

# López et al. v. Argentina

## ABSTRACT\*

*This case is about several inmates in prisons in Argentina who were repeatedly transferred around the country, often far away from their families. Eventually, the Court found the State in violation of several articles of the American Convention.*

### I. FACTS

#### A. Chronology of Events

##### 1. Events pertaining to Néstor Rolando López

**Before 1991:** Mr. Néstor Rolando López is sentenced to four years in prison.<sup>1</sup>

**April 25, 1991:** Mr. López enters the Federal Penitentiary Service (*Servicio Penitenciario Federal*, “SPF”) to serve his sentence.<sup>2</sup>

**February 17, 1992:** Mr. López leaves the SPF on probation.<sup>3</sup>

**December 7, 1995:** Mr. López again enters the SPF after the State sentences him to 18 years in prison.<sup>4</sup> The SPF has discretion to define the inmate transfer policy in its system and to transfer inmates among 35 federal prisons located throughout Argentina.<sup>5</sup>

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1. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 396, ¶ 43 (Nov. 25, 2019).

2. *Id.*

3. *Id.*

4. *Id.*

5. Néstor Rolando López et al. v. Argentina, Admissibility Report, Report No. 3/11, Inter-Am. Comm’n H.R., Pet. No. 12.804, ¶ 26 (Jan. 5, 2011).

**January 11, 1997:** The State transfers Mr. López from Unit 9, located near his family in the city of Neuquén, to Unit 6 of the penitentiary, located nearly 800 kilometers away from his family.<sup>6</sup>

**January 16, 1997:** Mr. López appears before the Federal Court in Rawson, Chubut, and requests a transfer back to Unit 9 in Neuquén to be close to his family.<sup>7</sup> He also requests that the Court send a copy of the present hearing transcript to the Criminal Chamber No. 2 in Neuquén.<sup>8</sup>

**February 10, 1997:** Mr. López appears again before the Rawson Federal Court to expressly withdraw the habeas corpus petition and to again request a transfer to Unit 9 to be closer to his family.<sup>9</sup> Mr. López informs the Court that his family is unable to travel to Rawson to visit him due to economic hardship.<sup>10</sup>

**February 11, 1997:** The Criminal Chamber No. 2 in Neuquén dismisses Mr. López's request, contending that the SPF determines the location of all its prisoners detained in its facilities in accordance with its availability and with the inmate's individual treatment needs.<sup>11</sup> The Chamber further states that, although Article 41 of the Neuquén Provincial Constitution provides that the State may not deprive inmates of their natural and cultural needs in prison and prohibits States from sending inmates to serve their sentences in prisons outside the territory of the province, this provision does not apply to Mr. López's case because of an agreement the State entered into with the Province of Neuquén.<sup>12</sup> Due to a lack of adequate facilities to house inmates in the province, the province of Neuquén and Argentina's Ministry of Justice agreed that individuals convicted by the provincial justice system may be sent to serve their sentences in the federal prison system and be subjected to the federal prison procedures.<sup>13</sup>

**March 3, 1997:** Mr. López appears for a third time before the Rawson Federal Court to request a transfer closer to his family.<sup>14</sup> Mr. López's

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6. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 44.

7. Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 38.

8. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 45.

9. *Id.* ¶ 46.

10. Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 39.

11. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 47.

12. *Id.* ¶ 77.

13. *Id.*

14. Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 41.

defense attorney files a writ of habeas corpus, which Criminal Chamber No. 2 denies, citing the same reasoning it provided in its February 11, 1997 decision.<sup>15</sup> Mr. López appeals, arguing that the Criminal Chamber misapplied the substantive law.<sup>16</sup>

**November 27, 1997:** The Neuquén Superior Court of Justice denies the appeal, citing Article 18 of the Penal Code, which provides that prisoners sentenced by provincial courts to more than five years shall be admitted to national facilities, if the province with original jurisdiction could not provide adequate accommodations.<sup>17</sup> The Court further argues that categorically applying Article 41 of the Provincial Constitution to all cases ignores inmates' rights to adequate prison treatment in favor of social rehabilitation, which a national facility could provide.<sup>18</sup> Nonetheless, in order to mitigate the harmful effects Mr. López may endure as a result of his incarceration far from his home, the Court orders the Criminal Chamber No. 2 of Neuquén to periodically send reports to Unit 6 in Rawson with progress of Mr. López 's prison treatment.<sup>19</sup>

**April 21, 1998:** Mr. López files an appeal to the Federal Supreme Court, arguing that the Superior Court's ruling was arbitrary.<sup>20</sup> The Superior Court finds Mr. López's appeal to the Supreme Court inadmissible.<sup>21</sup>

**August 6, 1998:** Mr. López files another appeal before the Federal Supreme Court.<sup>22</sup> The Supreme Court dismisses the appeal because the Superior Court deemed Mr. López 's prior appeal inadmissible, and the current appeal was based on the prior appeal.<sup>23</sup>

**March 22, 2000:** Mr. López appears again before the Rawson Federal Court to request that the Criminal Chamber No. 2 of Neuquén transfer Mr. López to Unit 9 or Unit 5 of General Roca, or alternatively, for an to go home.<sup>24</sup> The hearing minutes reveal that Mr. López filed a writ of habeas corpus to request the transfer, which Mr. López then withdrew in

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15. Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 41.

16. *Id.* ¶ 43.

17. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 49.

18. *Id.*

19. *Id.*

20. *Id.* ¶ 50.

21. *Id.*

22. *Id.* ¶ 51.

23. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 51.

24. *Id.* ¶ 52.

favor of the court request.<sup>25</sup> Mr. López states that he was held in Unit 6 for more than three years and never enjoyed the benefit of a transfer, despite his exemplary conduct.<sup>26</sup> He also reports that his transfer request arose from his desire to foster his family relationships and his need to contact his attorney, who resided in Neuquén.<sup>27</sup>

**October 11, 2000:** The State transfers Mr. López back to Unit 9 in Neuquén, for only a few weeks, to visit with his family.<sup>28</sup> During this time, Mr. López marries Silvia Verónica Yew, but loses touch with her when he is transferred back to Rawson twenty days later.<sup>29</sup>

**November 3, 2000:** Silvia Verónica Tejo de Rolando López, Mr. López's new wife, and Sandra Elizabeth Rolando López, Mr. López's sister, file a writ of habeas corpus to request Mr. López's urgent transfer to Neuquén or General Roca.<sup>30</sup> In the appeal, the women complain that Mr. López's transfers home and back were too quick.<sup>31</sup> The women further reveal that the transfer would protect Mr. López's safety, considering he initiated a hunger strike upon his return to Unit 6 in Rawson, and he was physically and psychologically harmed by the prison staff there.<sup>32</sup>

The Court denies Mr. López's appeal, stating that Mr. López's claim is limited to transfers within the penitentiary and does not include claims of illegitimate aggression by the prison staff.<sup>33</sup> Additionally, the Court indicates that unit transfers are under the exclusive control of the SPF and, subsequently, of the respective execution court.<sup>34</sup> Lastly, the Court orders an arbitration with Mr. López to discuss his hunger strike.<sup>35</sup>

**January 4, 2001:** Mr. López appears again before the Rawson Federal Court, where he is summoned for his withdrawal from the habeas corpus action he filed the day before.<sup>36</sup> During the hearing, Mr. López requests his definitive transfer to Unit 9 for family purposes, stating that his family

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25. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 52.

