

# Omar Humberto Maldonado Vargas et al. v. Chile

## ABSTRACT<sup>1</sup>

*This case is about the prosecution, detention and torture of twelve members of Chile's Air Force during the military dictatorship of General Augusto Pinochet. The twelve had been arbitrarily arrested, tortured, tried under the Military Code of Justice by the War Council, and sentenced to detention for varying lengths of time. Some were also exiled. Eventually, the Court found the State in violation of the American Convention for the delay in investigating the crimes committed against the victims, and for failing to provide them with an opportunity to appeal their military tribunal convictions, which it was required to do since the evidence used against them was illegally obtained through torture.*

## I. FACTS

### A. Chronology of Events

**September 11, 1973:** A military regime, led by General Augusto Pinochet, overthrows the national government.<sup>2</sup> The new *de facto* military government calls itself the “Government Junta” and issues a decree claiming authority over the State.<sup>3</sup>

**September 12, 1973:** The Government Junta issues Decree Law No. 5 declaring that punishments prescribed by the Code of Military Justice must be adjudicated as if the State were in a “state of war.”<sup>4</sup> This means that any alleged violations of the Code of Military Justice or other

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1. John Flynn, Author; Michelle Gonzalez, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 300, ¶ 20 (Sept. 2, 2015).

3. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, Report No. 119/13, Inter-Am. Comm'n H.R., Case No. 12.500, ¶ 44 (Nov. 8, 2013).

4. *Id.* ¶ 46.

military laws are to be tried before the War Council, which retains jurisdiction over such crimes during times of war.<sup>5</sup>

**March 11, 1990:** The Government Junta is overthrown and the State returns to democracy.<sup>6</sup>

**April 2001:** A criminal investigation is opened to focus on alleged acts of torture committed by members of the former dictatorship.<sup>7</sup>

**September 10, 2001:** *La Corporación de Promoción y Defensa de los Derechos Humanos* (Corporation for the Defense of Human Rights; "CODEPU") files a motion to reopen cases tried under the jurisdiction of the War Council during the "state of war."<sup>8</sup> The motion is filed on behalf of a number of individuals who were convicted during that time. Among them there are twelve petitioners to the Inter-American Commission on Human Rights.<sup>9</sup> The motion alleges that new evidence surfaced that proves their innocence.<sup>10</sup> In particular, CODEPU requests that the Supreme Court nullify the judgments issued in "Aviación/Bachelet et al." because of many miscarriages of justice that occurred during the original proceedings, including "confessions extracted under torture, serious violations of probatory law, retroactive application of penal law, absence of jurisdiction or competence of the Court, and aberrant criminal definition."<sup>11</sup>

**2005:** A constitutional reform allows the Supreme Court to retain jurisdiction over matters decided by the War Council before the State's return to democracy.<sup>12</sup>

**April 30, 2007:** Two members of the former dictatorship are sentenced for acts of torture in relation to the criminal investigation opened in April 2001.<sup>13</sup>

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5. *Id.* ¶¶ 55-56.

6. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, Official Summary Issued by the Inter-American Court, Inter-Am Ct. H.R. (ser. C) No 300, 1 (Sept. 2, 2015).

7. *Id.* at 2.

8. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 67.

9. *Id.*

10. *Id.* ¶ 69.

11. *Id.*

12. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, Official Summary Issued by the Inter-American Court, 2.

13. *Id.* at 2.

## 1. Events pertaining to Omar Humberto Maldonado Vargas

**October 23, 1973:** Corporal Second Class Vargas, of the State's Air Force, is detained at his place of work and summoned for a meeting at the Ministry of Defense.<sup>14</sup> However, the car transporting him, instead of stopping at the Ministry of Defense, goes to the Air War College, where he is blindfolded and his hands are tied.<sup>15</sup> All his belongings are taken and he is stripped of his rank.<sup>16</sup> He is forced to undress and lie on a table, while his hands and feet are tied and he is electrically shocked.<sup>17</sup> As a result of the torture he suffers, Cpl. Vargas loses sensitivity in his right hand.<sup>18</sup>

