariat for Children, Adolescents and the Family. *Adolescentes en el Sistema Penal*, *Situación actual and propuesta para un proceso de transformación*, 1st edition, September 2008 (file of annexes to the pleadings and motions brief, tome XI, folio 6213).

48 *Cf. Amicus curiae* submitted by the *Colectivo de Derechos de Infancia and Adolescencia* (merits file, tome III, folio 2008).

49 *Cf.* UNICEF. National Secretariat for Children, Adolescents and the Family, *Adolescentes en el Sistema Penal*. *Situación actual and propuesta para un proceso de transformación*, 1st edition, September 2008 (annexes to the pleadings and motions brief, tome XI, folio 6214).

50 In addition to the remedies of cassation, the defense counsel of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández also filed other appeals, such as the appeal based on unconstitutionality and the special federal appeal. However, as there is no dispute among the parties regarding the effects of these appeals and the corresponding decisions, the Court will not refer to them in the proven facts of this case, and will not rule in this regard.

serious injuries and aggravated double homicide, the latter as a necessary accomplice. The investigating judge declined jurisdiction and referred the case to Juvenile Court No. 4.[52] On February 13, 1997, this court expanded the said proceedings and considered César Alberto Mendoza co-perpetrator of four counts of armed robbery.[53] As a result of this, on March 7, 1997, the opening of a file on custody provisions was ordered.[54] On October 18, 1999, the Oral Juvenile Court declared that the tutelary provisions of César Alberto Mendoza had expired because he had attained his majority, and ordered that he be included in case No. 1048, [55] for the corresponding sentence to be delivered.

78. On October 28, 1999, Oral Juvenile Court No. 1 of the Autonomous City of Buenos Aires (hereinafter "the Oral Juvenile Court") declared César Alberto Mendoza, 21 years old, co-perpetrator criminally responsible for the concurrent offenses of four counts of armed robbery, two counts of aggravated homicide, and serious injuries. Based on Law 22,278, he was sentenced to life imprisonment.[56] The crimes of which he was convicted were committed when he was under 18 years of age.

79. On November 16, 1999, the official public defender of the case filed an remedy of cassation with regard to César Alberto Mendoza's sentence.[57] The Oral Juvenile Court dismissed the remedy of cassation on November 30, 1999.[58]

80. The official public defender of the case filed a remedy of complaint owing to the rejection of the remedy of cassation.[59] The remedy was dismissed by the Second Chamber of the National Criminal Cassation Court on June 23, 2000.[60]

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[51] Cesar Alberto Mendoza was born on October 17, 1978, and attained his majority on October 17, 1996. He was detained on December 2, 1996, and was sentenced to life imprisonment on October 28, 1999, for crimes committed on July 28, 1996. *Cf.* Social report on Cesar Alberto Mendoza of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XII, folio 6694). See, also, the decision of First Instance Judge Ricardo Luis Farias of December 18, 1996 (file of annexes to the pleadings and motions brief, tome XII, folio 6814).

[52] *Cf.* Decision of First Instance Judge Ricardo Luis Farias of December 18, 1996 (file of annexes to the pleadings and motions brief, tome XII, folios 6814, 6821 and 6822).

[53] *Cf.* Decision of María Cecilia Maiza, judge of National Court No. 4 of February 13, 1997 (file of annexes to the pleadings and motions brief, tome XII, folios 6823 and 6830).

[54] Cf. Note of Judge Horacio Barberis of March 7, 1997 (file of annexes to the pleadings and motions brief, tome XII, folios 6800).

[55] *Cf.* Decision of Judge Eduardo Osvaldo Albano of October 18, 1999 (file of annexes to the pleadings and motions brief, tome XII, folios 6923).

[56] *Cf.* Judgment of Juvenile Oral Court No. 1 of the Autonomous City of Buenos Aires of October 28, 1999, in case No. 1,084 (file of annexes to the pleadings and motions brief, tome XII, folio 6705).

[57] *Cf.* Remedy of cassation filed by Nelly Allende, official public defender of Cesar Alberto Mendoza in case No. 1,084 (file of annexes to the submission of the case, tome VIII, folio 4427).

[58] *Cf.* Decision of Juvenile Oral Court No. 1 of November 30, 1999 *(*file of annexes to the submission of the case, tome VIII, folio 4454).

[59] *Cf.* Remedy of complaint owing to rejection of the remedy of cassation filed by Nelly Allende, official public defender of Cesar Alberto Mendoza in case No. 1,084 *(*file of annexes to the submission of the case, tome VIII, folio 4459).

C.2. Claudio David Núñez and Lucas Matías Mendoza

81. The Court does not have the judgment that declared their criminal responsibility. However, the case file reveals that Claudio David Núñez[61] and Lucas Matías Mendoza[62] underwent tutelary treatment under Laws 22,278 and 10,903, the latter on the Child Welfare Agency. Following the year of observation established in the law, the Oral Juvenile Court considered that it was able to determine the punishment to be imposed.[63]

82. Claudio David Núñez and Lucas Matías Mendoza were tried together by the Oral Juvenile Court on April 12, 1999. The Court declared Claudio David Núñez criminally responsible for the separate but concurrent crimes of five counts of aggravated homicide, eight counts of aggravated armed robbery, two of them attempted, illegal possession of a weapon of war, and unlawful association, and sentenced him to reclusion for life.[64] In the same judgment, Lucas Matías Mendoza was sentenced to life imprisonment[65] for his responsibility for the crimes of

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60 *Cf.* Decision of the National Criminal Cassation Chamber, Second Chamber, of June 23, 2000, case No. 2544 (file of annexes to the submission of the case, tome VIII, folio 4470).

61 Claudio David Núñez was born on August 20, 1979, and attained his majority on August 20, 1997. He was detained on January 21, 1997, and sentenced to life imprisonment on April 12, 1999, for crimes committed between October 3, 1996, and January 9, 1997. *Cf.* Social report on Claudio David Núñez of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XII, folios 6769 and 6770). See, also, the Explanatory statement of the facts and law on which Juvenile Oral Court No. 1 of the Federal Capital based its verdict, corresponding to cases Nos. 833/838/839/851/910/920/937/972/1069 against Dante Núñez, Claudio David Núñez and Lucas Matías Mendoza of April 12, 1999 (file of annexes to the submission of the case, tome VIII, folio 4634).

62 Lucas Matías Mendoza was born in September 1980, and attained his majority in September 1998. He was detained on January 21, 1997, and was sentenced to life imprisonment on April 12, 1999, for crimes committed between October 3, 1996, and January 9, 1997. *Cf.* Social report on Lucas Matías Mendoza of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folios 6933 to 6935). See, also, the Explanatory statement of the facts and law on which Juvenile Oral Court No. 1 of the Federal Capital based its verdict, corresponding to cases Nos. 833/838/839/851/910/920/937/972/1069 against Dante Núñez, Claudio David Núñez and Lucas Matías Mendoza of April 12, 1999 (file of annexes to the submission of the case, tome VIII, folio 4634).

63 *Cf.* Explanatory statement of the facts and law on which Juvenile Oral Court No. 1 of the Federal Capital based its verdict, corresponding to cases Nos. 833/838/839/851/910/920/937/972/1069 against Dante Núñez, Claudio David Núñez and Lucas Matías Mendoza of April 12, 1999 (file of annexes to the submission of the case, tome VIII, folio 4634 and 4638).

64 *Cf.* Explanatory statement of the facts and law on which Juvenile Oral Court No. 1 of the Federal Capital based its verdict, corresponding to cases Nos. 833/838/839/851/910/920/937/972/1069 against Dante Núñez, Claudio David Núñez and Lucas Matías Mendoza of April 12, 1999 (file of annexes to the submission of the case, tome VIII, folio 4515).

65 Regarding possible differences between the punishments of life imprisonment and reclusion for life, article 44 of the Criminal Code establishes, with regard to an attempted crime, that: "the punishment that would have corresponded to the agent if the offense had been perpetrated, shall be reduced by one third to half. If the punishment would have been reclusion for life, the punishment for an attempt shall be reclusion for fifteen to twenty years. If the punishment would have been life imprisonment, the punishment for an attempt shall be ten to fifteen years' imprisonment. […]." Despite this legal distinction, both the State and the representative agree in indicating that, in the case of 'Mendez, Nancy Noemí ref/Murder,' on February 22, 2005, the Supreme Court considered that the punishment of reclusion for life had been implicitly annulled by Law on Execution of Sentence No. 24,660. In its judgment, the Supreme Court established that "there are not differences between the execution of [reclusion] and imprisonment." However, the representative indicated that, despite the case law of the Supreme Court, there are differences between the punishments of reclusion for life and life imprisonment. *Cf.* The State's final written arguments

two counts of aggravated homicide, aggravated armed robbery, illegal possession of a weapon of war and unlawful association.[66] Both were under 18 years of age when they committed the crimes of which they were accused.

83. Three remedies of cassation were filed against the judgment of April 12, 1999, handed down by the Oral Juvenile Court (*supra* para. 82); one of them by the official Public Defender on behalf of Claudio David Núñez,[67] and the others by the Children's Public Defender on behalf of Lucas Matías Mendoza and Claudio David Núñez.[68] In addition, the private legal counsel of Lucas Matías Mendoza filed another remedy of cassation.[69] Lastly, the official Public Defender filed two appeals based on unconstitutionality, one in favor of Claudio David Núñez and Lucas Matías Mendoza,[70] and another in favor of Claudio David Núñez.[71] On May 6, 1999, the Oral Juvenile Court rejected the remedies of cassation and unconstitutionality that had been filed.[72]

84. The official Public Defender, on behalf of Claudio David Núñez,[73] the Children's Public Defender, on behalf of Claudio David Núñez and Lucas Matías Mendoza,[74] and Lucas Matías

(merits file, tome III, folio 2193); the representative's final written arguments (merits file, tome IV, folio 2224), and the Federal Criminal Code (file of annexes to the submission of the case, Annex 1, tome VII, folio 4075).

66 *Cf.* Explanatory statement of the facts and law on which Juvenile Oral Court No. 1 of the Federal Capital based its verdict, corresponding to cases Nos. 833/838/839/851/910/920/937/972/1069 against Dante Núñez, Claudio David Núñez and Lucas Matías Mendoza, of April 12, 1999 (file of annexes to the submission of the case, tome VIII, folio 4515).

67 *Cf.* Remedy of cassation filed by Nelly Allende, official public defender of Dante Núñez and Claudio Núñez in cases Nos. 833/838/839/851/910/920/937/972/1069, on May 3, 1999 (file of annexes to the submission of the case, tome VIII, folio 4661).

68 *Cf.* Remedy of cassation filed by María Luz de Facio, Head of Children's Public Defense Office No. 1, on behalf of Lucas Matías Mendoza and Claudio David Núñez in cases Nos. 833/838/839/851/910/920/937/ 972/1069, on May 3, 1999 (file of annexes to the submission of the case, tome VIII, folio 4699).

69 *Cf.* Remedy of cassation filed by Mirta Beatriz López, private defense counsel of Lucas Matías Mendoza in cases Nos. 833/838/839/851/910/920/937/972/1069, on May 3, 1999 (file of annexes to the submission of the case, tome VIII, folio 4644).

70 *Cf.* Remedy of cassation filed by Nelly Allende, public defender of Lucas Matías Mendoza and Claudio Núñez in cases Nos. 833/837/838/839/910/920/937/972/1069, on May 3, 1999 (file of annexes to the submission of the case, tome VIII, folio 4705).

71 *Cf.* Remedy of cassation filed by Nelly Allende, public defender of Claudio Núñez and Dante Núñez in cases Nos. 833/837/838/839/910/920/937/972/1069, on May 3, 1999 (file of annexes to the submission of the case, tome VIII, folio 4712).

72 *Cf.* Decision of Juvenile Oral Court No. 1 of May 6, 1999 (file of annexes to the submission of the case, tome VIII, folios 4725, 4729 and 4730).

73 *Cf.* Remedy of complaint owing to rejection of the remedy of cassation filed by Nelly Allende, official public defender of Dante Núñez and Claudio Núñez in cases Nos. 833/838/839/851/910/920/937/972/1069, filed on May 3, 1999 (file of annexes to the submission of the case, tome VIII, folio 4749).

74 *Cf.* Remedy of complaint owing to rejection of the remedy of cassation filed by María Luz de Fazio, Head of the No. 1, on behalf of Lucas Matías Mendoza and Claudio David Núñez in cases Nos. 833/837/838/839/910/920 Children's Public Defense Office /937/972/1069, filed on May 13, 1999 (file of annexes to the submission of the case tome VIII, folio 4803).

Mendoza's private legal counsel,[75] filed three remedies of complaint before the National Criminal Cassation Chamber against the decision of May 6, 1999, of the Oral Juvenile Court rejecting the remedies of cassation and the appeal based on unconstitutionality. On October 28, 1999, the National Criminal Cassation Chamber ruled on the remedies of complaint declaring them admissible.[76] However, by rulings issued on April 4[77] and 19,[78] 2000, the National Criminal Cassation Chamber rejected these remedies of complaint.

C.3. Saúl Cristian Roldán Cajal

85. On October 30, 2000, the Juvenile Criminal Court of the First Judicial District of the province of Mendoza (hereinafter "the Mendoza Juvenile Criminal Court") declared Saúl Cristian Roldán Cajal[79] criminally responsible for committing the separate but concurrent crimes of aggravated homicide with aggravated robbery.[80] On November 6, 2000, tutelary treatment "for one year" and "psychiatric and psychological examinations" were ordered. It was also ordered that Saúl Cristian Roldán Cajal undergo training for a trade or continue his schooling through the Provincial Prison.[81]

86. On March 8, 2002, the Mendoza Juvenile Criminal Court sentenced Saúl Cristian Roldán Cajal to life imprisonment without the benefit of a reduced sentence established in the second paragraph of article 4 of the Law 22,278.[82] It also indicated that "taking into account that [Saúl Cristian Roldán Cajal had] a previous conviction for facts subsequent to those that resulted in these proceedings [in which he was declared a repeat offender],[83] the issue arises

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75 *Cf.* Remedy of complaint owing to rejection of the remedy of cassation filed by Mirta Beatriz López, private defense counsel of Lucas Matías Mendoza in cases Nos. 833/838/839/851/910/920/937/972/1069, filed on May 19, 1999 (file of annexes to the submission of the case, tome VIII, folio 4733).

76 *Cf.* Decisions of the National Criminal Cassation Chamber, Second Chamber, of October 28, 1999, cases Nos. 2209, 2211 and 3215 (file of annexes to the submission of the case, tome IX, folios 4804, 4816 and 4826).

77 *Cf.* Decision of the National Criminal Cassation Chamber, Second Chamber, of April 4, 2000, case No. 2209 (file of annexes to the submission of the case, tome IX, folio 4807).

78 *Cf.* Decisions of the National Criminal Cassation Chamber, Second Chamber, of April 19, 2000, cases Nos. 2211 and 2216 (file of annexes to the submission of the case, tome IX, folios 4817 and 4839).

79 Saúl Cristian Roldan Cajal was born on February 10, 1981, and attained his majority on February 10, 1999. He was detained on April 14, 1999, and sentenced to life imprisonment on March 8, 2002, for crimes committed on December 1, 1998. *Cf.* Social report on Saúl Cristian Roldán Cajal (file of annexes to the pleadings and motions brief, tome XIII, folios 6948 and 6949). See, also, the explanatory statement of the grounds for the verdict of the Juvenile Criminal Court against Saúl Cristian Roldan Cajal, of November 6, 2002 (file of annexes to the submission of the case, tome VIII, folio 6859) and the decision of the Mendoza Juvenile Criminal Court, First Judicial District, of March 8, 2002, in case No. 005/00 (file of annexes to the pleadings and motions brief, tome XIII, folio 6983).

80 *Cf.* Judgment of the Mendoza Juvenile Criminal Court, First Judicial District, of October 30, 2000, in case No. 005/00 (file of annexes to the pleadings and motions brief, tome XIII, folio 6957).

81 *Cf.* Decision of the Mendoza Juvenile Criminal Court, First Judicial District, of November 6, 2000, in case No. 005/00 (file of annexes to the pleadings and motions brief, tome XIII, folios 6959 and 6975).

82 *Cf.* Decision of the Mendoza Juvenile Criminal Court, First Judicial District, of March 8, 2002, in case No. 005/00 (file of annexes to the pleadings and motions brief, tome XIII, folio 6983).

83 *Cf.* Judgment No. 995 of the Fifth Criminal Chamber of the province of Mendoza of May 17, 2002 (file of annexes to the pleadings and motions brief, tome XIII, folio 7041).

of consolidating the punishments imposed by the […] Fifth Criminal Chamber […] and this Juvenile Criminal Court."[84] It therefore referred to the Fifth Criminal Chamber so that the latter could proceed to consolidate the punishments. The crimes of which Saúl Cristian Roldán Cajal was accused occurred when he was a minor.

87. On April 3, 2002, the official Public Defender filed a remedy of cassation and on unconstitutionality against the decision of March 8, 2002 (*supra* para. 86).[85] On April 8, 2002, the Mendoza Juvenile Criminal Court decided not to admit the appeal based on unconstitutionality and admitted the remedy of cassation.[86] On August 5, 2002, the Second Chamber of the Supreme Court of Justice of the province of Mendoza (hereinafter "Mendoza Supreme Court of Justice") rejected the remedy of cassation.[87]

88. Subsequently, on November 5, 2002, the Mendoza Fifth Criminal Chamber decided to consolidate the punishments imposed by the preceding courts, imposing on Saúl Cristian Roldán Cajal the sentence to life imprisonment and retaining the declaration that he was a repeat offender,[88] which meant that he was unable to apply for parole under article 13 of the national Criminal Code.

C.4. Ricardo David Videla Fernández

89. The social report on Ricardo David Videla Fernández[89] dated November 30, 2011, indicates that, "in May 2001, a judicial file was opened in which, [at the] age of 16 and a half, he was accused of the theft of a bicycle."[90] The case file before this Court does not contain exact details of the tutelary treatment or of other offenses of which he was also accused. However, the findings of the decision of December 5, 2002, handed down by the Mendoza

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84 *Cf.* Judgment of the Mendoza Juvenile Criminal Court, First Judicial District, of March 8, 2002, in case No. 005/00 (file of annexes to the pleadings and motions brief, tome XIII, folio 6990).

85 *Cf.* Remedy of cassation and on unconstitutionality filed by María del Carmen Riste, head of the Third Juvenile Criminal Defenders' Office, of April 3, 2002, in case No. 005/00 (file of annexes to the pleadings and motions brief, tome XIII, folio 6992).

86 *Cf.* Decision of the Mendoza Juvenile Criminal Court, First Judicial District, of April 8, 2002, in case No. 005/00 (file of annexes to the pleadings and motions brief, tome XIII, folio 7001).

87 *Cf.* Decision of the Second Chamber of the Supreme Court of Justice of the province of Mendoza, of August 5, 2002, in case No. 005/00 (file of annexes to the pleadings and motions brief, tome XIII, folio 7011).

88 *Cf.* Decision of the Fifth Criminal Chamber of the province of Mendoza of November 5, 2002 (file of annexes to the pleadings and motions brief, tome XIII, folio 7012).

89 Ricardo David Videla Fernández was born on September 17, 1984, and attained his majority on September 17, 2002. He was detained for the first time in May 2001, and for the last time in July 2002. He was sentenced to life imprisonment on November 28, 2002, for crimes committed between May 24 and July 12, 2001. *Cf.* Social report on Ricardo David Videla Fernández (file of annexes to the pleadings and motions brief, tome XIII, folios 7122 and 7123).

90 *Cf.* Social report on Ricardo David Videla Fernández of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folio 7123). See, also, the explanatory statement of December 5, 2002, on the grounds for the verdict of the Mendoza Juvenile Criminal Court, First Judicial District, in cases Nos. 109/110/ 111/112/113/116/117/120/121 (file of annexes to the submission of the case, tome IX, folios 4992 and 4993).

Juvenile Criminal Court mention that "the tutelary treatment of no less than one year [had been] complied with […]."[91]

90. On November 28, 2002, the Mendoza Juvenile Criminal Court declared Ricardo David Videla Fernández criminally responsible for committing the concurrent but separate offenses of two counts of aggravated homicide with aggravated robbery, attempted robbery, aggravated robbery, possession of weapons of war, and also aggravated robbery, aggravated coercion and illegally carrying an arm for civilian use, and sentenced him to life imprisonment.[92] Nine criminal proceedings were opened for these offenses. All of the offenses of which he was accused took place while Ricardo David Videla Fernández was under 18 years of age.

91. On December 19, 2002, his private defense counsel filed remedies of cassation against six of the joindered proceedings.[93] On April 24, 2003, the Supreme Court of Justice of the Province of Mendoza rejected the remedies of cassation.[94]

D. Judicial decisions in Argentina following the issue of Merits Report No. 172/10 of the Inter-American Commission and the submission of the case to the Inter-American Court

D.1. Decision of the Second Chamber of the Mendoza Supreme Court of Justice of March 9, 2012, setting aside the conviction of Saúl Cristian Roldán Cajal

92. On March 29, 2011, after the Inter-American Commission had issued Merits Report No. 172/10 in this case, the official Public Defender filed, on behalf of Saúl Cristian Roldán Cajal, an appeal for review of the judgment sentencing him to life imprisonment and the decision declaring him a repeat offender.[95] On September 22, 2011, the Mendoza Supreme Court of Justice decided to admit the appeal in order to review the judgment convicting Saúl Cristian Roldán Cajal.[96] On March 9, 2012 the Second Chamber of the Mendoza Supreme Court of Justice decided to set aside the judgment sentencing him to life imprisonment. Based on Merits

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91 *Cf.* Explanatory statement of December 5, 2002, on the grounds for the verdict of the Mendoza Juvenile Criminal Court, First Judicial District, in cases Nos. 109/110/111/112/113/116/117/120/121 (file of annexes to the submission of the case, tome IX, folios 4992 and 4993).

92 *Cf.* Judgment No. 107 of the Mendoza Juvenile Criminal Court, First Judicial District, of November 28, 2002, in cases Nos. 109/110/111/112/113/116/117/120/121 (file of annexes to the submission of the case, tome IX, folio 4902).

93 *Cf.* Remedy of cassation filed by Fernando Gastón Peñaloza, defense counsel of Ricardo David Videla Fernández, in cases Nos. 109/02, 110/02, 117/02, 121/02, 112/02 and 116/02, of December 19, 2002 (file of annexes to the submission of the case, tome IX, folios 5029, 5047, 5064, 5003, 5021 and 5012).

94 *Cf.* Decision of the Mendoza Supreme Court of Justice of April 24, 2003, in case No. 76063 (file of annexes to the submission of the case, tome IX, folio 5080).

95 *Cf.* Appeal for review filed by María del Carmen Riste, head of the Third Juvenile Criminal Defenders' Office of March 28, 2011, in case No. 005/00 *(*file of annexes to the pleadings and motions brief, tome XIII, folio 7013).

96 *Cf.* Decision of the Supreme Court of Justice of the province of Mendoza of September 22, 2011, in case No. 102,319 *(*file of annexes to the pleadings and motions brief, tome XIII, folio 7027).

Report 172/10 of the Inter-American Commission, that court decided to impose 15 years' imprisonment on Saúl Cristian Roldán Cajal.[97] According to information from the parties, Saúl Cristian Roldán Cajal's release could not be secured, because he was deprived of liberty for supposedly having perpetrated another offense.

D.2. Decision of the Federal Criminal Cassation Chamber of August 21, 2012, annulling the sentences of César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza

93. On April 8, 2011, based on the recommendation of the Inter-American Commission in Merits Report 172/10, Lucas Matías Mendoza, "*in forma pauperis*," filed a brief requesting the review of the judgment of the Oral Juvenile Court of April 12, 1999, that sentenced him to reclusion for life (*supra* para. 82).[98] Subsequently, the official Public Defender went before that court in order to substantiate the appeal.[99]

94. When the proceedings had reached the stage of an agreement,[100] two new appeals for review were filed by the official public defender of Cesar Alberto Mendoza[101] and Claudio David Núñez,[102] on the same grounds as the first one. On April 18, 2012, it was decided to joinder the three proceedings since they all had the same purpose.[103] On August 21, 2012, about a week before the public hearing in the instant case was held (*supra* para. 12), the Federal Criminal Cassation Chamber annulled the judgment delivered by the Oral Juvenile Court on April 12, 1999 (*supra* para. 82), against Claudio David Núñez and Lucas Matías Mendoza, and the judgments of April 4 and 9, 2000, handed down against César Alberto Mendoza and Lucas Matías Mendoza (*supra* para. 84) in relation to the sentencing to life imprisonment and reclusion for life, and declared that that paragraph 7 of article 80 of the Criminal Code was unconstitutional "as regards the punishment of life imprisonment established for children and adolescents." Furthermore, it admitted the appeals in cassation and on unconstitutionality that

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97 *Cf.* Decision of the Supreme Court of Justice of the province of Mendoza of March 9, 2012, in case No. 102,319 *(*file of annexes to the answering brief, tome XV, folio 7897).

98 *Cf.* Appeal for review filed *in forma pauperis* by Lucas Matías Mendoza of April 8, 2011 *(*file of annexes to the answering brief, tome XV, folio 7940).

99 *Cf.* Appeal for review filed by Graciela Galván, defender *ad hoc* of Lucas Matías Mendoza in case No. 14,087 (file of annexes to the answering brief, tome XV, folio 7945). It should be explained that the defense counsel committed the material error of coming forward in representation of Cesar Alberto Mendoza when, in fact, the appeal for review was filed with regard to Lucas Matías Mendoza. Consequently, she submitted a clarification in this regard (file of annexes to the answering brief, tome XV, folio 7954).

100 *Cf.* Note of the Secretary of the Chamber of February 15, 2012, in case No. 14,087 (file of annexes to the answering brief, tome XV, folio 7955).

101 *Cf.* Appeal for review presented by Patricia García, defense counsel *ad hoc* of Cesar Alberto Mendoza in case No. 15,311 (file of annexes to the answering brief, tome XV, folio 7903).

102 *Cf.* Appeal for review filed by Flavio Vega, had of official public defense office No. 2 on behalf of Claudio David Núñez in case No. 15,312 (file of annexes to the answering brief, tome XV, folio 7924).

103 *Cf.* Note of the Secretary of the Chamber dated April 18, 2012, in case No. 14,087 (file of annexes to the answering brief, tome XV, folio 7952).

had previously been denied (*supra* para. 84), and ordered "that the proceedings be referred [to the Oral Juvenile Court] so that, following a hearing," it establish new punishments for the three convicted youths, "based on the [said decision] and especially on the guidelines set out in Report [172/10]."[104]

D.3. Special federal appeal of the Prosecutor General against the decision handed down in favor of César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza in the appeal for review

95. On September 4, 2012, the Prosecutor General filed a special federal appeal against the decision of the Federal Criminal Cassation Chamber of August 21, 2012 (*supra* para. 94), basically, on the grounds that the principle of *res judicata* had been violated and that the declaration of the unconstitutionality of paragraph 7 of article 80 of the Criminal Code was "arbitrary."[105] On September 27, 2012, the Second Chamber of the Federal Criminal Cassation Chamber declared that the special federal appeal filed by the Prosecutor General was inadmissible. Accordingly, on October 5, 2012, the Prosecutor General filed a remedy of complaint before the Supreme Court of Justice of the Nation.[106] According to information provided to the Court, at the date of delivery of this Judgment, this appeal had not been decided, and thus the decision of the Second Chamber of the Federal Criminal Cassation Chamber of August 21, 2012, granting the appeals for review in favor of Caesar Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza (*supra* para. 94) is not yet final.

D.4. Incidental plea for the release of César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza

96. On September 7, 2012, the Argentine Ombudsperson submitted a brief to the Second Chamber of the Federal Criminal Cassation Chamber requesting the immediate release of César Alberto Mendoza and Claudio David Núñez, and an end to the detention of Lucas Matías Mendoza that had been ordered as a result of his sentence to life imprisonment, based on the "acknowledgement of judicial error" revealed by the Chamber's judgment of August 21, 2012.

97. On September 8, 2012, the Oral Juvenile Court granted the release of César Alberto Mendoza, Lucas Matías Mendoza and Claudio David Núñez on their own recognizance because, "in this case, the length of their detention as a preventive measure[; that is, approximately 17 years,] d[id] not justify their continued detention until the end of the proceedings." Lucas

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104 *Cf.* Judgment of the Federal Criminal Cassation Chamber in case No. 14,087 of August 21, 2012 (file of annexes to the representative's final written arguments, tome XII, folios 8249 and 8330).

105 *Cf.* Special federal appeal filed by the Prosecutor General of the Nation on September 4, 2012, against the Federal Criminal Cassation Chamber's decision of August 21, 2012 (file of annexes to the representative's final written arguments, tome XII, folios 8365 and 8374).

106 *Cf.* Remedy of complaint of the Prosecutor General of the Nation filed before the Supreme Court of Justice of the Nation of September 5, 2012 (merits file, tome III, folio 2354).

Matías Mendoza was not released, "because […] National Criminal Investigation Court No. 5 had made an annotation on the order."[107]

E. Lucas Matías Mendoza's loss of vision

98. On July 31, 1998, at 17 years of age,[108] and during his time at the Dr. Luis Agote Juvenile Institution, located in Buenos Aires,[109] Lucas Matías Mendoza was hit by a ball in the left eye.[110] The diagnosis made on August 18 of that year determined that he had suffered a retinal detachment.[111] On September 25, 1998, since he had attained his majority,[112] Lucas Matías Mendoza was transferred from the juvenile institution, first to the "Judicial Detention Center (U. 28)," and later to the "Federal Capital Prison (U. 16)."[113] On December 22, 1998, he was transferred to the Federal Complex for Young Adults (U.24), where he was examined by the staff physician on August 31, 1999. The latter confirmed that the inmate's injury had affected his vision irreversibly, without the possibility of surgery and treatment. The report recommended "maximizing care as regards the inmate's physical activity, as well as his accommodations, avoiding insofar as possible situations that could worsen his limited vision." In addition, the doctor stated that Lucas Matías Mendoza had a congenital toxoplasmosis scar in his right eye which had resulted in a decrease in his visual acuity, [114] although in a previous report dated February 3, 1997, it was noted that, at that time, his vision was normal.[115]

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107 *Cf.* Judgment of Juvenile Oral Court No. 1 of the Federal Capital, of September 8, 2012 (file of annexes to the representative's final written arguments, tome XII, folios 8400 and 8401).

108 Lucas Matías Mendoza was born in September 1980. *Cf.* Psychological report of the Agote Institution of July 7, 1997 (file of annexes to the pleadings and motions brief, tome XIII, folio 7151).

109 *Cf.* Psychological report of the Agote Institution of July 7, 1997 (file of annexes to the pleadings and motions brief, tome XIII, folio 7151). See, also, the note of the Agote Institution dated September 25, 1998, advising of the departure of Lucas Matías Mendoza (file of annexes to the pleadings and motions brief, tome XIII, folio 7164); testimony provided by Lucas Matías Mendoza by affidavit on August 16, 2012 (merits file, tome II, folio 1415), and Technical criminalistics report on Lucas Matías Mendoza (file of annexes to the pleadings and motions brief, tome XIII, folio 7331).

110 *Cf.* Clinical history of Lucas Matías Mendoza (file of annexes to the pleadings and motions brief, tome XIII, folio 7195). See, also, testimony provided by Lucas Matías Mendoza by affidavit on August 16, 2012 (merits file, tome II, folio 1415).

111 *Cf.* Clinical history of Lucas Matías Mendoza (file of annexes to the pleadings and motions brief, tome XIII, folio 7196).

112 *Cf.* Note of the Agote Institution dated September 25, 1998, advising of the departure of Lucas Matías Mendoza (file of annexes to the pleadings and motions brief, tome XIII, folio 7164)

113 *Cf.* Report prepared by the General Registry of Detainees (file of annexes to the pleadings and motions brief, tome XIII, folio 7254)

114 *Cf.* Medical report prepared by Dr. Jorge Goncalves on August 31, 1999 (file of annexes to the pleadings and motions brief, tome XIII, folio 7205).

115 *Cf.* Medical report prepared by Dr. Juan Barmiento on February 3, 1997 (file of annexes to the pleadings and motions brief, tome XIII, folio 7192).

99. After four transfers between December 3, 1999, and June 21, 2002,[116] on April 14, 2003, Lucas Matías Mendoza was taken to Ezeiza Federal Penitentiary Complex I.[117] On April 25, 2003, he was moved to the "Federal Penitentiary Complex of the [Autonomous City] of Buenos Aires]."[118] There, on April 30 that year, at the request of National Execution of Sentence Court No. 2, the Forensic Medicine Unit diagnosed that the vision impairment to Lucas Matías Mendoza's left eye, could have been acquired as a result of trauma, retinal detachment, and subsequent cataract. In addition, it was also determined that the right eye also had a lesion that could be the result of congenital problems, and it was recommended "to provide him with regular training regarding his advanced amblyopic condition."[119] In October 2005, a doctor from the Forensic Medicine Unit referred the ophthalmologic examination performed on Lucas Matías Mendoza that year to another doctor, in order to advise Execution of Sentence Court No. 2 about his ophthalmologic situation, and the same conclusions were reached as in the other reports.[120]

100. On April 27, 2007, Lucas Matías Mendoza was transferred back to Ezeiza Federal Penitentiary Complex I.[121] In July that year, at the request of National Execution of Sentence Court No. 2, a "medical ophthalmology board" of the Forensic Medicine Unit re-examined him and confirmed the previous diagnoses. In this report, it was established that the "visual acuity with optical correction [of his right eye is] 1/10, [while he is] blind in his [left] eye,"[122] and the report concluded that the problems he suffered from were irreversible, with a total and permanent disability of 100 percent. Thus, Lucas Matías Mendoza would need periodic monitoring of his eyes, owing to the absence of specific treatments for his condition.[123] Between January 15, 2008, and December 13, 2010, Lucas Matías Mendoza was transferred three times, arriving finally at Federal Penitentiary Complex II of Marcos Paz.[124]

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116 *Cf.* From December 3 to 13, 1999, he was in the Federal Capital Prison; from December 13, 1999, to October 7, 2000, he was in the Federal Complex for Young Adults; from October 7, 2000, to June 21, 2002, he was in the Ezeiza Federal Prison Complex, and from June 21, 2002, to April 14, 2003, he was in the Regional Prison for the South. *Cf.* Report prepared by the General Registry of Detainees (file of annexes to the pleadings and motions brief, tome XIII, folio 7254).