26. *Id.*

27. *Id.*

28. *Id.* ¶ 44.

29. *Id.* ¶ 53.

30. *Id.* ¶ 54.

31. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 54.

32. *Id.*

33. *Id.* ¶ 55.

34. *Id.*

35. *Id.*

36. *Id.* ¶ 56.

cannot visit him due to lack of financial resources.<sup>37</sup> He also asks to contact his defense attorney.<sup>38</sup>

**February 8, 2002:** Mr. López's defense attorney files a habeas corpus and *amparo* action with the Criminal Chamber No. 2 in Neuquén.<sup>39</sup> The same day, the habeas corpus action is denied *in limine* and the *amparo* action is declared inadmissible.<sup>40</sup>

**February 18, 2002:** Mr. López appeals the February 8, 2002 decision.<sup>41</sup>

**April 24, 2002:** The Neuquén Superior Court of Justice declares Mr. Lopez's February 18, 2002 appeal admissible.<sup>42</sup>

**September 13, 2002:** The Neuquén Superior Court of Justice rejects Mr. Lopez's February 18, 2002 appeal, relying on the same arguments it presented in its November 27, 1997 ruling, and adding that, although the decision to deny a transfer was lawful, the inmate could still enjoy his right to family visits.<sup>43</sup>

**May 16, 2003:** The Criminal Chamber No. 2 rejects Mr. López's request for parole.<sup>44</sup>

**May 19, 2003:** Mr. López's sister, Veronica Tejo de López, sends a correspondence to Criminal Chamber No. 2 notifying it of Mr. López's constant transfers.<sup>45</sup>

**May 27, 2003:** Mr. López sends a letter to Criminal Chamber No. 2 requesting a transfer to a provincial unit in Neuquén to see his family.<sup>46</sup> He also indicates that he is again initiating a peaceful hunger strike until the Court complies with his request.<sup>47</sup>

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37. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 56.

38. *Id.*

39. *Id.* ¶ 57.

40. *Id.*

41. *Id.* ¶ 58.

42. *Id.*

43. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 58.

44. *Id.* ¶ 59.

45. *Id.*

46. *Id.*

47. *Id.*

**June 3 and June 10, 2003:** Criminal Chamber No. 2 of Neuquén adheres to previous decisions to deny the transfer and orders the management of the penitentiary unit to periodically inform the Chamber of Mr. López's refusal to eat.<sup>48</sup>

**September 24, 2003:** The State transfers Mr. López back to Unit 6.<sup>49</sup>

**December 29, 2007:** Mr. López is released from the Federal Penitentiary Service, and no records indicate any further imprisonment.<sup>50</sup>

## 2. Events pertaining to Miguel Ángel González Mendoza

**March 12, 1993:** Mr. Miguel Ángel González Mendoza enters the Federal Penitentiary Service to serve a twelve-year sentence for the crime of homicide.<sup>51</sup> He begins serving his sentence at Unit 9 in Neuquén.<sup>52</sup>

**March 18, 1994:** The State transfers Mr. González Mendoza to Unit 6 in Rawson.<sup>53</sup>

**August 20, 1996:** The State transfers Mr. González Mendoza back to Unit 9 to be closer to his family.<sup>54</sup>

**April 4, 1997:** The State transfers Mr. González Mendoza back to Unit 6.<sup>55</sup>

**April 24, 1997:** The State transfers Mr. González Mendoza back to Unit 9.<sup>56</sup>

**May 5, 1997:** The State temporarily transfers Mr. González Mendoza to Unit 2, the Institute of the Federal Capital.<sup>57</sup>

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48. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 59.

49. *Id.* ¶ 44.

50. *Id.* ¶ 43.

51. *Id.* ¶ 60; Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 57.

52. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 61.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

**May 9, 1997:** Mr. González Mendoza's defense attorney files a habeas corpus appeal and requests that the State transfer Mr. González Mendoza back to Neuquén.<sup>58</sup>

**May 14, 1997:** The Criminal Chamber No. 2 of Neuquén rejects the habeas corpus claim and the transfer request.<sup>59</sup> The Chamber asserts that although Article 41 of the Provincial Constitution prohibits transfers, that provision is not applicable in this case because the province does not have its own prisons to house inmates.<sup>60</sup> Therefore, the Chamber argues, because prisoners are sentenced to the SPF system, the federal system has the authority to determine the place of detention, in accordance with its existing facility availability and the type of prison treatment appropriate for each case.<sup>61</sup> Furthermore, Article 41 of the Provincial Constitution is a local rule, which cannot prevail over national penal provisions, and because Mr. González Mendoza's transfers were not irrational or arbitrary, the State did not violate his rights.<sup>62</sup> Nevertheless, the Chamber requests that the administrative authority, barring any well-founded reasons to decide otherwise, order Mr. González Mendoza's definitive transfer back to the Neuquén jurisdiction so he may foster a relationship with his relatives.<sup>63</sup>

**May 16, 1997:** The State transfers Mr. González Mendoza to Unit 7, the North Regional Prison in the province of Chaco.<sup>64</sup> This unit is located almost 2,000 kilometers away from Neuquén, the city where Mr. González Mendoza's family resides and whose judicial body originally sentenced Mr. González Mendoza.<sup>65</sup>

**May 29, 1997:** Mr. González Mendoza's defense attorney files an appeal against the Criminal Chamber's decision, disputing the Chamber's application of the substantive law.<sup>66</sup>

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58. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 64.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 61.

65. Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 59.

66. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 65.

**October 19, 1997:** The State temporarily transfers Mr. González Mendoza back to Unit 2 with Unit 9 as the intended final destination.<sup>67</sup>

**October 20, 1997:** The Neuquén Superior Court of Justice rejects the appeal because, pursuant to Article 18 of the Penal Code, individuals sentenced to prison by provincial courts for more than five years are admitted to federal establishments if the provinces lack the adequate facilities to house them.<sup>68</sup> Therefore, the Court concludes, the Penal Code supersedes any provincial rule, and furthermore, categorically applying Article 41 of the Provincial Constitution ignores an inmate's right to obtain adequate prison treatment in favor of his social rehabilitation.<sup>69</sup> Nevertheless, to mitigate the possible detrimental effects of detention outside his home jurisdiction, the Court orders Criminal Chamber No. 2 in Neuquén to periodically request reports from Mr. González Mendoza's federal prison unit to keep abreast of his prison treatment and progress.<sup>70</sup>

**October 24, 1997:** The State temporarily transfers Mr. González Mendoza back to Unit 7 with Unit 9 as the intended final destination.<sup>71</sup>

**November 4, 1997:** Mr. González Mendoza's defense attorney files an appeal against the October 20, 1997 judgment, arguing that the Superior Court's decision was arbitrary and violated Article 41 of the Provincial Constitution.<sup>72</sup>

**November 5, 1997:** The State transfers Mr. González Mendoza to Unit 6.<sup>73</sup>

**April 21, 1998:** The Neuquén Superior Court of Justice declares the appeal inadmissible.<sup>74</sup>

**August 6, 1998:** Mr. González Mendoza's defense attorney files an appeal before the Federal Supreme Court.<sup>75</sup> The Supreme Court dismisses

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67. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 61.