**July 30, 1974:** The War Council convicts Cpl. Vargas of conspiracy of sedition.<sup>19</sup> He is sentenced to four years in military prison, and is barred from holding public office during his sentence.<sup>20</sup> Further, he is permanently stripped of all political rights.<sup>21</sup>

**November 1975:** Cpl. Vargas is exiled to England and is prohibited from ever returning to the State.<sup>22</sup>

## 2. Events pertaining to Mario Gonzalez Rifo

**December 12, 1973:** Sergeant First Class Rifo, of the Air Force, is arrested at his home by two armed pilots in civilian clothes.<sup>23</sup> His captors do not display a warrant and tell Sgt. Rifo he is being taken into custody to speak to an Air Force prosecutor and will be released in a few hours; instead, he is taken to the basement of the Air War College where he is interrogated and tortured.<sup>24</sup> He is blindfolded with a cord so tight that it leaves him permanently partially blind in his right eye.<sup>25</sup>

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14. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 71.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* ¶ 53.

20. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 53.

21. *Id.*

22. *Id.* ¶ 71.

23. *Id.*

24. *Id.*

25. *Id.*

**January 27, 1975:** The War Council convicts Sgt. Rifo for dereliction of military duty.<sup>26</sup> He is sentenced to two years in military prison, and is barred from holding public office during the course of his sentence.<sup>27</sup>

**April 10, 1975:** The Commander-in-Chief modifies Sgt. Rifo's sentence and increases it to three years in military prison.<sup>28</sup>

### 3. Events pertaining to Manuel Lopez Oyadenel

**March 1974:** First Class Cpl. Oyadenel, of the Air Force, is arrested at the El Bosque Air Base.<sup>29</sup> He is taken to the Air War College, where he is blindfolded at all times, beaten, and threatened.<sup>30</sup>

**January 27, 1975:** The War Council convicts Cpl. Oyadenel for dereliction of military duty.<sup>31</sup> He is sentenced to three years in military prison, and is barred from holding public office during the course of his sentence.<sup>32</sup>

### 4. Events pertaining to Mario Cornejo Barahona

**October 14, 1973:** Sergeant Second Class Barahona, of the Air Force, is arrested without a warrant.<sup>33</sup> He is taken to the basement of the Ministry of Defense, where he is blindfolded, bound, and tortured.<sup>34</sup> As a result of the torture, Sgt. Barahona suffers a permanent spinal injury.<sup>35</sup>

**January 27, 1975:** The War Council convicts Sgt. Barahona of dereliction of military duty.<sup>36</sup> He is sentenced to eight years in military prison, and is permanently barred from holding public office.<sup>37</sup> Further, he is permanently stripped of all political rights, and is prohibited from working in licensed professions during the course of his sentence.<sup>38</sup>

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26. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 53.

27. *Id.*

28. *Id.*

29. *Id.* ¶ 71.

30. *Id.*

31. *Id.* ¶ 53.

32. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 53.

33. *Id.* ¶ 71.

34. *Id.*

35. *Id.*

36. *Id.* ¶ 53.

37. *Id.*

38. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 53.

**April 10, 1975:** The Commander-in-Chief modifies Sgt. Barahona's sentence, and increases it to fifteen years and one day in military prison.<sup>39</sup>

#### 5. Events pertaining to Alvaro Yanez Del Villar

**September 13, 1973:** Commander Villar, a Group Commander in the Air Force, is arrested at his place of work by an Officer accompanied by two armed soldiers.<sup>40</sup> He is placed inside a vehicle and is told that he is being taken to the Office of the Prosecutor of Aviation.<sup>41</sup> Upon arrival, he is blindfolded and his hands are tied.<sup>42</sup> He is told that he will be killed if he attempts to escape.<sup>43</sup>

Cmdr. Villar is interrogated and tortured with beatings and electric shock sessions.<sup>44</sup> He is told numerous times to write down "[his] confession."<sup>45</sup>