117 *Cf.* Report prepared by the General Registry of Detainees (file of annexes to the pleadings and motions brief, tome XIII, folio 7254).

118 *Cf.* Report prepared by the General Registry of Detainees (file of annexes to the pleadings and motions brief, tome XIII, folio 7255).

119 *Cf.* Medical examination performed by Dr. Norberto Domingo Alfano on April 30, 2003 (file of annexes to the pleadings and motions brief, tome XIII, folio 7209).

120 *Cf.* Medical report prepared by Dr. Roberto Borrone on October 28, 2005 (file of annexes to the submission of the case, tome X, folio 5556).

121 *Cf.* Report prepared by the General Registry of Detainees (file of annexes to the pleadings and motions brief, tome XIII, folio 7255)

122 *Cf.* Ophthalmological report on Lucas Matías Mendoza prepared by the Forensic Ophthalmological Physician, Norberto Domingo Alfano on July 13, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folio 7217).

123 *Cf.* Ophthalmological report on Lucas Matías Mendoza prepared by the Forensic Ophthalmological Physician, Norberto Domingo Alfano on July 13, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folio 7218).

124 *Cf.* From January 15, 2008, to December 7, 2010, he was in Federal Prison Complex II of Marcos Paz; from December 7 to 13, 2010, in the Santa Rosa Penal Colony, and on December 13, 2010, he returned to Federal Prison

101. On May 6, 2011, the ophthalmologist of the Forensic Medicine Unit updated the ophthalmological examination, reaching the same conclusions that have been noted above and recommending "glasses with organic lenses" for distance vision, for the "only functionally useful eye (the right eye)."[125] Based on this examination, that same day, the National Judiciary's Forensic Physician sent a report to National Execution of Sentence Court No. 2, in which he concluded that "the consequences of the disease […] could be managed more appropriately outside the prison."[126]

102. On June 17, 2011, National Execution of Sentence Court No. 2 considered that "the medical reports [were] conclusive as regards the delicate health of [Lucas Matías Mendoza], his acute and irreversible medical condition, [and …] the increased effects caused by suffering this in a prison establishment." Taking this into account, approximately 13 years after being hit by a ball that resulted in a retinal detachment, the court ordered his house arrest so that, in this way, he could continue serving the life sentence that had been imposed.[127]

F. Detention conditions in the Mendoza provincial prisons, the death of Ricardo David Videla Fernández, and its investigation

F.1. Situation of violence in the Mendoza provincial prisons

103. In the context of the request for provisional measures filed by the Inter-American Commission on October 14, 2004, in favor of those detained in the Mendoza Provincial Prison, among other matters, the Argentine State acknowledged that the situation inside the prison, which included a high rate of violent deaths, was "critical," and provided information on the measures it was implementing to safeguard the life and integrity of the inmates, such as regular inspections in order to find objects that could be used as weapons.[128] The Inter-American Court ordered the adoption of provisional measures in the Order of November 22, 2004, and this decision was reiterated by the Court in its Orders of June 18, 2005, March 30, 2006, and November 27, 2007, because it considered that the situation of extreme gravity and urgency subsisted within this prison. It should be noted that, in an official document signed by the State, the Inter-American Commission, and the representatives of the beneficiaries of the provisional measures on the occasion of the public hearing held in Asuncion, Paraguay, on May

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Complex II of Marcos Paz, where he remained until he was granted house arrest. Report prepared by the General Registry of Detainees (file of annexes to the pleadings and motions brief, tome XIII, folio 7255).

125 *Cf.* Report of the ophthalmological examination of Lucas Matías Mendoza carried out by Dr. Roberto Borrone on May 6, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folio 7224).

126 *Cf.* Report of the Forensic Medicine Unit signed by Dr. Cristian Rando of June 15, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folio 7222).

127 *Cf.* Decision of the national execution of sentence judge of June 17, 2011, in case file No. 5895 (file of annexes to the pleadings and motions brief, tome XIII, folio 7227).

128 *Cf. Matter of the Mendoza Prisons*. Provisional measures with regard to Argentina. Decision of the Inter-American Court of Human Rights of November 22, 2004, twelfth having seen paragraph and ninth considering paragraph.

11, 2005, Argentina undertook, *inter alia,* to create an *ad hoc* Investigation Committee "in order to investigate the acts of violence and deaths that had occurred in the prisons of the province of Mendoza between January 2004 […] and [that] date," and "to take measures in order to seize weapons of any type that might be found in the establishments, [… and] to prevent the clandestine entry of weapons […]."[129] The provisional measures remained in force until November 26, 2010, when they were lifted following "the adoption of several decisions at the domestic level that ha[d] ordered the rectification of the situation in the Mendoza Prisons."[130]

F.2. Death of Ricardo David Videla Fernández

104. "In mid-July 2001," at 16 years of age, Ricardo David Videla Fernández was interned in the Socio-Educational Orientation Center, charged with three murders (*supra* para. 73). Upon attaining 18 years of age, on September 17, 2002, he was transferred from this Center "to the infirmary of the Boulogne Sur Mer Prison, where he was kept with adult detainees," because he had been shot in the stomach during an escape attempt, and was "in the post-operative period." When he was "relatively recovered, […] he was taken to the […] San Felipe Complex [of the Mendoza Provincial Prison], where young adults aged from 18 to 21 years were kept."[131]

105. A brief dated May 2, 2005, handwritten by Ricardo David Videla Fernández, which he called a "*habeas corpus*" before the "judge of the First Juvenile Prosecutor's Office," reveals that he had reported that, "in the sector [he was] in…] his physical integrity [was] in danger"; that "he was [being] psychologically persecuted by [prison staff], and […] that the threats receive[d were …] 'severe'"; he therefore asked "to be transferred to the San Rafael prison […]."[132] On May 16, 2005, Ricardo David Videla Fernández "started a hunger strike" that lasted until May 20 that year "so that he would be removed from the maximum security module."[133] According to his mother, Stella Maris Fernandez, subsequently "he asked her, in tears, not to continue insisting on the claims he had set out in his *habeas corpus* petition because a prison guard had threatened to [… harm her]."[134]

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129 *Cf. Matter of the Mendoza Prisons.* Provisional measures with regard to Argentina. Order of the Inter-American Court of Human Rights of March 30, 2006, fourth and fifth having seen paragraphs.

130 *Cf. Matter of the Mendoza Prisons*. Provisional measures with regard to Argentina. Order of the Inter-American Court of Human Rights of November 26, 2010, forty-fourth considering paragraph.

131 Ricardo Videla was born on September 17, 1984. *Cf.* Social report on Ricardo David Videla Fernández of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folios 7122 to 7124).

132 *Cf.* Application for *habeas corpus* filed by Ricardo David Videla Fernández on May 2, 2005 (file of annexes to the submission of the case, tome IX, folio 5394)

133 *Cf.* Social report on Ricardo David Videla Fernández of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folios 7122 to 7126).

134 *Cf.* Social report on Ricardo David Videla Fernández of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folios 7122 to 7126).

106. Furthermore, on June 3, 2005, Ricardo Videla was prescribed the psychotropic drug Lorazepam.[135] In this regard, on June 21, 2005, a prison official stated that Ricardo David Videla Fernández "was taking psychiatric medication and had a doctor's prescription."[136]
107. In addition, on June 16, 2005, members of the Prison Policy Monitoring Commission visited the Mendoza Prison where Ricardo Videla was being kept. Regarding this visit, Pablo Ricardo Flores, a member of the Commission, declared that:

> "First, they visited Pavilion 2, which is a punishment pavilion, and the first irregularity they noted was that juveniles were being kept there, specifically inmate Videla […]. They had no mattresses, no blankets, […] and were confined to the cells for more than 20 hours […]. There are no toilets in the cells, so they did their necessities in nylon bags, and the food was next to the urine and fecal matter. […] The conditions of the bathroom and of the whole pavilion were truly inhuman. […] The water in the pavilion […] was extremely insufficient for hygiene. [… Videla was] very damaged from a psychological perspective […]. [Mr. Flores] considered him to be depressive, […] [and inmate Videla] told him that the hours of confinement were killing him."[137]

108. Ricardo Videla died at approximately 1.30 p.m. on June 21, 2005, at the age of 20. He was found hanging, with a belt around his next, from a bar of a window of cell No. 14 in Unit 11 "A" of the Security Unit of the Mendoza Prison for "juvenile adults."[138] That same day, judicial file P-46824/05 was opened, with the intervention of Investigating Prosecutor No. 1 of the Departmental Prosecution Unit of the capital of the province of Mendoza[139] and administrative case file No. 7808-I-05, entitled "General Security Inspection-Death of Ricardo David Videla alias '*El Perro*' in the Provincial Prison."[140]

F.3. The prosecution's investigation into the death of Ricardo David Videla Fernández

109. During the investigation into the death of Ricardo David Videla Fernández testimonial statements were taken from the staff of the Mendoza Provincial Prison,[141] from various

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135 *Cf.* Informative note of June 24, 2005, sent by Dr. Fernando Pizarro to the Director of the Mendoza Provincial Prison and presented to the prosecutor in charge of the investigation (file of annexes to the submission of the case, tome IX, folio 5238), and testimony of Dr. Favio Roberto Bertolotti Nento before the acting investigating prosecutor, Liliana Curri, in judicial file P-46824/05, of June 21, 2005 ((file of annexes to the submission of the case, tome IX, folios 5246 to 5247).

136 *Cf.* Testimonial statement of Enrique Fernando Alvea Gutiérrez in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5259).

137 *Cf.* Testimonial statement of Pablo Ricardo Flores in judicial file P-46824/05, dated August 18, 2005 (file of annexes to the submission of the case, tome IX, folios 5351 to 5353).

138 *Cf.* Judicial file P-46824/05, Capital Departmental Prosecution Unit, Investigating Prosecutor No. 1 (file of annexes to the submission of the case, tome IX, folio 5242).

139 *Cf.* Judicial file P-46824/05, Capital Departmental Prosecution Unit, Investigating Prosecutor No. 1 (file of annexes to the submission of the case, tome IX, folio 5241).

140 *Cf.* Administrative file No. 7808-I-05 (file of annexes to the submission of the case, tome X, folio 5482).

141 *Cf.* Testimonial statement of Ariel Gustavo Macaccaro Calderón in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5243); Testimonial statement of Dr. Favio Roberto Bertolotti Nento in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5246); Testimonial statement of Jorge Armando Lantero Araya in judicial file P-46824/05, dated June 21,

inmates,[142] and from members of the Prison Policy Monitoring Commission who visited the Mendoza Prison during the days prior to his death (*supra* para. 107).[143] Thus, it is worth noting that some inmates stated, in general terms, that that the prison officials gave no importance to the indications given by Videla Fernández that he would kill himself.[144]

110. The prison staff also gave statements, including, Ariel Gustavo Macaccaro Calderon,[145] a guard in the sector where Ricardo David Videla was located on the day he died, and the official Alvea Gutierrez, who testified that Ricardo David Videla had told him "that he was going to cut himself all over." In addition, official Alvea Gutierrez stated that he had told the inmate "that he was not going to achieve anything because [… the doctor] would patch him up [and …] order that he be held under observation for 24 hours […]."[146] In addition, prison official Hector Jorge Salas Pedernera indicated that it was he, together with the above-mentioned prison officials who found Ricardo Videla dead.[147]

111. Nevertheless, the case file contains the statements of the Prison Service doctor, Favio Roberto Bertolotti Nento,[148] the prison nurse, Jorge Armando Lantero Araya,[149] and three

2005 (file of annexes to the submission of the case, tome IX, folio 5249); Testimonial statement of Hector Jorge Salas Pedernera in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5251); Testimonial statement of Enrique Fernando Alvea Gutiérrez in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5258); Testimonial statement of Gustavo Olguín Massotto in judicial file P-46824/05, dated August 8, 2005 (file of annexes to the submission of the case, tome IX, folio 5331), and Testimonial statement of Jorge Daniel Michel in judicial file P-46824/05, dated August 11, 2005 (file of annexes to the submission of the case, tome IX, folio 5336).

142 *Cf.* Testimonial statement of Pedro Jesús Zenteno Rojas in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5253); Testimonial statement of Jonathan Matías Díaz Díaz in judicial file P-46824/05, dated June 29, 2005 (file of annexes to the submission of the case, tome IX, folio 5294); Testimonial statement of Jonathan Gustavo Alfredo Moyano Sandoval in judicial file P-46824/05, dated July 4, 2005 (file of annexes to the submission of the case, tome IX, folio 5301), and Testimonial statement of Fabián Francisco Cedrón Ortiz in judicial file P-46824/05, dated August 17, 2005 (file of annexes to the submission of the case, tome IX, folio 5340).

143 *Cf.* Testimonial statement of Pablo Ricardo Flores in judicial file P-46824/05, dated August 18, 2005 (file of annexes to the submission of the case, tome IX, folio 5351), and Testimonial statement of Claudia Rosana Cesaroni in judicial file P-46824/05, dated August 19, 2005 (file of annexes to the submission of the case, tome IX, folio 5363).

144 *Cf.* Testimonial statement of Jonathan Gustavo Alfredo Moyano Sandoval in judicial file P-46824/05, dated July 4, 2005 (file of annexes to the submission of the case, tome IX, folio 5301), Testimonial statement of Pedro Jesús Zenteno Rojas in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5253), and Testimonial statement of Jonathan Matías Díaz Díaz in judicial file P-46824/05, dated June 29, 2005 (file of annexes to the submission of the case, tome IX, folio 5294).

145 *Cf.* Testimonial statement of Ariel Gustavo Macaccaro Calderón in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5243).

146 *Cf.* Testimonial statement of Enrique Fernando Alvea Gutiérrez in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folios 5258 and 5259).

147 *Cf.* Testimonial statement of Hector Jorge Salas Pedernera in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5251). See, also, the note from the Head of the Security Unit, Franco Fattori, to the Deputy Director of the San Felipe Complex dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5284).

148 *Cf.* Testimonial statement of Favio Roberto Bertolotti Nento in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5247).).

inmates,[150] indicating that Ricardo David had never indicated his intention to commit suicide previously.

112. The report of the autopsy of Ricardo David Videla Fernández performed by a forensic physician the day he died indicates that "the cause of death was hanging, [and that n]o other recent traumatic injuries [were] observed on the surface of the body."[151] In addition, during the judicial investigation, a member of the Forensic Police inspected Videla Fernández's cell on June 30, 2005, and in this regard, stated that the suicide was atypical owing to the neck injury, because suicide by incomplete suspension was not common. He also indicated that there was a possibility that another person had jerked Ricardo David Videla from behind, suffocated him manually, and then pulled him down. In particular, this police agent mentioned that "the belt was not consistent with the clothing that [Ricardo David Videla Fernández] was wearing at the time."[152]

113. On June 24, 2005, Stella Maris Fernandez, Ricardo David Videla's mother, appeared as a complainant in the proceedings in order to request clarification of the facts surrounding the death of her son and a full investigation, granting a power of attorney to a private defense counsel to intervene on her behalf.[153] On August 28, 2005, the defense counsel requested that a decision be taken on the status of the case "bringing charges against those allegedly responsible for the offense."[154]

114. On September 1, 2005, the lawyer Jorge Nelson Cardozo, who had visited Ricardo David Videla Fernández together with Dr. Claudia Cesarioni of the Prison Policy Monitoring Commission during the days before his death, gave his testimony. In his statement, he declared that "[d]uring two visits [to the Mendoza Prison, he] interviewed Videla Fernandez […

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149 *Cf.* Testimonial statement of Jorge Armando Lantero Araya in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5249).

150 *Cf.* Testimonial statement of Pedro Jesús Zenteno Rojas in judicial file P-46824/05, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5253); Testimonial statement of Jonathan Matías Díaz Díaz in judicial file P-46824/05, dated June 29, 2005 (file of annexes to the submission of the case, tome IX, folio 5294), and Testimonial statement of Jonathan Gustavo Alfredo Moyano Sandoval in judicial file P-46824/05, dated July 4, (file of annexes to the submission of the case, tome IX, folio 5301).

151 *Cf.* Report on the autopsy performed by Dr. Jorge Daniel Michel on Ricardo David Videla Fernández, dated June 21, 2005 (file of annexes to the submission of the case, tome IX, folio 5323).

152 *Cf.* Testimonial statement of Gustavo Olguín Massotto in judicial file P-46824/05, dated August 8, 2005 (file of annexes to the submission of the case, tome IX, folio 5331).

153 *Cf.* Brief submitted by Stella Maris Fernández in judicial file P-46824/05, dated June 24, 2005 (file of annexes to the submission of the case, tome IX, folio 5275).

154 *Cf.* Brief submitted by the Fernando Peñaloza in judicial file P-46824/05, dated August 28, 2005 (file of annexes to the submission of the case, tome IX, folio 5343).

and] saw that he was not well […]."[155] Furthermore, on March 17 and May 12, 2006, two inmates and a prison official testified again.[156]

115. On May 17, 2006, the representative of Stella Maris Fernandez requested that the Investigating Prosecutor "file claims against [the members of the prison staff] F[ernando] A[lvea], A[riel] M[accacaro], H[ector] J[orge] S[alas] P[edernera] and J[uan] B[alboa]," because "they had failed to comply with their obligations on realizing that there was a possibility that Videla Fernández was about to take his life and, after this event, the said conduct becoming a criminal offense."[157]

116. On June 6, 2006, the Investigating Prosecutor requested that the case be archived, considering, among other elements, that "it ha[d] been proved without a doubt that inmate Videla Fernández caused his own death."[158] The Investigating Prosecutor also considered that criminal negligence had not been constituted, because, "apart from the testimony of the inmates, which are contradictory […], there [was] insufficient reason to suspect that the assistance [to intern Videla] [had not been] provided immediately."[159] In response, the complainant's representative contested the closure of the proceedings, arguing that the Investigating Prosecutor's assessment of the evidence had been "arbitrary and selective."[160] Finally on July 24, 2006, the judge responsible for procedural guarantees of the 10th Court of First Instance of Mendoza ordered the archiving of the proceedings, accepting the Prosecutor's arguments, and without admitting the complainant's request.[161]

117. Regarding David Videla's prison conditions when he died, the said judge indicated that it was "common knowledge that there [were] structural constraints in the Provincial Prison that affect[ed] the quality of life for the inmates; a situation that had long been awaiting a solution that was outside the sphere of judicial actions, [because it was] a matter that fell with the executive sphere." The judge also mentioned that "the mental deterioration often observed in the inmates is a result of a number of factors, not only of an environmental nature, given the

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155 *Cf.* Testimonial statement of Jorge Nelson Cardozo in judicial file P-46824/05, dated September 1, 2005 (file of annexes to the submission of the case, tome IX, folio 5367).

156 *Cf.* Testimonial statement of Pedro Jesús Zenteno in judicial file P-46824/05, dated March 17, 2006 (file of annexes to the submission of the case, tome IX, folio 5373), and Testimonial statement of Ariel Gustavo Macaccaro Calderón in judicial file P-46824/05, dated May 12, 2006 (file of annexes to the submission of the case, tome IX, folio 5382).

157 *Cf.* Brief submitted by the Fernando Peñaloza in judicial file P-46824/05, dated May 17, 2006 (file of annexes to the submission of the case, tome IX, folio 5386).

158 *Cf.* Report of the prosecutor, Liliana Patricia Curri, in judicial file P-46824/05, of June 6, 2006 (file of annexes to the submission of the case, tome X, folios 5412 and 5413.).

159 *Cf.* Report of the prosecutor, Liliana Patricia Curri, in judicial file P-46824/05, of June 6, 2006 (file of annexes to the submission of the case, tome X, folios 5413 and 5416).

160 *Cf.* Brief of opposition submitted by Fernando Gastón Peñaloza in judicial file P-46824/05, dated June 14, 2006 (file of annexes to the submission of the case, tome X, folio 5419).

161 *Cf.* Decision of the judge responsible for procedural guarantees in judicial file P-46824/05, dated July 24, 2006 (file of annexes to the submission of the case, tome X, folio 5428 and 5429).

living conditions of the Provincial Prison, but also due to the residue of unfavorable variables that they have been exposed to throughout their life […]."[162]

118. In view of this decision, the representative of Ms. Fernandez filed an appeal.[163] This appeal was rejected by the Second Criminal Chamber of the province of Mendoza on September 25, 2006, thus confirming the closure of the proceedings, considering that there was no act that had the "characteristics of an offense that warranted public action […]," because, "despite the possible existence of simple negligence or unsafe working conditions in the prison, [Ricardo David Videla's] announcement that he would hang himself […] had no […] significance and was not believed by the officials or by the inmates themselves […]."[164]

119. Finally, on February 28, 2011, the representative of Ms. Fernández requested that the case be reopened and that the investigation be continued, citing as a new fact Merits Report No. 172/10 issued by the Inter-American Commission in this case, which found flaws in the investigation previously conducted.[165] However, on March 29, 2011, the Investigating Prosecutor of Departmental Prosecution Unit No. 1 of Mendoza indicated that there was no new evidence that would invalidate the order to close the case, and therefore rejected the request.[166]

F.4. Administrative investigation into the death of Ricardo David Videla Fernández

120. On June 21, 2005, the head of the Security Unit of the Mendoza Prison informed the Deputy Director of the San Felipe Complex about the events surrounding the death of Ricardo David Videla Fernández.[167]

121. On June 23, 2005, the Administrative Head of the Health Division sent a letter to the Director of the Mendoza Provincial Prison advising that the doctor in charge of maximum security Unit 11 had told him, that same day, that the situation in this unit was "'serious,' because several inmates ha[d] indicated their intention to commit suicide by hanging or other methods." The doctor added that the system of 21-hour confinement caused the inmates severe distress and generated "despairing [*sic*] anguish" and "generalized anxiety that can

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[162] *Cf.* Decision of the judge responsible for procedural guarantees in judicial file P-46824/05, dated July 24, 2006 (file of annexes to the submission of the case, tome X, folio 5429 and 5430).

[163] *Cf.* Appeal filed by the lawyer Fernando Gastón Peñaloza in judicial file P-46824/05, on September 8, 2006 (file of annexes to the submission of the case, tome X, folio 5446).

[164] *Cf.* Decision of the Second Criminal Chamber in judicial file P-46824/05, of September 25, 2006 (file of annexes to the submission of the case, tome X, folios 5449 and 5454).

[165] *Cf.* Brief submitted by Fernando Gastón Peñaloza in judicial file P-46824/05, on February 28, 2011 (file of annexes to the pleadings and motions brief, tome XIV, folio 7622).

[166] *Cf.* Decision of the prosecutor Gustavo Pirrello in judicial file P-46824/05, of March 29, 2011 (file of annexes to the pleadings and motions brief, tome XIV, folio 7631).

[167] *Cf.* Note from Franco Fattori, Head of the Security Unit to the Deputy Director of the San Felipe Complex in administrative file 7808/01/05/00105/E dated June 21, 2005 (file of annexes to the submission of the case, tome X, folio 5498).

only lead them to think of death as a possible way out." Therefore, the doctor asked the director to "find a solution to the problem" urgently.[168]

122. On July 4, 2005, the Board of the General Security Inspectorate of the Ministry of Justice and Security ordered a preliminary investigation into information regarding the death of Ricardo David Videla Fernández.[169] On November 21, 2005, the designated investigator received the administrative case file and ordered that the relevant evidence be produced.[170]

123. In an official note of January 5, 2006, the General Security Inspectorate asked the Prosecutor of the Capital Departmental Prosecution Unit for a copy of judicial file 46824/05[171] and, on March 28, 2006, that entity asked Departmental Prosecution Unit No. 1 to advise whether any of the prison staff had been charged in the judicial proceedings.[172] In an official note of April 5, 2006, the Deputy Secretary of the Capital Departmental Prosecution Unit advised that "no formal charges had been pressed against any of the prison staff."[173]

124. In addition, on May 16, 2006, a prison official testified that, during the prison inspections, they seized articles "such as belts [or] shoelaces" and that, in his opinion, it was an inmate who had given Ricardo David Videla Fernández the belt he had used to hang himself. Also, in this statement, the said person clarified that agent Macaccaro "did not have the key [… to the cell that inmate Videla Fernandez occupied,] because he only [… carried] the individual keys to each cell where any activity would take place; in other words, that of [the] janitor and that of [… an] inmate who had a visitor, [as …] this […] was a security measure."[174]

125. On May 17, 2006, the preliminary investigator asked the General Security Inspectorate of the province of Mendoza to proceed to close the case, without further action, given that, according to the evidence in the file, no administrative responsibility could be alleged against the prison staff.[175] Furthermore, on July 2, 2008, the legal counsel of the General Security

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168 *Cf.* Note from Fernando Pizarro, Administrative Head of the Health Division to the Director of the Mendoza Provincial Prison in administrative file 7808/01/05/00105/E, of June 23, 2005 (file of annexes to the submission of the case, tome X, folio 5480)

169 *Cf.* Note of the Head of the General Security Inspectorate of the province of Mendoza in administrative file 7808/01/05/00105/E of June 4, 2005 (file of annexes to the submission of the case, tome X, folio 5503)

170 *Cf.* Note of sub-prefect Héctor Roberto Arango in administrative file 7808/01/05/00105/E of November 21, 2005 (file of annexes to the submission of the case, tome X, folio 5504 and 5505)

171 *Cf.* Note addressed to the prosecutor of the Departmental Prosecution Unit in administrative file 7808/01/05/00105/E of January 5, 2006 (file of annexes to the submission of the case, tome X, folio 5483).

172 *Cf.* Note addressed to Departmental Prosecution Unit No. 1 in administrative file 7808/01/05/00105/E of March 28, 2006 (file of annexes to the submission of the case, tome X, folio 5490).

173 *Cf.* Note of Departmental Prosecutor No. 1 to the Director of the General Security Inspectorate in administrative file 7808/01/05/00105/E of April 5, 2006 (file of annexes to the submission of the case, tome X, folio 5539).

174 *Cf.* Testimonial statement of Enrique Fernando Alvea Gutiérrez in administrative file 7808/01/05/00105/E dated May 17, 2006 (file of annexes to the submission of the case, tome X, folios 5542 and 5543).

175 *Cf.* Request to archive the case by the judge responsible for the preliminary investigation in administrative file 7808/01/05/00105/E dated May 17, 2006 (file of annexes to the submission of the case, tome X, folio 5546).

Inspectorate issued a report in which he recommended to the Board of this entity that it archive the proceedings, because "the prison staff had committed no administrative offense […]."[176]

G. The injuries sustained by Lucas Matías Mendoza and Claudio David Núñez in Ezeiza Federal Prison Complex No. 1

126. In December 2007, the defense counsel of Lucas Matías Mendoza[177] and Claudio David Núñez[178] filed a complaint of physical violence before Federal Criminal and Correctional Court No. 2, requesting a hearing with the judge in order to report that on December 9, 2007, these young men had suffered abuse while in Ezeiza Federal Prison Complex I.[179]

127. In this regard, the records of Federal Prison Complex I of December 9 and 13, 2007, show that both Lucas Matías Mendoza and Claudio David Núñez had indicated that their injuries were "the result of an altercation with another inmate"[180] and, also, that, "[…] piece[s] of broomsticks […] with blood stains" had been found.[181] In addition, the disciplinary report prepared by the Service Inspector on duty of Federal Prison Complex No. 1, indicates that, on December 9, 2007, a heated argument started and a fight ensued in which Lucas Matías Mendoza, Claudio David Núñez and two other inmates took part. The prison staff proceeded to separate them and house them preemptively in the transit cell of Module II, where they underwent a medical examination and were later taken back to their individual cells.[182] Moreover, the report of the prison doctor issued the next day states that Claudio David Núñez had a "contusion in the right dorsal region, on the back of his right knee and on the back of his left leg," and that Lucas Matías Mendoza had a "contusion in the dorsal region and a blunt injury on his scalp, sutured."[183]

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176 *Cf.* Report of legal counsel Maximiliano Gómez in administrative file 7808/01/05/00105/E, dated July 2, 2008 (file of annexes to the submission of the case, tome X, folio 5554).

177 *Cf.* Complaint filed by Juan Facundo Hernández, defense counsel of Lucas Matías Mendoza (file of annexes to the pleadings and motions brief, tome XIII, folio 7401).

178 *Cf.* Complaint filed by Juan Facundo Hernández, defense counsel of Claudio David Núñez (file of annexes to the pleadings and motions brief, tome XIV, folio 7542).

179 *Cf.* Testimony of Lucas Matías Mendoza before Federal Criminal and Correctional Court No. 2, of December 17, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folio 7402). See, also, testimony of Claudio David Núñez before Federal Criminal and Correctional Court No. 2, of December 17, 2007 (file of annexes to the pleadings and motions brief, tome XIV, folio 7544).

180 *Cf.* Injury record dated December 9, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folios 7422 and 7425); injury records dated December 13, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folios 7416 and 7417).

181 *Cf.* Confiscation record dated December 9, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folio 7421).

182 *Cf.* Disciplinary report signed by Service Inspector Ruben Constantin on December 9, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folio 7427).

183 *Cf.* Medical report prepared by Esteban Blasi, staff physician of Ezeiza Federal Prison Complex No. 1, of December 10, 2007 (file of annexes to the submission of the case, tome X, folio 5561).

128. On December 11, 2007, the national Prison Oversight Office learned of these facts by a telephone call that Lucas Matías Mendoza's mother made to its Directorate General for the Protection of Human Rights. The next day, the doctor of the national Prison Oversight Office went to Federal Prison Complex I and performed a complete examination of both young men. The doctor described all their injuries and concluded that these were due, "*prima facie*, to a blow, friction and/or impact with or against a hard surface and/or body." Among other injuries, he noted that Claudio David Núñez had an "[i]rregularly-shaped hematoma with imprecise edges, on the outer edge of the fifth [left] metatarsal," and that Lucas Matías Mendoza had an "irregularly-shaped hematoma with imprecise edges, that covered half the sole of both feet."[184] Also, on December 12 or 13, 2007, another doctor from the Medical Assistance Service of Federal Prison Complex No. 1 examined the inmates and reported that the injuries sustained by both "[were] evolving,"[185] and that those of Claudio David Núñez were "not acute."[186] Regarding Lucas Matías Mendoza, the report indicated, among other matters, that he had a "hematoma on the soles of both feet."[187]

129. On December 13, 2007, members of the Prison Commission of the Ombudsman's Office went to Federal Prison Complex No. 1 and interviewed both detainees, who gave their version of what happened. In his statement, Lucas Matías Mendoza affirmed that a group of four members of the inspection unit of Federal Prison Complex I entered his cell, and that one of them hit him on the head with a stick, after which he was taken to the "*leonera*"[188] where he received more than 20 blows to the soles of his feet. He was then taken to another sector where he was ordered to get up and walk and, since he was unable to do so, they began to beat him again.[189] Meanwhile, Claudio David Núñez stated that he had received similar treatment.[190]

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184 *Cf.* Report on interview with Claudio David Núñez conducted by Dr. Jorge Teijeiro on December 12, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folios 7452 to 7456), and with Lucas Matías Mendoza conducted by Dr. Jorge Teijeiro on December 12, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folios 7456 to 7458).

185 *Cf.* Medical report on Lucas Matías Mendoza, prepared by Dr. Héctor Rossini (file of annexes to the submission of the case, tome X, folio 5563 bis). See, also, the medical report on Claudio David Núñez, prepared by Dr. Héctor Rossini (file of annexes to the submission of the case, tome X, folio 5563).

186 The medical report indicates that Claudio David Núñez had: "erythema with a scab in the umbilical region; two injuries with similar characteristics on the right knee, abrasions on the right iliac crest, abrasions on the left thigh and lower arm, [and] an injury with a scab in the right scapular region." The report is dated December 12, 2007; however, it indicates that the consultation took place on December 13, 2007. *Cf.* Medical report of Claudio David Núñez, prepared by Dr. Héctor Rossini (file of annexes to the submission of the case, tome X, folio 5563).

187 The report indicates that Lucas had: "[…] sutured cut to the scalp, abrasion with scab in the left scapular region, and hematoma on both soles." The report is dated December 12, 2007; however, it indicates that the consultation took place on December 13, 2007. *Cf.* Medical report on Lucas Matías Mendoza, prepared by Dr. Héctor Rossini (file of annexes to the submission of the case, tome X, folio 5563 bis).

188 According to the representative, the "*leonera*" is an individual cell where those in transit are kept. *Cf.* Pleadings and motions brief (merits file, tome I, folio 467).

189 *Cf.* Statement made by Lucas Matías Mendoza before the Prison Commission of the national Ombudsman's Office on December 13, 2007 (file of annexes to the submission of the case, tome X, folio 5579)

190 He stated that: "on Sunday, 9 [December 20070, at approximately 10.30p.m., three prison guards belonging to the inspection unit entered his cell; they asked him to lie on the floor and they kicked him on the right side of the

130. On December 17, 2007, in the context of the investigation opened as a result of the complaint filed by the defense counsel of both inmates (*supra* para. 126), the secretary of Sentence Execution Court No. 2 took the statements of Lucas Matías Mendoza and Claudio David Núñez. On that occasion, they both indicated that, "on December 9, after 10.30 p.m., [they] were subjected to unlawful coercion, [… and indicated that [they did] not want to elaborate further, because [they] fear[ed'] for their physical integrity."[191] On December 18, 2007, the case file was forwarded to the National Federal Criminal and Correctional Court of Lomas de Zamora in order to report the facts that could constitute offenses for which a public action was in order.[192] As a result, case No. 615 was opened for the alleged coercion of Lucas Matías Mendoza, and case No. 616 for the alleged coercion of Claudio David Núñez, both by Federal Criminal and Correctional Court of First Instance No. 2.[193] On December 26 that year, the forensic medicine unit informed the court of the examination carried out that same day on Mendoza and Núñez, and "indicate[d] that they [had] not received any recent injuries."[194] Meanwhile, Lucas Matías Mendoza added that he had "suffered a blow due to a fall approximately 10 days previously, with a scalp wound that had been sutured in the prison." Thus, the report concluded that "the cause of the wound [that inmate Mendoza referred to was] compatible with a blow or a collision with a hard surface."[195]

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head and punched him. […]. Then […] they took him to the '*leonera'* [and] on the way they continued to hit him […]. They took off his left shoe […] and hit him [… about 30 times] on the foot […]. They also hit him […] on the leg and on the waist. All this was together with his companion Mendoza […]. Then, he limped to the medical unit, […] the nurse […] told him that nothing was wrong with him and […] cleaned up his hair to get rid of the blood he had from inmate Mendoza, because when they were hitting him, they were together on the floor. […] Also, on the 12th, […] they hit and punched him." *Cf.* Statement made by Claudio David Núñez before the Prison Commission of the national Ombudsman's Office on December 13, 2007 (file of annexes to the submission of the case, tome X, folios 5582 and 5583).