68. *Id.* ¶ 65.

69. *Id.*; Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 65.

70. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 65.

71. *Id.* ¶ 61.

72. *Id.* ¶ 66.

73. *Id.* ¶ 61.

74. *Id.* ¶ 66.

75. *Id.* ¶ 67.



the appeal on the grounds that the Superior Court found Mr. González Mendoza's previous appeal inadmissible, because Mr. González Mendoza did not sufficiently raise a federal issue.<sup>76</sup>

**August 26, 1999:** The State grants Mr. González Mendoza parole.<sup>77</sup>

**December 15, 2001:** Mr. González Mendoza again enters the SPF, this time serving a sentence of four years and six months, at the General Roca Prison for Defendants in Río Negro.<sup>78</sup>

**May 30, 2004:** The State transfers Mr. González Mendoza from Unit 11 of the Neuquén Penitentiary Service to the Federal Penitentiary Complex of Ezeiza.<sup>79</sup>

**June 11, 2004:** The State transfers Mr. González Mendoza back to Unit 7.<sup>80</sup>

**December 1, 2004:** The State transfers Mr. González Mendoza to the Federal Penitentiary Complex 2 by Marcos Paz.<sup>81</sup>

**December 9, 2004:** The State transfers Mr. González Mendoza to Unit 6.<sup>82</sup>

**December 11, 2004:** The State transfers Mr. González Mendoza to Unit 9.<sup>83</sup>

**March 30, 2006:** The State transfers Mr. González Mendoza to Unit 6.<sup>84</sup>

**November 30, 2006:** Mr. González Mendoza benefits from assisted freedom and is released from prison.<sup>85</sup>

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76. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 67, 69.

77. *Id.* ¶ 60.

78. *Id.* ¶¶ 60, 62.

79. *Id.* ¶ 63.

80. *Id.*

81. *Id.*

82. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 63.

83. *Id.*

84. *Id.*

85. *Id.*

### 3. Events pertaining to José Heriberto Muñoz Zabala

**April 28, 1987:** Mr. José Heriberto Muñoz Zabala, a Chilean national, enters the SPF for the first time in Unit 9, after being convicted for armed robbery and evasion.<sup>86</sup>

**July 31, 1987:** Mr. Muñoz Zabala is released from prison.<sup>87</sup>

**April 24, 1989:** Mr. Muñoz Zabala enters Unit 5.<sup>88</sup>

**March 23, 1991:** Mr. Muñoz Zabala is discharged from prison after completing his sentence.<sup>89</sup>

**August 14, 1996:** Mr. Muñoz Zabala returns to Unit 9.<sup>90</sup>

**May 6, 1997:** The State transfers Mr. Muñoz Zabala to Unit 6, the Security and Resocialization Institute, for disciplinary reasons.<sup>91</sup>

**May 9, 1997:** Mr. Muñoz Zabala's attorney files a habeas corpus petition to request the State to transfer Mr. Muñoz Zabala back to the Neuquén jurisdiction.<sup>92</sup>

**May 14, 1997:** The State denies the habeas corpus petition.<sup>93</sup>

**May 29, 1997:** Mr. Muñoz Zabala's attorney files an appeal requesting the State to immediately transfer Mr. Muñoz Zabala to the Neuquén jurisdiction.<sup>94</sup>

**November 5, 1997:** The Superior Court of Justice rejects the appeal as inadmissible.<sup>95</sup>

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86. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 68; Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶¶ 70, 72.

87. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 68.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* ¶ 69.

93. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 69.

94. *Id.*

95. *Id.*

**November 13, 1997:** Mr. Muñoz Zabala's attorney files an appeal before the Federal Supreme Court.<sup>96</sup>

**May 21, 1998:** The State grants Mr. Muñoz Zabala the opportunity for parole.<sup>97</sup>

**August 6, 1998:** The Supreme Court dismisses the appeal on the grounds that the Superior Court found Mr. Muñoz Zabala's previous appeal inadmissible.<sup>98</sup>

**December 2, 1998:** Mr. Muñoz Zabala again enters Unit 9.<sup>99</sup>

**January 8, 1999:** The State transfers Mr. Muñoz Zabala to the General Roca Prison for Defendants at Río Negro.<sup>100</sup>

**April 8, 2001:** The State transfers Mr. Muñoz Zabala from Unit 4 to Unit 9.<sup>101</sup>

**October 20, 2005:** To deter Mr. Muñoz Zabala's possible attempts to escape or evade detention using firearms, the State temporarily transfers Mr. Muñoz Zabala to the Federal Penitentiary Complex with a final destination of Unit 7 in the North Regional Prison, located in the province of Chaco, about 2000 kilometers away from Neuquén.<sup>102</sup>

**October 21, 2011:** The State transfers Mr. Muñoz Zabala to Unit 11 within the Neuquén Penitentiary Service, so Mr. Muñoz Zabala may be closer to his family; Mr. Muñoz Zabala does not reenter the federal prison system thereafter.<sup>103</sup>

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96. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 69.

97. *Id.* ¶ 68.

98. *Id.* ¶ 69.

99. *Id.* ¶ 68.

100. *Id.*

101. *Id.*

102. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 68.

103. *Id.*

#### 4. Events pertaining to Hugo Alberto Blanco

**September 4, 2002:** Mr. Hugo Alberto Blanco enters the SPF after being convicted for robbery.<sup>104</sup> The representatives allege that Mr. Blanco initially served his sentence in Unit 11 in the province of Neuquén, but reported suffering poor treatment and beatings by prison personnel there.<sup>105</sup> Thus, the State transfers Mr. Blanco from Unit 11 to Unit 9 as a result of a criminal investigation it launched against one of the prison officials accused of mistreating Mr. Blanco.<sup>106</sup> While in Unit 9, Mr. Blanco alleges he is the subject of threats, punishment, and beatings related to his complaint against the prison officials in Unit 11.<sup>107</sup>

**November 3, 2004:** Mr. Blanco's attorneys file a writ of habeas corpus.<sup>108</sup> The writ of habeas corpus indicates that prison personnel told Mr. Blanco he would be sent to Rawson and that his life was "not worth two packages of pills."<sup>109</sup>

**November 18, 2004:** The State transfers Mr. Blanco to the Institute of Security and Resocialization in Unit 6 in the city of Rawson, located approximately 800 kilometers from his defense attorney, home judicial body, and family in Neuquén.<sup>110</sup>

**November 20, 2004:** Upon discovering the State transferred Mr. Blanco to Unit 6, Mr. Blanco's attorney files another habeas corpus action requesting Mr. Blanco's immediate transfer to the city of Neuquén.<sup>111</sup>

**November 22, 2004:** The Criminal Chamber No. 2 of Neuquén decides to keep Mr. Blanco in Unit 6, noting that the administrative authority's decision to transfer Mr. Blanco was based on Mr. Blanco's complaints of the injuries he suffered in Unit 9 and was made to protect him.<sup>112</sup> The Chamber also declares that Mr. Blanco's transfer should be confined to the Federal Penitentiary jurisdiction, as a transfer to another provincial

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104. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 70; Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 75.

105. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 71.

106. *Id.*

107. *Id.*

108. *Id.* ¶ 72.

109. Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 78.

110. *Id.* ¶¶ 76-77.

111. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 72.

112. *Id.*

unit was inconvenient given Mr. Blanco's history of escape, attempted escape, and other incidents which occurred during Mr. Blanco's detention in the First Sectional Police Station and in Unit 11 of Neuquén.<sup>113</sup> Finally, the Chamber orders the Director of Unit 6 to adopt all necessary precautions to physically protect Mr. Blanco and to issue bi-weekly reports on his condition.<sup>114</sup>

**November 23, 2004:** Mr. Blanco's defense attorney requests the Court to extend the habeas corpus petition in Mr. Blanco's favor and to transfer Mr. Blanco to a provincial penitentiary unit.<sup>115</sup> Mr. Blanco's attorney also files an *amparo* appeal for Mr. Blanco's family members in light of his mother's and his sister's illnesses, and his loss of contact with his young children.<sup>116</sup> The Criminal Chamber No. 2 rejects Mr. Blanco's request for transfer, arguing that Article 41 of the Provincial Constitution is not applicable in this case because the province lacks its own establishments suitable to house Mr. Blanco for the duration of his sentence.<sup>117</sup> Also, the Chamber notes that National Law 24.660 regulates the family and social relationships of all inmates, and that any restrictions on inmates are tied to the penalties the State has imposed upon them.<sup>118</sup>

**December 8, 2004:** The State transfers Mr. Blanco to Unit 9 in Neuquén to appear before the Court there.<sup>119</sup>

**January 30, 2005:** The State transfers Mr. Blanco back to Unit 6.<sup>120</sup>

**March 20, 2005 – April 5, 2005:** The State temporarily transfers Mr. Blanco back to Unit 9 for an "extraordinary visit," and then transfers him back to Unit 6.<sup>121</sup>

**April 25, 2005:** The Neuquén Superior Court of Justice denies Mr. Blanco's appeal stating that the transfer violates Mr. Blanco's right to respectful treatment and dignity as a human, among other rights afforded

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113. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 72.

114. *Id.*

115. *Id.* ¶ 73.

116. *Id.*

117. *Id.*

118. *Id.*

119. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 70.

120. *Id.*

121. *Id.*

to inmates.<sup>122</sup> Mr. Blanco's attorney further contends that, in light of the dire health circumstances of both Mr. Blanco's mother and sister, the transfer is arbitrary and impedes upon Mr. Blanco's and his family's legitimate right to visitation.<sup>123</sup>

**April 25, 2005:** Mr. Blanco's attorney files another appeal against the decision by the Superior Court of Justice.<sup>124</sup> In the appeal, Mr. Blanco's attorney details the legal and constitutional effects of Mr. Blanco's transfers, including that the transfers: 1) affected Mr. Blanco's dignity as a human, 2) impeded upon Mr. Blanco's natural and cultural needs, and 3) represented cruel, degrading, and inhumane treatment.<sup>125</sup> Furthermore, Mr. Blanco's attorney notes that the agreement between the federal system and the province of Neuquén is unconstitutional.<sup>126</sup> The Neuquén Superior Court of Justice rejects the appeal, citing a Federal Supreme Court decision which held that transfers of inmates from one province to another, pursuant to common law and procedural norms, are unrelated to the present appeals process.<sup>127</sup> The Superior Court also states that, although Mr. Blanco's attorney invoked constitutional protections, he failed to show that Mr. Blanco's relocation to Unit 6 in Rawson is in itself a violation of those constitutional protections.<sup>128</sup>

**July 5, 2005:** The State transfers Mr. Blanco back to Unit 9 for an "extraordinary visit," because his sister is ill.<sup>129</sup>

**August 18, 2005:** The State transfers Mr. Blanco back to Unit 6.<sup>130</sup>

**March 11, 2006:** The State transfers Mr. Blanco back to Unit 9 for twenty days.<sup>131</sup>

**May 20, 2006:** The State transfers Mr. Blanco back to Unit 6.<sup>132</sup>

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122. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 74.

123. *Id.*

124. *Id.* ¶ 75.

125. *Id.*

126. *Id.*

127. *Id.* ¶ 77.

128. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 75.

129. *Id.* ¶ 70.

130. *Id.*

131. *Id.*

132. *Id.*

**February 5, 2007:** The State transfers Mr. Blanco back to Unit 9.<sup>133</sup>

**July 20, 2007:** The State transfers Mr. Blanco to the Third Police Station of Neuquén.<sup>134</sup>

*B. Other Relevant Facts*

[None]

II. PROCEDURAL HISTORY

*A. Before the Commission*

**October 15, 1998:** Petitioners Gerardo Nicolás García, Claudia Ramírez, Marcelo Montero, Flavia Piccinini, Maximiliano Sánchez, Milton Hernán Kees, Juan Manuel Kees, Laura Marcela Serrano, Alejandra Coria, Oscar Suárez, Alejandra Marina Luna, Carla Castiglioni and Julio Helisondo Jara lodge a petition with the Inter-American Commission on Human Rights, claiming that Argentina violated the rights of 16 inmates when it transferred them to prisons far from their home.<sup>135</sup> Petitioners are subsequently represented by Gustavo Vitale and Fernando Ten.<sup>136</sup>

**January 5, 2011:** The Commission approves Report on Admissibility No. 3/11, declaring the petition admissible only with respect to four of the alleged victims: Néstor Rolando López, Miguel Ángel González Mendoza, José Heriberto Muñoz Zabala, and Hugo Alberto Blanco.<sup>137</sup>

**May 8, 2012:** The Procuratorate Penitentiary of the Nation submits an amicus curiae brief.<sup>138</sup>

**July 27, 2012:** The General Defender of the Province of La Pampa submits an amicus curiae brief.<sup>139</sup>

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133. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 70.

134. *Id.*

135. Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 1.

136. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

137. Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 3.

138. *Id.* ¶ 9.

139. *Id.*

**January 26, 2017:** The Commission approves Merits Report No. 1/17 pursuant to Article 50 of the American Convention of Human Rights and submits its recommendations to the State.<sup>140</sup>

**April 11, 2017:** The Commission notifies the State of the Merits Report and grants the State two months to report on compliance with the Commission's recommendations.<sup>141</sup> The State requests three extensions, two of which the State grants.<sup>142</sup> The State fails to provide information to show its compliance with the recommendations.<sup>143</sup>

### B. Before the Court

**January 11, 2018:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>144</sup>

#### 1. Violations Alleged by Commission<sup>145</sup>

Article 5(1), 5(2), 5(6) (Right to Humane Treatment)

Article 11(2) (Right to Privacy)

Article 17(1) (Rights of the Family)

Article 25(1) (Right to Judicial Protection)

*all in relation to:*

Article 1.1 (Obligation of Non-Discrimination)

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

#### 2. Violations Alleged by Representatives of the Victims<sup>146</sup>

Same Violations Alleged by Commission, plus:

Article 8(2)(d), 8(2)(e) (Right to Be Presumed Innocent),

Article 9 (Freedom from *Ex Post Facto* Laws)

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140. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* ¶ 3.

145. Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 138.

146. *Id.* Gustavo Vitale and Fernando Ten served as representatives of Petitioners Gerardo Nicolás García, Claudia Ramírez, Marcelo Montero, Flavia Piccinini, Maximiliano Sánchez, Milton Hernán Kees, Juan Manuel Kees, Laura Marcela Serrano, Alejandra Coria, Oscar Suárez, Alejandra Marina Luna, Carla Castiglioni and Julio Helisondo Jara.



Article 19 (Rights of the Child)

*all in relation to:*

Article 1.1 (Obligation of Non-Discrimination)

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

**September 28, 2018:** The State submits an answer brief, consisting of two preliminary objections and its response to the case and the representatives' brief.<sup>147</sup>

First, the State argues that Court is incompetent to hear the case, because the alleged victims failed to exhaust the domestic processes and remedies available to them.<sup>148</sup> Specifically, under Article 44 of the Law of Penal Execution No. 24.660, the alleged victims should have exercised their rights as inmates to be transferred to the prison in closest proximity to their family's domicile through a request to the prison administrative authority.<sup>149</sup> Furthermore, if the prison administrative authority denied this request, the alleged victims should have resorted to judicial measures.<sup>150</sup> The State contends that the alleged victims failed to invoke their right to appear before the prison administrative authority.<sup>151</sup> The State further asserts that in the cases of Mr. López, Mr. González Mendoza, and Mr. Muñoz Zabala, the alleged victims' appeals were rejected because, pursuant to provincial regulations, their claims against the State failed to raise a valid federal issue.<sup>152</sup>

Next, the State argues that the circumstances that gave rise to the alleged victims' claims had already ceased by the time the Commission declared the petition admissible.<sup>153</sup> The State asserts that, although the Commission included this argument of timing in its Admissibility Report, it should have given the argument proper consideration and discontinued the international proceedings.<sup>154</sup> The State further contends that even if the prison transfers constituted international legal violations, any eventual remedies should have been pursued domestically and not in the international system.<sup>155</sup> According to the State, the Commission ignored

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147. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 6.

148. *Id.* ¶ 15.

149. *Id.*

150. *Id.*

151. *Id.* ¶ 16.

152. Néstor Rolando López et al. v. Argentina, Admissibility Report, ¶ 16.

153. *Id.* ¶ 25.

154. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 25.

155. *Id.*

Article 48.1(b) of the Convention, which required the Commission to archive the proceedings while the circumstances that gave rise to the alleged victims' complaints were no longer present.<sup>156</sup>

### III. MERITS

#### A. *Composition of the Court*<sup>157</sup>

Eduardo Vio Grossi, President-in-Office  
Humberto Antonio Sierra Porto, Judge  
Elizabeth Odio Benito, Judge  
L. Patricio Pazmiño Freire, Judge  
Ricardo C. Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary

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

**November 25, 2019:** The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.<sup>158</sup>

On admissibility, the Court finds that the Convention requires that alleged victims exhaust all domestic remedies before bringing their case to the Inter-American system.<sup>159</sup> However, the State must raise this defense in the early stages of the procedure and must identify the specific domestic remedies that petitioners have not yet exhausted as well as the effectiveness of each remedy.<sup>160</sup> It is not the Court or the Commission's job to identify the domestic remedies pending exhaustion.<sup>161</sup> While the State argued the domestic remedies defense with more specificity before the Court, the State presented an underdeveloped and unspecific defense before the Commission in the admissibility stage.<sup>162</sup> Because the State's arguments before the Commission differed from its arguments before the

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156. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 25.

157. Judge Eugenio Raúl Zaffaroni, as an Argentinian, did not participate in deliberations of this Judgment, pursuant to Articles 19.2 of the Statute and Rule 19.1 of the Rules of Court. Judge Eduardo Ferrer Mac-Gregor Poisot did not participate in deliberations or signature of this Judgment for reasons of force majeure, which the Plenary of the Court has accepted. *Id.* n.\*.

158. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

159. *Id.* ¶ 20.

160. *Id.*

161. *Id.* ¶ 22.

162. *Id.* ¶ 23.

Court, the Court must reject this preliminary objection as extemporaneous.<sup>163</sup>

Next, with regard to the State's preliminary objection that the Commission failed to comply with Article 48.1(b) of the Convention when the alleged violations ceased, the Commission argues that in order for international proceedings related to alleged human rights violations to conclude, not only must the State cease the violations, but the State must also recognize the violations and make reparations.<sup>164</sup> Thus, because the State has not yet recognized nor fully remedied the violations, the proceedings against the State must continue, and the Court must reject this preliminary objection.<sup>165</sup>

Then, as to the objection that the circumstances that gave rise to the alleged victims' claims had already ceased by the time the Commission declared the petition admissible, the Court found that, even if the State had ceased the violations, it still has the responsibility to repair the situation and take action to avoid repeating the violations in the future.<sup>166</sup> When a State commits an international wrongful act it has the obligation not only to cease its unlawful actions but also to make reparations for those violations.<sup>167</sup> In this case, the State's unlawful actions ceased when the alleged victims completed their prison sentences, but the State did not remedy the violations resulting from its practice of transferring the prisoners far from their families, lawyers, and execution judges.<sup>168</sup>

On the merits, the Court found by four votes in favor and one against<sup>169</sup> that Argentina had violated:

Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 5(6) (Detention Must Aim to Reform and Rehabilitate), 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor and Dignity), and 17(1) (Family's Right to Be Protected), in relation to Articles 1(1) (Obligation of Non-Discrimination), 2 (Obligation to Give Domestic Legal Effect to Rights), and 30 (Restrictions Can Only Be Applied in Accordance with Laws Enacted for Reasons of General Interest) of the Convention, to the detriment

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163. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 24.

164. *Id.* ¶ 26.

165. *Id.*

166. *Id.*

167. *Id.* ¶¶ 28-29.

168. *Id.* ¶ 28.

169. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "Declares" ¶ 3. Judge Eduardo Vio Grossi disagreed with the Court's findings.

of Mr. López, Mr. Blanco, Mr. Muñoz Zabala, and Mr. González Mendoza,<sup>170</sup> because:

*The Court acknowledged that when it comes to detained individuals, states cannot use their own economic hardships to justify substandard detention conditions that do not comply with international criteria and that violate the detainee's inherent human dignity.<sup>171</sup> Additionally, because states hold a dominant position over detainees and control the fulfillment of their basic needs, they have a responsibility to guarantee prison conditions that uphold inmates' dignity, human rights, and basic necessities.<sup>172</sup>*

*The Court also found that depriving detainees of their liberty affects their human rights and personal liberty and may also restrict their right to privacy and their families' privacy.<sup>173</sup> Therefore, in a democratic society, any restriction of these rights is only justifiable when absolutely necessary.<sup>174</sup>*

*According to the Court, Article 5(6) of the Convention requires the State to consider several factors when imposing penalties on detainees, including: 1) that the penalty's main objective should be the rehabilitation and reintegration of the prisoner, 2) the prisoner's contact with family and community, including visitation, is fundamental to the prisoner's social rehabilitation, 3) visitation restrictions may compromise the personal integrity of prisoners and their families, 4) unjustifiable distance between prisoners and their families violates Article 17(1) and potentially Article 11(2) of the Convention, and 5) prisoners subjected to unrequested location transfers should be consulted prior to the transfer and allowed to oppose the transfer administratively and, if needed, judicially.<sup>175</sup>*

*Regarding Articles 11(2) and 17(1) of the Convention, the Court analyzed several international standards, including the United Nations Minimum Standards for the Treatment of Prisoners, also known as the "Nelson Mandela Rules," which emphasize the importance of prisoners' proximity to home or location of reintegration, family visitation, and interaction*

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170. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "Declares" ¶ 3.

171. *Id.* ¶ 90.

172. *Id.* ¶¶ 90-91.

173. *Id.* ¶ 92.

174. *Id.*

175. *Id.* ¶ 118.

with the outside world.<sup>176</sup> The Court also analyzed other international standards which indicate that frequent transfers of prisoners from one detention center to another can be harmful to a prisoner's physical and psychological well-being because they may interfere with a prisoner's relationships with family and legal representatives, and may lead to degrading and inhumane conditions.<sup>177</sup> The Court previously determined that one's right to privacy also encompasses the right to one's own personality, goals, identity, and personal relationships.<sup>178</sup> As such, Article 17 protects the family unit as a natural and fundamental right which the State must protect.<sup>179</sup> In fact, the Court found that states must favor the development of the family nucleus and avoid interfering with family life, especially when such interference, including separation, would affect the rights of children and adolescents.<sup>180</sup> The Court has previously established that unjustifiably separating prisoners from their families may be an inherent violation of Article 17(1), because prisoners have a fundamental right to family visitation to preserve the family unit and protect the emotional and financial well-being of both the prisoner and his family.<sup>181</sup> Therefore, the state, as the guarantor of prisoners' fundamental rights while in its custody, has an obligation to facilitate the convenient visitation of prisoners with their families.<sup>182</sup> States should consider the ease of family visitation – including material complications such as distance, financial burden, and security limitations when contemplating prisoners' locations and transfers.<sup>183</sup>

Furthermore, the Court established that not only did the State violate the Convention when it transferred the alleged victims to distant prison locations; the State's internal rules, which allowed for these transfers, were also unlawful.<sup>184</sup> Article 30 of the Convention provides that whenever a state imposes restrictions on a human right, the state must explain that restriction in its internal regulations.<sup>185</sup> Based on this requirement, the Court analyzed Argentina's internal policy on the transfer of federal prisoners and found that Argentina regulates the transfer of federal prisoners

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176. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 107.

177. *Id.* ¶ 116.

178. *Id.* ¶ 97.

179. *Id.* ¶ 98.

180. *Id.* ¶¶ 98-99.

181. *Id.* ¶ 101.

182. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 101.

183. *Id.* ¶¶ 104-05.

184. *Id.* ¶ 142.

185. *Id.* ¶ 123.

under two internal rules.<sup>186</sup> First, Article 72 of the Argentine National Penal Enforcement No. 24.660 regulates discretionary transfers and establishes that inmate transfers must be communicated, with supporting rationale, to the inmate's sentencing judge.<sup>187</sup> The General Director of the Correctional Regime of the Federal Penitentiary System (SFP) has discretion to approve the transfers, but, this discretion is not based on any executive decree, official transfer policy, or consultation with interested parties, but instead is merely based on the scattered regulations of the SFP Director.<sup>188</sup> Second, Article 87 of the Argentine National Penal Enforcement No. 24.660 regulates transfers as disciplinary sanctions, subject to other regulations specifically regarding sanctions, such as a requirement that the State notify a prisoner of any infraction imputed to him and offer him an opportunity to object.<sup>189</sup> The practical effects of these two rules are flawed because inmates transferred for disciplinary purposes are often given more rights – such as the right to notice of the transfer and the right to appeal the transfer – than inmates transferred for discretionary reasons.<sup>190</sup>

Here, the State claimed that all of the transfers of the alleged victims were discretionary and were meant to provide the alleged victims with more suitable housing conditions.<sup>191</sup> However, the Court found that in some instances, the State merely labeled the transfers as discretionary in order to avoid the added scrutiny that comes with disciplinary transfers.<sup>192</sup> For example, Mr. López's prison files indicated that his transfer to Unit 7 was directed by the security personnel after Mr. López intimidated other inmates, yet the State indicated that it actually conducted the transfer in order to ensure better living conditions for Mr. López to serve his sentence; therefore, the transfer was deemed discretionary under Article 72.<sup>193</sup>

Additionally, despite prison files indicating Mr. Muñoz Zabala's transfers were due to an alleged escape riot, hostage-taking, evasion, and use of a firearm in Unit 9, the State did not conduct the transfer with the

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186. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 127.

187. *Id.*

188. *Id.*

189. *Id.* ¶ 128.

190. *Id.* ¶ 130.

191. *Id.* ¶¶ 143-44.

192. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 138-39.

193. *Id.* ¶ 133.

*special disciplinary procedures required for sanctions, and the transfers were based on the SFP's discretion under Article 72.<sup>194</sup> Unlike disciplinary transfers, discretionary transfers under the State's internal rules do not require the State to provide added reasoning for the transfer or to consider the effects of the transfer on the prisoners' family.<sup>195</sup>*

*The Court concluded that although the State's purported intention to provide the alleged victims with better housing conditions was legitimate,<sup>196</sup> the transfers were not suitable, necessary, or proportionate to the needs of the alleged victims.<sup>197</sup> The sporadic nature of the transfers infringed on the rights of the alleged victims and their families,<sup>198</sup> and the flaws in the State's domestic prisoner transfer policies provided the State with excessive discretion on the use of prisoner transfers.<sup>199</sup> Therefore, the Court found that the State violated the rights of the alleged victims and their families, as enshrined in Articles 5(1), 5(6), 11(2), and 17(1) of the Convention.<sup>200</sup>*

Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 5(3) (Punish Only Criminals), 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor and Dignity), and 17.1 (Family's Right to Be Protected), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Lidia Mabel Tarifeno, Silvia Verónica Tejo de López, Sandra Elizabeth López, Nicolás Gonzalo Tejo López, Nicolás López (father) and Josefina Huichacura (relatives of Mr. Néstor López); Carina Fernández, Mirta del Carmen Fernández, Enzo Ricardo Blanco and Camila Andrea Blanco (relatives of Mr. Hugo Blanco), and in relation to Article 19 (Rights of the Child) of the Convention, to the detriment of Nicolás Gonzalo Tejo López, Camila Andrea Blanco, and Enzo Ricardo Blanco, who were all children when the events occurred,<sup>201</sup> because:

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194. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 135.