**November 14, 1973:** Cmdr. Villar is relocated to the Santiago Public Prison.<sup>46</sup>

**July 30, 1974:** The War Council convicts Cmdr. Villar of dereliction of military duty.<sup>47</sup> He is sentenced to 541 days in military prison, and is barred from holding public office during the course of his sentence.<sup>48</sup>

**October 8, 1974:** After spending eleven months in jail, Cmdr. Villar is released.<sup>49</sup>

#### 6. Events pertaining to Victor Adriazola Meza

**July 30, 1974:** The War Council convicts Petty Officer Meza of conspiracy of sedition.<sup>50</sup> He is sentenced to ten years and one day in military prison and is barred from working in licensed professions

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39. *Id.*

40. *Id.* ¶ 71.

41. *Id.*

42. *Id.*

43. *Id.*

44. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 71.

45. *Id.*

46. *Id.*

47. *Id.* ¶ 53.

48. *Id.*

49. *Id.* ¶ 71.

50. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 53.

during the course of his sentence.<sup>51</sup> Further, he is permanently stripped of all political rights and is forever barred from holding public office.<sup>52</sup>

**September 26, 1975:** Petty Officer Meza's sentence is modified by decision, decreasing it to eight years in military prison in addition to his other sanctions.<sup>53</sup>

#### 7. Events pertaining to Ibar Rojas Ravanal

**October 10, 1973:** Corporal First Class Ravanal, an aeronautical technician in the Air Force, is detained while at work by three Air Force officers.<sup>54</sup> He is placed in a military vehicle, blindfolded, and transported to the Air War College, where he is tortured.<sup>55</sup>

**July 30, 1974:** The War Council convicts Cpl. Ravanal of conspiracy of sedition.<sup>56</sup> He is sentenced to seven years in military prison, and is barred from working in licensed professions during his sentence.<sup>57</sup> Further, he is permanently stripped of his political rights, and is forever barred from holding public office.<sup>58</sup>

**October 30, 1975:** Cpl. Ravanal's prison sentence is commuted to exile.<sup>59</sup> He is sent to England and spends the next eighteen years unable to return to the State or to see his family.<sup>60</sup>

#### 8. Events pertaining to Jaime Donoso Parra

**Approx. September 20, 1973:** Captain Parra, an engineer in the Air Force, is arrested by Commander Edgar Ceballos.<sup>61</sup> He is tortured and coerced into declaring that he is involved in a conspiracy against the new government.<sup>62</sup>

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51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* ¶ 71.

55. *Id.*

56. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 53.

57. *Id.*

58. *Id.*

59. *Id.* ¶ 71.

60. *Id.*

61. *Id.*

62. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 71.

**July 30, 1974:** The War Council convicts Cpt. Parra of conspiracy of sedition.<sup>63</sup> He is sentenced to fifteen years in military prison, and is barred from working in licensed professions during his sentence.<sup>64</sup> Further, he is permanently stripped of his political rights and is forever barred from holding public office.<sup>65</sup>

#### 9. Events pertaining to Gustavo Lastra Saavedra

**September 26, 1973:** Officer Saavedra, a member of the Air Force, is arrested at the El Bosque School of Aviation by a Squadron Commander named Doctor Alamain.<sup>66</sup> Doctor Alamain tells Officer Saavedra that he must take a common psychological examination taken by all Air Force members, but after travelling a short distance, he is told to put on a blindfold.<sup>67</sup> When he resists, he is threatened.<sup>68</sup>

**July 30, 1974:** The War Council convicts Officer Saavedra of conspiracy of sedition.<sup>69</sup> He is sentenced to ten years and one day in military prison and is barred from working in licensed professions during his sentence.<sup>70</sup> Further, he is permanently stripped of his political rights and is forever barred from holding public office.<sup>71</sup>

#### 10. Events pertaining to Alberto Bustamante Rojas

**October 17, 1973:** Mr. Rojas, a civilian employee of the Air Force, is arrested in his office by a lieutenant and two noncommissioned officers.<sup>72</sup> A hood is placed over his head, his hands are bound, and he is taken to a building where is tortured for over a one-year period.<sup>73</sup> As a result of the torture, he is left permanently deaf in one ear and suffers from constant painful tinnitus in both ears.<sup>74</sup>

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63. *Id.* ¶ 53.