191 *Cf.* Statement made by Lucas Matías Mendoza on December 17, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folio 7402), and Statement made by Claudio David Núñez on December 17, 2007 (file of annexes to the pleadings and motions brief, tome XIV, folio 7544).

192 *Cf.* Brief of Execution of Sentence Court No. 2, addressed to the national judge of Federal Criminal and Correctional matters of Lomas de Zamora, of December 18, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folio 7406), and Brief of Execution of Sentence Court No. 2, addressed to the national judge of Federal Criminal and Correctional matters of Lomas de Zamora, of December 18, 2007 (file of annexes to the pleadings and motions brief, tome XIV, folio 7549).

193 *Cf.* Brief of the Secretary of the Federal Court of Federal Criminal and Correctional matters of Lomas de Zamora, of December 26, 2007, in case No. 615 (file of annexes to the pleadings and motions brief, tome XIII, folio 7408), and Brief of the Secretary of the Federal Court of Federal Criminal and Correctional matters of Lomas de Zamora, of December 26, 2007, in case No. 616 (file of annexes to the pleadings and motions brief, tome XIV, folio 7552).

194 *Cf.* Brief of the Forensic Medicine Unit submitted to the Federal judge of first instance for Criminal and Correctional Matters No. 2 of Lomas de Zamora, of December 26, 2007, in case No. 615 (file of annexes to the pleadings and motions brief, tome XIII, folio 7410), and Brief of the Forensic Medicine Unit submitted to the Federal Judge of first instance for Criminal and Correctional matters No. 2 of Lomas de Zamora, of December 26, 2007, in case No. 616 (file of annexes to the pleadings and motions brief, tome XIV, folio 7554).

195 *Cf.* Brief of the Forensic Medicine Unit submitted to the Federal Judge of first instance for Criminal and Correctional matters No. 2 of Lomas de Zamora, of December 26, 2007, in case No. 615 (file of annexes to the pleadings and motions brief, tome XIII, folio 7410).

131. On December 27, 2007, Lucas Matías Mendoza and Claudio David Núñez gave statements once again, confirming the contents of the complaint, and assuring that they could not recognize any of the alleged perpetrators. However, the latter indicated that he "believe[d] that [it] was the prison staff."[196] That same day, both inmates were examined again by medical staff of Federal Prison Complex No. 1, who endorsed the examination performed by the said staff on December 12 or 13, 2007 (*supra* para. 128).[197] On January 15, 2008, both young men were transferred to Federal Complex II of Marcos Paz.[198]

132. On June 11, 2008, Claudio David Núñez testified as a witness in the proceedings relating to his companion and described how "he had been attacked by several prison agents on December 9, 2007, in Ezeiza's Pavilion 2, first in the cell and then in the "*leonera*"; that [he did] not remember exactly how many there were, but knew it was a large group […] and, also, that the circumstances did not allow [him] to see the attacker or attackers. [… He] remember[s] that [he] was with […] Lucas M[atias Mendoza] whose head had been […] injured."[199]

133. On June 23, 2008, the alternate federal prosecutor requested that case No. 615 regarding Lucas Matías Mendoza be archived, as there were no "lines of investigation" because, while it was clear from the statement of inmate Claudio David Núñez that he had been assaulted by prison guards, "he could not recall exactly how many there were," and "he could not identify them" (*supra* para. 132).[200] Also, on February 1, 2008, although he was "unable to deny the existence of the reported incident," the prosecutor also requested the closure of case No. 616, regarding Claudio David Núñez, because "[…] the victim's lack of cooperation […] prevent[ed] the investigation from continuing […] until new evidence or […] eye witnesses [appeared] that could allow the investigation to continue."[201] Thus, Federal Criminal and Correctional Court No. 2 decided to admit the prosecutor's requests and "[to archive] the […] proceedings, pending the appearance of new evidence that would allow them to be reopened."[202]

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196 *Cf.* Statement made by Lucas Matías Mendoza on December 27, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folio 7412), and Statement made by Claudio David Núñez on December 27, 2007 (file of annexes to the pleadings and motions brief, tome XIV, folio 7556).

197 *Cf.* Medical report on Lucas Matías Mendoza of December 27, 2007 (file of annexes to the submission of the case, tome X, folio 5594) and medical report on Claudio David Núñez of December 27, 2007 (file of annexes to the submission of the case, tome X, folio 5595).

198 *Cf.* Report prepared by the General Registry of Detainees (file of annexes to the pleadings and motions brief, tome XIII, folios 7254 and 7255)

199 *Cf.* Statement made by Claudio David Núñez on June 11, 2008 (file of annexes to the pleadings and motions brief, tome XIII, folios 7501 and 7502).

200 *Cf.* Brief of alternate Federal Prosecutor Ariel Omar Berze of June 23, 2008 (file of annexes to the pleadings and motions brief, tome XIII, folio 7506).

201 *Cf.* Brief of alternate Federal Prosecutor Ariel Omar Berze of February 1, 2008 (file of annexes to the pleadings and motions brief, tome XIV, folio 7564).

202 *Cf.* Judicial decision of the Federal Judge of Criminal and Correctional Court of First Instance No. 2 of Lomas de Zamora, of July 2, 2008 (file of annexes to the pleadings and motions brief, tome XIII, folio 7510). See, also,

VIII

RIGHTS TO PERSONAL INTEGRITY, PERSONAL LIBERTY, AND OF THE CHILD IN RELATION TO THE OBLIGATIONS TO RESPECT AND ENSURE RIGHTS

A. Arguments of the Commission and pleadings of the parties

134. The Commission argued that "the sentences to life imprisonment that were handed down […] were based on Law 22,278 of August 25, 1980, amended by Law 22,803," but that the said law had no "special parameters for the application of criminal punishments to adolescents […]," so that "the victims in this case were treated as adult offenders." The Commission also indicated that the judges who heard the cases did not explore alternatives to the sentence imposed, and did not provide grounds for failing to apply their legal authority to reduce the sentence, which violated the standard of limiting the deprivation of liberty of adolescents "as a measure of 'last resort' and 'for the shortest time appropriate.'" It also argued that the presumed victims did benefit from a periodic review of their sentences, and that "the legal possibility of release is not sufficient *per se* to make the application of life imprisonment […] compatible with international obligations concerning special protection for children and the purpose of the punishment under the American Convention." Based on the foregoing, the Commission considered that the sentences of life imprisonment and reclusion for life were applied arbitrarily, and that Law 22,278 was incompatible with the rights and obligations established in the American Convention.

135. The Commission also indicated that, in this specific case, "there were a series of violations of the American Convention, in particular of the rights established in Articles 19 and 5(6) [… which] mean that sentences of life imprisonment and reclusion for life were applied arbitrarily." Lastly, it indicated that this arbitrariness was "aggravated by the constraints to the review by means of the appeals in cassation filed by the [presumed] victims." Therefore, the Commission asked the Court to declare that the State had violated Articles 5(6), 7(3) and 19 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of César Alberto Mendoza, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal, Ricardo David Videla Fernández and Claudio David Núñez.

136. The representative agreed, in general, with the Commission's position. However, she also argued that Argentina had violated the principle of subsidiarity of a prison sentence for juveniles by applying life sentences and by its failure to extend the tutelary treatment. In addition, the representative argued that, in this specific case, the judges not only violated the principle of subsidiarity of a prison sentence, but also that of equality and non-discrimination, the principle of the best interests of the child, and the special measures of protection required by Article 19 of the American Convention, since César Alberto Mendoza, Claudio David Nuñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández were sentenced to life imprisonment without any distinction having been made in relation to the

judicial decision of the Federal Judge of Criminal and Correctional Court of First Instance No. 2 of Lomas de Zamora, of February 29, 2008 (file of annexes to the pleadings and motions brief, tome XIV, folio 7566).

punishment applicable to an adult. Moreover, the representative indicated that the behavior of the presumed victims during the tutelary treatment period was not considered when determining the sentence.

137. The representative also indicated that the State had violated the principle of deprivation of liberty for the shortest time appropriate and the principle of periodic review of the detention measures by imposing an absolute sentence such as life imprisonment on the youths. In this regard, Argentine legislation allows for early release by means of parole, but after a 20-year sentence has been served, and this also depends on "fulfillment of the conditions imposed and evaluated by the prison service itself." In addition, the representative argued the violation of the principle of lesser criminal responsibility of children in conflict with the law, since "the Juvenile Criminal Regime […] establishes that juveniles can be sentenced to the same prison sentences as adults"; in other words, for "the determination of offenses, and the establishment of punishments and their execution, this system refers to the adult system, without any type of distinction." Furthermore, the representative argued that the sentence to life imprisonment violated the principle of social rehabilitation and reform as an essential purpose of the punishment. Based on all the above, she considered that Argentina had violated, among others, the rights recognized in Articles 1(1), 2, 5(6), 19 and 24 of the American Convention.

138. The State acknowledged that there had been a "judicial error" in the specific case of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, because "the courts involved […] sentenced them to life imprisonment, which was forbidden by the principle of *nulla poena sine culpa*, according to the criteria of the Supreme Court of Justice [of Argentina] in the 'Maldonado' judgment." The State also acknowledged that this "same shortcoming is apparent in the context of the execution of the sentences, because both the technical defense and the judges concerned based their interventions on norms that were manifestly inapplicable to the case." Lastly, it indicated that there were "certain inconsistencies in the argument that the presumed victims had been subjected to cruel, inhuman and degrading treatment by imposing sentences of life imprisonment on them," because "under international law, it is not prohibited to apply such punishments."

B. Considerations of the Court

139. The Court observes that the disputes described in this section are not intended to contest the criminal responsibility of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, but rather the imposing of life sentences and reclusion for life on them. In this regard, the State acknowledged its responsibility for the violation of the principle of *nulla poena sine culpa* because, in its opinion, life imprisonment is only established for adults.

140. First, the Court finds it relevant to reiterate that the term "child" is understood to mean any person who has not yet attained 18 years of age, unless the applicable domestic law stipulates a different age of majority (*supra* para. 67). Moreover, children have the same rights as all human beings, and also have "special rights derived from their condition that are

accompanied by specific obligations of the family, society, and the State."[203] For the purposes of this Judgment, because it has been proved that César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández were between 16 and 18 years of age when they committed the offenses with which they were charged, the Court will refer to them as "children."

141. Children are bearers of all the rights established in the American Convention, in addition to the special measures of protection provided for in Article 19 of this instrument, which must be defined according to the particular circumstances of each specific case.[204] The adoption of special measures for the protection of the child corresponds to the State, the family, the community, and the society to which the child belongs.[205]

142. Furthermore, all State, social or family decisions that involve any limitation to the exercise of any right of a child must take into account the principle of the best interests of the child and rigorously respect the provisions that govern this matter.[206] Regarding the best interests of the child, the Court reiterates that this regulating principle of the laws on the rights of the child is based on the dignity of the human being, on the inherent characteristics of children, and on the need to foster their development making full use of their potential,[207] as well as on the nature and scope of the Convention on the Rights of the Child.[208] Thus, this principle is reiterated and developed in Article 3 of the Convention on the Rights of the Child, which states:

> 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

143. The Convention on the Rights of the Child refers to the child's best interests (Articles 3, 9, 18, 20, 21, 37 and 40) as a reference point to ensure the effective realization of all the rights recognized in that instrument, respect for which will allow the individual to develop his or her potential to the highest degree. The actions of the State and society as regards the protection of children and the promotion and preservation of their rights must adhere to this standard.[209] In this regard, based on the consideration of the best interests of the child as an

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203 *Cf. Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 54.

204 *Cf. Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011 Series C No. 221, para. 121, and *Case of Furlan and family members v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012 Series C No. 246, para. 125.

205 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 62, and *Case of Furlan and family members v. Argentina,* para. 125.

206 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 65, and *Case of Furlan and family members v. Argentina,* para. 126.

207 Cf. Case of Furlan and family members v. Argentina, para. 126.

208 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 56.

209 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 59.

interpretative principle aimed at ensuring the maximum satisfaction of the rights of the child, they should also serve to ensure minimal restriction of such rights. Furthermore, the Court reiterates that children exercise their rights progressively as they gradually develop a higher level of personal autonomy.[210] Consequently, the person who applies the law, in either the administrative or the judicial sphere, must take into consideration the specific conditions of the child and his or her best interests in order to decide on the child's participation, as appropriate, in the determination of his or her rights. This assessment seeks to provide the child with the greatest access, insofar as possible, to the examination of his own case.[211] Therefore, the principles of the best interests of the child, of progressive autonomy, and of participation are particularly relevant in the design and operation of a system of juvenile criminal responsibility.

144. In relation to due process and guarantees, this Court has indicated that States have the obligation to recognize and ensure the rights and freedoms of the individual, as well as to protect and ensure their exercise by means of the respective guarantees (Article 1(1)). Suitable means for ensuring that they are effective under all circumstances, both the *corpus iuris* of rights and freedoms and their guarantees are concepts that are inseparable from the system of values and principles characteristic of a democratic society.[212] These fundamental values include safeguarding children, due to both their condition as human beings and their inherent dignity, and also to their special status. Owing to their level of maturity and vulnerability, they require protection that ensures the exercise of their rights within the family, society and in relation to the State.[213] These considerations must be reflected in the regulation of judicial or administrative proceedings where decisions are taken on the rights of the child and, when appropriate, of the persons in whose custody or guardianship they find themselves.[214]

145. Even though children have the same human rights as adults during legal proceedings, the way in which these rights are exercised varies according to their level of development. Accordingly, it is essential to recognize and respect the differences in treatment that correspond to different situations of those participating in a proceeding.[215] This corresponds to the principle of differentiated treatment that, in the sphere of criminal justice, means that the differences between children and adults, as regards both their physical and psychological

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210 *Cf.* Committee on the Rights of the Child, General Comment No. 7, "Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, para. 17, and *Case of Furlan and family members v. Argentina*, para. 230.

211 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 102, and *Case of Furlan and family members v. Argentina,* para. 230. Rule 14.2 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") indicates that: "[t]he proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely."

212 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 92.

213 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 93

214 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 94.

215 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 96.

development, and their emotional and educational needs, must be taken into account for the existence of a separate juvenile criminal justice system.[216]

146. In sum, even though procedural rights and their corresponding guarantees apply to all persons, in the case of children, due to their special status, the exercise of those rights requires the adoption of certain specific measures so that they may truly enjoy those rights and guarantees.[217] In this regard, Article 5(5) of the American Convention indicates that "[m]inors while subject to criminal proceedings shall be separated from adults and brought before specialized courts, as speedily as possible, so that they may be treated in accordance with their status as minors." Therefore, pursuant to the principle of specialization, a justice system should be established that is specialized at all stages of the proceedings and during the execution of the measures or punishments that are eventually applied to minors who have committed offenses and who can be held responsible under domestic law. This should involve both the legislation and the legal framework and also the State institutions and agents specialized in juvenile criminal justice. However, it also entails the application of special legal rights and principles that protect the rights of children accused or convicted of an offense.

147. In addition, Rule 5(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) stipulates that "[t]he juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence." As mentioned above (*supra* para. 146), an evident consequence of the relevance of dealing in a differentiated, specialized, and proportionate manner with matters pertaining to children, and specifically those relating to illegal conduct, is the establishment of specialized jurisdictional bodies to hear cases involving conduct defined as crimes attributed to them. The considerations made above as regards the age required for a person to be considered a child, according to the predominant international criterion, applies to this important matter. Consequently, if it not possible to avoid the intervention of the courts, children under 18 years of age who are accused of conduct defined as criminal in nature by criminal law must be subject, for the purposes of the respective hearing and the adoption of the pertinent measures, only to specific jurisdictional bodies distinct from those for adults.

148. The guarantees recognized in Articles 8 and 25 of the Convention are recognized to all persons equally, and must also correspond to the specific rights established in Article 19 so that they are reflected in any administrative or judicial proceedings in which any right of a child is debated.[218] The principles and functions of due process of law constitute an unwavering and strict series of requirements that may be expanded in light of advances in human rights law. [219]

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216 *Cf.* Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 10.

217 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 98.

218 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 95..

219 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 115.

149. The rules of due process have been established, first, in the American Convention on Human Rights. Nevertheless, as this Court has already indicated, other international instruments are relevant in order to safeguard the rights of children subject to different actions by the State, society, or the family, such as the Convention on the Rights of the Child, the Beijing Rules, the United Nations Minimum Rules for Non-custodial Measures (the Tokyo Rules), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).[220] Due process and judicial guarantees must be respected not only in judicial proceedings, but also in any other proceedings conducted by the State, or under its supervision.[221] At an international level, it is important to stress that the States Parties to the Convention on the Rights of the Child have assumed the obligation to adopt a series of measures to safeguard due process of law and judicial protection, following similar parameters to those established in the American Convention on Human Rights.[222] These norms are found in Articles 37[223] and 40[224] of that treaty.

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220 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 116.

221 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 117.

222 *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002, para. 118.

223 Article 37 of the Convention on the Rights of the Child stipulates:

"States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

224 Article 40 of the Convention on the Rights of the Child indicates:

"1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

150. In addition, the Court underlines that, pursuant to Article 19, 17, 1(1) and 2 of the Convention, States are obliged to ensure, by the adoption of the necessary legislative or any other measures, the protection of the child by the family, society and the State itself. In this regard, this Court has recognized the fundamental role of the family for the development of the child and the exercise of his or her rights.[225] Thus, the Court considers that, in order to comply with these obligations, in the area of juvenile criminal justice, the States must have an appropriate legal framework and public policies that are adapted to the international standards indicated above (*supra* para. 149), and implement a series of measures designed to prevent juvenile delinquency by programs and services that promote the integral development of children and adolescents. Thus, among other matters, the State must disseminate information on the international standards concerning the rights of the child and provide support to vulnerable children and adolescents and also their families.[226]

151. Regarding the specific issue raised in this case, directly related to sentencing children to criminal sanctions, the American Convention does not include a list of punitive measures that States may impose when children have committed offenses. However, it is pertinent to note that, in order to determine the legal consequences of the offense when this has been

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(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

[225] *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC 17/02 of August 28, 2002. Series A No. 17, fourth operative paragraph.

[226] *Cf.* Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 18.

committed by a child, the principle of proportionality is a relevant criterion. According to this principle, there must be a balance between the presumptions and the punishment, both as regards the individualization of the punishment and its judicial application. Therefore, the principle of proportionality means that any response with regard to children who have committed a criminal offense must always be adjusted to their status as minors and to the offense,[227] giving priority to reintegration with the family and/or society.

B.1. The sentences imposed on Saúl Cristian Roldán Cajal, Ricardo David Videla Fernández, César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza

152. First, the Court finds it appropriate to specify that the criminal proceedings concerning Saúl Cristian Roldán Cajal and Ricardo David Videla were held in the jurisdiction of the province of Mendoza, while the proceedings concerning César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza were held in the jurisdiction of the federal capital of Buenos Aires (hereinafter "Buenos Aires"). However, in substance, Law 22,278 on the Juvenile Criminal Regime and the national Criminal Code, both of which apply nationwide, were used in both cases.

153. In this regard, Law 22,278 establishes that:

> Art 2. The minor aged from sixteen to eighteen years who commits an offense that was not listed in the [… first] article may be punished.
>
> […] In these cases, the judicial authority shall submit the minor to the respective proceedings and shall have custody over him or her temporarily during their processing in order to make it possible to exercise the powers conferred by article [… four].
>
> Whatever the outcome of the case, if it appears, from the assessments made, that the minor has been abandoned, is in need of assistance, is in physical or moral danger, or has behavioral problems, the judge shall decide his situation by means of a well-founded decision, after a hearing with the parents, tutor or guardian.
>
> […]
>
> Art. 4. The sentencing of the minor referred to in the [second] article shall be subject to the following requirements:
>
> 1) That criminal or civil responsibility, as applicable, has been declared previously, pursuant to the procedural norms.
>
> 2) That the minor has attained eighteen years of age.
>
> 3) That the minor has been subject to tutelary treatment for no less than one year, extendible if necessary until he attains his majority.
>
> Once these requirements have been met, if the facts, the minor's background, the result of the tutelary treatment, and the direct impression made on the judge make it necessary to apply a sanction, the judge shall decide this, but may reduce the punishment to that applicable to attempted offenses.

[227] *Cf.* United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). Adopted by the General Assembly of the United Nations in resolution 40/33 of 29 November 1985, Rule 5.

> Conversely, if application of a punishment is unnecessary, the minor shall be acquitted, in which case the requirement under the [… second] paragraph can be dispensed with.

154. Meanwhile, articles 13[228] and 14 of the national Criminal Code in force at the time of the facts, establish that:

> Art. 13. The person sentenced to life imprisonment or to reclusion for life who has served twenty years of the sentence, […] routinely respecting prison rules may obtain his or her liberty by judicial decision, following the report of the head of the establishment, on the following conditions […].
>
> Art. 14. Repeat offenders shall not be granted parole.

155. In addition, article 44 of the national Criminal Code, which regulates attempted offenses**,** stipulates the following:

> […] If the sentence is to reclusion for life, the sentence for an attempted offense shall be fifteen to twenty years' reclusion.
>
> If the sentence is to life imprisonment, the sentence for an attempted offense shall be ten to fifteen years' imprisonment […]."

156. Also, article 80 of the national Criminal Code establishes that:

> "Reclusion for life or life imprisonment shall be imposed, allowing for the application of the provisions of Article 52, to a person who has committed murder: […]
>
> 7) To prepare, facilitate, perpetrate or conceal another offense or to ensure its results or to seek impunity for oneself or another, or for not having achieved the intended objective when attempting another offense […]

157. The foregoing reveals that Law 22,278 contains provisions that regulate, among other aspects, the age for attributing responsibility to persons under 18 years of age, the measures that the judge may adopt before and after determining criminal responsibility, and the possibility of imposing a criminal sanction following tutelary treatment, the duration of which cannot be less than one year. In addition, the offenses and the punishments are established in

[228] Law 25,892 of 2004 amended article 13, stipulating that those sentenced to life imprisonment or reclusion for life had to serve 35 years in order to obtain parole: "The individual sentenced to imprisonment or reclusion for life who has served thirty five (35) years of his or her sentence, […] observing the prison rules, may be released by a court order, following the report of the head of the establishment and the report of experts who each predict his or her social reinsertion, under the following conditions: he or she must (1) live in the placed determined in the order of release; (2) observe the inspection rules established in this order, especially the obligation to abstain from consuming alcoholic beverages or using narcotic substances; (3) engage in a profession, trade or craft, if he or she has no other means of subsistence, within the time frame established in the order; (4) not commit other offenses; (5) submit to the care of a welfare agency indicated by the competent authorities, and (6) undergo the necessary medical, psychiatric or psychological treatment recommended by experts. These conditions, to which the judge may add any of the rules of conduct established in article 27 bis shall be in force until the expiry of the terms of the temporary sentences and up to ten (10) years more for life sentences, calculated from the day that parole is granted." (Article substituted for art. 1 of Law No. 25,892 B.O.26/5/2004).

a separate instrument; namely, the National Criminal Code, which applies also to adults who have committed an offense. Neither Law 22,278 nor the national Criminal Code contain provisions on how the criminal sanctions established in this Code for adults are applied to minors under 18 years of age.

158. With regard to this specific case, the Court will now refer to the grounds for the guilty verdicts handed down in the jurisdiction of the province of Mendoza against Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, and in Buenos Aires against César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza, in order to assess whether the principles applicable to the imposing of the punishment were complied with, particularly those relating to the deprivation of liberty of children.

159. In this Judgment, it has already been mentioned that, on March 8, 2002, the Mendoza Juvenile Criminal Court sentenced Saúl Cristian Roldán Cajal to life imprisonment (*supra* para. 86). On November 5, 2002, the Fifth Criminal Chamber of the Mendoza Judiciary decided to consolidate the previous sentences, confirming the life sentence that had been imposed and, also, declaring Saúl Cristian Roldán Cajal a repeat offender (*supra* paras. 86 and 88). Additionally, on November 28, 2002, the Mendoza Juvenile Criminal Court declared the criminal responsibility of Ricardo David Videla Fernández and sentenced him to life imprisonment (*supra* para. 90). The grounds for this sentence were set out in a decision of December 5, 2002. Both judgments established that the reduction of the punishment established in paragraph 2 of article 4 of Law 22,278 was not applicable, and that it was fair and equitable to impose life sentences on the youths Roldán Cajal and Videla Fernández, having "weighed" their age at the time they committed the unlawful acts.[229]

160. Meanwhile, on April 12, 1999, Claudio David Núñez and Lucas Matías Mendoza were prosecuted together by Juvenile Oral Court No. 1 of the Federal Capital. The judgment sentenced the youth Núñez to reclusion for life, and the youth Mendoza to life imprisonment (*supra* para. 82).[230] Also, on October 28, 1999, Juvenile Oral Court No. 1 of the Federal Capital sentenced César Alberto Mendoza to life imprisonment (*supra* para. 78).[231]

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[229] The judgment handed down against Saúl Cristian Roldán Cajal indicated that: "it is necessary to apply a sanction to the defendant, [who] has not earned the reduction of the punishment established at the end of the second paragraph of art. 4 of Law No. 22,278/22,803. Consequently, […] this Juvenile Criminal Court considers it just and fair to apply the punishment of [life imprisonment], having weighed the age of the offender at the time the acts were committed and the adaptation to the prison regime imposed." *Cf.* Decision of the Mendoza Juvenile Criminal Court, First Judicial District, of March 8, 2002, in case No. 005/00 (file of annexes to the pleadings and motions brief, tome XIII, folio 6987). Meanwhile, the judgment against Ricardo David Videla Fernández indicated that: "it is necessary to apply a sanction to the defendant, [who] has not earned the reduction of the punishment established at the end of the second paragraph of art. 4 of Law No. 22,278/22,803," and that "[the] Juvenile Criminal Court considers it just and fair to apply the punishment of [life imprisonment], having weighed in his favor his age at the time the acts for which he has been declared criminally responsible were committed." *Cf.* Explanatory statement on the factual and legal grounds of the verdict of the Mendoza Juvenile Criminal Court, First Judicial District, of December 5, 2002, in cases Nos. 109/110/111/112/113/116/117/120/121 (file of annexes to the submission of the case, tome IX, folios 4995 and 4996).

[230] Regarding Claudio David Núñez, his sentence mentions that: "[t]hese parameters for graduating the punishment lead to finding it just to impose the sentence of reclusion for life." Also, regarding Lucas Matías Mendoza, the sentence indicates that: "he is recorded as having committed two counts of aggravated murder, eight armed

B.2. Arbitrariness of the criminal sanctions

161. Article 7(3) of the Convention stipulates that "[n]o one shall be subject to arbitrary arrest or imprisonment." The Court has established on other occasions that "no one shall be subject to arrest or imprisonment for reasons and by methods that, although classified as legal, may be considered incompatible with respect for the fundamental rights of the individual because, among other factors, they are unreasonable, unpredictable, or disproportionate.[232] In addition, Article 37(b) of the Convention on the Rights of the Child establishes that States must ensure that "[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily." This means that if judges decide that it is necessary to apply a criminal sanction, and if this is deprivation of liberty, even though this is provided for by law, its application may be arbitrary if the basic principles that regulate this matter are not considered.

162. Particularly with regard to measures or sentences involving the deprivation of liberty of children, the following principles apply, above all: (1) *ultima ratio* and as short as possible, which in the terms of article 37(b) of the Convention on the Rights of the Child, means that "[t]he arrest, detention or imprisonment of a child […] shall only occur as a last resort and for the shortest appropriate period of time";[233] (2) temporal determination from the moment they are imposed, particularly related to the former, because if deprivation of liberty must be the exception and for as short a time as possible, this means that prison sentences with an indeterminate duration or that involve the absolute deprivation of this right must not be applied to children, and (3) periodic review of the measures of deprivation of liberty of children. In this regard, if the circumstances have changed and their reclusion is no longer required, States have the obligation to release children, even when they have not completed the sentence established in each specific case. To this end, States must provide early release programs in their legislation. On this point, the Committee on the Rights of the Child, based on

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robberies, one of them attempted, unlawful association, and possession of a weapon of war, which added to the fact that he can be easily influenced, his lack of character and other environmental circumstances, together with his status as a minor when committing the said crimes, lead to imposing the sentence of life imprisonment." *Cf.* Explanatory statement of the factual and legal grounds on which Juvenile Oral Court No. 1 of the Federal Capital based its verdict, corresponding to cases No. 833/838/839/851/910/920/937/972/1069 against Dante Núñez, Claudio David Núñez and Lucas Matías Mendoza, of April 12, 1999 (file of annexes to the submission of the case, tome VIII, folios 4638 and 4639).

231 The judgment indicates that "[t]hese parameters for graduating the punishment lead to finding it just to impose on César Alberto Mendoza the punishment of life imprisonment, loss of civil rights, and costs […]." *Cf.* Explanatory statement of the factual and legal grounds on which Juvenile Oral Court No. 1 of the Federal Capital based its verdict in case No. 1,084 against Guillermo Antonio Álvarez and César Alberto Mendoza (file of annexes to the pleadings and motions brief, tome XII, folio 6764).

232 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 90.

233 Rule 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") indicates that: "[t]he juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence." While, Rule 17.1(a) indicates that: "[t]he reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society."

article 25 of the Convention on the Rights of the Child, which provides for the periodic review of measures involving the deprivation of liberty, has established that "the possibility of release should be realistic and regularly considered."[234]

163. Based on the above, and in light of the best interests of the child as an interpretative principle designed to ensure the maximum satisfaction of the child's rights (*supra* para. 143), life imprisonment and reclusion for life for children are incompatible with Article 7(3) of the American Convention, because they are not exceptional punishments, they do not entail the deprivation of liberty for the shortest possible time or for a period specified at the time of sentencing, and they do permit periodic review of the need for the deprivation of liberty of the children.

164. Consequently the Court finds that the State violated the right recognized in Article 7(3) of the American Convention to the detriment of César Alberto Mendoza, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal, Ricardo David Videla Fernández and Claudio David Núñez, in relation to Articles 19 and 1(1) of this instrument, by sentencing them to life imprisonment and reclusion for life, respectively, for the perpetration of offenses while still minors. In this regard, the Court observes that, in the judgments delivered by the Mendoza Supreme Court of Justice on March 9, 2012, sentencing Saúl Cristian Roldán Cajal and, on August 21, 2012, by the Second Chamber of the Federal Criminal Cassation Chamber sentencing César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza, among other considerations, it was indicated that, when imposing sentences of life imprisonment and reclusion for life for the perpetration of offenses while under 18 years of age, the judges did not consider the application of the principles contained in the international laws on the rights of the child.[235]

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[234] Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 77.

[235] Regarding Saúl Cristian Roldán Cajal, the Mendoza Supreme Court of Justice considered that: "it follows that, when deciding on the sentence, the judge must take into account its effects from the perspective of special prevention, because fundamentally juvenile criminal law is designed to avoid its negative effects [… and to achieve] social reinsertion; therefore this must be specifically considered in the punishment." *Cf.* Decision of the Supreme Court of Justice of the Mendoza Judiciary of March 9, 2012, in case No. 102.319 (file of annexes to the answering brief, tome XV, folio 7897). Regarding César Alberto Mendoza, the respective sentence indicates that: "the judges are obliged to justify the punishment imposed and to proceed to apply the sanction; they must also explain the grounds for whether or not they apply the reduced level under article 4 of Law 22,278. All this is derived from the principles of *ultima ratio*, subsidiarity and the best interests of the child that must be considered when prosecuting juveniles." Consequently, "the sentence, without the reduction to the level of an attempted offense, must only be applied in extraordinary circumstances. The Court must assess – in order not to reduce the sentence – how this would be appropriate to promote the rehabilitation of the juvenile, because, the contrary would entail giving the juvenile the same treatment as an adult without considering his different status. […] Thus, it may be seen that an analysis has not been made of the guilt for the act (which the judges had to consider especially in a reduced way […]), but rather they based themselves on criteria of dangerousness that are included in the criminal law relating to the offender, and which are incompatible with the principles embodied in articles 18 and 19 of the [Constitution]." Similar considerations were made with regard to Claudio David Núñez and Lucas Matías Mendoza. *Cf.* Judgment of the Federal Criminal Cassation Chamber of August 21, 2012, in case No. 14,087 (file of annexes to the representative's final written arguments, tome XVII, folios 8238, 8239 and 8288).

B.3. Purpose of the sentence to imprisonment

165. The American Convention on Human Rights does not refer expressly to life imprisonment or reclusion for life. However, the Court underscores that, pursuant to Article 5(6) of the American Convention, "the deprivation of liberty shall have as an essential aim the reform and social reintegration of the prisoners." In this regard, the Convention on the Rights of the Child stipulates that, when a child has been found guilty of committing a crime, the child has the right "to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."[236] Thus, the measure that should be ordered as a result of the perpetration of an offense must have the objective of the child's reintegration into society. Therefore, the proportionality of the sentence is closely related to its purpose.

166. Based on the above, and pursuant to Article 5(6) of the American Convention, the Court considers that, owing to their characteristics, life imprisonment and reclusion for life do not achieve the objective of the social reintegration of juveniles. Rather, this type of sentence entails the maximum exclusion of the child from society, so that it functions in a purely retributive sense, because the expectations of re-socialization are annulled to their highest degree. Therefore, such sentences are not proportionate to the objective of the criminal sanction of children.