195. *Id.* ¶ 139.

196. *Id.* ¶ 151.

197. *Id.* ¶ 158.

198. *Id.* ¶ 154.

199. *Id.* ¶ 142.

200. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 162.

201. *Id.* "Declares" ¶ 4.

*The Court found that the State's decision to transfer Mr. López and Mr. Blanco to serve their sentences far from their families affected their relatives and children and violated the prisoners' and their relatives' rights to family life under the Convention.<sup>202</sup> The Court considered that the Convention establishes that states must take special protective measures to preserve the interests of children when their parents are incarcerated, and must consider the effects of prison transfers on the prisoner's children because violating the right to family life is more severe if it impacts the rights of children.<sup>203</sup> The Court held that, when it is in the best interest of the family, families must maintain their family nucleus around a child, and family separation should only occur in exceptional circumstances for temporary periods.<sup>204</sup>*

*Here, the alleged victims' children and families were not able to visit often because of the long distance, lack of financial resources, health conditions, and work commitments.<sup>205</sup> The lack of family visits not only impeded upon the rehabilitation of the prisoners themselves, but also harmed their relatives personally, adding to the grief from having a family member in prison.<sup>206</sup> Furthermore, the Court found that distance between incarcerated parents and their children can impact the children's physical and mental development.<sup>207</sup>*

*Additionally, the Court found that on the few occasions when the alleged victims' families were able to visit, the prison staff treated the families terribly, subjecting them to strip searches and allowing the small children to see their fathers badly beaten.<sup>208</sup>*

*Because of the harm the State caused the victims' families, the Court concluded that the State violated the rights to personal integrity, caused suffering to the prisoners' families, arbitrarily interfered with the victims' private lives and families, and violated the victims' relatives right to family life, pursuant to Articles 5(1), 5(3), 11(2), and 17(1) of the Convention.<sup>209</sup>*

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202. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 178.

203. *Id.* ¶¶ 171-72.

204. *Id.* ¶ 173.

205. *Id.* ¶¶ 163-66.

206. *Id.* ¶ 165.

207. *Id.* ¶ 166.

208. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 167-68.

209. *Id.* ¶ 178.



Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1(1) of the Convention, to the detriment of Mr. López, Mr. Gonzalez, Mr. Mr. Muñoz Zabala, and Mr. Blanco,<sup>210</sup> because:

*The Court considered that limiting prisoners' access to the outside world and separating them from their families may constitute degrading or inhumane treatment.<sup>211</sup> The Court found that the State subjected the alleged victims to inhumane or degrading treatment because of the continuous prison transfers, distance from the alleged victims' next of kin, and mistreatment of the alleged victims by prison personnel.<sup>212</sup> The Court also held that, when assessing whether a victim of inhumane or degrading treatment was also subject to a violation of personal integrity, one must take into account the victim's personal characteristics and vulnerabilities, such as their family situation.<sup>213</sup> Therefore, the Court concluded, after analyzing the witness testimony and expert report, that the State violated the alleged victims' right to humane treatment pursuant to Article 5(2) of the Convention.<sup>214</sup>*

Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), in relation to Article 1(1) of the Convention, to the detriment of Mr. López, Mr. Gonzalez, Mr. Mr. Muñoz Zabala, and Mr. Blanco,<sup>215</sup> because:

*The Court acknowledged that convicted individuals have a right to a competent lawyer who can adequately defend them against procedural inequities at the hands of the State, especially when vulnerable to the State's punitive power.<sup>216</sup>*

*Here, the Court found that the alleged victims were not denied access to the courts, as they were able to appeal their transfers and file habeas corpus claims seeking their returns to Neuquén.<sup>217</sup> Additionally, they were each appointed public defenders who advocated on their behalf before*

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210. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "Declares" ¶ 5.

211. *Id.* ¶ 182.

212. *Id.* ¶¶ 181-87.

213. *Id.* ¶ 181.

214. *Id.* ¶¶ 184-86.

215. *Id.* "Declares" ¶ 6.

216. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 201.

217. *Id.* ¶ 204.

*the Argentine courts to pursue their transfers to their home penitentiary units.<sup>218</sup> Therefore, while the State did not violate Article 8(2)(e) because it provided the alleged victims legal representation, the Court found that the State violated Article 8(2)(d) when it subjected the alleged victims to the continuous transfers.<sup>219</sup> The transfers imposed distance and communication difficulties on the alleged victims, limiting their ability to freely access and receive assistance from their attorneys.<sup>220</sup> Furthermore, the Court found that the transfers often occurred unexpectedly and without prior judicial control, allowing the alleged victims little opportunity to inform their attorneys or relatives of the transfer, and giving the alleged victims and their attorneys no procedural opportunities to contest the transfers before they happened.<sup>221</sup> This impeded the attorneys' ability to effectively intervene and strategically defend the prisoners' rights.<sup>222</sup>*

*Therefore, the Court concluded that the State violated the alleged victims' right to a defense attorney and the right to communicate effectively and privately with their attorneys, pursuant to Article 8(2)(d) of the Convention.<sup>223</sup>*

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) of the Convention, to the detriment of Mr. López, Mr. Gonzalez, Mr. Mr. Muñoz Zabala, and Mr. Blanco,<sup>224</sup> because:

*The Court found that the right to judicial protection required the State's intervening judges to analyze the alleged victims' transfer decisions more holistically.<sup>225</sup> Once a judge receives a prisoner's request to serve their sentences in their home jurisdiction, the judge should consider all of the implications of the prisoner's request, such as proximity to family and children, impact on serious health issues, access to their defense*

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218. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 204-05.

219. *Id.* ¶¶ 204, 207-08.

220. *Id.* ¶ 207.

221. *Id.* ¶ 206.

222. *Id.* ¶ 207.

223. *Id.* ¶ 208.

224. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "Declares" ¶ 7.

225. *Id.* ¶ 217.

attorneys, and the resulting positive impacts on their rehabilitation, not just the formal regulations around transfers.<sup>226</sup>

Here, the Court found that the State's criminal and federal courts failed to justify their decisions to reject the habeas corpus actions filed by Mr. López, Mr. Gonzales, and Mr. Muñoz Zabala.<sup>227</sup> In their appeals, the alleged victims provided valid reasoning to support their request to transfer back to their home province of Neuquén: they referenced the proximity to their families, their families' serious health issues, the impact on their children, and the impact on their own rehabilitation.<sup>228</sup> The State should have taken all of these factors into account before rejecting the appeals.<sup>229</sup> For example, the State courts denied Mr. Blanco's appeals, even though they had the responsibility to ensure Mr. Blanco's sentence was carried out in accordance with constitutional requirements and international protections of prisoners.<sup>230</sup> Furthermore, the appellate court failed to consider Mr. Blanco's mother and sister's medical records, which supported his request to serve his sentence closer to his family.<sup>231</sup>

Therefore, the Court concluded that the State failed to uphold its obligation to guarantee the victims access to justice and the right to judicial protection, pursuant to Articles 8(1) and 25(1) of the Convention.<sup>232</sup>

### C. Dissenting and Concurring Opinions

#### 1. Dissenting Opinion of Judge Eduardo Vio Grossi

Judge Eduardo Vio Grossi opined that the Court should not have dismissed the State's preliminary objection regarding the alleged victims' failure to exhaust all domestic remedies because the Court could not have ruled on the remaining substantive issues in the Judgment if it had accepted this preliminary objection.<sup>233</sup> Accordingly, Judge Grossi voted against the substantive operative findings of the Judgment, and

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226. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 220.