64. *Id.*

65. *Id.*

66. *Id.* ¶ 71.

67. *Id.*

68. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 71.

69. *Id.* ¶ 53.

70. *Id.*

71. *Id.*

72. *Id.* ¶ 71.

73. *Id.*

74. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 71.

**July 30, 1974:** The War Council convicts Mr. Rojas of betrayal.<sup>75</sup> He is sentenced to five years and one day in military prison, and is barred from working in licensed professions during his sentence.<sup>76</sup> Further, he is permanently stripped of his political rights and is forever barred from holding public office.<sup>77</sup>

**September 26, 1975:** Mr. Rojas' sentence is modified by decision, decreasing it to seven years in prison in addition to his other sanctions.<sup>78</sup>

#### 11. Events pertaining to Ernesto Galaz Guzman

**September 11, 1973:** Group Commander Guzman, a member of the Air Force who has served for thirty years, decides not to report for duty after hearing of the military *coup*.<sup>79</sup> He later goes to his office, where a lieutenant and three armed officers arrest him.<sup>80</sup> He is taken to Colina Air Base along with three other service members, where he is held in custody until September 20, 1973, and is told that he is a prisoner of war.<sup>81</sup>

**September 20, 1973:** Cmdr. Guzman and the other Air Force detainees are taken by helicopter to a different facility.<sup>82</sup> Upon arrival, his hands and feet are tied, a bag is placed over his head, and he is left to stand for hours.<sup>83</sup> He is subsequently subjected to various forms of torture at the hands of General Orlando Gutiérrez, who calls himself the prosecutor in the court martial against Cmdr. Guzman.<sup>84</sup> General Gutiérrez demands information from Mr. Guzman relating to a plot against the new Government Junta and implicates Mr. Guzman in a conspiracy against the Junta.<sup>85</sup>

Cmdr. Guzman continues to be tortured.<sup>86</sup> His captors insert needles under his fingernails, beat him, and leave him in isolation.<sup>87</sup> When Guzman does not confess, his captors resort to electric shock

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75. *Id.* ¶ 53.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* ¶ 71.

80. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 71.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 71.

87. *Id.*



sessions.<sup>88</sup> Cmdr. Guzman said his captors had their own version and “the systematic torture was to get [him] to confirm their story.”<sup>89</sup>

**July 30, 1974:** The War Council convicts Cmdr. Guzman of betrayal and promotion of sedition.<sup>90</sup> He is sentenced to death, but the sentence is later commuted to thirty years in prison because of his “previous good conduct.”<sup>91</sup> He is sent to the Public Prison where he stays for five years.<sup>92</sup>

**April 18, 1978:** Cmdr. Guzman leaves for Belgium after being granted political asylum.<sup>93</sup>

## 12. Events pertaining to Belarmino Constanzo Merino

**September 27, 1973:** Mr. Merino, a noncommissioned officer and maintenance supervisor in the Air Force, is arrested by armed cadets who are told to shoot if he attempts to escape.<sup>94</sup>

**September 28–November 1973:** Mr. Merino is taken to the Air War College, where he is bound and a bag is placed over his head.<sup>95</sup> All of his belongings are confiscated, and he is stripped of his military rank.<sup>96</sup> He is tortured in various ways; one method is to tie his hands and feet to an iron cot and electrocute him.<sup>97</sup> As a result of the torture, he becomes deaf and suffers symptoms consistent with post-traumatic stress disorder.<sup>98</sup>

**July 30, 1974:** The War Council convicts Mr. Merino of betrayal and promotion of sedition.<sup>99</sup> He is sentenced to death, but the sentence is later commuted to thirty years in prison.<sup>100</sup>

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88. *Id.*

89. *Id.*

90. *Id.* ¶ 53.

91. *Id.* ¶¶ 53, 71.

92. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 71.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 71.

99. *Id.* ¶ 53.

100. *Id.*

*B. Other Relevant Facts*

[None]

## II. PROCEDURAL HISTORY

*A. Before the Commission*

**April 15, 2003:** CODEPU, along with the International Federation for Human Rights (“FIDH”), files a petition on behalf of twelve members of the Chilean Air Force.<sup>101</sup>

**March 9, 2005:** The Commission issues Admissibility Report No. 6/05 and declares the petition admissible insofar as the petition alleges violations of Articles 1(1) (Obligation of Non-Discrimination), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2)(h) (Right to Appeal), 9 (Freedom from *Ex Post Facto* Laws), 11(1) (Right to Honor and Dignity), 24 (Right to Equal Protection), 25 (Right to Judicial Protection), and 27(2) (Non-Derogable Rights) of the American Convention on Human Rights.<sup>102</sup>

**November 8, 2013:** The Commission issues its Report on Merits, and concludes that the State violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhumane, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.<sup>103</sup> The Commission also highlighted the importance of Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention and Article 10 (Statements Obtained Through Torture Are Inadmissible) of the Inter-American Convention to Prevent and Punish Torture.<sup>104</sup> The Commission declines to rule on alleged violations of Articles 9 (Freedom from *Ex Post Facto* Laws), 11(1) (Right to Honor and Dignity), 25 (Right to Judicial Protection) in regards to equality before

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101. Omar Humberto Maldonado Vargas et al. v. Chile, Admissibility Report, Report No. 6/05, Inter-Am. Comm’n H.R., Case No. 12.500, ¶ 1 (Mar. 9, 2005).

102. *Id.* “Decides” ¶ 1.

103. Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, ¶ 136.

104. *Id.*

the law, and 27(2) (Non-Derogable Rights) of the American Convention.<sup>105</sup>

The Commission recommends the State do the following: (1) “investigate, prosecute and punish” those responsible for torturing the victims; (2) establish administrative or criminal blame for failing to investigate the torture; (3) adopt necessary measures to ensure an effective judicial recourse for the victims and their next of kin; (4) fully compensate the victims, including both pecuniary and non-pecuniary damages; (5) adopt necessary domestic measures to comply with the Inter-American system’s standards against torture and for judicial protection; and (6) take necessary measures to guarantee non-repetition.<sup>106</sup>

### *B. Before the Court*

**April 12, 2014:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>107</sup>

#### 1. Violations Alleged by Commission<sup>108</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 11 (Right to Privacy)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1 (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhumane, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute)

*all in relation to:*

Article 1 (Obligation to Prevent and Punish Torture) of the Inter-American Convention to Prevent and Punish Torture

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105. *Id.*

106. *Id.* ¶ 137.

107. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, ¶ 2.

108. *Id.*

## 2. Violations Alleged by Representatives of the Victims<sup>109</sup>

Same Violations Alleged by Commission.

***Approx. 2015:*** The Center for International Human Rights Law of Northwestern University submits an amicus curiae brief to the Court.<sup>110</sup>

***April 22-23, 2015:*** The public hearing is held in Cartagena, Columbia. The parties and the Inter-American Commission give final oral arguments and victims give statements.<sup>111</sup>

***September 1, 2015:*** The Court begins its deliberations.<sup>112</sup>

### III. MERITS

#### *A. Composition of the Court<sup>113</sup>*

Humberto Antonio Sierra Porto, President  
Manuel E. Ventura Robles, Judge  
Diego García-Sayán, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Ferrer Mac-Gregor Poisot, Judge

Emilia Segares Rodríguez, Deputy Secretary

#### *B. Decision on the Merits*

***September 2, 2015:*** The Court issues its Judgment on Merits, Reparations and Costs.<sup>114</sup>

The Court found unanimously that the State had violated:

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109. *Id.*

110. *Id.* ¶ 7.

111. *Id.* ¶ 6.

112. *Id.* ¶ 9.