167. Based on the foregoing (*supra* paras. 134 to 166), the Court finds that the State violated the right recognized in Article 5(6) of the American Convention, in relation to Articles 19 and 1(1) of this instrument, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, by imposing on them sentences of life imprisonment and reclusion for life, respectively.

IX
THE RIGHTS TO PERSONAL INTEGRITY AND OF THE CHILD, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS

168. In this Chapter, the Court will examine whether the imposing of life sentences on the juveniles César Alberto Mendoza, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal, Ricardo David Videla Fernández and Claudio David Núñez constituted cruel, inhuman and degrading treatment in the terms of the American Convention. It will also analyze the presumed violations of the human rights of Lucas Matías Mendoza owing to the supposed lack of medical care he suffered while in detention. Lastly, the Court will refer to the presumed acts of torture

[236] Convention on the Rights of the Child. Adopted and open to signature and ratification by the General Assembly of the United Nations in resolution 44/25 of 20 November 1989, article 40.1.

suffered by Lucas Matías Mendoza and Claudio David Núñez during the time they were detained at Ezeiza Federal Prison Complex I.

A. Life imprisonment and reclusion for life as cruel and inhuman treatment

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

169. The Commission argued that the "arbitrariness and violations, both procedural and substantive [that co-existed in this case,] meant that the sentences imposed on the [presumed] victims resulted in inhuman treatment […]." Therefore, the Commission asked the Court to declare that the State had violated Articles 5(1), 5(2) and 19 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of César Alberto Mendoza, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal, Ricardo David Videla Fernández and Claudio David Núñez.

170. The representative argued that the sentencing to life imprisonment of the presumed victims for offenses committed as children constituted cruel, inhuman and degrading treatment. Therefore, she considered that Argentina had violated, among others, the rights recognized in Articles 1(1), 5(1), 5(2) and 19 of the American Convention to their detriment.

171. The State indicated that there were "certain inconsistencies in the argument that the presumed victims had been subjected to cruel, inhuman and degrading treatment owing to the life sentences imposed on them," because "international law does not prohibit the application of such sanctions."

A.2. Considerations of the Court

172. This Court notes that Article 5(2) of the American Convention establishes that "[n]o 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." Similarly, Article 37(a) of the Convention on the Rights of the Child stipulates that States shall ensure that "[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." The Court underscores that this article then establishes that "[…] life imprisonment without possibility of release shall [not] be imposed for offences committed by persons below eighteen years of age," and thus, this international instrument reveals a clear connection between the two prohibitions.

173. This Court has established that torture and cruel, inhuman or degrading treatment or punishment are strictly prohibited by international human rights law.[237] The prohibition of torture and cruel, inhuman or degrading treatment or punishment is absolute and non-derogable, even under the most difficult circumstances, such as war, threat of war, the fight

[237] *Cf. Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, para. 95, and *Case of Fleury et al. v. Haiti. Merits and reparations.* Judgment of November 23, 2011. Series C No. 236, para. 70.

against terrorism and any other crimes, state of siege or emergency, internal conflict or unrest, suspension of constitutional guarantees, internal political instability or other public disasters or emergencies.[238] The Court has also indicated that criminal sanctions are an expression of the punitive power of the State and "entail impairment, withdrawal or alteration of the rights of the individual, as a result of unlawful conduct."[239]

174. In the area of international human rights law, most relevant treaties only establish, by fairly similar formulas, that "no one shall be subject to torture or to cruel, inhuman or degrading treatment."[240] However, the dynamic nature of the interpretation and application of this branch of international law has allowed a requirement of proportionality to be inferred from norms that make no explicit mention of this element. The initial concern in this regard, focused on the prohibition of torture as a form of persecution and punishment as well as other forms of cruel, inhuman and degrading treatment has extended to other areas, including those of State punishments for the perpetration of offenses. Corporal punishment, the death penalty, and life imprisonment are the main sanctions that are of concern from the point of view of international human rights law. Therefore, this area refers not only to the means of punishment, but also to the proportionality of the punishment, as indicated in this judgment (*supra* paras. 147, 151, 161, 165 and 166). Therefore, punishments considered radically disproportionate, such as those that can be described as atrocious fall within the sphere of application of the articles that contain the prohibition of torture and cruel, inhuman and degrading treatment.[241] In this regard, the Court observes that, in the judgment in the cases of *Harkins* and *Edwards v. United Kingdom,* the European Court of Human Rights (hereinafter "the European Court") established that imposing a sentence that is severely disproportionate may constitute cruel treatment and, therefore, may violate Article 3 of the European Convention Human Rights, which corresponds to Article 5 of the American Convention.[242]

175. Previously, in this judgment, it has been mentioned that article 13 of the national Criminal Code applicable in this case indicates that those sentenced to life imprisonment and reclusion for life can obtain their release once they have served 20 years of their sentence, "by judicial decision after a report of the head of the establishment under the following conditions […]" (*supra* para. 154). The Court has already determined that this fixed term prevents the analysis of the specific circumstances of each child and his or her progress, which could eventually allow for early release at any time (*supra* para. 163). Specifically, it does not permit

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238 *Cf. Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs*. Judgment of November 25, 2004. Series C No. 119, para. 100, and *Case of Fleury et al. v. Haiti*, para. 70.

239 *Cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs.* Judgment of February 2, 2001. Series C No. 72, para. 106, and *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 314.

240 For example, Article 5(2) of the American Convention, Article 7 of the International Covenant on Civil and Political Rights, Article 3 of the European Convention on Human Rights, and Article 5 of the African Charter on Human and Peoples' Rights.

241 *Cf.* ECHR. *Cases of Harkins and Edwards v. United Kingdom* (No. 9146/07 and No. 32650/07). Judgment of 17 January 2012, para. 132.

242 *Cf.* ECHR. *Cases of Harkins and Edwards v. United Kingdom* (No. 9146/07 and No. 32650/07). Judgment of 17 January 2012, para. 133.

a regular periodic review of the need to keep the person deprived of liberty. Furthermore, in this Judgment, it has also been established already that the imposing of sentences to life imprisonment and reclusion for life for crimes committed when under 18 years of age did not take into account the special principles applicable in the case of the rights of children, including deprivation of liberty as a measure of last resort and for the shortest possible time. The Court also established that life imprisonment for minors does not achieve the purpose of social reinsertion established in Article 5(6) of the Convention (*supra* paras. 165 to 167). In sum, this Court found that life imprisonment and reclusion for life are not proportionate to the purpose of the criminal sanction of minors.

176. Moreover, in this case it must be taken into account that the reviews of the sentences of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal occurred after approximately 12 years (*supra* paras. 92 and 94). Moreover, the case file before this Court shows that, after his conviction, Ricardo David Videla Fernández was deprived of liberty for around four years until his death in the Mendoza Prison (*supra* para. 108). Consequently, for all these minors, the expectations of liberty were minimal, because article 13 of the national Criminal Code required that they serve at least 20 years of their sentence in order to request parole.

177. It is worth noting that, in this case, expert witness Laura Sobredo referred to the psychological problems and difficulties in personality development suffered by Claudio David Núñez, Lucas Matías Mendoza, César Alberto Mendoza, Ricardo Videla Fernández and Saúl Cristian Roldán Cajal because of the life sentences imposed on them for crimes committed when they were minors. The expert witness stated that:

> "The extreme conditions that these young people were subjected to by State institutions from the early stages of their lives are a clear example of the serious difficulty or, eventually, the impossibility of maintaining mental integrity as far as identity is concerned, and a frightening example of how this situation can end a human life."[243]

178. Expert witness Laura Sobredo also stated that "imposing punishment of an illegal nature has subjected these young men, by their very existence, to a very serious obstacle to their possibility of growing up in a healthy environment […]."[244] Also, during the public hearing of this case, expert witness Miguel Cillero indicated that the "length of time before the review [of the sentence] is considered, in itself, a lapse that ends the hope of rehabilitation and social reintegration for anyone, but especially for the adolescent." In addition, he indicated that "the existence of these over-delayed review procedures, which were unreliable in practice and had unreliable results, causes the individual concerned additional suffering – considered unlawful and not inherent in those punishments – to the normal suffering associated with a sentence, so

[243] *Cf.* Expert opinion provided by Laura Sobredo by affidavit on August 23, 2012 (merits file, tome II, folio 1441).

[244] *Cf.* Expert opinion provided by Laura Sobredo by affidavit on August 23, 2012 (merits file, tome II, folio 1440).

that [it is …] one of those punishments that [may] be regarded as cruel, inhuman or degrading treatment."[245]

179. Similarly, during the public hearing, expert witness Sofía Tiscornia referred to the impact of imposing a life sentence on the adolescents, taking into account the stage of development the alleged victims were undergoing:

> […] all these individuals sentenced to life imprisonment state that, on hearing the sentence, at first, they are unable […] to understand the scale of what has occurred. And when they do understand it, the effect is devastating; they feel that life has ended and, in many cases, they think the only thing they can do is take their own lives. […] I believe that this is particularly serious owing to the period of their life during which this occurs; they are not adults who can assume absolute responsibility for their actions, but rather adolescents who are still at a formative stage, who are not yet adults; who, at that moment of their development, are told by the law and the State that this is the end. [T]he effect is truly devastating."[246]

180. Expert witness Tiscornia also indicated that all the presumed victims "have recounted how their sentencing to life imprisonment ended any plans for the future." In this regard, she mentioned that "the number of years of imprisonment imposed [by life sentences] is more than any adolescent has lived […]." Moreover, "added to this, the juveniles sentenced to life imprisonment are recipients of every type of corporal and psychological punishments and disdain," because "those who have experienced or are experiencing prison since they were very young all agree that they fear they will be unable to rid themselves of that accursed and imposed identity when they return to life in society outside, and if they are sentenced to life imprisonment, what other identity can they assume?"

181. Expert witness Tiscornia also indicated that "[t]his sentence has extended over time, and these adolescents became men and continued to suffer these punishments." Lastly, expert witness Tiscornia stated that "one of the most distressing issues [for the presumed victims] is, precisely, not knowing what to do with their time, and that is why they continually ask for access to education, some kind of intramural work, some type of activity. Generally, they do not get this, precisely because they have been sentenced to life imprisonment; thus, time […] is a merely time that passes […]."[247]

182. Regarding his situation, César Alberto Mendoza stated that he "fe[lt …] he was part of the living dead [… that his] life was over," when he learned that he would spend the rest of his life in prison.[248] He said that nothing was important to him any longer, and he began to

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[245] *Cf.* Expert opinion provided by Miguel Cillero before the Inter-American Court at the public hearing held on August 30, 2012.

[246] *Cf.* Expert opinion provided by Sofía Tiscornia before the Inter-American Court at the public hearing held on August 30, 2012.

[247] *Cf.* Expert opinion provided by Sofía Tiscornia before the Inter-American Court at the public hearing held on August 30, 2012.

[248] *Cf.* Testimony of César Alberto Mendoza provided by affidavit on August 21, 2012 (merits file, tome II, folio 1383).

misbehave and take drugs. Claudio David Núñez recounted that, when the guilty verdict was handed down, he felt that he "was being killed in life; that [he] had no future, nothing; and that […] he was going to die in prison."[249] When he understood what life imprisonment signified, Lucas Matías Mendoza sent a letter to the Human Rights Secretariat of the national Ministry of Justice requesting euthanasia. He said he "would rather die than suffer life imprisonment."[250] Meanwhile, Saúl Cristian Roldán Cajal stated that "[t]he sentence to life imprisonment had a strong impact on" him, because he had "been […] in prison long enough to understand what each day of life in prison meant." He indicated that "those sentenced to life imprisonment [were] scum; they [were] condemned to the worst suffering."[251] In the case of Ricardo David Videla Fernández, the consequences of a life sentence were evident because, apparently, it led him to end his life, and "[h]is life sentence gave rise to a different situation that was more intense than the ordinary levels of punishment."[252]

183. Based on the foregoing, the Court finds that the disproportionality of the sentences imposed on César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández is evident, and the extreme psychological impact produced by the considerations indicated previously (*supra* paras. 169 to 182), constituted cruel and inhuman treatment. Therefore, the Court considers that the State violated the rights recognized in Articles 5(1) and 5(2) of the American Convention, in relation to Articles 19 and 1(1) of this instrument, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla.

B. Lack of adequate medical care in relation to the loss of vision of Lucas Matías Mendoza

B.1. Arguments of the Commission and pleadings of the parties

184. The Commission maintained that it was for the State to provide information on the Lucas Matías Mendoza's loss of vision in both eyes while he was detained and on the medical care provided. However, according to the Commission, the State "failed to comply with the burden of proof" and did not "substantiate that its authorities acted with the special care they were supposed to provide […]"; particularly given that Lucas Matías was a minor when the retinal detachment in his left eye occurred. Consequently, the Commission considered that

[249] *Cf.* Testimony of Claudio David Núñez provided by video (file of annexes to the pleadings and motions brief, tome XIII, folio 7397).

[250] *Cf.* Social report on Lucas Matías Mendoza prepared by prepared by the Program of Attention to Social Problems and Community Relations of the national Ombudsman's Office, of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folio 6935).

[251] *Cf.* Social report on Saúl Cristian Roldán Cajal prepared by the Program of Attention to Social Problems and Community Relations of the national Ombudsman's Office, of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folio 6949).

[252] *Cf.* Social report on Ricardo David Videla Fernández prepared by the Program of Attention to Social Problems and Community Relations of the national Ombudsman's Office, of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folio 7133).

Argentina had violated the right to personal integrity recognized in Articles 5(1) and 5(2) of the Convention in relation to Article 1(1) of this instrument, to the detriment of Lucas Matías Mendoza.

185. The representative argued that, despite the disability Lucas Matías Mendoza acquired while deprived of his liberty, "[d]uring the 16 years and 7 months he was detained," his situation was not modified, even though, "on several occasions, different State officials" recommended a differentiated treatment. She emphasized that Lucas Mendoza was a minor when he suffered the retinal detachment. However, according to the representative, "the State only reacted […] on June 17, 2011," when he was granted house arrest. Consequently, she considered that the State had violated Articles 1(1), 5(1), 5(2), and 19 of the American Convention, to the detriment of Lucas Matías Mendoza.

186. The State maintained that, during his detention in the Federal Prison Service, Lucas Matías Mendoza received medical and psychological care.

B.2. Considerations of the Court

187. In the instant case, the Court considers it relevant to underline that, on July 31, 1998, when Lucas Matías Mendoza was hit by the ball, resulting in the detached retina in his left eye, he was awaiting sentencing under the tutelary system in the Dr. Luis Agote Juvenile Institution, and was 17 years of age (*supra* paras. 98). In this regard, the Court considers it pertinent to recall that any limitation of the physical liberty of an individual, even if this is detention for tutelary purposes, must adhere strictly to the relevant provisions of the American Convention and domestic laws, provided the latter are compatible with the Convention.[253] In this regard, it should be noted that the United Nations Rules for the Protection of Juveniles Deprived of their Liberty state that "[t]he deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority."[254]

188. Accordingly, the Court recalls that, when dealing with persons who have been deprived of liberty, the State is in a special position of guarantor, because prison authorities exercise strong control or command over the persons in their custody,[255] especially if they are minors. Thus, a special relationship and interaction of subordination is created between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate his or her rights and obligations, and by the inherent circumstances of

253 *Cf. Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs.* Judgment of August 26, 2011. Series C No. 229, para. 76, and *Case of Fleury et al. v. Haiti*, para. 54.

254 United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Adopted by the General Assembly of the United Nations by resolution 45/113, of 14 December 1990, rule 11.b.

255 *Cf. Case of the "Children's Rehabilitation Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 152, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011. Series C No. 226, para. 42.

imprisonment, where the prisoner is prevented from satisfying, on his own account, a series of basic needs that are essential for leading a decent life.[256]

189. This Court has established that the State has the obligation, as guarantor of the health of the persons in its custody, to provide detainees with regular medical examinations and adequate medical treatment when required.[257] In this regard, the Court recalls that numerous decisions of international bodies cite the Standard Minimum Rules for the Treatment of Prisoners in order to interpret the content of the right of persons deprived of liberty to be treated in a dignified and humane manner.[258] Regarding the medical services with which they must be provided, these Rules indicate, *inter alia*, that "[t]he medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures."[259] Meanwhile, Principle 24 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment establishes that "[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."[260]

190. Article 5(2) of the American Convention establishes that "[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." In this regard, this Court has indicated that lack of adequate medical care does not satisfy the minimum material requirements of a dignified treatment consistent with the human condition in the terms of Article 5 of the American Convention.[261] Thus, the failure to provide adequate medical care to a person who is deprived of liberty and in the custody of the State could be considered a violation of Article 5(1) and 5(2) of the Convention depending on the particular circumstances of the specific person, such as their health or the type of ailment they suffer

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256 *Cf. Case of the "Children's Rehabilitation Institute" v. Paraguay*, para. 152, and *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2010. Series C No. 218, para. 216.

257 *Cf. Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2004. Series C No. 114, para. 156, and *Case of Vélez Loor v. Panama*, para. 220.

258 Cf. Case of Raxcacó Reyes v. Guatemala. Merits, reparations and costs. Judgment of September 15, 2005. Series C No. 133, para. 99, and Case of Vera Vera et al. v. Ecuador, para. 50.

259 *Cf.* Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1995, and approved by the Economic and Social Council in its resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 24. See, also, Rules 49 and 50 of the United Nations Rules for the Protection of Juveniles deprived of their Liberty, adopted by the General Assembly in resolution 45/113, of 14 December 1990.

260 *Cf.* Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in resolution 43/173, of 9 December 1988, Principle 24. See, also, Rule 24 of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1995, and approved by the Economic and Social Council in its resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

261 *Cf. Case of De la Cruz Flores v. Peru. Merits, reparations and costs.* Judgment of November 18, 2004. Series C No. 115, para. 131, and *Case of Vera Vera et al. v. Ecuador*, para. 44.

from, the time that has elapsed without medical care, and the cumulative physical and mental effects of this[262] and, in some cases, the person's sex and age.[263]

191. In addition, the Court reiterates that, when dealing with children and adolescents deprived of liberty, the State must assume a special position of guarantor with the utmost care and responsibility, and must take special measures based on the principle of the best interests of the child[264] (*supra* paras. 142 and 188). The State's role as guarantor with regard to the right to personal integrity obliges it to prevent situations that might, by act or omission, affect this negatively.[265] In this regard, the Court recalls that the Convention on the Rights of the Child recognizes "the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health," and commits the State to "strive to ensure that no child is deprived of his or her right of access to such health care services."[266]

192. In this case, the Court considers that Lucas Matías Mendoza should have enjoyed the increased protection to which he was entitled based on his condition as a minor deprived of liberty. However, the case file reveals that the minor Mendoza was first diagnosed for the "*pelotazo*," to his left eye on August 18, 1998; in other words, 18 days after he had received the blow (*supra* para. 98). Lucas Matías Mendoza was examined again one year later, on August 31, 1999, when he had been sentenced and transferred to the "Federal Complex for Young Adults (U.24)." At that time, the doctor who examined him recommended "extreme care as regards the physical activity of the inmate, and his accommodation, avoiding insofar as possible the risk of incidents that could exacerbate his already limited vision" (*supra* para. 98). However, it was not until April 30, 2003, almost four years later, that Lucas Matías Mendoza was examined again (*supra* para. 99). In addition, the case file shows that he was re-examined in October 2005; that is, two and half years later, and again a year and nine months later, in July 2007 (*supra* paras. 99 and 100). On the last occasion, it was repeated that Lucas Matías Mendoza would require periodic monitoring (*supra* para. 100). Lastly, the Court observes that he was also examined on May 6, 2011, in other words, four years later, and that it was based on the resulting report that National Sentencing Court No. 2 ordered his house arrest in order to guarantee his right to health. This report recommended, among other matters, the provision of "glasses with organic lenses" for the inmate's "sole functional eye"; namely, his right eye (*supra* para. 101).

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262 Cf. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objection, merits, reparations and costs. Judgment of July 5, 2006. Series C No. 150, para. 103, and Case of Vera Vera et al. v. Ecuador, para. 44.

263 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 74, and *Case of Vera Vera et al. v. Ecuador*, para. 44.

264 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits,* paras. 146 and 191, and *Case of the Massacres of Río Negro v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 142.

265 *Cf. Case of Bulacio v. Argentina. Reparations and costs.* Judgment of September 18, 2003. Series C No. 100, para. 138.

266 *Cf.* Convention on the Rights of the Child. Adopted and open to signature and ratification by the General Assembly of the United Nations in resolution 44/25 of 20 November 1989, article 24.1.

193. Accordingly, the Court underscores that, over the course of 13 years, Lucas Matías Mendoza was only examined by a doctor in relation to his eye problems on six occasions, with periods of from one to four years between each examination. The State did not indicate whether these intervals had any medical explanation. Rather, the Court observes that, with the passing of time, Lucas Matías Mendoza's sight degenerated to the point that, today, he has almost no vision. Therefore, the Court considers that the State failed to comply with its obligation to conduct periodic and regular examinations in order to safeguard the health of the inmate, despite the recommendations made by the doctors who examined him (*supra* paras. 98 to 100). Moreover, there is no evidence in the case file that the State took any action to address the particular health needs of the minor Mendoza, recommended by the doctors who attended him, up until 2011, when national Judge Marcelo Peluzzi ordered his house arrest (*supra* para. 102).

194. It is worth noting that, in the proceedings before this Court, Lucas Matías Mendoza testified before notary public regarding his sight problems, indicating that he "stopped being able to see" after the blow he suffered and that, "from then on, everything was more difficult." Thus, the presumed victim stated:

> "I cannot do other things like everyone else. It is hard for me to shower; I bump into people in the dark; I cannot defend myself. Everything is much harder for me […]. This happened to me at both the Agote Institution and in the prison units, when I turned 18 years old. Here, everything is worse. It is a mixture of insecurity, fear of everything, and loneliness."

195. Based on the above (*supra* paras. 184 to 194), the Court considers that the State violated the rights recognized in Articles 5(1), 5(2) and 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Lucas Matías Mendoza, owing to the absence of adequate medical care during the time he was detained in the Dr. Luis Agote Juvenile Institution and in various federal detention centers between 1998 and 2011.

C. Torture suffered by Lucas Matías Mendoza and Claudio David Núñez

C.1. Arguments of the Commission and pleadings of the parties

196. The Commission indicated that, in response to the complaints and supposed indications that Claudio David Núñez and Lucas Matías Mendoza had been tortured by means of the *falanga*, "the State did not provide a satisfactory explanation" as to what happened to them and, "consequently, did not disprove the presumption of responsibility" for the injuries suffered by individuals in its custody. The Commission affirmed that "by the application of methods prejudicial to human dignity, intended to cause physical suffering, Claudio David Núñez and Lucas Matías Mendoza were subjected to torture by State agents and, therefore, [the State …]" violated Article 5 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Lucas Matías Mendoza and Claudio David Núñez."

197. The representative argued that Claudio David Núñez and Lucas Matías Mendoza "were subjected to acts of torture," such as the "*falanga*." According to the representative, "both of them were severely beaten with sticks on the head, back, and soles of the feet, and some days

later, were forced to remain in the sun in positions requiring the use of strength while [… being] beaten on the back." Thus, she alleged that the State had violated Article 5(1) and 5(2) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of those indicated above.

198. The State indicated that "the injuries to [Lucas] Mendoza and [Claudio] Núñez were the result of a brawl between inmates" and that, during the processing of the provisional measures before the Commission, the petitioners did not mention "the eventual filing of judicial remedies available at the domestic level […,] in particular, "the application for corrective *habeas corpus*."

C.2. Considerations of the Court

199. First, the Court reiterates its case law to the effect that, today, the absolute prohibition of torture, both physical and mental, is part of international *jus cogens* (*supra* para. 173).[267] Both universal[268] and regional treaties[269] establish this prohibition and the non-derogable right not to be subjected to any form of torture. Furthermore, numerous international instruments establish that right and reiterate the same prohibition,[270] even under international humanitarian law.[271]

200. Now, to define what, in light of Article 5(2) of the American Convention, should be understood as "torture," according to the Court's case law, an act constitutes torture when the

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267 *Cf. Case of Baldeón García v. Peru. Merits, reparations and costs.* Judgment of April 6, 2006. Series C No. 147, para. 117, and *Case of Fleury et al. v. Haiti*, para. 70.

268 *Cf.* International Covenant on Civil and Political Rights, Art. 7; Convention against Torture and All Cruel, Inhuman and Degrading Treatment or Punishment, Art. 2; Convention on the Rights of the Child, Art. 37, and International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Art. 10.

269 *Cf.* Inter-American Convention to Prevent and Punish Torture, Arts. 1 and 5; African Charter of Human and Peoples' Rights, Art. 5; African Charter on the Rights and Welfare of the Child, art. 16; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), Art. 4, and European Convention of Human Rights, Art. 3.

270 *Cf.* Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Principle 6; Code of Conduct for Law Enforcement Officials, art. 5; United Nations Rules for the Protection of Juveniles deprived of their Liberty, Rule 87(a); Declaration on the human rights of individuals who are not nationals of the country in which they live, art. 6; United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Rule 17.3; Declaration on the Protection of Women and Children in Emergency and Armed Conflict, art. 4, and Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism, Guideline IV.

271 *Cf.* Art. 3 common to the four Geneva Conventions; Geneva Convention relative to the Treatment of Prisoners of War (Convention III), Arts. 49, 52, 87, 89 and 97; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV), Arts. 40, 51, 95, 96, 100 and 119; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art. 75.2.a.ii), and Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II), Art. 4.2.a. *Cf. Case of Fleury et al. v. Haiti. Merits and reparations*, para. 71.

ill-treatment: (a) is intentional; (b) causes severe physical or mental suffering, and (c) is committed with a specific purpose or objective.[272]

201. In addition, this Court has indicated that the violation of the right to physical and mental integrity of the individual has different levels of connotation and ranges from torture to other types of abuse, or cruel, inhuman or degrading treatment, the physical and mental consequences of which vary in intensity according to factors that are endogenous and exogenous to the individual (such as duration of the treatment, age, sex, health, context, and vulnerability), which must be analyzed in each specific situation.[273] In other words, the personal characteristics of a supposed victim of torture or cruel, inhuman or degrading treatment, must be taken into account when determining whether his or her personal integrity was violated, because these characteristics can change the individual's perception of the reality and, consequently, increase the suffering and the feeling of humiliation when subjected to certain types of treatment.[274]

202. Moreover, the Court has indicated that, in its capacity as guarantor of the rights established in the Convention, the State is responsible for respecting the right to personal integrity of every individual in its custody.[275] Thus, this Court reiterates that, since the State is responsible for detention centers and prisons, it has the obligation to safeguard the health and well-being of the persons deprived of liberty, and to guarantee that the manner and method of deprivation of liberty does not exceed the inevitable level of suffering inherent in detention.[276]

203. In addition, the Court's case law has indicated that whenever an individual is deprived of liberty in normal health and subsequently displays health problems, the State must provide a satisfactory and credible explanation for this situation[277] and disprove the allegations of its responsibility with adequate probative elements.[278] In circumstances such as those of the instant case, the absence of this explanation leads to the presumption of State responsibility for the injuries revealed by a person who has been in the custody of State agents.[279]

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272 Cf. Case of Bueno Alves v. Argentina. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 164, para. 79, and Case of Fleury et al. v. Haiti, para. 72.

273 *Cf. Case of Loayza Tamayo v. Peru. Merits,* paras. 57 and 58, and *Case of Fleury et al. v. Haiti,* para. 73.

274 Cf. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Series C No. 149, para. 127, and Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs. Judgment of September 3, 2012 Series C No. 248, para. 176.

275 Cf. Case of López Álvarez v. Honduras. Merits, reparations and costs. Judgment of February 1, 2006. Series C No. 141, paras. 104 to 106, and Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs. Judgment of November 26, 2010. Series C No. 220, para. 134.

276 *Cf. Case of the "Children's Rehabilitation Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 159, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 26, 2012. Series C No. 244, para. 135.

277 *Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, para. 100, and *Case of Fleury et al. v. Haiti*, para. 77.

278 *Cf. Case of Juan Humberto Sánchez v. Honduras,* para. 111, and *Case of Fleury et al. v. Haiti,* para. 77.

279 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits,* paras. 95 and 170, and *Case of Fleury et al. v. Haiti*, para. 77.

204. First, the Court observes that, in this case, it has been alleged that State agents were responsible for the injuries suffered by Lucas Matías Mendoza and Claudio David Núñez in Ezeiza Federal Prison Complex No. 1. Thus, even though this institution's records for December 9 and 13, 2007, indicate that they had stated that their injuries were "the result of a brawl," on at least five different occasions following the complaint filed by their defense counsel, Lucas Matías Mendoza and Claudio David Núñez stated that, on December 9, 2007, they had been beaten by prison staff on the head and other parts of the body (*supra* paras. 129, 131 and 132). Thus, on December 13, 2007, Lucas Matías Mendoza and Claudio David Núñez declared before members of the Prison Commission of the national Ombudsman's Office that members of the prison staff had taken them to the "*leonera*" and, *inter alia*, had beaten them on the soles of the feet (*supra* para. 129). According to the statement by Claudio David Núñez:

> "On Sunday, [December] 9, at approximately 10.30 [p.m.], three prison guards from the inspection unit entered cell 3, asked him to lie on the ground and kicked him on the right side of the head and punched him. […] Then, […] they transferred him to the "*leonera*" [and] all the way there they continued to beat him […]. They took off his left shoe […] and began to hit him [... around 30] times […] on his foot […]. They also hit him […] on the leg and waist. All this was with his companion Mendoza […]. Then he limped to the medical section; […] the nurse […] told him that nothing was wrong and […] wiped his hair to remove the blood that he had from [inmate] Mendoza, because when they were beating him they were together on the floor. [… A]lso, on the 12th […] they punched and beat him."[280]

205. Similarly, in affidavits prepared for the proceedings before the Inter-American Court, both Lucas Matías Mendoza and Claudio David Núñez referred to the blows they had received on the soles of their feet. According to the youth Mendoza:

> "On December 9, 2007, at around 10.30 in the evening, three or four members of the inspection unit of the Federal Prison Service entered [his] cell; hit [him], handcuffed [him] and took him to the "*leonera*" […]. There they hit [him] on the soles of the feet and on other parts of the body and his head was cut significantly. When he stood up, they hit [him], and … they transferred [him] to another sector where [he] was ordered to get up and walk. This was impossible, [he] felt a terrible pain; it was unbearable. At that moment, they threw [him] on the ground again and, still handcuffed, they again hit [him] on the soles of the feet. […] When, together with Claudio, [he] filed the complaint before the Sentencing Court, [he] related what had happened on December 9, but [they] also said that [they] did not want to add any more information, because [they] were afraid."[281]

206. Meanwhile, Claudio David Núñez indicated that:

> "On December 9, 2007, three or four members of the Prison Service inspection unit entered [his] cell, beat and handcuffed [him], and took [him] to the "*leonera,*" an individual cell where they put people who are passing through. There [he] was beaten 20 to 30 times on the soles of the feet and on other parts of the body, on the back, waist and head.[282]

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[280] *Cf.* Statement made by Claudio David Núñez before the Prison Commission of the national Ombudsman's Office on December 13, 2007 (file of annexes to the submission of the case, tome X, folios 5582 and 5583)

[281] *Cf.* Testimony of Lucas Matías Mendoza provided by affidavit on August 16, 2012 (merits file, tome II, folio 1416).

[282] *Cf.* Testimony of Claudio David Núñez provided by affidavit on August 21, 2012 (merits file, tome II, folio 1392).

207. In addition, the body of evidence reveals that, between December 9 and 27, 2007, Lucas Matías Mendoza and Claudio David Núñez were examined on at least five separate occasions by doctors from Ezeiza Federal Prison Complex I, from the national Prison Oversight Office, and from the Forensic Medicine Department of the Supreme Court of Justice of the Nation (*supra* paras. 127, 128, 130 and 131).). The six reports resulting from these examinations all indicated that Lucas Matías Mendoza had been injured within the Federal Prison Complex, and three of them, two from prison doctors and one from the national Prison Oversight Office, indicated that the inmate had bruising on the soles of his feet (*supra* paras. 127, 128, 130 and 131). Furthermore, five of the said reports indicated that Claudio David Núñez had injuries on different parts of his body, and the report prepared by the national Prison Oversight Office noted that he had an "irregularly-shaped hematoma with imprecise edges on the fifth [left] metatarsal" (*supra* paras. 127, 128, 130 and 131).[283]

208. In this regard, the Court observes that, according to the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), the "*falanga*" is a form of torture consisting in "the repeated application of blunt trauma to the feet (or more rarely to the hands or hips), usually applied with a truncheon, a length of pipe or similar weapon."[284] According to the Protocol, the application of the *falanga* can cause numerous complications and syndromes.[285]

209. Based on the above, owing to the nature and location of the injuries to Claudio David Núñez and Lucas Matías Mendoza, which were recorded in several medical reports, the Court finds that both of them were subjected to strong blows to the feet consistent with the practice of "*falanga*," a typical form of torture, and that these were undoubtedly inflicted intentionally while they were deprived of liberty in Ezeiza Federal Prison Complex I. The Court also finds it evident that the beatings that Lucas Matías Mendoza and Claudio David Núñez received on their feet and other parts of their body while they were in the State's custody caused them severe physical suffering, as revealed by their statements.

210. Although the Court has no evidence to determine the purpose or objective of the blows received by the youths Mendoza and Núñez, according to the Inter-American Convention to Prevent and Punish Torture, this conduct can be carried out for "the purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure,

283 *Cf.* Report on the interview with Claudio David Núñez conducted by Dr. Jorge Teijeiro on December 12, 2007 (file of annexes to the pleadings and motions brief, tome XIII, folio 7452).

284 *Cf.* Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), Office of the United Nations High Commissioner for Human Rights (UNHCHR). Professional Training Series No. 8/Rev.1, United Nations, New York and Geneva, 2004, para. 203.