227. *Id.* ¶ 223.

228. *Id.* ¶ 225.

229. *Id.* ¶¶ 222-23.

230. *Id.* ¶ 227.

231. *Id.* ¶ 225.

232. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 223, 227.

233. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Dissenting Opinion, Inter-Am. Ct. H.R. (ser. C) No. 396, ¶ 81 (Nov. 25, 2019).

voted in favor of the procedural operative findings of the Judgment, because he believed the preliminary objection barred him from ruling on the substance of the case.<sup>234</sup> However, his negative vote did not indicate his substantive determinations of the issues, but merely represented his abstention out of respect for the preliminary objection.<sup>235</sup>

#### IV. REPARATIONS

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

The Court ruled, by four votes in favor and one against,<sup>236</sup> that the State had the following obligations:

##### 1. Judgment as a Form of Reparation.

The Court found that the Judgment itself constituted a form of reparation.<sup>237</sup>

Adopt necessary legislative, administrative, or judicial measures to better regulate the transfer of prisoners in accordance with the Convention and this Judgment.<sup>238</sup>

The Court found that Article 72 of Argentina Law 24.660 does not comport with the legality requirement established in the Convention.<sup>239</sup> Therefore, the State must adopt all necessary measures to implement improved regulation regarding the transfer of prisoners in accordance with the Convention and this Judgment, taking particular care to uphold prisoner's rights and guarantee prisoners maximum contact with family, lawyers, and the outside world.<sup>240</sup>

##### 2. Publish the Judgment.<sup>241</sup>

The Court found that the State must publish: 1) the official summary of this Court's Judgment, in adequate and legible font, in the Official

234. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Dissenting Opinion, ¶ 81.

235. *Id.*

236. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "Provides." Judge Eduardo Vio Grossi disagreed with the Court's findings.

237. *Id.* "Provides" ¶ 8.

238. *Id.* "Provides" ¶ 9.

239. *Id.* ¶ 247.

240. *Id.*

241. *Id.* "Provides" ¶ 10.

Gazette, 2) the official summary of the sentence as prepared by the Court, in adequate and legible font, in a widely circulated national newspaper, and 3) this Judgment in its entirety, made available for a one-year period, on an official website accessible to the public.<sup>242</sup>

### 3. Reimburse the Victim

The Court ruled unanimously that the State had the following obligations:<sup>243</sup>

Reimburse the Victim's Legal Assistance Fund of the Court the amount expended during this proceeding, a sum of \$4,805.40.

Submit a report to the Court on the measures the State adopted to comply with this Judgment.

#### *B. Compensation*

The Court decided, by four votes in favor and one against,<sup>244</sup> to award the following amounts:

#### 1. Pecuniary Damages

[None]

#### 2. Non-Pecuniary Damages

The Court awarded the representatives \$10,000 to compensate for expenditures to be divided between the representatives.<sup>245</sup> To compensate the victims for their suffering caused by the State's violations, the Court awarded \$10,000 each in non-pecuniary damages to Néstor Rolando López, Hugo Alberto Blanco, Miguel Angel González Mendoza, José Heriberto Muñoz Zabala; as well as their relatives, Lidia Mabel Tarifeño, Silvia Verónica Tejo de López, Sandra Elizabeth López, Nicolás Gonzalo Tejo López, Nicolás López, Josefina Huichacura, Carina Fernández, Mirta Fernández, Enzo Blanco, and Carina Blanco.<sup>246</sup> The State shall distribute the portion belonging to Mrs. Carina Fernández, the deceased

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242. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "Provides" ¶ 237.

243. *Id.* "Provides" ¶¶ 13-14.

244. *Id.* Judge Eduardo Vio Grossi disagreed with the Court's findings.

245. *Id.* ¶ 261.

246. *Id.* ¶ 257.

sister of Mr. Blanco, equally between her heirs according to information provided by the representatives.<sup>247</sup>

### 3. Costs and Expenses

The Court ordered the State to immediately provide free, effective psychological and psychiatric treatment, including medicine, as needed to each victim, with their informed consent, at a location close to their home for as long as necessary.<sup>248</sup>

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

\$154,805.40

#### A. Deadlines

The State must adopt all necessary legislative, administrative, or judicial measures to better regulate prisoner transfers within one year from notification of this Judgment.<sup>249</sup>

The State must publish the Judgment within six months from notification of this Judgment.<sup>250</sup>

The victims have a period of six months from notification of this Judgment to request the psychological treatment to which they are entitled from the State.<sup>251</sup>

The State must pay the compensatory damages and reimburse the costs and expenses to the established individuals within one year from notification of this Judgment.<sup>252</sup>

The State must repay the Victim's Legal Assistance Fund within six months from notification of this Judgment.<sup>253</sup>

The State must publish a report to the Court of the measures it adopted within one year from notification of this Judgment.<sup>254</sup>

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247. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 257.

248. *Id.* ¶ 250.

249. *Id.* ¶¶ 247-48.

250. *Id.* ¶ 237.

251. *Id.* ¶ 250.

252. *Id.* ¶ 265.

253. Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 264.

254. *Id.* "Provides" ¶ 14.

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

[Not Available]

## VII. LIST OF DOCUMENTS

*A. Inter-American Court*

## 1. Preliminary Objections

[None]

## 2. Decisions on Merits, Reparations and Costs

Néstor Rolando López et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 396, (Nov. 25, 2019).

Néstor Rolando López et al. v. Argentina, Resolution of the President, Call for Hearing, Inter-Am. Ct. H.R. (ser. C) No. 396, (Feb. 14, 2019).

Néstor Rolando López et al. v. Argentina, Preliminary Objections, Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 396, (Nov. 25, 2019).

## 3. Provisional Measures

Néstor Rolando López et al. v. Argentina, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. (ser. C) No. 396, (March 4, 2019).

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

*A. Inter-American Commission*

## 1. Petition to the Commission

[None]

## 2. Report on Admissibility

Néstor Rolando López et al. v. Argentina, Admissibility Report, Report No. 3/11, Inter-Am. Comm'n H.R., Pet. No. 12.804, (Jan. 5, 2011).

## 3. Provisional Measures

[None]

## 4. Report on Merits

Néstor Rolando López et al. v. Argentina, Report on Merits, Report No. 1/17, Inter-Am. Comm'n H.R., Pet. No. 12.804, (Jan. 26, 2017).

## 5. Application to the Court

[None]

## VIII. BIBLIOGRAPHY

[None]