113. Judge Eduardo Vio Grossi did not participate in the deliberation of the judgment pursuant to Rule 19.1 of the Rules of Procedure. Judge Roberto F. Caldas did not participate in the deliberation due to extenuating circumstances. Secretary Pablo Saavedra Alessandri excused himself from participation. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations and Costs, n.\*.

114. *See generally id.*

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Rojas, Mr. Ravanal, Mr. Villar, and Mr. Vargas,<sup>115</sup> because:

*Upon hearing allegations of torture, the State was required to immediately initiate an impartial investigation into the crimes.<sup>116</sup> The necessity for swift investigation and prosecution of the wrongdoers was amplified by the fact that the alleged wrongdoers were State agents.<sup>117</sup> For eight of the twelve victims, the State initiated a timely investigation in 2001.<sup>118</sup> During the course of that investigation, the State learned of the torture suffered by the remaining four victims, yet failed to investigate those crimes until 2013.<sup>119</sup> Therefore, the State was on notice of the alleged torture in relation to those four victims but failed in its responsibility to immediately investigate those claims.<sup>120</sup> As such, the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).<sup>121</sup>*

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 2 (Obligation to Give Domestic Legal Effect to Rights) and Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Vargas, Mr. Villar, Mr. Barahona, Mr. Merino, Mr. Oyanedel, Mr. Guzman, Mr. Rifo, Mr. Parra, Mr. Rojas, Mr. Saavedra, Mr. Meza, and Mr. Ravanal,<sup>122</sup> because:

*The State failed to provide the twelve victims with an opportunity to appeal their military tribunal convictions, which it was required to do since the evidence used against them was illegally obtained through torture.<sup>123</sup> Prior to the 2005 constitutional reform, the Supreme Court did not have jurisdiction to review convictions handed down by War Councils.<sup>124</sup> After gaining jurisdiction to review, however, the Supreme*

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115. *Id.* “Declares” ¶ 1.

116. *Id.* ¶ 76.

117. *Id.*

118. *Id.* ¶ 78.

119. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, ¶¶ 78-79.

120. *Id.* ¶¶ 76-80.

121. *Id.* “Declares” ¶ 1.

122. *Id.* “Declares” ¶ 2.

123. *Id.* ¶ 119.

124. *Id.* ¶¶ 118-25.

*Court denied the victims' petitions for review, and the victims were left with no opportunity to review their convictions.*<sup>125</sup>

*In 2001, the victims filed an appeal of their War Council Convictions to the Supreme Court, their only recourse.*<sup>126</sup> *The Court declared the appeal inadmissible for a lack of jurisdiction, despite the fact that the Code of Criminal Procedure allows for Supreme Court review of convictions when new facts emerge that establish the defendant's innocence.*<sup>127</sup> *The Supreme Court instead cited to the Code of Military Justice, which does not allow for review of final judgments made during wartime.*<sup>128</sup> *Since the State declared "wartime" when the convictions were handed down, the victims were denied any way to appeal their convictions.*<sup>129</sup>

*After the 2005 amendment to the Constitution allowing for review of War Council sentences, the Supreme Court still denied the victims any opportunity to appeal.*<sup>130</sup> *Even though the victims themselves did not file another appeal, it was clear that the Supreme Court still refused to hear such cases after it denied a similar petition from others who had been convicted by War Councils.*<sup>131</sup> *The victims in the similar petition had also been held as political prisoners and confessed to crimes after being tortured but were denied review.*<sup>132</sup> *The Supreme Court there reasoned that regardless of whether the victims' confessions were obtained by illegal means such as torture, it could only review convictions if new facts arose establishing innocence.*<sup>133</sup> *Ultimately, the Supreme Court's reasoning resulted in the denial of effective recourse for the victims.*<sup>134</sup> *Thus, the State violated Article 25(1) (Right of Recourse Before a Competent Court) of the American Convention on Human Rights by denying the victims' 2001 appeal.*<sup>135</sup>

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125. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, ¶ 125.

126. *Id.* ¶ 127.

127. *Id.* ¶¶ 127-28.

128. *Id.*

129. *Id.* ¶ 131.