285 *Cf.* Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), Office of the United Nations High Commissioner for Human Rights (UNHCHR). Professional Training Series No. 8/Rev.1, United Nations, New York and Geneva, 2004, paras. 203 and 204. "The most severe complication of *falanga* is closed compartment syndrome, which can cause muscle necrosis, vascular obstruction or gangrene of the distal portion of the foot or toes. Permanent deformities of the feet are uncommon but do occur, as do fractures of the carpal, metacarpal and phalanges."

as a penalty, *or for any other purpose.*"[286] Moreover, as established *infra*, the State failed to provide sufficient evidence, by means of an effective investigation, to disprove the presumption of State responsibility for the torture suffered by Lucas Matías Mendoza and Claudio David Núñez on the soles of their feet while in State custody and to prove that the said injuries were the result of a "brawl" (*infra* paras. 235 and 236), as alleged by Argentina.

211. In light of the above, the Court concludes that Lucas Matías Mendoza and Claudio David Núñez were tortured within Ezeiza Federal Prison Complex I by the use of the "*falanga*" (*supra* paras. 196 to 210). Consequently, the State is responsible for the violation of Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to their detriment.

X
RIGHTS TO JUDICIAL GUARANTEES, TO JUDICIAL PROTECTION, AND OF THE CHILD, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE RIGHTS, AS WELL AS THE OBLIGATIONS ESTABLISHED IN ARTICLES 1, 6, AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE

212. In this Chapter, the Court will analyze the presumed violations of the rights to judicial guarantees and to judicial protection of the next of kin of Ricardo David Videla owing to the supposed failure to investigate the causes of his death. Then, the Court will refer to the supposed lack of an investigation into the torture inflicted on Lucas Matías Mendoza and Claudio David Núñez. Subsequently, the Court will refer to the allegations concerning the supposed violations of the right to appeal the sentence and the right of defense.

A. Investigation into the death of Ricardo David Videla Fernández

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

213. The Commission argued that the purpose of the criminal investigation opened as a result of the death of Ricardo David Videla Fernández was to determine whether he had committed suicide and whether the prison authorities had responded appropriately on the day of his death as soon as they were informed of the incident, but that "it did not include determination of possible responsibilities for the omissions […] in view of the inhuman detention conditions of the [presumed] victim and the known deterioration of his health." Moreover, according to the Commission, "no steps were taken to verify the prison authorities' failure to act in response to the victim's specific statement that he would end his life." The Commission considered that "these were logical lines of investigation" that should have been followed in order to clarify all those possibly responsible for the death. Regarding the disciplinary investigation opened as a result of the death of Ricardo David Videla, the Commission "observe[d] that the foregoing considerations are equally applicable to [this

[286] Inter-American Convention to Prevent and Punish Torture, Article 2 (italics added).

investigation], which was ultimately archived because no official was charged in the criminal proceedings." Based on all the foregoing, the Commission concluded that the State had violated "the rights established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument," to the detriment of the next of kin of Ricardo David Videla Fernandez.

214. The representative agreed with the Commission that the investigation into the death of Ricardo David Videla Fernandez was incomplete, because "its purpose was limited to establishing the causes of death, leaving to one side the potential responsibility of the prison staff or of the doctors who intervened for possible omissions in the performance of their duties […]," and because "all the evidence that could have been required in a case with these characteristics was not collected." The representative also indicated that "the failure to investigate the death of David [Videla] continues," because, following the issue of the Inter-American Commission's Report No. 172/10, a complaint was filed requesting the re-opening of the investigation, but "this request was not granted." Lastly, the representative indicated that "the investigation was not conducted with due diligence," because "between August 2005 and March 2006 no probative actions were taken […]." Consequently, she asked that the State be declared "responsible for the violation of the rights protected by Articles 1(1), […] 8(1), 19 and 25 of the American Convention," *inter alia,* to the detriment of Ricardo David Videla Fernández and his next of kin.

215. As previously mentioned (*supra* para. 26), the State indicated that, under the friendly settlement agreement signed on August 28, 2007, with the petitioners in case No. 12,535, *Mendoza Prison Inmates*, "the province of Mendoza undert[ook] to take all the necessary measures, within its sphere of competence, to continue the investigations of all the human rights violations that resulted in the issue of the provisional measures that were ordered" by the Inter-American Court in favor of the persons held in these prisons." In this regard, the State advised that, "in the context of court case No. 46,824/05, entitled 'Inquiry, death of Videla Fernández, Ricardo,' […] on November 3, 2011, the […] Attorney General of the Supreme Court of Justice of the province of Mendoza instructed the investigating prosecutor […] to consult with his superior regarding the presentation […] of the private complainant […]." In addition, it indicated that the Human Rights Directorate of the province of Mendoza had forwarded a copy of the Inter-American Commission's Merits Report No. 172/10 to the said Attorney General, so that the latter could comply with recommendation No. 6 of the this report concerning the investigation into the death of Ricardo Videla. According to the State, this report was "sent to the Complex Crimes Prosecution Unit in order to respond to the request." Once the competence of that entity had been established, "the production of the evidence suggested by the chamber prosecutor" recommenced.

A.2. Considerations of the Court

216. This Court observes that, under the friendly settlement agreement signed on August 28, 2007, in case No. 12,532 *Mendoza Prison Inmates* (*supra* para. 33), the State acknowledged "the objective responsibility of the province of Mendoza in the case" for the violation of Articles 4 and 5 of the American Convention to the detriment of Ricardo Videla, among other

individuals, owing to the detention conditions to which he was subjected in the Mendoza Prison, and because he "was found hanging in his cell in Unit 1.1 of the prison on June 21, 2005." The Court will now examine the alleged lack of investigation into these facts by the State, in light of the rights to judicial guarantees and to judicial protection recognized in the American Convention.[287]

A.2.1. Obligation to investigate the death of a person in the State's custody

217. The Court has indicated that Article 8 of the American Convention signifies that the victims of human rights violations, or their next of kin, should have extensive opportunities to be heard and to participate in the respective proceedings, both to try and clarify the facts and punish those responsible, and to seek due reparation. The Court has also considered that States have the obligation to provide effective judicial remedies to those who claim to be victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all within the general obligation of the States to guarantee the free and full exercise of the rights recognized by the Convention to all persons under their jurisdiction (Article 1(1)). Furthermore, the Court has indicated that the obligation to investigate and the corresponding right of the presumed victims or their next of kin are derived not only from treaty-based provisions under international law, which are binding for States Parties, but also from domestic laws concerning the obligation to investigate *ex officio* certain illegal conducts and the norms that allow the victims or their next of kin to file complaints or lawsuits, evidence, petitions, or any other measure, in order to play a procedural role in the criminal investigation intended to establish the truth of the facts.[288]

218. In light of this obligation, in the case of the investigation into the death of a person who was in State custody, as in this case, the corresponding authorities must initiate *ex officio* and without delay, a serious, impartial, and effective investigation. This investigation must be conducted using all available legal means to determine the truth and to investigate, prosecute and punish all those responsible for the facts, especially when State agents are or may be involved.[289] It should be noted that the duty to investigate is an obligation of means rather than results. Nevertheless, the Court reiterates that it must be assumed by the State as an inherent legal obligation and not as a mere formality preordained to be ineffective, or as a

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[287] The pertinent part of Article 8 of the American Convention establishes that: "[e]very 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(1) of the American Convention stipulates that: "[e]veryone 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."

[288] *Cf.* Case of *Velásquez Rodríguez v. Honduras*. *Merits,* para. 91, and Case of *Vera Vera et al. v. Ecuador*, para. 86.

[289] *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits,* para. 177, and *Case of Vera Vera et al. v. Ecuador*, para. 87.

mere step take by private interests that depends upon the procedural initiative of the victims or their next of kin, or on the production of probative elements by private individuals.[290]

219. The Court has established that the State, as guarantor of the rights recognized in the Convention, is responsible for respecting the rights to life and personal integrity of every individual in its custody.[291] In this regard, the State can be found responsible for the death of a person who has been in the custody of State agents when the authorities have not conducted a serious investigation into the facts followed by the prosecution of those responsible.[292] Thus, it is the State's obligation to provide an immediate, satisfactory and convincing explanation of what happened to a person in its custody, and to disprove the allegations of its responsibility with appropriate probative elements.[293]

A.2.2. Due diligence in the investigation of the death of Ricardo David Videla

A.2.2.1. Lines of investigation

220. Regarding judicial investigation P-46824/05, the Court observes that, by a decision of July 24, 2006, the judge responsible for procedural safeguards of the 10th First Instance Court of Mendoza ordered that the case be closed at the request of the investigating prosecutor, because, in his opinion, from the evidence in the case file it could not be inferred that third parties were involved in the apparent suicide of Ricardo David Videla Fernandez. Furthermore, according to the judge, it could not be inferred that the prison staff had responded improperly to inmate Videla Fernandez's threats to harm himself or to their duty to act immediately once they became aware that he had been found hanged (*supra* para. 116). Similarly, in the said decision, the judge indicated that the determination of the possible responsibilities of the staff of the Mendoza Prison for the conditions inside this detention center "exceed[ed] the sphere of judicial actions," and was a "matter that fell within the executive sphere" (*supra* para. 117).

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290 *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits,* para. 177, and *Case of the Massacre of Santo Domingo v. Colombia,* para. 157.

291 *Cf. Case of Neira Alegría et al. v. Peru. Merits.* Judgment of January 19, 1995. Series C No. 20, para. 60, and *Case of Vera Vera et al. v. Ecuador*, para. 88.

292 *Cf. Case of Neira Alegría et al. v. Peru. Merits.* Judgment of January 19, 1995. Series C No. 20, para. 60, and *Case of Vera Vera et al. v. Ecuador*, para. 88.

293 *Cf. Case of Juan Humberto Sánchez v. Honduras*, para. 111, and *Case of Vera Vera et al. v. Ecuador*, para. 88. It is worth mentioning the case law of the European Court of Human Rights on this matter, which has maintained that, under Article 3 of the European Convention, which recognizes the right to humane treatment, the State has the obligation to provide a "convincing explanation" for any injury suffered by a person deprived of his liberty. Also, based on reading Article 3 of the European Convention in conjunction with Article 1 of this instrument, it has stated that an effective official investigation is required when an individual makes a "credible assertion" that State agents have violated any of his rights stipulated in Article 3 of this instrument. The investigation must be able to achieve the identification and punishment of those responsible. Similarly, the European Court has stated that, to the contrary, the general prohibition of cruel, inhuman and degrading treatment, among others, would be "ineffective in practice," because it would be possible for State agents to violate the rights of those in their custody with total impunity. *Cf.* ECHR. *Case of Elci and Others v. Turkey* (Nos. 23141 and 25091/94), judgment of 13 November 2003, paras. 648 and 649, and *Case of Assenov and Others v. Bulgaria* (No. 24760/94), judgment of 28 October 1999, para. 102.

221. In this regard, the Court has established in its case law that, when a State is a party to an international treaty such as the American Convention on Human Rights, this treaty is binding on all its organs, including the Judiciary and the Executive, whose members must ensure that the effects of the provisions of these treaties are not lessened by the application of laws or interpretations that are contrary to its object and purpose. The judges and organs involved in the administration of justice at all levels are obliged to exercise *ex officio* a "control of the conformity" between domestic law and the human rights treaties to which the State is a party; evidently, within the framework of their respective competences and the corresponding procedural regulations. In this task, the judges and other organs involved in the administration of justice, such as the public prosecution service, must take into account not only the American Convention and other inter-American instruments, but also their interpretation by the Inter-American Court.[294]

222. The Court observes that in the context of the judicial investigation opened into the death of Ricardo David Videla Fernández, there were indications that he was in a depressed mood in the days before his death and that he was suffering, among other factors, due to the deplorable conditions in which he was detained – which the State had recognized previously – and the prolonged confinement regime of more than 20 hours a day, which was verified by Ricardo Flores, a member of the Prison Policy Monitoring Commission responsible for the unit in which Ricardo David Videla Fernandez was being held (*supra* para. 107). Nevertheless, at no point were the possible responsibilities of the prison staff investigated for the presumed failure to comply with their duty to prevent violations to the right to life of Videla Fernández owing to the omissions related, on the one hand, to his detention conditions and, on the other hand, to his state of depression, factors that may have contributed to his death. It is worth noting in this regard that, in the days following this event, a doctor in charge of the unit in which Videla Fernández was being held stated that the situation in this unit was "serious" and that several inmates had expressed the desire to kill themselves (*supra* para. 121). In addition, under the friendly settlement agreement signed in case No. 12,532 *Mendoza Prison Inmates*, the State assumed responsibility, in general, for the violation of the rights to life and to personal integrity of the inmates of the Mendoza Prison, including Ricardo Videla, owing to the deplorable condition in which they were being held (*supra* para. 33). Thus, under this agreement, an *ad hoc* Court was created to determine the corresponding reparations. In an arbitral award of November 29, 2010, that court indicated, among other matters, that "the government of the province of Mendoza […] acknowledged [its …] responsibility […] for not having ensured minimum conditions for the security, safeguard and physical integrity of the inmates […]."[295]

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294 Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs. Judgment of September 26, 2006. Series C No. 154, para. 124, and Case of the Massacre of Santo Domingo v. Colombia, footnote 193.

295 *Cf.* Arbitral award of November 29, 2010 (file of annexes to the pleadings and motions brief, folios 7662 to 7681). In addition, the Court *ad hoc* indicated that the body of the youth Videla "showed signs of violence" at the time of his death and that "death occurred by hanging."

223. Hence, the Court considers that the State authorities had the obligation to follow up on a logical line of investigation designed to determine the possible responsibilities of the prison staff for the death of Ricardo Videla, since the omissions related to his detention conditions and/or his state of depression could have contributed to this act. The State had the obligation to disprove the possibility of the responsibility of its agents, taking into account the measures that they should have adopted in order to safeguard the rights of a person in its custody (*supra* paras. 188 to 190), and to collect the evidence that this entailed.

224. In addition, this Court has affirmed that the proceedings of the disciplinary jurisdiction may be assessed to the extent that they contribute to the clarification of the facts and that its decisions are relevant as regards the symbolic value of the message of censure that this type of sanction can convey within the State's prisons.[296] Nevertheless, given the nature of their competence, the purpose of these investigations is restricted to merely determining the individual disciplinary responsibilities of State officials.[297] In this regard, the determination of criminal and/or administrative responsibility each has its own substantive and procedural rules. Consequently, the failure to determine criminal responsibility should not prevent the continuation of the investigation into other types of responsibilities, such as administrative responsibilities.

225. Now, regarding the administrative case file opened as a result of the death of Ricardo David Videla Fernandez, this Court has already established that, on May 17, 2006, the investigating judge requested the General Inspectorate of Security of the province of Mendoza to archive the proceedings because, *prima facie*, there was no indication that any prison staff were "involved" in this incident and because no member of the staff had been accused "judicially."[298] It should be noted that, in this regard, the investigating judge who requested that the administrative case file be archived had access to the judicial file and the psychological and psychiatric history of inmate Videla Fernandez (*supra* para. 125).[299] Nevertheless, he also failed to investigate whether there were any omissions relating to the conditions in which the inmate was being held in or whether his mental state could have had a bearing on his death.

226. Last, this Court considers it pertinent to indicate that, under the said friendly settlement agreement signed on August 28, 2007, the "the government of the province of Mendoza undert[ook] to take all the necessary measures, within its sphere of competence, to continue the investigations into all the human rights violations that resulted in the issue of the

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296 *Cf. Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 203, and *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006 Series C No. 148 para. 327.

297 *Cf. Case of the Ituango Massacres v. Colombia*, para. 327.

298 *Cf.* Report of the investigating judge in administrative file 7808/01/05/00105/E of May 17, 2006 (file of annexes to the submission of the case, tome X, folio 5546).

299 *Cf.* Report of the investigating judge in administrative file 7808/01/05/00105/E of May 17, 2006 (file of annexes to the submission of the case, tome X, folio 5545).

provisional measures ordered by the [Inter-American] Court"[300] in the matter of the *Mendoza Prisons*, designed, *inter alia*, to protect the life and personal integrity of the persons detained in the Mendoza Prison.[301] However, the State has not provided any evidence to prove that it has re-opened the investigations into the death of Ricardo David Videla Fernandez as of that date, as alleged by Argentina (*supra* para. 215).[302]

227. Based on all the above, the Court finds that Argentina is responsible for the violation of the rights contained in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Stella Maris Fernández and Ricardo Roberto Videla, mother and father of Ricardo David Videla Fernández, owing to the lack of due diligence in the investigations to clarify the death of their son.

A.2.2.2. Other alleged violations

228. Regarding the argument of the representative that, supposedly, the evidence collected under judicial file P-46824/05 was assessed arbitrarily, because some pieces of evidence were given preference over others, the Court underlines that the international jurisdiction is subsidiary in nature,[303] reinforcing and complementary;[304] hence, it does not perform the functions of a court of "fourth instance." The Court is called on to decide whether, in the specific case, the State violated a right protected by the Convention, thereby incurring international responsibility. Therefore, this Court will not rule on this point.

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300 *Cf.* Decree No. 2740 of the Governor of the province of Mendoza, annex to the decree, paragraph B.2.b), B.O. No. 28,260 of the province of Mendoza, November 17, 2008 (merits file, tome II, folio 922).

301 *Cf. Matter of the Mendoza Prisons. Provisional measures with regard to Argentina.* Order of the Inter-American Court of Human Rights of November 22, 2001, first and second operative paragraphs; *Matter of the Mendoza Prisons. Provisional measures with regard to Argentina.* Order of the Inter-American Court of Human Rights of June 18, 2006, first operative paragraph, and *Matter of the Mendoza Prisons. Provisional measures with regard to Argentina.* Order of the Inter-American Court of Human Rights of March 30, 2006, first and second operative paragraphs.

302 In this regard, the Court observes that the State cited as evidence of these allegations a document entitled "Annex I(b) Judicial proceedings related to the facts alleged by the IACHR and the representative of the petitioners before the Inter-American Court," which contains, among other matters, a summary of the actions taken in the judicial proceedings opened in relation to the death of Ricardo David Videla. However, this document does not contain any reference to the entity that prepared it or any other element that would allow the Court to determine its probative value.

303 *Cf. Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs.* Judgment of November 24, 2006. Series C No. 157, para. 66, *and Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012 Series C No. 240, para. 38.

304 The Preamble to the American Convention states that the international protection is designed to "reinforc[e] or complement the protection provided by the domestic law of the American States." See also, *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights* (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 31; *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 26, and *Case of González Medina and family members v. Dominican Republic*, para. 38.

229. As for the alleged lack of diligence in the investigation owing to the lapse of approximately seven months between August 2005 and March 2006, during which supposedly "no evidentiary action was taken" (*supra* para. 214), this Court verified that, on the day that Ricardo David Videla Fernandez died, judicial file P-466824/05 was opened and an autopsy was performed on the inmate's body. In addition, on June 30, 2005, Gustavo Olguín Masotto, a member of the Forensic Police, inspected the cell occupied by Videla Fernández. Furthermore, between June and September 2005, at least seven testimonial statements were taken from the staff of the Mendoza Provincial Prison, four testimonial statements from persons incarcerated together with Ricardo Videla, and two testimonial statements from members of the Prison Policy Monitoring Commission. Also, statements were taken from another person who visited the prison with the said Commission during the days prior to the death of Videla Fernandez, from the doctor of the Prison Service, and from the Prison nurse (*supra* para. 109). Similarly, on March 17 and May 12, 2006, an inmate and a guard at the Mendoza Prison testified once again. On June 6, 2006, investigating prosecutor Curri requested that the file be archived, and on July 24, 2006, the judge responsible for procedural safeguards of the 10th Court of First Instance of Mendoza ordered that the case be closed. Thus, this Court has no elements to consider that a period of procedural inactivity of approximately six months between September 2005 and March 2006 was unreasonable for this type of investigation, notwithstanding the contents of section A.2.1.1 of this Chapter.

B. Investigation of the acts of torture against Lucas Matías Mendoza and Claudio David Núñez

B.1. Arguments of the Commission and pleadings of the parties

230. The Commission indicated that the State had failed to comply with its obligation to investigate effectively all the reports of acts of torture, because "both the investigating prosecutor and the judge of the case took very little action to discover the causes of the reported incidents." It argued that the State had closed "the criminal cases undertaken based on the abuse suffered" by the youths Núñez and Mendoza "because the victims did not individualize the perpetrators of the act." Therefore, the Commission concluded that the facts were not investigated "diligently and effectively" and that the State had violated, to the detriment of Lucas Matías Mendoza and Claudio David Núñez, Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

231. The representative argued that "[e]ven though the injuries [of Lucas Matías Mendoza and Claudio David Núñez] were verified by a medical examiner from the national Prison Oversight Office and by a forensic physician from the National Justice Department, the investigations opened to identify those responsible for these facts were unsuccessful, in clear violation of Articles 8(1) and 25 [of the American Convention] and [Articles] 1 and 6 [of the Convention Against Torture]." According to the representative, "without taking into account the special situation of vulnerability of [the presumed victims] owing to the difficulties faced by individuals deprived of their liberty to assert their claims, the presiding judge of Federal Criminal and Correctional Court No. 2 of Lomas de Zamora closed the investigations, based on

'the limited collaboration' of the victims […]." The State did not submit any arguments on this point.

B.2. Considerations of the Court

232. This Court has indicated that, under Article 1(1) of the American Convention, the obligation to guarantee the rights recognized in Article 5(1) and 5(2) of the American Convention entails the obligation of the State to investigate possible acts of torture or other cruel, inhuman or degrading treatment.[305] This obligation to investigate is increased by the provisions of Articles 1, 6 and 8 of the Convention Against Torture,[306] which oblige States to "take effective measures to prevent and punish torture within their jurisdiction," and also "to prevent and punish other cruel, inhuman or degrading treatment." Furthermore, pursuant to the provisions of Article 8 of this Convention, States Party must 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[, and]
>
> Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, […] that their respective authorities will proceed *ex officio* and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal proceedings. […]

233. As previously established, in this case, the obligation to investigate the acts of torture committed against Lucas Matías Mendoza and Claudio David Núñez arose from the moment their defense counsel filed a complaint concerning the events. In addition, the Court emphasizes that the statements they made before different bodies, and the medical reports issued following the examinations they underwent, attested to the injuries they suffered while they were incarcerated in Ezeiza Federal Prison Complex I. Some of these reports recorded injuries to the young men's feet consistent with the application of the "*falanga*" (*supra* para. 207).

234. In this regard, the Court reiterates that whenever there are indications that torture has occurred, the State must open an impartial, independent and thorough investigation, *ex officio* and immediately, that allows the nature and origin of the injuries observed to be determined,

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305 *Cf. Case of Ximenes Lopes v. Brazil. Merits, reparations and costs.* Judgment of July 4, 2006. Series C No. 149, para. 147, and *Case of Gudiel Álvarez (Diario Militar) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012 Series C No. 253, para. 274.

306 Article 1 of the Inter-American Convention to Prevent and Punish Torture establishes that: [t]he States Parties undertake to prevent and punish torture in accordance with the terms of this Convention."

Furthermore, Article 6 stipulates that: "[i]n 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 and degrading treatment or punishment within their jurisdiction."

those responsible to be identified, and their prosecution to commence.[307] It is essential that the State act diligently to avoid alleged acts of torture or cruel, inhuman and degrading treatment, taking into account that the victim usually abstains from denouncing the facts because he is afraid, especially when he is deprived of his liberty and in the State's custody. Also, the judicial authorities have the duty to guarantee the rights of the individual deprived of liberty, which entails obtaining and protecting any evidence that can prove any alleged acts of torture.[308]

235. Thus, the Court observes that, in this case, two investigations were opened in relation to the acts of torture, one into those perpetrated against Lucas Matías Mendoza and the other into those perpetrated against Claudio David Núñez. However, the prosecutor in charge requested the closure of the investigations after approximately six months because the victims had failed to identify the supposed perpetrators and owing to their "limited collaboration." This occurred despite the existence of various medical reports and different statements about what happened to inmates Mendoza and Núñez, to the effect that they had been beaten by prison staff all over their bodies and on the soles of their feet; that the said prosecutor had responded by indicating that he "was in no position to deny the existence of the alleged incident," and that the inmates had expressed their fear of reprisals for making the complaints, which could explain their supposed lack of collaboration (*supra* paras. 133, 205 and 207). The case file does not show that the State took any action in relation to these claims by the young inmates. The Court does not have any evidence either that statements were taken from anyone who was working at Ezeiza Federal Prison Complex I on the day of the events. Therefore, the Court considers that, in this case, the State placed its obligation to investigate upon the presumed victims, despite the fact, that this obligation cannot depend upon the procedural initiative of the victims or their next of kin or on their offer of probative elements (*supra* para. 218).

236. Finally, the Court observes that, in this case, the investigations were closed without the State having provided a satisfactory and convincing explanation about what happened in order to disprove the presumption of State responsibility for the torture suffered by Lucas Matías Mendoza and Claudio David Núñez (*supra* para. 235). In light of the foregoing, the Court concludes that the State is responsible for the violation of Articles 8(1), and 25(1) of the American Convention, in relation to Article 1(1) of this treaty, as well as for the failure to comply with the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Lucas Matías Mendoza and Claudio David Núñez.

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307 Cf. Case of Gutiérrez Soler v. Colombia. Merits, reparations and costs. Judgment of September 12, 2005. Series C No. 132, para. 54, and Case of Cabrera García and Montiel Flores v. Mexico, para. 135.

308 *Cf. Case of Cabrera García and Montiel Flores v. Mexico,* para. 135.

C. Right to appeal the sentence

C.1. Arguments of the Commission and pleadings of the parties

237. The Inter-American Commission argued that, owing to the applicable legal framework and the existence of a deep-rooted judicial practice of interpreting it restrictively, there was a serious limitation to the perspectives of effectiveness of any allegation that did not fall within what had historically been considered "reviewable" by cassation. It argued that each appeal filed by the defense counsel of the presumed victims was rejected because it sought the review of factual matters and of assessment of evidence, and this is incompatible with the broad scope of the remedy provided for in Article 8(2)(h) of the American Convention. According to the Commission, "in this specific case, [this] was especially serious, because of the nature of the sentence imposed on the victims and their special condition at the time they committed the conducts they were charged with." Consequently, the Commission indicated that it was "understandable that the victims' defense counsel, in seeking for the appeal to be admitted and decided, did not request a review of factual matters or of assessment of evidence"; but, instead, they formulated arguments "based above all on the application of incorrect laws, on the unconstitutionality of the sentence, or on its manifest arbitrariness." In that sense, the Commission indicated that it should be taken "into account that the victims began the review stage with a constraint *a priori* regarding the arguments they could present." The Commission referred to the Casal judgment, cited by the State (*infra* para. 239), and affirmed that it "assessed it positively and underst[ood] it as a first effort to harmonize judicial practice with Argentina's international obligations in the area of human rights." Nevertheless, it indicated that the judgment "has not inspired sufficient changes." It considered that the State has made progress in ensuring the right to appeal a judgment, but significant challenges remained to the full realization of this right. Consequently, the Commission asked the Court to declare that the State had violated the right recognized in Article 8(2)(h) of the American Convention, in relation to Articles 1(1) and 2 thereof to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández.

238. The representative claimed that the victims' sentences had not been subject to a comprehensive review "because the courts did not authorize a review of facts that had been decided [and because] they had not made an effective analysis of the arguments submitted in each objection," owing to legislation that "restricted the review mechanisms." Regarding the Casal judgment, the representative argued that "despite [its] symbolic impact […], to date, the State has not modified the legal grounds that prevent a broad review of guilty verdicts, as in [the instant cases]." Regarding the particular cases of the presumed victims, in general, the representative agreed with the Commission's arguments. Lastly, regarding the decisions of March 9, 2012, in favor of Saúl Cristian Roldán Cajal, and of August 21, 2012, in favor of César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza, handed down as a result of the appeals for review that had been filed (*supra* paras. 41 and 94), the representative indicated that, pursuant to the Code of Criminal Procedure of the province of Mendoza, applicable to the former case, and the national Code of Criminal Procedure, applicable to the

latter, the appeal for review does not satisfy the requirements of the right established in Article 8(2)(h) of the Convention.

239. The State declared "the inadmissibility of the claims regarding the failure to respect the guarantee of a comprehensive review of the sentences." Regarding the appeals system established at both the national level and in the province of Mendoza, it maintained that, "in accordance with the guidelines established by the Supreme Court of Justice of the Nation in the Casal precedent […], it is only possible to decide the cassation procedure adequately to the extent that a comprehensive review of the conviction is guaranteed." Therefore, it contested the arguments regarding "the failure to comply with the binding decisions of the [Supreme Court of Justice of the Nation, because] they abide by a dispersed system of constitutional control adopted by the national Constitution (Articles 116 and 117)." The State also argued that the decision of the Mendoza Superior Court in favor of Saúl Cristian Roldán Cajal in the context of an appeal in cassation reflects some application of and following up on the criteria of the Supreme Court, particularly those of the Casal judgment. As for the specific situation of each of the convicted youths, the State argued that "[the Commission did not advise which] defense contentions or arguments the youths were prevented from asserting before the higher courts, particularly when it indicate[d] that the defense counsel reserved some possible grounds for appeal in view of the probable rejection of the appeal for formal reasons." The State questioned why, having the route of an appeal immediately available after being notified personally by the national Ombudsman's Office, the convicted youths failed to file the relevant appeals, and the said counsel did not advise them to do this. Accordingly, it concluded that "it is clear that the convicted youths did not exhaust all the available remedies for the full exercise of their right to defense during a trial […]; proof of this is the current processing before the Second Chamber of the Federal Criminal Cassation Chamber [of] the appeals for review […]" filed in favor of César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza (*supra* para. 94). Therefore, the State maintained that the legislative system currently in force is suitable not only for regulating the determination of the sentence, but also to rectify judicial decisions."

C.2. Considerations of the Court

240. In this case, both the Inter-American Commission and the representative have argued that, owing to laws that are still in force regarding appeals, at both the national level and in the province of Mendoza, the appeals in cassation filed by the five victims sentenced to life imprisonment and reclusion for life, respectively, were rejected and failed to obtain a comprehensive review of the sentences pursuant to the provisions of Article 8(2)(h) of the American Convention. The State argued, on the one hand, that the victims had not exhausted all available remedies, because a review of the convictions of Saúl Cristian Roldán Cajal, César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza had even been authorized subsequently. On the other hand, it denied that the current legislation was contrary to the right to appeal a judgment, because this issue had been decided by the Supreme Court of Justice of the Nation in the "Casal" judgment. The Court will now refer to these two aspects.

241. Article 8(2) of the Convention establishes the protection of the minimum guarantees in favor of "[e]very person accused of a criminal offense." The Court understands that Article 8(2) refers, in general terms, to the minimum guarantees for a person who is subjected to an investigation and criminal proceedings. These minimum guarantees must be protected at the different stages of the criminal proceedings, which include the investigation, indictment, prosecution, and sentencing. The last subparagraph, which enumerates these guarantees, that is (h), refers to the "right to appeal the judgment to a higher court." This is a guarantee for the individual in relation to the State, and not just a recommendation to guide the design of the appeals system in the legal systems of the State Parties to the Convention.

242. The Court has indicated that the right to appeal the judgment is a crucial guarantee that must be respected as part of the due process of law, in order to permit the review of an adverse decision by a different and higher judge or court.[309] The right to review by a higher court, represented by the access to a remedy that grants the possibility of a complete review of the sentence, confirms the merits and gives greater credibility to the jurisdictional act of the State while, at the same time, offering greater security and protection to the rights of the individual who has been convicted.[310] The Court has also indicated that, the important point is that the remedy must guarantee the possibility of a comprehensive examination of the decision appealed.[311]

243. The right to contest the judgment seeks to protect the right of defense to the extent that it grants the possibility of filing an appeal to prevent a decision adopting in a flawed proceeding, containing errors that cause undue prejudice to a person's interests, from becoming final.[312]

244. The Court has indicated that Article 8(2)(h) of the Convention refers to an accessible and efficient ordinary remedy.[313] This assumes that it must be guaranteed before the judgment becomes *res judicata*.[314] The effectiveness of the remedy means that it must obtain results or answers in relation to the purpose for which it was conceived.[315] Also, the remedy must be accessible; in other words, it should not require complex formalities that would render this right illusory.[316] In this regard, the Court finds that the formalities required for the appeal

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309 *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of July 2, 2004. Series C No. 107, para. 158, and *Case of Mohamed v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 23, 2012. Series C No. 255, para. 97.

310 *Cf. Case of Barreto Leiva v. Venezuela. Merits, reparations and costs.* Judgment of November 17, 2009. Series C No. 206, para. 89, and *Case of Mohamed v. Argentina,* para. 97.

311 *Cf. Case of Herrera Ulloa v. Costa Rica,* para. 165, and *Case of Mohamed v. Argentina*, para. 97.

312 *Cf. Case of Herrera Ulloa v. Costa Rica,* para. 158, and *Case of Mohamed v. Argentina*, para. 98.

313 *Cf. Case of Herrera Ulloa v. Costa Rica,* paras. 161, 164, 165 and 167, and *Case of Mohamed v. Argentina,* para. 99.

314 *Cf. Case of Herrera Ulloa v. Costa Rica,* para. 158, and *Case of Mohamed v. Argentina,* para. 99.

315 *Cf. Case of Herrera Ulloa v. Costa Rica,* para. 161, and *Case of Mohamed v. Argentina,* para. 99.

316 *Cf. Case of Herrera Ulloa v. Costa Rica*, para. 164, and *Case of Mohamed v. Argentina,* para. 99.

to be admitted should be minimal and should not constitute an obstacle to the appeal fulfilling its objective of examining and deciding the grievances claimed by the appellant.[317]

245. It should be understood that, regardless of the appeals system or regime adopted by the States Parties, and the name given to the means of contesting a conviction, for it to be effective, it must constitute an appropriate means of obtaining the rectification of a wrongful conviction. This means that it must be able to analyze the facts, evidence and law on which the contested judgment was based, because, in jurisdictional activities, interdependence exists between the determination of the facts and the application of the law, so that an erroneous determination of the facts entails an incorrect application of the law. Consequently, the grounds for the admissibility of the appeal should make an extensive control of the contested sentence possible.[318]

246. Furthermore, the Court considers that, in the rules that States develop in their respective appeals systems, they must ensure that this remedy against a conviction respects the minimum procedural guarantees that, under Article 8 of the Convention, are relevant and necessary to decide the grievances claimed by the appellant, which does not mean that a new trial must be conducted.[319]

247. In this specific case, the Court also finds it desirable to emphasize that the right to appeal the judgment is also provided for in the Convention on the Rights of the Child. Article 40(2)(b)(v) states that: "every child alleged as or accused of having infringed the penal law has at least the following guarantees: […] to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law." In this regard, the Committee on the Rights of the Child has interpreted that, according to this provision, "[t]he child has the right to appeal against the decision by which he is found guilty of the charge(s) brought against him/her and against the measures imposed as a consequence of this guilty verdict. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body; in other words, a body that meets the same standards and requirements as the one that dealt with the case in the first instance."[320] It has also considered that this right "is not limited to the most serious offences."[321] Therefore, the right to appeal the judgment becomes especially relevant when determining the rights of children, when they have been sentenced to imprisonment for the perpetration of offenses.

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317 *Cf. Case of Mohamed v. Argentina*, para. 99.

318 Cf. Case of Mohamed v. Argentina, para. 100.

319 Cf. Case of Mohamed v. Argentina, para. 101.

320 *Cf.* Committee on the Rights of the Child, General Comment No. 10, "Children's rights in juvenile justice", CRC/C/GC/10, 25 April 2007, para. 60.

321 *Cf.* Committee on the Rights of the Child, General Comment No. 10, "Children's rights in juvenile justice", CRC/C/GC/10, 25 April 2007, para. 60.

C.2.1. The right to appeal the judgments convicting César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández

248. Taking into account the arguments of the parties and the proven facts regarding the proceedings against the presumed victims, the Court will determine whether their right to appeal the judgment that sentenced them to life imprisonment and reclusion for life, respectively, was violated.

249. Among other remedies, the presumed victims filed appeals in cassation against the judgments convicting them. As shown in the following paragraphs, under the national legislation on criminal procedure, and that of the province of Mendoza, cassation is the appropriate remedy against a judgment that hands down a criminal conviction against an individual who commits offenses while under 18 years of age.

250. The national Code of Criminal Procedure establishes the appeal in cassation in the following terms:[322]

> Admissibility
> Art. 456. The remedy of cassation may be filed for the following reasons:
> 1) Non-compliance with or wrongful application of the substantive law.
> 2) Non-compliance with the norms established in this Code regarding inadmissibility, extinction or nullity, provided that, with the exception of cases of absolute nullity, the appellant has filed a claim to remedy the defect opportunely if this was possible, or declared that he will file an appeal in cassation.
>
> Decisions subject to appeal
> Art. 457. In addition to the cases especially provided for by law and subject to the limitations established in the following articles, this remedy may be filed against final judgments and court orders that terminate the action or the sentence, or that make it impossible to continue the proceedings, or that deny the extinction, substitution, or suspension of the sentence.
>
> Cassation for violation of the law
> Art. 470. If the contested decision did not observe or wrongfully applied the substantive law, the Court shall annul it and decide the case according to the law and the legal doctrine declared applicable.
>
> Annulment
> Art. 471. If the procedural norms were breached, the chamber shall annul the proceedings and refer the case to the appropriate court for trial.

251. Meanwhile, the Code of Criminal Procedure of the province of Mendoza also establishes the appeal in cassation:[323]

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[322] *Cf.* National Code of Criminal Procedure (file of annexes to the submission of the case, tome VII, folios 4180 to 4184).

[323] *Cf.* Code of Criminal Procedure of the province of Mendoza (file of annexes to the submission of the case, tome VIII, folio 4259).

> Admissibility
> Art. 474. Grounds.
> The appeal in cassation may be filed for the following reasons:
> 1) Non-compliance with or wrongful application of the substantive law.
> 2) Non-compliance with the norms established in this Code regarding inadmissibility, extinction or nullity, provided that, with the exception of cases of absolute nullity, the appellant has filed a claim to remedy the defect opportunely, if this was possible, or declared that he will file an appeal in cassation.
>
> Art. 475. Decisions subject to appeal
> In addition to the cases especially provided for by law and subject to the limitations established in the following articles, this remedy may be filed against final judgments and court orders that terminate the action or the sentence, or that make it impossible to continue the proceedings, or that deny the extinction, substitution, or suspension of the sentence.

252. The foregoing reveals that the appeal in cassation is regulated in similar terms in the legislation applicable to the federal capital and that applicable in the province of Mendoza. Consequently, the analysis made in this chapter will take this situation into account.

253. According to the legislation in force at the time of the facts, a conviction could be contested by an appeal in cassation in two situations: (1) erroneous application of the substantive law to the facts of the case, and (2) violation of any of the procedural rules. In the first situation, "the facts considered proved during the oral hearing are not discussed, […] but rather, the substantive legal rule that the court applied to decide the case is questioned."[324] In the second situation, "the facts that the trial court found to have been proved are not discussed either, but rather […] the way in which the court reached [that conclusion]"; in other words, whether any of the rules of procedure were violated.[325] Consequently, the Court observes that, given the way in which the remedy is regulated, the literal wording of the laws that regulate the appeal in cassation make it impossible for a higher court to review matters of fact and/or evidence (*supra* paras. 250 and 251) In this regard, the State argued that, since 2005, full review of the judgment is possible, because the Supreme Court of Justice of the Nation decided this in the Casal judgment.[326]

254. In this regard, this Court observes that the pertinent part of the "Casal judgment" establishes that the remedy of cassation was historically limited to legal issues, because it was created to that a higher court could exercise control of the work of lower court judges, to prevent their judgments being contrary to the text of the law. Under this classic schema, the decisions made by the judges on the facts could not be changed. Therefore, during the appeal in cassation, historically, a complete separation was made between factual issues and legal

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[324] *Cf.* Expert opinion of Alberto Bovina provided by affidavit on August 24, 2012 (merits file, tome II, folio 1295).

[325] *Cf.* Expert opinion of Alberto Bovino provided by affidavit on August 24, 2012 (merits file, tome II, folio 1296).

[326] *Cf.* Judgment of the Supreme Court of Justice of the Nation of September 20, 2005, in the case of "Casal, Matías Eugenio *et al.* ref/ attempted common theft," paras. 24 to 26 (file of annexes to the submission of the case, tome VIII, folios 4285 to 4289).

issues in order to decide whether or not a judgment could be appealed. The appeal in cassation was limited to legal issues.[327] However, the highest court of Argentina indicated that the delimitation between these areas "although it appears to be clear in principle, when confronted with real cases is almost inoperable [… because], moreover, a factual issue may become a legal issue and vice versa."[328] In this way, the Supreme Court of the Nation indicated that "the limitation of the appeal in cassation to the so-called issues of law is discarded definitively."[329] In other words, if the wrong committed against the convicted individual is considered a matter of fact and evidence, this cannot be used as an excuse to deny, *ipso facto,* the examination of the possible errors in the judgment. Consequently, the Supreme Court stated that "Articles 8(2)(h) of the American Convention and 14(5) of the [International] Covenant [on Civil and Political Rights] require the review of everything that is not exclusively reserved to those who were present as judges during the oral proceedings"[330] and, therefore, any error that the judgment could contain shall be a matter that can be appealed, with the exception of what was perceived, only and directly, by the judges during the said stage.[331]

255. It is pertinent to stress that the criteria evident from the Casal judgment were subsequent to the decisions taken on the appeals in cassation filed on behalf of the presumed victims in this case. Therefore, the analysis of the relevance of this judgment, in the terms indicated by the State, will be made in the pertinent chapters of this Judgment (*infra* paras. 299 to 303).

256. It is evident from the above that the appeals in cassation filed in favor of Saúl Cristian Roldán Cajal,[332] Ricardo David Videla Fernández,[333] César Alberto Mendoza,[334] Claudio David

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327 *Cf.* Judgment of the Supreme Court of Justice of the Nation of September 20, 2005, in the case of "Casal, Matías Eugenio *et al.* ref/ attempted common theft," paras. 9 and 10 (file of annexes to the submission of the case, tome VIII, folios 4275 to 4276).

328 *Cf.* Judgment of the Supreme Court of Justice of the Nation of September 20, 2005, in the case of "Casal, Matías Eugenio *et al.* ref/ attempted common theft," para. 26 (file of annexes to the submission of the case, tome VIII, folios 4287 to 4288).

329 *Cf.* Judgment of the Supreme Court of Justice of the Nation of September 20, 2005, in the case of "Casal, Matías Eugenio *et al.* ref/ attempted common theft," para. 25 (file of annexes to the submission of the case, tome VIII, folio 4287).

330 *Cf.* Judgment of the Supreme Court of Justice of the Nation of September 20, 2005, in the case of "Casal, Matías Eugenio *et al.* ref/ attempted common theft," para. 24 (file of annexes to the submission of the case, tome VIII, folio 4286).

331 *Cf.* Judgment of the Supreme Court of Justice of the Nation of September 20, 2005, in the case of "Casal, Matías Eugenio *et al.* ref/ attempted common theft," paras. 24 and 25 (file of annexes to the submission of the case, tome VIII, folios 4285 to 4287).

332 On April 3, 2002, the official Public Defender filed an remedy of cassation against the conviction, which was rejected on August 5, 2002, by the Second Chamber of the Supreme Court of Justice of the province of Mendoza (*supra* para. 87). Among other elements, the Chamber indicated that: "[t]he procedural sphere of the remedy of cassation] is limited to matters of law; in other words, it is only concerned with the examination of the juridical accuracy of the judgment, in both its formal and substantive aspects. Consequently, matters relating to the determination of the factual circumstances and the assessment of the evidence fall outside its sphere, with the exception of presumptions of arbitrariness." *Cf.* Decision of the Supreme Court of Justice of the province of Mendoza of August 5, 2002 in case No. 73,771 (file of annexes to the pleadings and motions brief, tome XIII, folios 7007 to 7008).

Núñez and Lucas Matías Mendoza[335] were rejected, basically, on the grounds that what was sought was a review of issues related to the facts and the evidence, including the questioning of the sentence to life imprisonment, which were beyond the scope of the appeal for review established in Article 474 of the Code of Criminal Procedure of the province of Mendoza, and Article 456 of the national Code of Criminal Procedure. Based on rigid formulas contrary to the integral review of the judgment in the sense required by the Convention, the rejection of the appeals in cassation was *in limine*, without any examination of the merits of the matter, and without considering that issues relating to the facts and evidence could also have an impact on the rectification of a criminal conviction (*supra* para. 253). In terms of case law on the scope of the right to appeal the judgment, the decisions rendered on the appeals in cassation were contrary to the provisions of Article 8(2)(h) of the American Convention.

257. The Court also underscores that, when this case was being processed before this Court, in both the judgment of March 9, 2012, delivered by the Supreme Court of Justice of the province of Mendoza in favor of Saúl Cristian Roldán Cajal, as well as the judgment of the

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333 On December 19, 2002, the defense counsel of Ricardo David Videla Fernández filed appeals in cassation for six of the joindered cases for which he had been sentenced to life imprisonment. The Supreme Court of Justice of the province of Mendoza reject these appeals on April 24, 2003 (*supra* para. 91). In this regard, it stated, *inter alia*, that: "[r]egarding the failure to provide the grounds for the sentence, [… t]his way of contesting the judgment denatures the remedy of cassation, by seeking an examination *ex novo* of the case, which means that it is formally unviable, owing to the exceptional and restrictive nature of this special stage. […] Regarding the alleged substantive error, this must also be rejected; […t]his way of submitting the problem leads to its formal unfeasibility, because the contestation does not respect the facts that were considered to be true, and these represent an unavoidable limit to cassation, because the task of control of legality assigned to this court, supposes respect for the facts established in the *dictum*." *Cf.* Judgment of the Supreme Court of Justice of the province of Mendoza of April 24, 2003, in case No. 76,063 (file of annexes to the submission of the case, tome IX, folios 5080 and 5082).

334 On November 16, 1999, the Official Public Defender of the case filed an appeal in cassation against the judgment convicting César Alberto Mendoza. On November 30, 1999, the Juvenile Oral Court rejected the appeal (*supra* para. 79) considering, among other matters, that "[cassation] is a way of contesting the judgment to rectify a legal error in the judgment […]. […] The National Criminal Cassation Chamber (Second Chamber) has decided […] that 'the assessments made by the judges […] to graduate the punishment to impose are […] excluded from control by cassation' […]. Consequently, we understand that the appeal in cassation filed […] must be rejected." *Cf.* Ruling of Juvenile Oral Court No. 1 of November 30, 1999, in case No. 1,084 (file of annexes to the submission of the case, tome VIII, folios 4453 to 4454). Against this ruling, the official Public Defender of the case filed a remedy of complaint owing to the rejection of the appeal in cassation. This remedy was rejected by the Second Chamber of the National Criminal Cassation Chamber in a ruling of June 23, 2000 (*supra* para. 80), in which it considered, *inter alia*, that: "the rules that govern the individualization of the punishment are reserved for application by the judges of the merits and, in principle, are beyond the control of cassation […]." *Cf.* Decision of the Second Chamber of the National Criminal Cassation Chamber of June 23, 2000, in case No. 2544 (file of annexes to the submission of the case, tome VIII, folio 4470).

335 Three appeals in cassation were filed against the judgment convicting Claudio David Núñez and Lucas Matías Mendoza. On May 6, 1999, the Juvenile Oral Court ruled in this regard, rejecting the appeals (*supra* para. 83). Among other considerations, that court indicated that: "[a]ll matters relating to the assessment of the evidence are reserved to the trial court and fall outside the remedy of cassation, as is the method chosen by the court to make its analysis […]. […T]he Criminal Cassation Chamber has indicated that the criteria for graduating the punishment are reserved to the court hearing the merits, which 'is, in principle, sovereign as regards the graduation of the punishment to be imposed' […]. […ᴍ]atters relating to the facts and the assessment of the evidence fall outside the sphere of the remedy in question." *Cf.* Decision of Juvenile Oral Court No. 1 of May 6, 1999 (file of annexes to the submission of the case, tome VIII, folios 4728 to 4730).

Second Chamber of the Federal Criminal Cassation Chamber of Mendoza handed down in favor of César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza on August 21, 2012, regarding the appeals for review filed after the issue of Merits Report No. 172/10 in this case (*supra* paras. 92, 94 and 164), it was also established that the appeals in cassation had been rejected based on the argument that the defense counsel sought a review of issues of fact and evidence, and that these matters were "beyond the scope [of the remedy]."[336] Applying control of conformity with the Convention, it was recognized that these criteria had been contrary to the provisions of Article 8(2)(h) of the American Convention and that, in particular, they had not afforded an integral review of the decision appealed and of the issues discussed and analyzed by the lower court.[337]

258. Lastly, the Court finds it pertinent to refer to the State's arguments regarding the possibility for the victims, with the exception of Ricardo David Videla Fernández, to file appeals for review by which, finally, the sentences to life imprisonment and reclusion for life, respectively, were annulled. This remedy is regulated as follows in the national Code of Criminal Procedure:[338]

> Appeal for Review
> Admissibility
> Art. 479. The appeal for review shall be admissible at all times and in favor of the convicted person, against final judgments when:
> 1) The facts established as the grounds for the conviction are irreconcilable with those established for another irrevocable criminal judgment.
> 2) The contested judgment was founded on documentary or testimonial evidence the falseness of which has been declared in a subsequent irrevocable judgment.
> 3) The conviction has been pronounced as a result of malfeasance, bribery, or another offense the existence of which has been declared in a subsequent irrevocable judgment.
> 4) Following the conviction, new facts or probative elements supervene or are discovered, which alone or together with those already examined in the proceedings, clearly establish that the act did not exist, that the convicted person did not commit it, or that the act committed falls under a more favorable criminal law.
> 5) A more lenient criminal law than the one applied in the judgment shall be applied retroactively.

259. Also, the Code of Criminal Procedure of the province of Mendoza indicates:[339]

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336 *Cf.* Decision of the Supreme Court of Justice of the province of Mendoza of March 9, 2012, in case No. 102,319 (file of annexes to the answering brief, tome XV, folio 7892), and Judgment of the Federal Criminal Cassation Chamber of August 21, 2012, in case No. 14,087 (file of annexes to the representative's final written arguments, tome XVII, folios 8200 to 8201 and 8218 to 8219).

337 *Cf.* Judgment of the Federal Criminal Cassation Chamber of August 21, 2012, in case No. 14,087 (file of annexes to the representative's final written arguments, tome XVII, folio 8219), and Decision of the Supreme Court of Justice of the province of Mendoza of March 9, 2012, in case No. 102,319 (file of annexes to the answering brief, tome XV, folios 7890 and 7894 to 7895).

338 *Cf.* National Code of Criminal Procedure (file of annexes to the submission of the case, tome VII, folios 4185).

339 *Cf.* Code of Criminal Procedure of the province of Mendoza (file of annexes to the submission of the case, tome VIII, folio 4260).

Review
Art. 495. Grounds
The appeal for review shall be admissible at all times and in favor of the convicted person, against final judgments:
1) If the facts established as the grounds for the conviction are irreconcilable with those established for another irrevocable criminal judgment.
2) When the contested judgment was founded on documentary or testimonial evidence the falseness of which has been declared in a subsequent irrevocable judgment.
3) If the conviction has been pronounced as a result of malfeasance, bribery, or another offense the existence of which has been declared in a subsequent irrevocable judgment.
4) When, following the conviction, new facts or probative elements supervene or are discovered, which alone or together with those already examined in the proceedings, clearly establish that the act did not exist, that the convicted person did not commit it, or that the act committed falls under a more favorable criminal law.
5) If the judgment is based on an interpretation of the law that is more onerous that the one upheld by the Supreme Court of Justice when the appeal is filed.
6) It the consent required by articles 359 and 418 was not given by the convicted person.

260. The Court observes that both cases refer to a special remedy that is appropriate against final judgments in certain circumstances. While the Court assesses positively that, in the instant case, the review of the convictions of César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza was obtained by the appeals for review after approximately 12 years, this type of remedy does not satisfy the right established in Article 8(2)(h) of the American Convention as regards the possibility of filing an appeal before the conviction becomes final and *res judicata*. However, the Court will take into account the decisions taken in the appeals for review in the chapter on reparations of this Judgment (*infra* paras. 328 to 332).

261. Based on the foregoing, because the appeal in cassation of the judgment was not sufficient to guarantee César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández the right to appeal the judgment, the Court considers that Argentina violated the right recognized in Article 8(2)(h) of the American Convention, in relation to Articles 19, 1(1) and 2 of this instrument, to their detriment.

D. Right to defense

D.1. Arguments of the Commission and pleadings of the parties

262. The Commission indicated that the State had not argued or proved that César Alberto Mendoza had been notified personally of the decision rejecting the special federal appeal filed in his favor *(supra* para. 95 and *infra* paras. 326 and 327), or that his defense counsel had advised him about it. According to the Commission, the information available reveals that "both circumstances led to his inability to continue defending himself up until the last instances provided for by domestic law," so that subparagraphs (e) and (d) of Article 8(2) of the American Convention, in relation to Article 1(1) of this instrument, were violated to his detriment. Regarding Saúl Cristian Roldán Cajal, the Commission also argued that it did not

have "documentation indicating that […] he was notified personally or was aware of [the decision rejecting the appeal in cassation that had been filed]." Similarly, with regard to César Alberto Mendoza, the Commission considered that the State "had failed to meet the burden of proof" and, "[t]aking into account that additional remedies could have been filed against this decision," it affirmed that the right to a defense of Saúl Cristian Roldán Cajal, recognized in subparagraphs (d) and (e) of Article 8(2) of the American Convention, in relation to the obligations established in Article 1(1) of this instrument, was violated.

263. The representative argued that the Court has recognized the "right to defense counsel," but that did not imply excluding the party concerned from the proceedings. In this regard, she affirmed that, in order to guarantee the right to a broad review of the guilty verdict and in accordance with the "obligation to provide information," the defense lawyer must "notify his or her client of decisions involving them." In addition, the representative argued that the right to personal notification had been recognized by the Supreme Court of Justice of the Argentine Republic. Regarding César Alberto Mendoza, she argued that "the exercise of his right to obtain a review of the decision that rejected his special appeal before the Supreme Court of Justice was thwarted [… because] his defense lawyer […] not only failed to file the corresponding remedy of complaint, but also failed to inform him of the existence of this remedy." Similarly, nor did Saúl Cristian Roldán Cajal "have the opportunity to exhaust all the available remedies, [… because] his defense lawyer, in addition to unilaterally waiving [… the right to file the remedy of complaint,] failed to inform his client about the procedural mechanisms available to him to reverse the decision that sentenced him to life imprisonment." Therefore, the representative asked the Court to declare that Argentina had violated the rights protected by Articles 1(1), 8(2)(d) and (e), and 19 of the American Convention, in light of Article 40(2) of the Convention on the Rights of the Child, to the detriment of César Alberto Mendoza and Saúl Cristian Roldán Cajal. The representative did not submit arguments concerning Claudio David Núñez and Lucas Matías Mendoza.

264. The State did not submit any arguments in this regard.

D.2. Considerations of the Court

265. Both the Commission and the representative argued that Cesar Alberto Mendoza and Saúl Cristian Roldán Cajal were not notified personally of decisions regarding which they could have filed appeals, thereby violating their right to a defense. The representative also indicated that in the domestic sphere, the right to personal notification of the interested party could be inferred from a judgment of the Supreme Court of Justice of the Argentine Republic of September 21, 2004, considering that "the possibility to obtain a new judicial ruling […] constitutes an faculty of the accused and not a technical possibility for the defense counsel."[340]

[340] *Cf.* Supreme Court of Justice of the Nation, "Dubra, David *et al.,"* judgment of September 21, 2004, para. 3 (file of annexes to the submission of the case, tome VII, folio 4410). This judgment indicates that: "what must be taken into account in order to calculate the time for filing the complaint is the personal notification of the accused of the decision that makes the conviction final – because the possibility of obtaining a new judicial ruling through the procedural remedies is a privilege of the accused and not a technical possibility for the defense counsel – and the eventual obtaining of evidence that guarantee fully the right to defense […]."

266. The Court finds it pertinent to indicate that neither the parties nor the Inter-American Commission provided the complete judicial files relating to the appeals filed by César Alberto Mendoza and Saúl Cristian Roldán Cajal. However, in the file of the case before this Court, there is no evidence that they were notified personally of the decision handed down on the special appeals filed by their defense counsel.

267. In this regard, subparagraphs (d) and (e) of Article 8(2) of the American Convention establishes the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing or by counsel provided by the State if the accused does not defend himself personally or engage his own counsel within the time period established by law. This provision does not expressly indicate that, having legal counsel, all decisions made on the appeals filed by the latter must also be notified personally to the accused. In this regard, the representative argued that this right could be inferred from a ruling of the Supreme Court of Justice of the Nation (*supra* para. 263). However, neither the Commission nor the representative explained how the 2004 ruling, which is therefore subsequent to the facts analyzed, could be taken into consideration by this Court to decide the matter raised. Therefore, the Court does not have any evidence to rule on the supposed violation of the rights recognized in Article 8(2)(d) and (e), in relation to Articles 1(1) and 19 of the American Convention, to the detriment of Cesar Alberto Mendoza and Saúl Cristian Roldán Cajal.

XI
RIGHT TO PERSONAL INTEGRITY OF THE VICTIMS' NEXT OF KIN

A. Arguments of the Commission and pleadings of the parties

268. The Commission considered that the State had violated the right to mental and moral integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, of the next of kin of César Alberto Mendoza,[341] Lucas Matías Mendoza,[342] Saúl Cristian Roldan Cajal,[343] Ricardo David Videla Fernández[344] and Claudio David Núñez[345] as a result,

[341] "Regarding Cesar Alberto Mendoza: his mother, Isolina del Carmen Herrera; his companion from 1999 to August 2007, Romina Beatriz Muñoz and his daughters and son, Isolina Aylen Muñoz, Sanira Yamile Muñoz and Santino Gianfranco Muñoz; his brothers and sisters: María del Carmen Mendoza, Roberto Cristian Mendoza, Dora Noemí Mendoza and Juan Francisco Mendoza, and his current partner, Gabriela Ángela Videla." *Cf.* Merits report No. 172/10 of the Inter-American Commission on Human Rights (merits file, tome I, folio 14).

[342] "Regarding Lucas Matías Mendoza: his grandmother, Elba Mercedes Pajón, his mother, Marta Graciela Olguín, his companion since 2006, Romina Vanessa Vilte, his son Lautaro Lucas Vilte, and Romina's sons and daughter, Junior González Neuman, Jazmín Adriadna Martínez and Emmanuel Martínez. Also, the brothers and sisters of Lucas: Omar Maximiliano Mendoza, Paola Elizabeth Mendoza, Verónica Albana Mendoza and Diana Salomé Olguín." *Cf.* Merits Report 172/10 of the Inter-American Commission on Human Rights (merits file, tome I, folio 14).

[343] "Regarding Saúl Cristian Roldán Cajal: his partner, Alejandra Garay; his mother, Florinda Rosa Cajal and her companion, Juan Caruso; his 11 siblings: Evelyn Janet Caruso Cajal, Juan Ezequiel Caruso Cajal, Cinthia Carolina Roldan, María de Lourden Roldan, Rosa Mabel Roldan, Albino Abad Roldan, Nancy Amalia Roldan, Carlos Roldan, Walter Roldan and Yohana Elizabeth Roldan." *Cf.* Merits Report 172/10 of the Inter-American Commission on Human Rights (merits file, tome I, folio 14).

among other matters, of: "the treatment […] incompatible with international standards that was accorded to the victims when they were sentenced to life imprisonment and reclusion for life respectively; the absence of a periodic review of the possibility of release […]"; "the lack of appropriate attention following [the] death [of Ricardo David Videla] in State custody," and the absence of an effective investigation into what happened, and "the effects […] of the violations of the personal integrity of Claudio David and Lucas Matías, the latter's loss of vision, and the absence of an adequate investigation of these facts."

269. The representative stated that the effects of the life sentences imposed on César Alberto Mendoza, Claudia David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández went beyond the sphere of their families, who "had to support the anguish of knowing" that the victims "would never be released from prison," and whose family structures were affected. She stressed that this situation subjected the families to "constant concern, anxiety and a sense of loss." The representatives also indicated that "the mothers suffered personally from the injuries to the bodies of their sons," who showed signs of wounds and injuries that could not be hidden. She also stressed the physical deterioration of the victims' mothers owing to the suffering and anguish caused by not knowing what "could happen to their sons in prison." Regarding Stella Maris Fernández, mother of the deceased inmate Ricardo David Videla, the representative emphasized that "[t]he grief over the death of her child had been increased […] by the uncertainty of not knowing how it happened."

270. With regard to the victims' children, the representative indicated that they also suffered the consequences of the life sentences imposed on their fathers, since they were unable to enjoy time with them outside the prison. Also, according to the representative, the children were forced to maintain their family ties within the limited spaces and times permitted by the prison system, with the risk of losing one of their parents. Lastly, regarding the alleged consequences suffered by the partners and former partners of the victims, the representative stressed that they had accompanied their partners during the years in prison and, at the same time, performed the tasks of raising their children under adverse circumstances. According to the representative, these tasks, added to the solitude, the life imprisonment of their partners, and the fact that they had to take on the responsibility of caring for their children without their respective partners had a considerable impact on them. Based on all the foregoing, the representative asked the Inter-American Court to declare that the State had violated "the rights protected in Articles 1(1) and 5(1) [of the Convention] with regard to the next of kin of: César Alberto Mendoza,[346] Claudio David Núñez,[347] Lucas Matías Mendoza,[348] Saúl Cristian Roldan Cajal[349] and Ricardo David Videla Fernández.[350]

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344 "Regarding Ricardo David Videla Fernández: his parents, Ricardo Roberto Videla and Stella Maris Fernández, and his siblings: Juan Gabriel Videla, Marilín Estefanía Videla, Esteban Luis Videla and Roberto Damián Videla". *Cf.* Merits Report 172/10 of the Inter-American Commission on Human Rights (merits file, tome I, folio 14).

345 "Regarding Claudio David Núñez: his mother, Ana María del Valle Britos; his companion Jorgelina Amalia Díaz and his daughter Saída Lujan Díaz. Also his brothers and sisters: Yolanda Elizabeth, Emely de los Ángeles, María Silvina and Dante[,] and his stepfather, Pablo Castaño." *Cf.* Merits Report 172/10 of the Inter-American Commission on Human Rights (merits file, tome I, folio 14).

346 Regarding Cesar Alberto Mendoza: (1) his mother, Isolina del Carmen Herrera; (2) his companion from 1999 to August 2007, Romina Beatriz Muñoz; his daughters and son: (3) Ailén Isolina Mendoza, (4) Samira Yamile Mendoza

271. The State indicated that, "regarding [the] arguments [of the representative], only the petitioners' account is included, while no other documents or means of proof were provided to the international court [… to prove] the existence of any claim […]."

B. Considerations of the Court

272. The Court will now analyze the arguments of the Commission and of the representatives concerning the alleged violation of the right to personal integrity of the next of kin of César Alberto Mendoza, Claudia David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, which was mentioned by the Court previously (*supra* para. 66).

B.1. Effects on the personal integrity of the victims' next of kin

273. The Court has stated on other occasions that the next of kin of the victims of human rights violations may be victims in their own right.[351] The Court has considered that the right to mental and moral integrity of some of the next of kin has been violated due to the suffering they experienced as a result of the acts or omissions of the State authorities,[352] taking into account, among other matters, the steps taken to obtain justice and the existence of close family ties.[353] It has also declared the violation of this right owing to the suffering resulting from the acts perpetrated against their loved ones.[354]

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and (5) Santino Geanfranco Mendoza; and his brothers and sisters: (6) María del Carmen Mendoza, (7) Roberto Cristian Mendoza, (8) Dora Noemí Mendoza and (9) Juan Francisco Mendoza.

347 Regarding Claudio David Núñez: (1) his mother, Ana María del Valle Brito, (2) his companion, Jorgelina Amalia Díaz, (3) his daughter, Zahira Lujan Núñez; his brothers and sisters: (4) Yolanda Elizabeth Núñez, (5) Emely de Los Ángeles Núñez, (6) María Silvina Núñez and (7) Dante Núñez, and (8) his stepfather, Pablo Roberto Castaño.

348 Regarding Lucas Matías Mendoza: (1) his grandmother, Elba Mercedes Pajón, (2) his mother, Marta Graciela Olguín, (3) his son, Lucas Lautaro Mendoza, and his brothers and sisters: (4) Omar Maximiliano Mendoza, (5) Elizabeth Paola Mendoza, (6) Verónica Luana Mendoza and (7) Daiana Salomé Olguín.

349 Regarding Saúl Cristian Roldán Cajal: (1) his mother, Florinda Rosa Cajal; (2) her companion, Juan Caruso, and his eight siblings: (3) Evelyn Janet Caruso Cajal, (4) Juan Ezequiel Caruso Cajal, (5) Cinthia Carolina Roldan, (6) María de Lourden Roldán, (7) Rosa Mabel Roldan, (8) Albino Abad Roldan, (9) Nancy Amalia Roldan, (10) Yohana Elizabeth Roldan, and (11) Jimena Abigail Puma Mealla.

350 Regarding Ricardo David Videla Fernández: his parents, (1) Ricardo Roberto Videla and (2) Stella Maris Fernández, and his siblings: (3) Juan Gabriel Videla, (4) Marilyn Estefanía Videla, (5) Esteban Luis Videla, (6) Lourdes Natalia Plaza and (7) Daniel David Alejandro Videla Plaza.

351 *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs.* Judgment of March 1, 2005. Series C No. 120, para. 113 and 114*, and Case of the Massacre of Santo Domingo v. Colombia*, para. 242.

352 *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, para. 290.

353 *Cf. Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 163, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, para. 290.

354 *Cf. Case of the Serrano Cruz Sisters v. El Salvador*, para. 113 and 114, and *Case of Furlan and family members v. Argentina,* para. 249.

B.1.1. Next of kin of César Alberto Mendoza

274. This Court considers it evident from the affidavits provided to it,[355] as well as from the social report on Cesar Alberto Mendoza in the case file, that his mother, Isolina del Carmen Herrera; his companion from 1999 until August 2007, Romina Beatriz Muñoz, and his daughters and son Ailén Isolina Mendoza, Samira Yamile Mendoza and Santino Geanfranco Mendoza, suffered psychological harm owing to the life sentence imposed on him. Thus, the Court observes that the social report records that Cesar Alberto Mendoza's mother perceived his imprisonment as the "loss of a member of the family," which caused her "profound pain" and adverse effects on their daily life.[356] The report also documented how Cesar Mendoza's imprisonment had a significant impact on the situation as a mother of Romina Beatriz Muñoz and on the raising of their children, whose growth and development were "adversely affected by their father's imprisonment."[357] According to the affidavit prepared by Ms. Muñoz, César Alberto Mendoza's children, Ailén, Zamira and Santino, "never […] knew [their father …] outside prison, and always saw him in grey, dark, enclosed spaces," a situation that negatively affected their conduct. Consequently, at the request of the authorities of the educational centers they attended, Ms. Muñoz had "to take all three to a psychologist." In particular, Ms. Muñoz stressed that it was difficult to explain to their eldest daughter, Ailén Mendoza, "that her father could remain in prison for ever."[358] Based on the foregoing, the Court considers that Argentina is responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Isolina del Carmen Herrera, Romina Beatríz Muñoz, Ailén Isolina Mendoza, Samira Yamile Mendoza and Santino Geanfranco Mendoza.