130. *Id.* ¶ 133.

131. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, ¶ 133.

132. *Id.* ¶ 133.

133. *Id.* ¶ 135.

134. *Id.* ¶¶ 138-39.

135. *Id.* ¶ 132.

The Court found unanimously that the State was not responsible for the violation of:

Article 11 (Right to Privacy), to the detriment of Mr. Vargas, Mr. Villar, Mr. Barahona, Mr. Merino, Mr. Oyandel, Mr. Guzman, Mr. González, Mr. Parra, Mr. Rojas, Mr. Saavedra, Mr. Adriazola, and Mr. Ravanal,<sup>136</sup> because:

*The Inter-American Court did not have jurisdiction to evaluate the merits of the cases that resulted in the victims' convictions and, as such, was unable to determine whether the sentences violated the victims' right to dignity and honor.*<sup>137</sup>

### *C. Dissenting and Concurring Opinions*

[None]

## IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

### *A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

#### 1. Continue to Investigate the Facts Surrounding This Case

While the State did initiate an investigation into the allegations of torture suffered by the victims, it was delayed by twelve years.<sup>138</sup> The Court ordered that the State continue the investigation to completion.<sup>139</sup> In so doing, the State must ensure that the victims and their families are allowed to have full access to the investigation in accordance with domestic and international law.<sup>140</sup> Moreover, the State must publish the results of the investigations and disclose any changes to the victims' War Tribunal convictions.<sup>141</sup>

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136. *Id.* “Declares” ¶ 3.

137. *Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs*, ¶ 146.

138. *Id.* ¶ 155.

139. *Id.*

140. *Id.* ¶ 156.

141. *Id.*

## 2. Publish the Judgment

The Court ordered that the State must publish the Court's Judgment in multiple formats and make it available to the public.<sup>142</sup> First, the State must publish the Official Summary of the Judgment in both the Official Journal and a national daily newspaper.<sup>143</sup> The State must also distribute the Official Summary of the Judgment within the Air Force, ensuring that it reaches all Air Force members.<sup>144</sup> Lastly, the State must publish the Judgment in its entirety online.<sup>145</sup>

## 3. Publicly Acknowledge Responsibility

The State must organize an event or ceremony publicly acknowledging responsibility for the human rights violations in this case, and senior State officials must attend the recognition ceremony.<sup>146</sup> The State must elect high-ranking senior State officials to attend, and at least one representative for the Judiciary must be present.<sup>147</sup> The State must work with the victims and their representatives to determine a date and location for the ceremony.<sup>148</sup>

## 4. Unveil a Plaque Inscribed with the Names of the Victims

The State must create a plaque to honor and commemorate the victims in this case.<sup>149</sup> The plaque must bear the names of the twelve victims, along with a description of the human rights violations they suffered.<sup>150</sup> The plaque must be placed where both the public and members of the Air Force can appreciate it.<sup>151</sup>

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142. *Id.* ¶ 162.

143. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, ¶ 162.

144. *Id.*

145. *Id.*

146. *Id.* ¶ 160.

147. *Id.*

148. *Id.*

149. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, ¶ 164.

150. *Id.*

151. *Id.*



### 5. Provide a Mechanism for the Review and Annulment of the Victims' War Tribunal Convictions

The State must establish an effective means so the victims may have their War Tribunal convictions reviewed and overturned.<sup>152</sup> The procedure must be available to other former members of the Air Force who are similarly situated to the victims in this case.<sup>153</sup>

### 6. Guarantee Non-Repetition

The State must implement legislation or administrative measures that will provide those condemned by the Council of War during the dictatorship the ability to review and annul convictions that were the result of torture.<sup>154</sup>

#### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court decided not to award pecuniary damages because there were no allegations of property damage or other material damages.<sup>155</sup>

#### 2. Non-Pecuniary Damages

In awarding non-pecuniary damages, the Court considered that the State failed to promptly investigate the victims' claims.<sup>156</sup> The State knew about the allegations of torture for twelve years before it took any action to investigate the claims.<sup>157</sup> Moreover, the State caused significant harm to the victims by failing to provide an effective way to review their War Tribunal convictions.<sup>158</sup> The Court awarded \$30,000 to each of the twelve victims as compensation for these failures.<sup>159</sup>

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152. *Id.* ¶ 167.