B.1.2. Next of kin of Claudio David Núñez

275. Regarding the harm suffered by the next of kin of Claudio David Núñez owing to the life sentence imposed on him, the Court observes, first, that his mother, Ana María del Valle Brito, testified before notary public:

> "I will never forget the moment when they sentenced him to life imprisonment. […] At that moment, I thought that they had taken him away from me forever […]. But, at the same time, I couldn't grasp the idea of life imprisonment, and I still hoped that he would be released. It fills you with anguish to think that you will never see him again. [… T]hey ruined his life. […] I think we all stopped smiling. We missed Claudio. […] Every time the 'phone ran, I froze. We expected the worst news from the

[355] *Cf.* Testimony by affidavit of Isolina del Carmen Herrera of August 21, 2012 (merits file, tome II, folios 1407 and 1408), and Testimony by affidavit of Romina Beatríz Muñoz of August 22, 2012 (merits file, tome II, folios 1428 to 1430).

[356] *Cf.* Social report on César Alberto Mendoza of November 30, 2011 (file of annexes to the pleadings and motions brief, folio 6699).

[357] *Cf.* Social report on César Alberto Mendoza of November 30, 2011 (file of annexes to the pleadings and motions brief, folio 6700).

[358] *Cf.* Testimony by affidavit of Romina Beatríz Muñoz of August 22, 2012 (merits file, tome II, folios 1428 and 1429).

> prison. Everything revolved around him. […] How can sentences this long exist? That they condemn people, children, to spend their entire life behind bars? […].[359]

276. Ms. del Valle Brito also emphasized that her son had "been treated very badly," and that "the whole family felt" his pain. Also, the case file shows that Ms. del Valle Brito's health deteriorated following her son's sentencing, which she perceived to be unjust.[360]

277. In addition, according to the social report on Claudio David Núñez provided by the representative, his partner, Jorgelina Amalia Díaz, "underscored that she had to give birth to [their daughter] absolutely alone, as well as the daily tasks of raising her," owing to his imprisonment. According to the report, Ms. Díaz indicated "that she suffers from depression and 'is always [stressed]' because, added to the different situations that occur in the context of Claudio's imprisonment, are the problems she experiences to satisfy her daughter's needs."[361]

278. Furthermore, the affidavit prepared by Ms. Diaz reveals that her father's prison regime has had an impact on their daughter, Zahira Lujan Núñez. In this regard, Ms. Diaz recounted that her daughter leaves the visits to her father "in tears […] because she doesn't want to leave without him. Each time we go to Unit No. 4, Zahira is very angry for a couple of days and only on the third of fourth day she once again behaves normally."[362]

279. In addition, regarding the alleged violation of the right to personal integrity of Pablo Roberto Castaño, stepfather of Claudio David Núñez, the Court observes that it has no evidence to prove any harm and will therefore not rule in this regard.

280. Consequently, the Court considers that Argentina is responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Ana María del Valle Brito, Jorgelina Amalia Díaz and Zahira Lujan Núñez.

B.1.3. Next of kin of Lucas Matías Mendoza

281. With regard to Martha Graciela Olguín and Elba Mercedes Pajón, mother and grandmother, respectively, of Lucas Matías Mendoza, the Court observes that, according to the social report submitted concerning him: "[t]he life sentence imposed on Lucas entailed a complete 'family breakdown,' a definitive change in the lives of all the next of kin […]. While the whole family group was affected, it was observed that the harm caused to Lucas's mother

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[359] *Cf.* Testimony by affidavit of Ana María del Valle Brito of August 22, 2012 (merits file, tome II, folios 1379 and 1380).

[360] *Cf.* Testimony by affidavit of Ana María del Valle Brito of August 22, 2012 (merits file, tome II, folios 1380), and Social report on Claudio David Núñez, of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XII, folio 6776).

[361] *Cf.* Social report on Claudio David Núñez of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XII, folio 6776).

[362] *Cf.* Testimony by affidavit of Jorgelina Amalia Díaz of August 21, 2012 (merits file, tome II, folios 1411).

and maternal grandmother was especially severe."[363] In this regard, the Court observes that, by affidavit, Martha Graciela Olguín stated:

> "When they read the sentence of life imprisonment, I felt that my heart was breaking. I think my mother and I were the only ones who cried […]. It was terrible. Perhaps we cried because we were the only ones that realized what this meant. Or almost, because everything that followed was worse; the collapse of the family, the loss of my son." [… The imprisonment of Lucas Matías Mendoza was a] torture that went outside the prison to the whole family. We have suffered so many moments of uncertainty, so much anguish. We lived awaiting 'phone calls, visits, transfers, trying to find out where he had been taken, how he was doing."[364]

282. Also, according to this social report, Ms. Olguín "recalled how traumatic it was to see [Lucas Matías] beaten, hurt, and to imagine what he had was enduring in prison, because he never told them anything about his life inside."[365] According to this inmate's mother, these concerns were made more acute owing to the fact that Lucas Matías suffered from problems with is eye sight.[366] Regarding Elba Mercedes Pajón, the Court observes that the social report indicated that, according to her, "in some way we were all prisoners." Lastly, regarding the effects on Lucas Lautano Mendoza, son of Lucas Matías Mendoza, the social report indicated that the child has an ambivalent attitude towards his father.[367]

283. Based on the above, the Court considers that the State violated the right recognized in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Marta Graciela Olguín, Elba Mercedes Pajón and Lucas Lautano Mendoza.

B.1.4. Next of kin of Saúl Cristian Roldán Cajal

284. Regarding to the presumed effects on the personal integrity of Florinda Rosa Cajal, mother of Saúl Cristian Roldán Cajal, the Court observes that she stated in an affidavit:

> [She could] not put into words what [she felt] as a mother; what it meant that they had condemned [her] son to life imprisonment […]. [T]o think of him locked up for life there was death itself. [… She didn't know if [she] wanted to die or what happened […]. Since Saúl [Cristian Roldán Cajal] was locked up, but especially since he was sentenced to life imprisonment, it was not the same. Above all, [her] health deteriorated. Prison marked [them] all in some way. Obviously, it is worse for Saúl […]. Before, [she] could go more often because [she] was better, but over the years [she has] been very ill, physically but also mentally. Sometimes [she gets] a paralysis. [She gets] medical checkups in a care

363 *Cf.* Social report on Lucas Matías Mendoza of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folio 6940).

364 *Cf.* Testimony by affidavit of Martha Graciela Olguín of August 22, 2012 (merits file, tome II, folios 1422).

365 *Cf.* Social report on Lucas Matías Mendoza of November 30, 2011. (file of annexes to the pleadings and motions brief, tome XIII, folio 6941).

366 *Cf.* Testimony by affidavit of Martha Graciela Olguín of August 22, 2012 (merits file, tome II, folios 1422).

367 *Cf.* Social report on Lucas Matías Mendoza of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folio 6942).

> facility all the time because [she] sometimes get heavy pressure on the chest and heart. And [she gets] depressed a lot, and [her] children ask [her] to get better but [she] can't."[368]

285. As for the alleged harm to the personal integrity of Juan Caruso, Florinda Rosa Cajal's companion, the Court notes that it has no evidence to prove this; accordingly, it will not rule in this regard.

286. Based on the above, the Court considers it proven that the State violated Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Florinda Rosa Cajal.

B.1.5. Next of kin of Ricardo David Videla Fernández

287. Regarding the harm to the personal integrity of Ricardo Roberto Videla and Stella Maris Fernandez, parents of Ricardo David Videla Fernandez, the Court observes that, during the public hearing held in this case, Ms. Fernandez stated that she did not expect her son to receive a life sentence, and recalled that when the sentence was handed down, she "just gave him a kiss, and stayed there crying." Also, according to the social report on the family of Ricardo David Videla prepared on November 30, 2011, following the death of her son:

> "Stella Maris said she had no words to describe how painful it was to lose [her son] in the circumstances in which he died […]. Her doctor suggested she start psychological treatment because he considered that her hypertension was directly related to her emotional distress. In this regard, he stressed that she knows that she is not well emotionally and that she cannot help thinking all the time that 'just as there was a possibility of a review of David's sentence and he was hoping to enjoy life with his family and especially his son someday, what happened, happened."[369]

288. Regarding Ricardo Roberto Videla, the Court observes that the social report only records his visits to the detention center where his son was imprisoned.[370] However, the severe emotional pain experienced by the parents of an inmate who dies in a State detention center is evident to the Court, both as a direct result of the death, and owing to the lack of an effective investigation into the matter. Consequently, the Court finds that the State violated the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Stella Maris Fernandez and Ricardo Roberto Videla.

B.1.6. Conclusions

289. Based on the foregoing, the Court finds that the next of kin of César Alberto Mendoza, Claudia David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David

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368 *Cf.* Testimony by affidavit of Florinda Rosa Cajal of August 22, 2012 (merits file, tome II, folios 1404 and 1405).

369 *Cf.* Social report on Ricardo David Videla Fernández of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folio 7129).

370 *Cf.* Social report on Ricardo David Videla Fernández of November 30, 2011 (file of annexes to the pleadings and motions brief, tome XIII, folio 7127).

Videla Fernández identified in paragraphs 274, 280, 283, 286 and 288 of this chapter suffered pain and anguish due to the life sentences imposed on them, for the perpetration of offenses while they were minors, which led to family disintegration and, at times, adverse physical effects. All this had an impact on the personal integrity of the said next of kin, in violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to their detriment.

XII
DOMESTIC LEGAL EFFECTS

290. Both the Commission and the representative argued the State's failure to comply with the obligation contained in Article 2 of the American Convention,[371] in relation to the imposing of sentences of life imprisonment and reclusion for life on minors and for the regulation of the appeal in cassation. The Court will now refer to these two points.

A. Law 22,278

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

291. The Inter-America Commission and the representative considered that Law 22,278 on the Juvenile Criminal Regime was incompatible with the rights and obligations established in the American Convention because it failed to comply with the special parameters for the application of criminal sanctions to children. Therefore, they considered that the State was responsible for failing to comply with the obligations established in Article 2 of the American Convention, in relation to Articles 5(1), 5(2), 5(6), 7(3) and 19 thereof.

292. The State argued that "it is incorrect to argue that [Argentina] has a juvenile criminal regime that, with regard to the application and execution of punishments, is contrary to the principles of international law." It indicated that the legislation concerning the determination, execution and periodic review of the criminal sanction is compatible with "the international principles." According to the State, this matter was resolved with "the entry into force of Law No. 26,061 [Comprehensive Protection of Children and Adolescents,] and its regulation by Decree No. 415/06." Consequently, "the regulations on the execution of adult sentences […] can only be applied […] in analogous manner for the benefit of a child or adolescent […]. Otherwise the principle of legality in criminal matters would be infringed."

A.2. Considerations of the Court

293. The Court has established that Article 2 (Domestic Legal Effects) of the American Convention establishes the general obligation of the State Parties to adapt their domestic law

[371] Article 2 establishes that: "[w]here 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."

to the provisions of the Convention in order to guarantee the rights recognized therein. This obligation entails the adoption of measures of two kinds. On the one hand, the elimination of norms and practices of any kind that involve the violation of the guarantees established in the Convention; on the other hand, laws must be enacted and practices must be implemented leading to the effective observance of the said guarantees.[372]

294. In this Judgment the Court has established that Argentina violated the right recognized in Article 7(3) of the American Convention, in relation to Articles 19 and 1(1) thereof, to the detriment of César Alberto Mendoza, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal, Ricardo David Videla Fernández and Claudio David Núñez, by imposing on them criminal sanctions of life imprisonment and reclusion for life, respectively, for the perpetration of offenses while minors (*supra* paras. 164 and 167).

295. In this regard, in this Judgment it has already been mentioned that Law 22,278, which was applied in this case and which dates from the time of the Argentine dictatorship, regulates some aspects of the attribution of criminal responsibility to minors and the measures that the judge can take before and after this attribution, including the possibility of imposing a criminal sanction. However, the determination of punishments, their severity, and the legal definition of offenses are regulated in the national Criminal Code, which is equally applicable to adult offenders. The system established in article 4 of Law 22,278 (*supra* para. 153) grants a wide margin of discretion to the judge to determine the legal consequences of the perpetration of an offense for juveniles under 18 years of age, based not only on the offense, but also on other aspects, such as "the child's background, the result of the tutelary treatment, and the judge's direct impression." Furthermore, the wording of paragraph 3 of article 4 of Law 22,278 reveals that judges may impose on juveniles the same sanctions as on adults including the deprivation of liberty (as in this case), and these sanctions are established in the national Criminal Code. From the foregoing, the Court finds that the consideration of elements other than the offense committed, as well as the possibility of imposing on children criminal sanctions established for adults, are contrary to the principle of proportionality in the criminal sanction of children, as already established in this judgment (*supra* paras. 147, 151, 161, 165 to 166, 174, 175 and 183).

296. The Court also highlights that, at the time of the facts, article 13 of the national Criminal Code established parole for those sentenced to life imprisonment and reclusion for life after they had served 20 years of the sentence (*supra* para. 154). In this regard, as established by the Court in this Judgment, these sanctions are contrary to the Convention, because this fixed period following which release can be requested does not take into account the circumstances of each child, which change with the passage of time and, at any moment, could reveal progress that would enable reintegration into society. In addition, the period established in the said article 13 does not meet the standard of periodic review of the sanction of deprivation of liberty (*supra* paras. 163 and 164). To the contrary, it is an blatantly disproportionate time frame for children to be able to request their release for the first time,

[372] Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs, para. 207, and Case of Mohamed v. Argentina, para.113.

and to be able to reintegrate society, because, in order to request their eventual release, they are obliged to remain deprived of liberty for longer – namely, 20 years – than the time lived before the perpetration of the offense and the imposing of the punishment, taking into account that, in Argentina, individuals over 16 years of age and under 18 years of age can be charged under article 2 of Law 22,278 (*supra* para. 75, footnote 46).

297. The State argued that the situation of the incompatibility of the determination, execution and periodic review of the criminal sanction of juveniles was resolved with Law No. 26,061 on the Comprehensive Protection of Children and Adolescents. The Court observes that this law, adopted in 2005, that is, after the criminal sanctions that are the subject of this case were imposed, regulates, in general terms, the so-called "Comprehensive Protection System for the Rights of Children and Adolescents" and, thus, the "[p]olicies, plans, and programs for the protection of rights," the "[a]dministrative and judicial bodies for the protection of rights," the "[f]inancial resources," the "[p]rocedures," the "[m]easures of protection for rights," and the "[m]easures of exceptional protection of rights," according to its article 32. Although Law No. 26,061 refers, among other matters, to some aspects of the "rights of children and adolescents," the "minimum procedural guarantees" and the "guarantees in judicial and administrative proceedings" (article 27), the aspects relating to the determination of criminal sanctions for children are governed by Law 22,278 and by the national Criminal Code, which are still in force in Argentina.

298. Based on the above, the Court concludes that the State failed to comply with the obligation contained in Article 2 of the American Convention, in relation to Articles 7(3) and 19 thereof, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal.

B. Cassation

B.1. Arguments of the Commission and pleadings of the parties

299. The Commission and the representative argued that the legal framework regulating the appeal in cassation, at both the national level and in the province of Mendoza, restricts the reviewing bodies and, therefore, does not comply with the provisions of Article 8(2)(h) of the American Convention. Both recognized the relevance of the "Casal" judgment mentioned by the State (*supra* para. 239 and *infra* para. 300) in relation to appeals. However, the Commission indicated that this ruling "has not led to sufficient change," because it was not mandatory for judges, and the interpretative standard that can be inferred from it was not "evident from the text of the norm." Also, the representative indicated that the State had still not amended the law that prevents a broad review of sentences.

300. The State referred to the criteria established by the Supreme Court of Justice of the Nation according to which "it is only possible to decide an appeal in cassation appropriately to the extent that the full revision of the sentence is guaranteed." Therefore, the State considered that the existing normative system was adequate under the provisions of Article 8(2)(h) of the Convention.

B.2. Considerations of the Court

301. The Court has already referred to the obligations imposed on States by Article 2 of the American Convention (*supra* paras. 290 to 303). Furthermore, in this Judgment, the Court has established that the appeals in cassation filed on behalf of Saúl Cristian Roldán Cajal, Ricardo David Videla Fernández, César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza, based on articles 474 of the Code of Criminal Procedure of the province of Mendoza and 456 of the national Code of Criminal Procedure, respectively, were rejected because they sought a review of issues of fact and evidence, including the imposing of sentences of life imprisonment and reclusion for life, that, pursuant to the above-mentioned provisions were not admissible. The Court has also decided that, based on the literal wording of the relevant norms, it is not possible for a higher court to review matters of fact and/or evidence by means of the appeal in cassation (*supra* para. 253). Therefore, the Court found that the State had violated the right recognized in Article 8(2)(h) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the said victims.

302. The Court observes that the State did not contest that the national Code of Criminal Procedure and the Code of Criminal Procedure of the province of Mendoza regulate the remedy of cassation in a very restricted sense and contrary to the provisions of Article 8(2)(h) of the Convention. Instead, the State argued that this point was resolved with the well-known "Casal judgment" delivered by the Supreme Court of Justice of the Nation (*supra* para. 254). While recognizing the importance of this ruling, the Court notes that the pertinent procedural provisions in both codes that contradict this ruling remain in force.

303. Based on the above, the Court concludes that the State failed to comply with the obligation contained in Article 2 of the American Convention, in relation to Articles 8(2)(h) and 19 thereof, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal.

XIII
REPARATIONS
(*Application of Article 63(1) of the American Convention*)

304. Based on the provisions of Article 63(1) of the American Convention,[373] the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation,[374] and that this provision reflects a customary norm

[373] Article 63(1) of the Convention stipulates that: "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

[374] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of the Massacre of Santo Domingo v. Colombia*, para. 290.

that is one of the fundamental principles of contemporary international law on State responsibility.[375]

305. Based on the violations of the American Convention and of the Convention against Torture declared in the preceding chapters, the Court will now examine the claims submitted by the Commission and the representatives, as well as the State's arguments, in light of the criteria established in the Court's case law as regards the nature and scope of the obligation to make reparation, in order to establish measures of reparation designed to repair the damage caused to the victims.[376]

306. This Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the damage proved, and the measures requested to repair the respective damage. Therefore, the Court must observe the co-existence of these factors in order to rule appropriately and in accordance with the law.[377]

307. The reparation of the damage caused by a violation of an international obligation requires, wherever possible, full restitution (*restitutio in integrum),* which consists of re-establishing the previous situation. Where this is not feasible, as in most cases involving human rights violations, the Court will determine measures to guarantee the infringed rights and to repair the consequences of the violations.[378] Hence, the Court has considered the need to grant different measures of reparation in order to redress the damage caused integrally; accordingly, in addition to pecuniary compensation, measures of restitution and satisfaction and guarantees of non-repetition have special relevance to the damage caused.[379]

A. Injured party

308. The Court considers that, in terms of Article 63(1) of the Convention, the injured party is the person declared a victim of the violation of any right recognized in this instrument. Therefore, the Court considers César Alberto Mendoza, Claudia David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández to be the "injured party," as well as those persons referred to in paragraphs 274, 280, 283, 286 and 288 of this Judgment, and they will be considered beneficiaries of the reparations ordered by the Court, in their capacity as victims of the violations declared herein.

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375 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, para. 40, and *Case of the Massacre of Santo Domingo v. Colombia*, para. 290.

376 *Cf. Case of Velásquez Rodríguez v. Honduras.* Reparations and costs, paras. 25 to 27, and *Case of the Massacre of Santo Domingo v. Colombia*, para. 293.

377 *Cf. Case of Ticona Estrada v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of the Massacre of Santo Domingo v. Colombia*, para. 291.

378 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 26, and *Case of the Massacre of Santo Domingo v. Colombia*, para. 292.

379 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81, and *Case of the Massacre of Santo Domingo v. Colombia*, para. 292.

B. Measures of integral reparation: rehabilitation, satisfaction, and guarantees of non-repetition

B.1. Rehabilitation

B.1.1. Physical and psychological

B.1.1.1. Arguments of the Commission and pleadings of the parties

309. The Inter-American Commission requested assurance that while César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal remained deprived of liberty, they would receive the medical care they required. The representative asked that "medical and psychological treatment and care be provided" to the said victims.[380] In the case of Lucas Matías Mendoza, she indicated that medical care "should include periodic consultations and ophthalmological treatment." The State did not submit observations in this regard.

B.1.1.2. Considerations of the Court

310. In this judgment the Court has established the psychological impact of the life sentences imposed on César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal, based on which the Court considered them cruel and inhuman treatment (*supra* para. 183). Expert witness Laura Sobredo concluded that "all those experiences [suffered by the youths] should be considered traumatic [… and] indelible events." The Court also noted that, owing to the inadequate medical attention to his visual problems, Lucas Matías suffered permanent damage while in State custody (*supra* paras. 187 to 195). In addition, the Court established that Claudio David Núñez and Lucas Matías Mendoza had been victims of torture in the Federal Prison Complex (*supra* para. 211).

311. Therefore, the Court finds, as it has in other cases,[381] that the State must provide, immediately and free of charge, through its specialized health care institutions and personnel, the necessary, adequate and effective medical, and psychological or psychiatric care to Lucas Matías Mendoza and Claudio David Núñez, and the necessary psychological or psychiatric care to César Alberto Mendoza and Saúl Cristian Roldán Cajal, if they all request this, including the free provision of any medication they may eventually require, taking into consideration the ailments of each one related to this case. In particular, in the case of Lucas Matías Mendoza, the Court orders that the State provide immediately the ophthalmological, surgical and/or specialized therapeutic treatment that may alleviate or improve his visual problems.

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380 The representative stated that, until they are released, this measure of reparation must be implemented "by specialized professionals, who are not part of the structure of the services provided by the prison in which they are detained" and, when "they have been released from the prisons, the medical and psychological care must be provided in specialized medical centers and by excellent professionals."

381 *Cf. Case of Barrios Altos v. Peru. Reparations and costs.* Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, para. 326.

312. If the State lacks adequate health care institutions or personnel, it must have recourse to specialized private institutions or institutions of civil society. Also, in the case of the victims who have been released, the respective treatments must be provided, to the extent possible, in the centers closest to their place of residence in Argentina for as long as necessary.[382] When providing the treatment, the specific circumstances and needs of each victim must also be considered, as agreed with each of them and following an individual assessment. The victims who request this measure of reparation, or their legal representatives, have six months from notification of this Judgment, to advise the State of their intention to receive the medical and psychological or psychiatric care ordered.[383]

B.1.2. Education and/or training

B.1.2.1. Arguments of the Commission and pleadings of the parties

313. The representative indicated that the violations against César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, and Saúl Cristian Roldán Cajal "not only prevented the realization of their expectations from a professional or employment standpoint, but also terminated any possibility of self-realization." According to the representative, currently the youths have no future project, with no educational training or job or housing prospects. Hence, she stated that the impairment of their self-realization could only be compensated by the payment of a sum of money or the delivery of goods or services with a monetary value that allow them to resume their studies, their employment or professional training, and to reconstitute their family ties. The Commission and the State did not present arguments or observations, respectively.

B.1.2.2. Considerations of the Court

314. The Court finds, as it has in other cases, that the life project relates to the integral self-realization of the person concerned, taking into consideration their vocation, skills, circumstances, potential and aspirations that allow them to establish certain reasonable expectations and to achieve them.[384] It is also expressed in the expectations for personal, professional and family development that are possible under normal conditions.[385] The Court has indicated that "harm to the life project" involves the loss or severe impairment of opportunities for personal development, in a way that is irreparable or very difficult to

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382 *Cf. Case of the Las Dos Erres Massacre v. Guatemala*. *Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 270, and *Case of the Massacre of Santo Domingo v. Colombia*, para. 309.

383 *Cf. Case of the 19 Tradesmen v. Colombia*. *Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 278, and *Case of the Massacre of Santo Domingo v. Colombia*, para. 309.

384 *Cf. Case of Loayza Tamayo v. Peru. Reparations and costs.* Judgment of November 27, 1998. Series C No. 42, para. 147, and *Case of Furlan and family members v. Argentina*, para. 285.

385 *Cf. Case of Loayza Tamayo v. Peru. Reparations and costs*, para. 148, and *Case of Furlan and family members v. Argentina*, para. 285.

repair.[386] This harm is derived from the constraints suffered by a person to relate to and to enjoy their personal, family or social environment due to serious injuries caused to them of a physical, mental, psychological or emotional nature. The integral reparation of the damage to the "life project" generally calls for measures of reparation that go beyond mere pecuniary compensation, consisting of measures of rehabilitation, satisfaction and a guarantee of non-repetition.[387] In some recent cases, the Court has assessed this type of damage and provided reparation for it.[388] Furthermore, the Court observes that some domestic high courts recognize relatively similar damage associated with "relationships" or other similar or complementary concepts.[389]

315. In this case, César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal were sentenced to life imprisonment for crimes committed while under 18 years of age. During the public hearing, expert witness Sofía Tiscornia mentioned that this sentence imposed on them "a life project, but for a life that implies the end, the closure, of all autonomy and decent social existence." She also indicated that "all of them have described how the imposing of the life sentence closed off any future perspectives," because "the number of years of imprisonment imposed was more than any adolescent has lived." The expert witness also indicated that the State "is responsible for restoring human dignity to [the victims]." Life imprisonment means the end of the road of life when it has barely begun.[390] According to expert witness Tiscornia, when adolescents realize the magnitude of their punishment, "the effect is devastating; they feel that life is over and, in many cases, they think that the only thing that can happen with their life, is to end it" (*supra* para. 180).

316. In this Judgment, it has been established that the life sentences imposed on the victims did not meet the standards of the rights of the child as regards criminal justice, and had harmful effects that ended their future expectations of life (*supra* paras. 177 and 183). Unlike an adult, a minor has not had the complete opportunity to plan his work or studies in order to address the challenges posed by today's societies.[391] However, the Court finds it evident that imposing life sentences on these minors, and the absence of any real possibility of achieving social rehabilitation, annulled their possibility of forming a life project at a crucial stage of their

386 *Cf. Case of Loayza Tamayo v. Peru. Reparations and costs,* para. 150, and *Case of Furlan and family members v. Argentina*, para. 285.

387 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs*, para. 80, and *Case of Furlan and family members v. Argentina*, para. 285.

388 *Cf. Case of the Las Dos Erres Massacre v. Guatemala*, paras. 284 and 293, and *Case of Furlan and family members v. Argentina*, paras. 285 and 286.

389 *Cf.* Council of State of Colombia: Contentious Administrative Chamber, Third Section, Judgment of July 19, 2000, Case file No. 11,842, and Contentious Administrative Chamber, Third Section, Judgment of September 14, 2011, Case file 38,222. See, also: Judgments of the Supreme Court of Justice of Colombia, Civil Cassation Chamber, Judgment No. 1100131030061997-09327-01 of May 13, 2008, and Criminal Cassation Chamber, Judgment No. 33833 of August 25, 2010.

390 *Cf. Amicus curiae* submitted by the *Asociación Pro Derechos Civiles* (merits file, tome III, folio 1943).

391 *Cf. Amicus curiae* submitted by the *Asociación Pro Derechos Civiles* (merits file, tome III, folio 1943).

education and their personal development. Also, since the victims were sentenced to imprisonment for crimes committed as children, the State had the obligation to provide them with the possibility of schooling or vocational training, so that they could undergo social rehabilitation and develop a life project. Thus, the Court considers that the most appropriate way to ensure a decent life project for César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal is through training that enables them to develop appropriate skills and abilities for their autonomy, insertion in the workforce, and social integration.

317. Therefore, the Court decides that, as soon as possible, the State should provide the said victims with the educational or formal training options they request, including university education, through the prison system or, if they are released, through its public institutions. Regarding the latter, the State must also provide them with a comprehensive scholarship while they are studying, which should include travel expenses and suitable educational materials for their studies until these are completed, to enable them to meet the requirements of an adequate education The State must implement this measure of reparation within one year of notification of this Judgment.

318. Since, according to the information provided by the parties, Saúl Cristian Roldán Cajal and Lucas Matías Mendoza are deprived of their liberty for the supposed perpetration of other offenses (*supra* paras. 92, 96 and 97), the State must ensure that they receive the educational training ordered in the preceding paragraph in the places where they are detained. In the case of Lucas Matías Mendoza, the State must consider his special needs due to his loss of vision and ensure that his place of detention has suitable facilities for him to carry out his studies, if he so wishes. Furthermore, the Court considers that the educational grant described in the preceding paragraph must also be provided to Saúl Cristian Roldán Cajal and to Lucas Matías Mendoza in the event that they are released and continue their studies outside the prison.

B.2. Satisfaction

B.2.1. Publication and dissemination of the pertinent parts of the judgment

B.2.1.1. Arguments of the Commission and pleadings of the parties

319. The representative requested the publication of the pertinent parts of the Judgment in three national newspapers and in three newspapers with widespread circulation in the province of Mendoza, as well as its complete publication on the websites of the Ministry of Justice of the Nation and the Ministry of Justice of the province of Mendoza for one year. She also requested widespread dissemination of the Judgment among police and prison authorities, and in detention centers for juveniles and for adults. The Commission and the State did not present arguments or observations in this regard.

B.2.1.2. Considerations of the Court

320. The Court decides, as it has ordered in other cases,[392] that the State must publish once, within six months of notification of this Judgment, the official summary of the Judgment prepared by the Court in the official gazette and in a national newspaper with widespread circulation. The State must ensure that this newspaper also circulates widely in the province of Mendoza. In addition, Argentina must publish the complete judgment on an official website of the Judiciary of the Autonomous City of Buenos Aires and of the province of Mendoza, and of the prisons and juvenile institutions in both locations.

B.3. Guarantees of non-repetition

B.3.1. Juvenile Criminal Regime

B.3.1.1. Arguments of the Commission and pleadings of the parties

321. The Commission asked the Court to order the State to adopt the necessary legislative and any other type of measures to make the criminal justice system applicable to adolescents for acts committed while under 18 years of age compatible with the international obligations concerning the special protection of children and the purpose of punishment. The representative indicated that the parameters of this reform should be: (a) to establish a system of special sanctions for juveniles; (b) to establish alternatives to criminal sanctions; (c) to reinforce the specific procedural guarantees for persons under 18 years of age, and (d) to establish appropriate public policies.

322. The State indicated that these measures are guaranteed, because, following the facts of the instant case, in the Maldonado judgment, the Supreme Court of Justice of the Nation established as legal doctrine that unlimited sentences were inapplicable to minors. Regarding determination of the criminal sanction for those under 18 years of age, the State indicated that article 4 of Law No. 22,278 requires the judge to rule on the need to apply a criminal sanction, and thus this article is in keeping with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, because it allows the juvenile criminal judge to acquit the minor found criminally responsible if he determines that it is unnecessary to apply a sanction. The State also underscored the entry into force of Law No. 26,061 on the Integral Protection of the Rights of Children and Adolescents, because it expressly establishes that: (1) application of the Convention on the Rights of the Child is mandatory in any administrative, judicial, or other type of decision adopted with regard to a child, and (2) for effects of the legitimate restriction of liberty, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the United Nations Guidelines for the Prevention of Juvenile Delinquency, and the United Nations Standard Minimum Rules for Non-custodial Measures must be observed.

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[392] *Cf. Case of the Massacre of Santo Domingo v. Colombia*, para. 303, and *Case of Cantoral Benavides v. Peru. Preliminary objections.* Judgment of September 3, 1998. Series C No. 40, para. 79.

B.3.1.2. Considerations of the Court

323. The Court recalls that Article 2 of the Convention obliges the States Parties to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms protected by the Convention.[393] In other words, the States not only have the positive obligation to adopt the necessary legislative measures to guarantee the exercise of the rights established in the Convention, but must also avoid enacting laws that preclude the free exercise of those rights, and prevent the annulment or amendment of laws that protect them.[394] Nevertheless, in its case law, the Court has established that it is aware that domestic authorities are subject to the rule of law.[395] However, as indicated in this Judgment (*supra* para. 218), when a State is a party to an in international treaty, such as the American Convention, all its organs, including its judges, are also bound by that treaty; accordingly, they must exercise, *ex officio,* "control of the conformity" of domestic norms with the American Convention.[396]

324. The Court assesses positively the issue of the Maldonado judgment by the State, which establishes important criteria concerning the incompatibility of life imprisonment with the rights of the child.[397] In addition, the Court appreciates that, in the instant case, the decisions

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393 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 68, and *Case of the Massacre of Santo Domingo v. Colombia*, para. 245.

394 *Cf. Case of Castillo Petruzzi et al. v. Peru*, para. 207, and *Case of Furlan and family members v. Argentina,* para. 300.

395 *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124*, and Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of the February 24, 2012. Series C No. 239, para. 281.

396 *Cf. Case of Almonacid Arellano et al. v. Chile*, para. 124, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala,* para. 330.

397 The pertinent parts of this judgment indicate that: "absolute punishments, such as life imprisonments, are characterized, precisely, because they do not admit aggravating or attenuating circumstances of any nature. This means that the legislator declares, *de iure,* that any answer to the charges is irrelevant […]. However, in the case of acts committed by juveniles, the situation is different, because, if the court decides to apply a punishment, it must still decide whether it is applicable to reduce the punishment for that for an attempted offense. Consequently, it is no longer sufficient to merely indicate the legal definition of the conduct in order to decide the applicable punishment. […] Furthermore, in the case of juveniles, the specific emotional situation when committing the act, his or her real possibilities of controlling the course of events, or even, the possibility of having acted impulsively or at the urging of companions, or any other element that could affect guilt, acquires a different significance that must be examined when determining the punishment. […] Law 22,278 contains an element that does not appear in the Criminal Code: the authority and obligation of the judge to ponder the "need for punishment.' […T]he reasons why the legislator granted the judge such broad powers when handing down a sentence to an individual who committed an offense when he or she was under 18 years of age is related to the mandate to ensure that these punishments, above all, seek social reinsertion or, in the words of the Convention on the Rights of the Child, 'the desirability of promoting the child's reintegration and the child's assuming a constructive role in society" (art. 40(1)). […] The constitutional mandate ordering that punishments consisting of deprivation of liberty shall have as an essential aim the reform and social rehabilitation of the prisoners (art. 5(6), American Convention) and that the essential aim of the treatment of prisoners shall be their reformation and social rehabilitation (art. 10(3) ICCVP) requires that the sentencing judge should not disregard the possible effects of the punishment from the point of view of special prevention. This mandate, in the case of juveniles, is much more constructive and translates into the obligation to provide grounds for the need

handed down on the applications for review that ultimately annulled the life sentences imposed on Saúl Cristian Roldán Cajal, César Alberto Mendoza, Lucas Matías Mendoza and Claudio David Núñez applied this judgment, among other elements (*supra* paras. 92 and 94).