153. *Id.* ¶ 170.

154. *Id.*

155. *Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs*, ¶ 172.

156. *Id.* ¶ 178.

157. *Id.*

158. *Id.*

159. *Id.*

The Court also awarded an additional \$25,000 to each of the victims whose rights to judicial protection were violated.<sup>160</sup>

### 3. Costs and Expenses

In assessing costs and expenses, the representatives of the victims presented no information about expenses incurred during domestic litigation prior to exhausting the victims' domestic legal remedies.<sup>161</sup> Therefore, the Court only considered expenses incurred by the representatives on the international level.<sup>162</sup>

The representatives provided the Court with evidence of expenses incurred during the processing of the case before the Court in the form of airline tickets, hotel expenses and affidavits.<sup>163</sup> In total, the expenses claimed by the representatives totaled \$9,022.<sup>164</sup> The Court, however, subtracted costs incurred by family members and friends of the victims who were not required to appear at the hearing, bringing the total expenses claimed by the representatives down to \$6,714.<sup>165</sup>

Ultimately, the Court awarded \$10,000 in costs and expenses, including the \$6,714 that the representatives claimed for airfare and lodging.<sup>166</sup>

### 4. Total Compensation (including Costs and Expenses ordered):

\$570,000

### C. Deadlines

Within six months, the State must publish the Court's Judgment and leave the full Judgment available on the internet for at least one year.<sup>167</sup>

Within one year, the State must organize a public ceremony recognizing international responsibility for its violations of the American Convention.<sup>168</sup>

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160. *Id.* ¶ 179.

161. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, ¶ 183.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* ¶ 185.

167. Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, ¶ 162.

Within one year, the State must unveil a plaque bearing the names of the victims in this case and a description of the circumstances surrounding the violations of human rights.<sup>169</sup>

Within one year, the State must provide the victims with a quick and effective way to have their War Tribunal convictions reviewed and reversed.<sup>170</sup>

Within one year, the State must provide the Court with a report on the measures that have been taken to comply with the Court's judgment.<sup>171</sup>

Within a reasonable time and with due diligence, the State must effectively conclude its investigations into the allegations of torture suffered by the victims.<sup>172</sup>

#### V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

#### VI. COMPLIANCE AND FOLLOW-UP

[None]

#### VII. LIST OF DOCUMENTS

##### *A. Inter-American Court*

##### 1. Preliminary Objections

[None]

##### 2. Decisions on Merits, Reparations and Costs

[Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. \(ser. C\) No. 300 \(Sept. 2, 2015\).](#)

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168. *Id.* ¶ 160.

169. *Id.* ¶ 164.

170. *Id.* ¶ 167.

171. *Id.* “Declares,” ¶ 12.

172. *Id.* ¶ 155.

## 3. Provisional Measures

[Omar Humberto Maldonado Vargas et al. v. Chile, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Mar. 10, 2015\).](#)

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations, and Costs, Official Summary Issued by the Inter-American Court, Inter-Am Ct. H.R. \(ser. C\) No. 300 \(Sept. 2, 2015\).](#)

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

[Omar Humberto Maldonado Vargas et al. v. Chile, Admissibility Report, Report No. 6/05, Inter-Am. Comm'n H.R., Case No. 12.500 \(Mar. 9, 2005\).](#)

## 3. Provisional Measures

[None]

## 4. Report on Merits

[Omar Humberto Maldonado Vargas et al. v. Chile, Report on Merits, Report No. 119/13, Inter-Am. Comm'n H.R., Case No. 12.500 \(Nov. 8, 2013\).](#)

## 5. Application to the Court

[Omar Humberto Maldonado Vargas et al. v. Chile, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.500 \(Apr. 12, 2014\).](#)

VIII. BIBLIOGRAPHY

[None]