325. Also, the Court observes that Law 26,061, on the comprehensive protection of children and adolescents, establishes that application of the Convention on the Rights of the Child is mandatory in every administrative, judicial or any other type of act, decision or measure adopted in their regard.[398] Nevertheless, in this Judgment, it was determined that Law 22,278, which currently regulates the juvenile criminal regime in Argentina and which was applied in this case, contains provisions contrary to the American Convention and to the international standards applicable to juvenile criminal justice (*supra* paras. 157 and 298). The Court has also established that, under Articles 19, 17, 1(1) and 2 of the Convention, the State is obliged to guarantee, by the adoption or the necessary legislative or other measures, the protection of the child by the family, society and the State. In this way, the Court considers that, in order to comply with these obligations, Argentina must adapt its legal framework to the international standards indicated previously concerning juvenile criminal justice (*supra* paras. 139 to 167) and design and implement public policies with clear goals and timetables, as well as with the allocation of sufficient budgetary resources for the prevention of juvenile delinquency by means of effective programs and services that encourage the integral development of children and adolescents. Thus, Argentina must, among other matters, disseminate information on the international standards concerning the rights of the child, and provide support to the most vulnerable children and adolescents, and also their families.[399]

B.3.2. Ensure that life imprisonment and reclusion for life are never again imposed

326. In this Judgment, it has been mentioned that on September 4, 2012, the Prosecutor General of the Nation filed a special appeal against the decision of the Federal Criminal Cassation Chamber of August 21, 2012 (*supra* para. 95), in favor of César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza, arguing, basically, that the principle *of res judicata* had been violated and that the declaration of the unconstitutionality of paragraph 7 of article 80 of the Criminal Code was "arbitrary."[400] On September 27, 2012, the Second

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for the deprivation of liberty imposed from the standpoint of the possibilities of resocialization, which supposes the need to weigh carefully in this consideration of need the potential adverse effects of imprisonment." *Cf.* Supreme Court of Justice of the Nation. Maldonado, Daniel Enrique *et al.*, case No.1174, judgment of December 7, 2005 (file of annexes to the submission of the case, tome VIII, folio 4333).

398 "Article 2. Mandatory Application. The Convention on the Rights of the Child is of mandatory application in the conditions under which it is in force, in every administrative, judicial or any other type of action, decision or measure adopted concerning persons under eighteen years of age. Children and adolescents have the right to be heard and responded to in whatever form they express themselves, in all spheres." *Cf.* Law 26,061 (merits file, tome IV, folio 2458).

399 *Cf.* United Nations, Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, 25 April 2007, CRC/C/GC/10, para. 18.

400 *Cf.* Special federal appeal submitted by the Prosecutor General of the Nation on September 4, 2012, against the decision of the Federal Criminal Cassation Chamber of August 21, 2012 (file of annexes to the representative's final written arguments, folios 8365 and 8374).

Chamber of the Federal Criminal Cassation Chamber declared that the special remedy filed by the Prosecutor General of the Nation was inadmissible. Therefore, on October 5, 2012, the Prosecutor General filed a remedy of complaint before the Supreme Court of Justice of the Nation.[401] It has also been indicated that, at the date of this Judgment, the said remedy had not yet been resolved; thus, the decision of the Second Chamber of the Federal Criminal Cassation Chamber of August 21, 2012, is still not final.

327. Based on the human rights violations declared in this case, particularly, those related to the imposing of life sentences on César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza and the denial of the appeal in cassation after their conviction (*supra* para. 256), the Court decided that the State must ensure that the sentences of life imprisonment and reclusion for life are never again imposed on César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza, or on any other person for crimes committed while minors. Likewise, Argentina must guarantee that anyone currently serving such sentences for crimes committed while they were minors may obtain a review of the sentence adapted to the standards described in this Judgment (*supra* paras. 240 to 261). The foregoing in order to avoid the need for cases such as this one being lodged before the organs of the inter-American system for the protection of human rights and, instead, that they can be decided by the corresponding State organs.

B.3.3. Right to appeal the judgment

B.3.3.1. Arguments of the Commission and pleadings of the parties

328. The Commission acknowledged the impact of the Casal judgment delivered by the Supreme Court of Justice of the Nation as regards the scope of the appeal in cassation in relation to Article 8(2)(h) of the American Convention. However, it indicated that this judgment is not binding on the Argentine judges. Therefore, it asked the Court to "order the legislative and any other type of measures to ensure effective compliance with [… the said] right […]." The representative indicated that the Casal judgment only had a "symbolic impact" and that the State had not yet amended the legal framework that prevented the comprehensive review of sentences. Consequently, she asked for "the enactment of a national framework law that would set minimum standards for the entire country, so that the inhabitants may enjoy an equal degree of legislative protection with regard to the right to this remedy. She also asked the Court to "order the necessary measures so that César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal may file an appeal to obtain a broad review of the convictions, in compliance with Article 8(2)(h) of the American Convention," pursuant to the international standards for juvenile criminal justice.

329. The State indicated that, since 2005, a full review of the judgment has been possible, because the Supreme Court of Justice of the Nation decided this in the Casal judgment and that, according to these standards, "the appeal must truly allow the higher court to consider

[401] *Cf.* Remedy of complaint filed by the Prosecutor General of the Nation before the Supreme Court of Justice of the Nation on October 5, 2012 (merits file, tome III, folio 2354).

the merits of the dispute, examine the alleged facts, the proposed defense, the evidence provided, its assessment, and the laws cited and their application." The State also indicated that it was inaccurate to claim that the Casal judgment was not binding on the Argentine judges. It affirmed that the absence of mandatory compliance with the decisions of the Supreme Court is the result of a system of broad control of constitutionality adopted by the Constitution; but, despite this, the failure to apply the legal doctrine established by the Supreme Court regarding the interpretation of a constitutional clause, such as the review of a sentence, by the lower courts would immediately enable any person affected to appeal to the federal organ. Although the Supreme Court of Justice of the Nation does not establish case law, because it is not a constitutional court, "any jurisdictional criterion that deviates from its legal doctrine authorizes a federal recourse and, in each specific case, may be cited by the party affected before the different instances, and the courts have the obligation to examine and decide the matter, which may ultimately, be referred to the Supreme Court by a special federal appeal." The same situation occurs "when it is ruled that a norm is unconstitutional or when a specific interpretation of the norm is made." In conclusion, the State considered that legislative reform is unnecessary with regard to review of the judgment.

B.3.3.2. Considerations of the Court

330. In this Judgment, the Court has already established that the State did not guarantee Saúl Cristian Roldán Cajal, César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Ricardo David Videla Fernández the right to appeal the judgment by filing the appeals in cassation regulated by article 474 of the Code of Criminal Procedure of the province of Mendoza and article 456 of the national Code of Criminal Procedure, respectively (*supra* paras. 240 and 261). The Court emphasizes that these facts occurred before the delivery of the Casal judgment (*supra* paras. 252 to 261).

331. The Court assesses positively the Casal judgment mentioned by the State with regard to the criteria it reveals on the scope of the review comprised by the appeal in cassation, in accordance with the standards derived from 8(2)(h) of the American Convention. The Court also underscores that the said judgment was cited by the courts when deciding the appeals for review filed by Saúl Cristian Roldán Cajal, César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza, and that control of compliance with the Convention was performed with regard to the scope of the right to appeal the judgment before a higher judge or court. Regarding the Casal judgment, the State explained how the system of constitutional control functions, based on which the criteria established in the said ruling regarding the right to appeal a judgment must be applied by Argentine judges at all levels.

332. The Court considers that judges in Argentina must continue exercising control of conformity with the Convention in order to ensure the right to appeal a judgment pursuant to Article 8(2)(h) of the American Convention and this Court's case law. Nonetheless, the Court refers to the its considerations on the obligations derived from Articles 2 and 8(2)(h) of the American Convention (*supra* paras. 293 to 298 and 301 to 303), and considers that within a

reasonable time, the State must adapt its domestic laws to the parameters set forth in this Judgment.

B.3.4. Training for State authorities

B.3.4.1. Arguments of the Commission and pleadings of the parties

333. The Commission asked the Court "to order measures of non-repetition including training programs for prison staff on international human rights standards and, in particular, on the right of persons deprived of liberty to be treated with dignity, as well as on the prohibition of torture and other cruel, inhuman or degrading treatment."

334. The representative asked the Court to order training on human rights and the rights of the child for "State officials from different entities (security forces, justice system personnel, officials of juvenile institutions, prison staff) of the province of Mendoza and the national jurisdiction." She also asked the Court to "order the Argentine State to adopt the necessary legal measures to prevent and eradicate torture, including the establishment of an independent national mechanism for the prevention of torture."

335. For its part, the State indicated that it was "working on the implementation of this mechanism," and that it "hoped to establish the national prevention mechanism by a national law." The State recalled that, in September 2011, the Chamber of Deputies of the Nation approved the bill on the creation of the National System for the Prevention of Torture, and that "the provinces of Chaco, Río Negro and Mendoza passed laws creating provincial mechanisms to prevent torture, and bills are pending in the provinces of La Pampa, Buenos Aires, Santa Fe and Neuquén.

B.3.4.2. Considerations of the Court

336. The Court assesses positively the progress made by the State to apply a mechanism to prevent torture and urges the State to expedite the implementation of specific and effective measures in this regard. However, the State did not explain whether this mechanism is also applicable in detention centers and prisons.

337. Thus, in order to guarantee the non-repetition of the human rights violations declared in this case, the Court finds it important to strengthen the institutional capacities of federal prison personnel and prison personnel of the province of Mendoza, as well as of the judges with competence for offenses committed by juveniles, by providing them with training on the principles and norms of the protection of human rights and the rights of the child, including those relating to humane treatment and torture. To this end, the State must implement, within a reasonable time, if they do not exist at present, obligatory programs or courses on the above-mentioned points as part of the general and ongoing education of the said State officials. These programs or courses must include references to this Judgment, to the Inter-American Court's case law on personal integrity, torture, and the rights of the child**,** as well as

the international human rights obligations derived from the treaties to which Argentina is a Party.[402]

C. Obligation to investigate the facts and to identify, prosecute and, as appropriate, punish those responsible

C.1. Investigation into the death of Ricardo David Videla Fernández

C.1.1. Arguments of the Commission and pleadings of the parties

338. The Commission and the representative asked for a complete, impartial and effective investigation, within a reasonable time, to clarify the circumstances surrounding the death of Ricardo David Videla Fernández and, if appropriate, to impose the corresponding sanctions. The Commission indicated that "[t]his investigation should include possible responsibilities for the omissions or breaches in the duty of prevention of the officials responsible for the custody of the victim." The representative also requested the publication of the proceedings, the possibility of effective intervention by the next of kin, and the dissemination of the eventual judgment "in the province's mass media."

339. In this regard, the State affirmed the "inadmissibility of any measure of reparation related to […] the death of David Videla Fernández and the judicial investigations opened concerning this incident," because it considers that it was "international *res judicata*."

C.1.2. Considerations of the Court

340. According to the considerations on the merits set out in Chapter X of this Judgment, the Argentine State has the obligation to investigate with due diligence, the possible responsibilities of the personnel of the Mendoza Prison for the presumed failure to comply with their duty to prevent violations of the right to life of Ricardo David Videla (*supra* paras. 216 to 229). Therefore, the State must comply with the said obligation to investigate and, as appropriate, sanction, by means of the pertinent judicial, disciplinary or administrative mechanisms, the acts that could have contributed to the death of Ricardo David Videla in that prison.[403]

341. Furthermore, the victim's next of kin or their representatives must have full access and legal standing at all stages and levels of the domestic criminal proceedings held in this case, in accordance with domestic legislation and the American Convention. The results of these

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402 *Cf. Case of El Caracazo v. Venezuela. Reparations and costs.* Judgment of August 29, 2002. Series C No. 95, para. 127, and *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. 369.

403 *Cf. Case of the Las Dos Erres Massacre v. Guatemala,* para. 233, and *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs.* Judgment of April 27, 2012. Series C No.242, para. 172.

proceedings must be published by the State, so that the Argentine society can know the truth regarding the facts of this case.[404]

C.2. Investigation into the acts of torture suffered by Lucas Matías Mendoza and Claudio David Núñez

C.2.1. Arguments of the Commission and pleadings of the parties

342. The Commission asked the Court to order the Argentine State "to conduct a complete, impartial and effective investigation, within a reasonable time, to clarify the acts of torture suffered by Lucas Matías Mendoza and Claudio David Núñez, and, as appropriate, impose the corresponding sanctions. The representative and the State did not present arguments in this regard.

C.2.2. Considerations of the Court

343. In this Judgment, the Court has determined that the State violated, to the detriment of Claudio David Núñez and Lucas Matías Mendoza, Articles 5(1), 5(2), 8 and 25 of the American Convention, in relation to Article 1(1) of this treaty, as well Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, because the State closed the investigations opened into the torture committed against them, without Argentina having provided a satisfactory and convincing explanation of what happened (*supra* paras. 232 to 236).

344. Accordingly, as the Court has decided on other occasions,[405] these facts must be investigated effectively by means of proceedings held against those presumably responsible for the attacks on personal integrity that occurred. Consequently, the Court decides that the State must conduct a criminal investigation into the acts of torture committed against Claudio David Núñez and Lucas Matías Mendoza in order to determine the eventual criminal responsibilities and, as appropriate, apply the punishments and consequences established by law. This obligation must be complied with within a reasonable time and taking into consideration the criteria established concerning investigations in this type of case.[406] Also, if the investigation into the said acts reveals procedural and investigative irregularities related to them, the pertinent disciplinary, administrative or criminal action must be undertaken.[407]

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404 *Cf. Case of El Caracazo v. Venezuela. Reparations and costs.* Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C. No. 258, para. 197.

405 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 174, and *Case of Cabrera García and Montiel Flores v. Mexico,* para. 215.

406 *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 331, and *Case of Cabrera García and Montiel Flores v. Mexico,* para. 215.

407 *Case of Cabrera García and Montiel Flores v. Mexico,* para. 215.

D. Compensation

D.1. Pecuniary damage

345. In its case law, the Court has developed the concept of pecuniary damage and has established that this involves "the loss or detriment to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case."[408]

D.1.1. Arguments of the Commission and pleadings of the parties

346. The Commission considered that the State should "provide adequate pecuniary compensation for the human rights violations declared in the [Merits Report]." The representative asked the Court to compensate César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla, and their next of kin, "rationally, in equity, and taking into account the characteristics of each case." She stated that, in the instant case, the consequential damage includes the expenses incurred by the respective families when visiting them and providing them with "essential items for their subsistence in prison." In this regard, she indicated that it was not possible to provide documents verifying these expenses owing to the "informality […] that characterized [them] […]." She also asked the Court to order "pecuniary compensation that, from the time the sentence was imposed, accounts for loss of earnings as a result of imposing a life sentence prohibited by international human rights law."

347. The State indicated that "the pecuniary claim made […is] obviously incompatible with the international standards in force." Thus, it noted that the representative "had not provided even minimal documentary or arithmetic support for the figures indicated." As for the loss of earnings, it underlined that the representative had not provided data considered relevant by the Inter-American Court for determining the amount of compensation for this concept, such as "what activities of a family, workplace, commercial, agricultural, industrial or any other nature had suffered deterioration […]." Also, regarding the compensation requested for the next of kin of Ricardo David Videla, it emphasized that they had received pecuniary compensation under the friendly settlement agreement endorsed by the Commission in Report No. 84/11.

D.1.2. Considerations of the Court

348. Regarding the amounts requested by the representative for loss of earnings, the Court observes that she forwarded a table to the Court showing the evolution of the minimum living wage in Argentina between 1964 and 2008; decisions issued by the National Council for Employment, Productivity and the Minimum Living and Mobile Wage in 2009, 2010 and 2011 establishing changes to the minimum wage during those years; and a table outlining life

[408] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of García and family members v. Guatemala,* para. 225.

expectancy at birth in Argentina for 2003 to 2011.[409] However, the Court observes that it does not have any evidence to prove that the youths César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla performed remunerated activities prior to the imposing of the life sentences or other facts that resulted in the human rights violations declared in this case (*supra* para. 346). Therefore, the Court does not consider it appropriate to order reparations under this heading.

349. Regarding consequential damage, the Court observes that the representative only specified the alleged expenses incurred by some of the next of kin of the said victims.[410] In addition, the Court does not have probative elements that prove the amounts that the next of kin of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla would have disbursed to cover the costs of transfers to the detention centers where the youths were being held and to provide them with food or other essential items for their personal hygiene. Nevertheless, the Court finds it reasonable to presume that these family members incurred expenses of this type during the period in which the victims were detained, which was prolonged owing to the imposing of life sentences in violation of their human rights. Therefore, as compensation for pecuniary damage, the Court establishes, in equity, the amount of US$1,000.00 (one thousand United States dollars) in favor of each of the following persons: Isolina del Carmen Herrera, Romina Beatriz Muñoz, Ana María del Valle Brito, Jorgelina Amalia Díaz, Marta Graciela Olguín, Florinda Rosa Cajal and Stella Maris Fernández.

D.2. Non-pecuniary damage

350. The Court has developed in its case law the concept of non-pecuniary damage and has established that it "may include both the suffering and distress caused to the direct victims and their families, the impairment of values that are highly significant to them, and other alterations of a non-pecuniary nature in the living conditions of the victims or their families."[411]

D.2.1. Arguments of the Commission and pleadings of the parties

351. The Commission considered that the State should "provide adequate non-pecuniary compensation for the human rights violations declared in the [Merits Report …]." The representative stated that César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla "were not only condemned to suffer a punishment prohibited by international law, but, for many years, were at the mercy of prison authorities who did not observe their international human rights obligations." She further stressed that the life sentence caused profound non-pecuniary damage to the family

409 *Cf.* Annex XL, Minimum Living and Mobile Wage (file of annexes to the pleadings and motions brief, tome XIV, folios 7692 to 7705).

410 The representative referred to Isolina del Carmen Herrera, Romina Beatriz Muñoz, Ana María del Valle Brito, Jorgelina Amalia Díaz, Marta Graciela Olguín, Florinda Rosa Cajal and Stella Maris Fernández.

411 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No.77, para. 84, *and Case of García and family members v. Guatemala*, para. 224.

unit. Consequently, she asked the Court to order specific amounts as compensation for non-pecuniary damage for each of the said victims, and also for their next of kin. The State indicated that "the pecuniary claim […is] evidently incompatible with the international standards in force."

D.2.2. Considerations of the Court

352. International case law has established repeatedly that the judgment may constitute *per se* a form of reparation.[412] However, in its own case law, the Court has developed the concept of non-pecuniary damage and established that it may "include both the suffering and distress caused to the direct victims and their families, and the impairment of values that are highly significant to them, as well as other alterations of a non-pecuniary nature that affect the living conditions of the victims or their families."[413]

353. In the instant case, the Court has established the psychological and moral impact on César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, and their respective family units (*supra* paras. 183 and 268), owing to the sentencing to life imprisonment. It has also established the impact on Lucas Matías Mendoza owing to the lack of medical care he suffered while at the Juvenile Institution; the torture suffered by Claudio David Núñez and Lucas Matías Mendoza, and the absence of a serious investigation into these events and into the death of Ricardo Videla. Based on all the foregoing, the Court finds it pertinent to order as compensation for non-pecuniary damage, in favor of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, the amount of US$2,000.00 (two thousand United States dollars) for each of them. It also finds it pertinent to order another US$10,000.00 (ten thousand United States dollars) for Claudio David Núñez and US$30,000.00 (thirty thousand United States dollars) for Lucas Matías Mendoza, owing to the violations additional to the sentencing to life imprisonment that they suffered in this case.

354. The Court has also established in this Judgment the impotence and anguish that the unlawful sentencing of the victims to life imprisonment caused to their families. Therefore, it considers it pertinent to establish, in equity, the following amounts for each of the persons mentioned below:

a) US$5,000.00 (five thousand United States dollars) for Isolina del Carmen Herrera, Ana María del Valle Brito, Marta Graciela Olguín, Florinda Rosa Cajal and Stella Maris Fernández, mothers of the said youths;
b) US$3,500 (three thousand five hundred United States dollars) for Ricardo Roberto Videla, father of Ricardo David Videla;

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412 *Cf. Case of Neira Alegría et al. v. Peru. Reparations and costs.* Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Mohamed v. Argentina*, para.155.

413 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs,* para. 84, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of June 27, 2012. Series C No. 245, para. 318.

c) US$3,500 (three thousand five hundred United States dollars) for Elba Mercedes Pajón, grandmother of Lucas Matías Mendoza, and
d) US$1,500 (one thousand five hundred United States dollars) for Romina Beatriz Muñoz, former partner of César Alberto Mendoza, and for Jorgelina Díaz, partner of Claudio David Núñez.

355. In addition, the Court considers it pertinent to order an additional amount of US$3,500 (three thousand five hundred United States dollars) to each of Ricardo Videla's parents for the sufferings caused by the absence of a diligent investigation into his death (*supra* paras. 109 to 125 and 213 to 227). Finally, with regard to Ailén Isolina Mendoza, Samira Yamile Mendoza, and Santino Geanfranco Mendoza, children of César Alberto Mendoza; Zahira Lujan Núñez, daughter of Claudio David Núñez; and Lucas Lautaro Mendoza, son of Lucas Matías Mendoza, the Court finds that the Judgment constitutes *per se* a form of reparation for them.[414]

E. Costs and expenses

E.1. Pleadings of the representative

356. The representative requested the reimbursement of 39,429 Argentine pesos corresponding to the disbursements she had incurred during the international litigation, and that had not been covered by the Victims' Legal Assistance Fund. This amount corresponds to 2,500 Argentine pesos for "[o]ffice expenses"; 10,551 Argentine pesos for travel and per diems for meetings with the victims in the provinces of La Pampa and Mendoza during the preparation of the expert opinions, and 26,378 Argentine pesos for the expenses incurred by officials from the national Ombudsman's Office during the visit to Costa Rica for the public hearing held in this case.

357. The Commission did not submit any observations in this regard. The State indicated that it was "surprised [that the representative had] request[ed] reimbursement of costs and expenses], because [the amounts claimed] c[ame] from the budget of the Argentine State."

E.2. Considerations of the Court

358. As the Court has indicated, costs and expenses are part of the concept of reparation, because the victims' activities to obtain justice at both the national and the international level involve disbursements that must be compensated when the international responsibility of the State is declared in a judgment.

359. However, in this case, the Court observes that the representative of the victims is the head of the Argentine national Office of the Ombudsman, which is an organ of the State. The representative did not justify how, despite this circumstance, it would be appropriate to

414 *Cf. Case of El Amparo v. Venezuela. Reparations and costs.* Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of Fornerón and daughter v. Argentina*, para.149.

reimburse the amounts requested. Therefore, the Court will not order the reimbursement of the expenses claimed.

F. Other measures of reparation requested

360. The representative asked the Court to order the State to release the victims by commuting the sentences, and to eliminate their names from the criminal records; to grant them housing and facilities for work and study; to prepare and implement educational, training and employment programs during the prison and post-prison stages; to prepare and implement plans that encourage the strengthening of the ties between individuals deprived of liberty and their next of kin and the community, and to organize awareness-raising campaigns and protocols for the actions of journalists. The representative and the Commission also requested the improvement of detention conditions in the Mendoza Prisons.

361. The Court finds that the measures of reparation ordered in this Judgment are sufficient as regards the facts and the human rights violations established, among others factors, because César Alberto Mendoza and Claudio David Núñez have been released, and Saúl Cristian Roldán Cajal and Lucas Matías Mendoza are detained for the supposed perpetration of other offenses.

G. Reimbursement of expenses to the Victims' Legal Assistance Fund

362. In 2008, the General Assembly of the Organization of American States created the Legal Assistance Fund of the Inter-American Human Rights System in order to "facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."[415] In the instant case, the victims were granted the necessary financial assistance from the Legal Assistance Fund for expert witness Sofía Tiscornia to appear at the public hearing, as well as for the expenses related to the preparation of her expert opinion. It was also decided that financial assistance would be allocated to cover travel and accommodation expenses for the presumed victim Stella Maris Fernández to provide her testimony at the public hearing.

363. The State had the opportunity to present its observations on the disbursement made in this case, which amounted to US$3,693.58 (three thousand six hundred ninety-three United States dollars and fifty-eight cents). The State did not submit any observations in this regard. It is for the Court, pursuant to article 5 of the Rules of the Fund, to evaluate the admissibility of ordering the defendant State to reimburse the Legal Assistance Fund the disbursements incurred.

[415] AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the thirty-eighth General Assembly of the OAS, during the fourth plenary session, held on June 3, 2008, *"Creation of the Legal Assistance Fund of the Inter-American Human Rights System,"* operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted by the OAS Permanent Council on November 11, 2009, *"Rules of Procedure for the Legal Assistance Fund of the Inter-American Human Rights System,"* article 1(1).

364. Based on the violations declared in this Judgment, the Court orders the State to reimburse the Fund the sum of US$3,693.58 (three thousand six hundred ninety-three United States dollars and fifty-eight cents) for the said expenses related to the appearance of Stella Maris Fernández and expert witness Sofía Tiscornia at the public hearing, as well as to the preparation of the latter's expert opinion. This amount must be repaid within ninety days of notification of this Judgment.

H. Method of compliance with the payments ordered

365. The State must pay the compensation for pecuniary and non-pecuniary damage established in this Judgment directly to the persons indicated herein, within one year of notification of the Judgment, in the terms of the following paragraphs.

366. If any of the beneficiaries should die before they have received the respective compensation, the amount will be provided directly to their heirs, pursuant to the applicable domestic law.

367. The State must comply with its obligations by payment in United States dollars or Argentine currency, using the exchange rate in effect on the Stock Exchange of New York, United States of America, the day before the payment to make the respective calculation.

368. If, for reasons that can be attributed to the beneficiaries of the compensation, they are unable to receive this within the indicated period, the State shall deposit the said amounts in their favor in an account or a deposit certificate in a solvent Argentine financial institution, in United States dollars, and in the most favorable financial conditions permitted by Argentine law and banking practice. If, after 10 years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest.

369. The amounts allocated in this Judgment as compensation must be delivered to the persons indicated in full, as established in this Judgment, without any deductions arising from eventual taxes or charges.

370. If the State should fall in arrears, it must pay interest on the amount owed, corresponding to banking interest on arrears in Argentina.

371. In accordance with its consistent practice, the Court retains the authority inherent in its attributes and also derived from Article 65 of the American Convention, to monitor full compliance with this Judgment. The case will be closed when the State has complied fully with its provisions.

372. Within one year of notification of this Judgment, the State must provide the Court with a report on the measures adopted to comply with it.

XIV
OPERATIVE PARAGRAPHS

373. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To determine that the issues raised by the State as preliminary objections concerning the procedural purpose on which the case before the Inter-American Commission on Human Rights was founded are analyzed as part of the merits of the case, in the terms of paragraphs 22 to 25 of this Judgment.

2. To admit partially the preliminary objection of *res judicata,* in the terms of paragraphs 26 to 40 of this Judgment.

3. To reject the preliminary objection filed by the State alleging that the procedural claims of the representative of the victims with regard to Saúl Roldan Cajal are now moot, in the terms of paragraphs 41 to 45 of this Judgment.

4. To reject the preliminary objection of lack of competence of the Inter-American Court of Human Rights filed by the State, in the terms of paragraphs 46 to 49 of this Judgment.

DECLARES,

unanimously that:

5. The State is responsible for the violation of the right established in Article 7(3) of the American Convention on Human Rights, in relation to Articles 19 and 1(1) of this instrument, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and Ricardo David Videla Fernández, in the terms of paragraphs 134 to 164 of this Judgment.

6. The State is responsible for the violation of the right recognized in Article 5(6) of the American Convention on Human Rights, in relation to Articles 19 and 1(1) of this treaty, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal, in the terms of paragraphs 134 to 160 and 165 to 167 of this Judgment.

7. The State is responsible for the violation of the rights recognized in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Ricardo David Videla and Saúl Cristian Roldán Cajal, in the terms of paragraphs 168 to 183 of this Judgment.

8. The State is responsible for the violation of the rights recognized in Article 5(1) and 5(2) of the American Convention, in relation to Articles 19 and 1(1) thereof, to the detriment of Lucas Matías Mendoza, in the terms of paragraphs 184 to 195 of this Judgment.

9. The State is responsible for the violation of the rights recognized in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Lucas Matías Mendoza and Claudio David Núñez, in the terms of paragraphs 196 to 211 of this Judgment.

10. The State is responsible for the violation of the rights recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Stella Maris Fernández and Ricardo Roberto Videla, parents of Ricardo David Videla Fernández, in the terms of paragraphs 213 to 229 of this Judgment.

11. The State is responsible for the violation of the rights recognized in Articles 8(1), and 25(1) of the American Convention, in relation to Article 1(1) of this instrument and to the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Lucas Matías Mendoza and Claudio David Núñez, in the terms of paragraphs 230 to 236 of this Judgment.

12. The State is responsible for the violation of the right established in Article 8(2)(h) of the American Convention on Human Rights, in relation to Articles 19, 1(1) and 2 thereof, to the detriment of Saúl Cristian Roldán Cajal, César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza, in the terms of paragraphs 237 to 261 of this Judgment.

13. The State is responsible for the violation of the right recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Isolina del Carmen Herrera, Romina Beatríz Muñoz, Ailén Isolina Mendoza, Samira Yamile Mendoza, Santino Geanfranco Mendoza, Ana María del Valle Brito, Jorgelina Amalia Díaz, Zahira Lujan Núñez, Marta Graciela Olguín, Elba Mercedes Pajón, Lucas Lautano Mendoza, Florinda Rosa Cajal, Stella Maris Fernández and Ricardo Roberto Videla, in the terms of paragraphs 268 to 289 of this Judgment.

14. The State failed to comply with the obligation contained in Article 2 of the American Convention on Human Rights, in relation to Articles 7(3) and 19 thereof, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal, in the terms of paragraphs 291 to 298 of this Judgment.

15. The State failed to comply with the obligation contained in Article 2 of the American Convention on Human Rights, in relation to Articles 8(2)(h) and 19 thereof, to the detriment of César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal, in the terms of paragraphs 299 to 303 of this Judgment.

AND ORDERS,

unanimously that,

16. This Judgment constitutes *per se* a form of reparation.

17. The State must provide, free of charge, immediately and through its specialized health care institutions or personnel, the adequate and effective medical and psychological or psychiatric treatment required by Lucas Matías Mendoza and Claudio David Núñez, and the psychological or psychiatric treatment required by César Alberto Mendoza and Saúl Cristian Roldán Cajal, if they request this, including the provision, free of charge, of the medicines they may eventually need, taking into consideration the ailments of each of them related to this case. In particular, in the case of Lucas Matías Mendoza, the State must provide the specialized ophthalmological, surgical, and/or therapeutic treatment that will alleviate or improve his visual problems, in the terms of paragraphs 309 to 312 of this Judgment.

18. The State must ensure, as soon as possible, that César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal receive the formal educational or training opportunities that they want, including university studies, through the prison system or, if they have been released, through its public institutions, in the terms of paragraphs 313 to 318 of this Judgment.

19. The State must make the publications ordered in paragraph 320 of this Judgment, in the terms of that paragraph.

20. The State must adapt its legal framework to the international standards for juvenile criminal justice indicated above, and design and implement public policies with clear goals and timetables, as well as with the allocation of adequate budgetary resources, for the prevention of juvenile delinquency through effective programs and services that encourage the integral development of children and adolescents. In this regard, Argentina must, among other matters, disseminate information on the international standards regarding children's rights, and provide support to the most vulnerable children and adolescents, as well as to their families, in the terms of paragraphs 321 to 325 of this Judgment.

21. The State must ensure that sentences of life imprisonment and reclusion for life are never again imposed on César Alberto Mendoza, Claudio David Núñez and Lucas Matías Mendoza, or on any other person for crimes committed while a minor. Similarly, Argentina must ensure that those persons who are currently serving such sentences for offenses

committed as juveniles may obtain a review thereof that meets the standards set out in this Judgment, in the terms of paragraphs 326 and 327 hereof.

22. The State must, within a reasonable time, adapt its domestic laws in accordance with the parameters established in this Judgment concerning the right to appeal a judgment before a higher court or judge, in the terms of paragraphs 329 to 332 of this Judgment.

23. The State must implement, within a reasonable time, if they do not exist already, mandatory programs or courses on the principles and standards for the protection of human rights and the rights of the child, including those relating to personal integrity and torture, as part of the general and ongoing training of federal prison staff and prison staff of the province of Mendoza, as well as of judges with competence for offenses committed by minors, in the terms of paragraphs 333 to 337 of this Judgment.

24. The State must investigate the facts that could have contributed to the death of Ricardo David Videla in the Mendoza Prison by means of the pertinent judicial, disciplinary or administrative mechanisms, in the terms of paragraphs 338 to 341 of this Judgment.

25. The State must conduct, effectively and within a reasonable time, the criminal investigation into the acts of torture suffered by Claudio David Núñez and Lucas Matías Mendoza to determine the eventual criminal responsibilities and, as appropriate, apply the sanctions and consequences established by law. It must also conduct the pertinent disciplinary, administrative or criminal actions if the investigation into the said acts reveals procedural or investigative irregularities related to them, in the terms of paragraphs 342 to 344 of this Judgment.

26 The State must pay the amounts established in paragraphs 349 and 353 to 355 of this Judgment as compensation for pecuniary and non-pecuniary damage and to reimburse the Victims' Legal Assistance Fund the amount established in paragraph 364 of this Judgment, in the terms of those paragraphs and of paragraphs 345 to 372 of this Judgment.

27. The State must, within one year of notification of this Judgment, provide the Court with a report on the measures taken to comply with it.

28. The Court will supervise full compliance with this Judgment, in exercise of its authority and in compliance with its obligations under the American Convention on Human Rights, and will close the case once the State has complied fully with its provisions.

Done, at San José, Costa Rica, on May 14, 2013, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán

President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary