

Ordenes Guerra et al. v. Chile

ABSTRACT¹

This case is about the quest of a group of relatives of victims of the Pinochet regime to seek reparations from the State through civil actions in courts. Although Chile acknowledged the victims were entitled to reparations and some had received some compensation, the plaintiffs deemed the amounts not adequate and their attempts to recover in full had been rejected due to statute of limitations. Eventually, the Court found Chile in violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and Article 25(1) (Right of Recourse Before a Competent Court) of the American Convention.

I. Facts

A. Chronology of Events

1. Events pertaining to Mr. Augusto Alcañaga Aldunate and his next of kin

September 11, 1973: A military coup, led by the Chilean Army and Police, deposes President Salvador Allende. A military junta, led by General Augusto Pinochet, seizes power. Repression of left-wing movements, especially communist and socialist parties, and trade unions begins.

September 17, 1973: Mr. Augusto Alcañaga Aldunate, President of the Workers' Union of the Elecmetal Company² ("Empresa Elecmetal"),

¹ Gabrielle Szlachta-McGinn, Author; Kevin Zipser, Editor; Elizabeth Russo, Chief IACHR Editor, Cesare Romano, Faculty Advisor

² *Órdenes Guerra v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 372, ¶ 43 (November 29, 2018).

and an active member of the Chilean Radical Party (“Partido Radical”),³ is arrested by officers of the Chilean national police force (Carabineros de Chile; “Carabineros”) while he is at work in Santiago.⁴ Shortly after his arrest Carabineros ransack Mr. Alcayafa Aldunate’s home.⁵ Mr. Alcayafa Aldunate’s wife, Ms. Maria Laura Órdenes Guerra, returns home and discovers the aftermath of the raid.⁶ Concerned for her husband’s safety, Ms. Órdenes Guerra travels to Elecmetal Company to determine her husband’s whereabouts.⁷ There, she learns that Carabineros from the Fourth Precinct of Santiago detained her husband and several other employees earlier that morning.⁸

Ms. Órdenes Guerra goes to the Fourth Precinct and requests information pertaining to her husband’s whereabouts.⁹ An officer informs Ms. Órdenes Guerra that all detainees were transferred to military custody and that she should contact the Ministry of National Defense for additional information.¹⁰

Ms. Órdenes Guerra consults the Ministry of National Defense but is told they do not have any information regarding her husband’s whereabouts.¹¹ The Ministry of National Defense refers her to two locations currently being used as detention centers, the Stadium of Chile and the National Stadium.¹² However, Ms. Órdenes Guerra is again unsuccessful in obtaining information regarding her husband’s whereabouts.¹³

September 18, 1973: Mr. Alcayaga Aldunate is executed by Carabineros in the Macul district of Santiago. After his execution, the officers abandon his body on a public street within Macul.¹⁴ Shortly thereafter Mr. Alcayaga Aldunate’s body is discovered with numerous

³ Órdenes Guerra v. Chile, Report on Merits, Report No. 52/16, Inter-Am. Comm’n H.R., Case No. 12.521, ¶ 57 (November 30, 2016).

⁴ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 43.

⁵ Órdenes Guerra v. Chile, Admissibility Report, Report No. 60/05, Inter-Am. Comm’n H.R., Case No. 12.521, ¶ 5 (October 12, 2005).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Órdenes Guerra v. Chile, Admissibility Report, ¶ 5.

¹² *Id.*

¹³ *Id.*

¹⁴ Órdenes Guerra v. Chile, Report on Merits, ¶ 57.

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bullet wounds and transported to the Forensic Medical Institute morgue in Santiago.¹⁵

April 25, 1990: The Chilean military dictatorship ends and President Patricio Aylwin creates the Rettig Commission to investigate the human rights violations committed between September 11, 1973 and March 11, 1990.¹⁶ President Aylwin states the Rettig Commission purpose is to determine the fate and whereabouts of the alleged victims, and recommend reparations for the alleged victim's next of kin.¹⁷

February 8, 1991: The Rettig Commission issues a report to President Aylwin which concludes that: (1) the State was responsible for the murder of Mr. Alcayaga Aldunate during the military dictatorship; (2) his murder violated his fundamental right to due process of law; and (3) there was no justification for his death.¹⁸

March 4, 1992: President Aylwin issues a public apology to the families of the victims for the injustice they suffered at the hands of the State.¹⁹

February 8, 1992: Based on the Rettig Commission's recommendations regarding reparations to victims, the State issues Law No. 19.123.²⁰ Under Law No. 19.123 the National Corporation for Reparation and Reconciliation (Corporación Nacional de Reparación y Reconciliación; "CNNR") is formed with the primary goal of providing social and legal benefits to the relatives of the victims named in the Rettig Commission report.²¹

Specifically, the CNNR provides identifiable beneficiaries with a monthly pension, free medical and educational benefits, and exempts children of the victims from otherwise mandatory military service.²²

¹⁵ Órdenes Guerra v. Chile, Admissibility Report, ¶ 6.

¹⁶ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, Judgment, ¶ 32.

¹⁷ *Id.*

¹⁸ Órdenes Guerra v. Chile, Report on Merits, ¶ 57.

¹⁹ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, Judgment, ¶ 34.

²⁰ *Id.* ¶ 35.

²¹ *Id.*

²² *Id.* ¶ 36.

Pursuant to Law 19.123, Ms. Órdenes Guerra receives a monthly, widow's pension.²³ She also receives education and health benefits for her five children, which is effective until they turn twenty-five years old.²⁴

1997: Based on the Rettig Commission's conclusions which identified Mr. Alcayaga Aldunate as a victim of human rights violations during the military dictatorship, Ms. Órdenes Guerra files a civil claim for compensation for moral suffering in the Eighth Civil Court.²⁵ Her claim further alleges that the State denied her justice and has provided no information regarding the facts of her husband's murder.²⁶

January 28, 1999: The Eighth Civil Court acknowledges that the State is responsible for the execution of Mr. Alcayaga Aldunate, but dismisses Ms. Órdenes Guerra's claim for compensation because she filed the claim after the expiration of the five-year statute of limitations under the Civil Code.²⁷ The Eighth Civil Court explains that in order for her civil claim to be valid, Ms. Órdenes Guerra was required to file her claim by 1977.²⁸ Thus, the twenty-six years between Mr. Alcayaga Aldunate's death and the date at which Ms. Órdenes Guerra filed her claim caused civil reparations to expire.²⁹

April 22, 1999: Ms. Órdenes Guerra files an appeal for the Eighth Civil Court's judgment.³⁰

October 24, 2002: The Fourth Chamber of the Court of Appeals of Santiago ("CAS") agrees with the Eighth Civil Court and denies Ms. Órdenes Guerra's appeal.³¹ Ms. Órdenes Guerra files a second appeal requesting an annulment against the CAS's judgment.³²

²³ Órdenes Guerra v. Chile, Admissibility Report, ¶ 8. Between July 1991 and November 2007 Ms. Órdenes Guerra received widows' pension of 36,674.00 Chilean pesos (approximately \$94.46 USD) a month.

²⁴ Órdenes Guerra v. Chile, Report on Merits, ¶ 58.

²⁵ Órdenes Guerra v. Chile, Admissibility Report, ¶ 8.

²⁶ Órdenes Guerra v. Chile, Report on Merits, ¶ 59.

²⁷ *Id.* ¶ 60.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Órdenes Guerra v. Chile, Admissibility Report, ¶ 9.

³¹ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 46.

³² *Id.*

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January 7, 2003: The Supreme Court of Justice (“CSJ”) dismisses Ms. Órdenes Guerra’s second appeal³³ and returns her file to the Eighth Civil Court.³⁴

March 17, 2003: The Eighth Civil Court issues a compliance resolution reiterating its original judgment wherein it denied Ms. Órdenes Guerra’s claim for compensation.³⁵

November 2005: Mr. Alcayaga Aldunate’s children, who were previously denied pensions, are given a one-time reparation award of 10,000,000 Chilean pesos (approximately \$18,357.65 USD).³⁶

2. Events pertaining to Mr. Jorge Ovidio Osorio Zamora and his next of kin

September 17, 1973: Mr. Jorge Ovidio Osorio Zamora, a socialist activist and Professor at the University of Chile is arrested at his workplace, the Tire Manufacturers Company facilities (“MANESA”), by Chilean Investigations personnel.³⁷ He is then transported to the “La Serena” public prison and placed in military custody.³⁸

Between September 17, 1973 and October 16, 1973: Military personnel permit Mr. Osorio Zamora’s wife, Ms. Lucia Morales Compagnon, to visit him while in custody.³⁹

October 16, 1973: The military executes Mr. Osorio Zamora and fourteen other people pursuant to the leader of the military’s orders,⁴⁰ without providing victims any due process of law.⁴¹ Mr. Osorio Zamora’s execution is reported to the press and his body is buried in a mass grave at the La Serena prison cemetery.⁴²

³³ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 46.

³⁴ Órdenes Guerra v. Chile, Report on Merits, ¶ 60.

³⁵ *Id.*

³⁶ *Id.* ¶ 61.

³⁷ *Id.* ¶ 62.

³⁸ Morales Compagnon v. Chile, Admissibility Report, Report No. 61/05, Inter-Am. Comm’n H.R., Case No. 12.522, ¶ 5 (October 12, 2005).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Órdenes Guerra v. Chile, Report on Merits, ¶ 63.

⁴² Morales Compagnon v. Chile, Admissibility Report, ¶ 5.

February 8, 1991: The Rettig Commission concludes that the State was responsible for the murder of Mr. Osorio Zamora.⁴³

February 8, 1992: Pursuant to Law 19.123, Ms. Morales Compagnon begins to receive a monthly widow's pension and free education and health benefits for her children.⁴⁴

1997: Ms. Morales Compagnon and her children file a civil claim for compensation for moral suffering in the Eighth Civil Court of Santiago.⁴⁵

1998: After Chile's return to democratic government, Mr. Osorio Zamora's body is unearthed, further revealing that he was tortured prior to his death.⁴⁶

Proceedings are brought in the Court of Appeals of Santiago against Augusto Pinochet after a criminal investigation into the "Caravan of Death" (Caravana de la Muerte), wherein the military leader specifically ordered the execution of prisoners held at the La Serena prison.⁴⁷

January 27, 1999: The Eighth Civil Court dismisses Ms. Morales Compagnon's claim after it finds that according to the rules of civil law, the time for her to bring forth a claim for compensation has already expired and her claim is now incompatible with Law 19.123.⁴⁸ Ms. Morales Compagnon files an appeal with the CAS against the Eighth Civil Court's judgment.⁴⁹

December 10, 2002: The CAS agrees with the Eighth Civil Court's ruling and dismisses Ms. Morales Compagnon's appeal.⁵⁰

⁴³ Morales Compagnon v. Chile, Admissibility Report, ¶ 6.

⁴⁴ Órdenes Guerra v. Chile, Report on Merits, ¶ 64 n.59-60. Between July 1991 and November 2007 Ms. Morales Compagnon received a monthly widows pension totaling 36,175,000 Chilean pesos (approximately \$93,171.04 USD).

⁴⁵ *Id.* ¶ 65.

⁴⁶ *Id.* ¶ 66.

⁴⁷ Morales Compagnon v. Chile, Admissibility Report, ¶ 7.

⁴⁸ Órdenes Guerra v. Chile, Report on Merits, ¶ 67.

⁴⁹ *Id.*

⁵⁰ *Id.*

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December 18, 2002: Ms. Morales Compagnon files a second appeal requesting the annulment of the CAS's judgment in the Supreme Court ("CSL").⁵¹

March 25, 2003: The CSL dismisses Ms. Morales Compagnon's appeal for failure to comply with a formality after she failed to pay for photocopies.⁵² Her file is returned to the Eighth Civil Court.⁵³

April 2, 2003: The Eighth Civil Court confirms its original judgment and dismisses Ms. Morales Compagnon's claim.⁵⁴

November 11, 2003: The Chilean government creates the Valech Commission to investigate the human rights violations committed under the military dictatorship between September 11, 1973 and March 11, 1990.⁵⁵ Despite confirmation that Mr. Osorio Zamora was in fact a victim of State execution, his name is not included on the Valech Commission's published list of victims of State executions.⁵⁶

October 29, 2004: As a result of the Valech Commission's findings, Law No. 19.980 is enforced.⁵⁷ Law No. 19.980 serves as an expansion of the Rettig Commission's issuance of Law No. 19.123.⁵⁸ Specifically, the new law increases monthly pensions by fifty percent and grants a reparative bonus to identifiable beneficiaries.⁵⁹

After 2004: Pursuant to Law 19.980, each of Mr. Osorio Zamora's four children receive reparation awards ranging from 6,163,383 Chilean pesos (approximately \$10,010.58 USD) to 10,000,000 Chilean pesos (approximately \$16,242.02 USD).⁶⁰

3. Events pertaining to the Mr. Hipólito Pedro Cortés Álvarez and his next of kin

⁵¹ Órdenes Guerra v. Chile, Report on Merits, ¶ 67.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Morales Compagnon v. Chile, Admissibility Report, ¶ 8.

⁵⁵ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 37.

⁵⁶ Órdenes Guerra v. Chile, Report on Merits, ¶ 66.

⁵⁷ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 38.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Órdenes Guerra v. Chile, Report on Merits, ¶ 73.

September 22, 1973: Mr. Hipólito Pedro Cortés Álvarez, an employee at the municipal office in the city Ovalle located in the Coquimbo Region of Chile, is a leader of the Construction Workers trade union, and a Communist Party activist.⁶¹ He is arrested at his workplace by Carabineros and taken to the La Serena prison where he is detained by members of the Chilean military, drugged, and beaten.⁶² During Mr. Cortés Álvarez's detention, members of the national police conduct an illegal search for incriminating evidence in his home.⁶³

October 16, 1973: The military orders the execution without due process of law of Mr. Cortés Álvarez.⁶⁴ His execution is reported to the press and his body is buried in a mass grave at the La Serena prison cemetery.⁶⁵

February 8, 1991: The Rettig Commission concludes that the State was responsible for the murder of Mr. Cortés Álvarez.⁶⁶

February 8, 1992: Pursuant to Law 19.123, Ms. Alina María Barraza Codoceo, Mr. Cortés Álvarez's wife, begins to receive a monthly widow's pension and education and health benefits for her children.⁶⁷

1998: After Chile's reestablishment as a democratic government, Mr. Cortés Álvarez's body is unearthed, revealing that he, too, was subjected to torture before his death.⁶⁸

1999: Following the Rettig Commission's report identifying the State as the responsible actor for the death of Mr. Cortés Álvarez, Ms. Barraza Codoceo and her children file a civil suit for compensation of damages in the CSL.⁶⁹

⁶¹ Maria Barraza v. Chile, Admissibility Report, Report No. 62/05, Inter-Am. Comm'n H.R., Case No. 12.523, ¶ 5 (October 12, 2005).

⁶² Órdenes Guerra v. Chile, Report on Merits, ¶ 62.

⁶³ Maria Barraza v. Chile, Admissibility Report, ¶ 5.

⁶⁴ Órdenes Guerra v. Chile, Report on Merits, ¶ 63.

⁶⁵ Maria Barraza v. Chile, Admissibility Report, ¶ 5.

⁶⁶ *Id.* ¶ 6.

⁶⁷ Órdenes Guerra v. Chile, Report on Merits, ¶ 64 n.59-60. Between July 1991 and November 2007 Ms. Barraza Codoceo received a monthly widows pension totaling 36,627,798 Chilean pesos (approximately \$94,337.25 USD).

⁶⁸ *Id.* ¶ 66.

⁶⁹ *Id.* ¶ 68.

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March 9, 2001: The CSL grants Ms. Barraza Codoceo's claim on the grounds that the State violated Mr. Cortés Álvarez's rights⁷⁰ and orders the State pay each claimant 15 million Chilean pesos less the amount of pension compensation received to date.⁷¹

April 9, 2002: The Chilean Treasury files an appeal against the CSL's judgment in the Court of Appeals of La Serena.⁷² The Court of Appeals overturns the CSL's judgment after it concludes that Ms. Barraza Codoceo's claim is barred by the passage of the five-year statute of limitations under the Civil Code, and thus, her action is now incompatible with Law 19.123.⁷³

May 7, 2003: Ms. Barraza Codoceo files an appeal requesting the annulment of the CSL's ruling in the Supreme Court.⁷⁴

March 25, 2003: The CSJ rejects Ms. Barraza Codoceo's appeal and concludes that she brought forth her action too late.⁷⁵ Ms. Barraza Codoceo's file is remanded to the original court.⁷⁶

June 2003: The original court confirms its original judgment and dismisses Ms. Barraza Codoceo's claim.⁷⁷

After 2004: Pursuant to Law 19.980 following the Valech Commission's findings, each of Mr. Cortés Álvarez's children receive reparation awards ranging from 8,230,371 Chilean pesos (approximately 13,367.78 USD) to 10,000,000 Chilean pesos (approximately \$16,242.02 USD).⁷⁸

4. Events pertaining to Mr. Ramon Luis Vivanco Diaz and his next of kin

September 28, 1973: Mr. Ramon Luis Vivanco Diaz, a member of the Communist party, is working at the San Bernardo de Ferrocarriles

⁷⁰ Órdenes Guerra v. Chile, Report on Merits, ¶ 68.

⁷¹ *Id.* ¶ 69.

⁷² Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 59.

⁷³ Órdenes Guerra v. Chile, Report on Merits, ¶ 70.

⁷⁴ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 60.

⁷⁵ Órdenes Guerra v. Chile, Report on Merits, ¶ 71.

⁷⁶ Maria Barraza v. Chile, Admissibility Report, ¶ 8.

⁷⁷ *Id.*

⁷⁸ Órdenes Guerra v. Chile, Report on Merits, ¶ 74.

machine shop located in the Santiago region when military personnel enter his workplace and detain Mr. Vivanco Diaz and ten others.⁷⁹ Mr. Vivanco Diaz is transferred to Cerro Chena detention center.⁸⁰

October 6, 1973: Mr. Vivanco Diaz is executed by the military at the Cerro Chena detention center.⁸¹ His body was then sent to the Institute for Forensic Medicine.⁸² The Truth and Reconciliation Commission investigates his death and concludes that the execution constituted a violation of his human rights and violated his right to due process of law.⁸³

February 8, 1991: The Rettig Commission concludes that the State was responsible for the murder of Mr. Vivanco Diaz.⁸⁴

February 8, 1992: Pursuant to Law 19.123 of 1992, Mr. Vivanco Diaz's daughter, Ms. Pamela Adriana Vivanco Medina, receives a pension compensation award which will last until December 31, 1993 when she ages out.⁸⁵

August 30, 2000: Ms. Vivanco Medina files a civil suit in the Sixteenth Civil Court against the Chilean Treasury for compensation of damages for the moral damage caused by the execution of her father.⁸⁶

October 4, 2002: The Sixteenth Civil Court dismisses Ms. Vivanco Medina's claims after it concludes that the applicable statute of limitations under the Civil Code for which her claim can be brought already expired.⁸⁷

January 22, 2003: Ms. Vivanco Medina files an appeal against the Sixteenth Civil Court's judgment in the CAS.⁸⁸

⁷⁹ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 62.

⁸⁰ *Id.*

⁸¹ Órdenes Guerra v. Chile, Report on Merits, ¶ 75.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 62.

⁸⁵ Órdenes Guerra v. Chile, Report on Merits, ¶ 76.

⁸⁶ *Id.* ¶ 77.

⁸⁷ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 64.

⁸⁸ Órdenes Guerra v. Chile, Report on Merits, ¶ 77.

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May 6, 2003: The CAS declares Ms. Vivanco Medina's appeal void because she failed to appear and remands her case to the original court.⁸⁹

June 3, 2003: The Sixteenth Civil Court dismisses Ms. Vivanco Medina's case pursuant to its original ruling.⁹⁰

After 2004: Pursuant to Law 19.980 following the Valech Commission's findings, Ms. Vivanco Medina receives a compensation bonus in the amount of 10,000,000 Chilean pesos (approximately \$16,242.02 USD).⁹¹

5. Events pertaining to Mr. Carlos Melo Prádenas and his next of kin

September 29, 1973: Mr. Mario Ramiro Melo Prádenas, a retired Army officer and private secretary of President Salvador Allende's security guard, is an active member of the Socialist party.⁹² He is arrested and detained by the Chilean Air Force Patrol (Fuerza Aérea Chilena; "FACH") before being taken to the Ministry of Defense.⁹³ Mr. Melo Prádenas is last seen at the Peldehue military base.⁹⁴

February 8, 1991: The Rettig Commission concludes that the Chilean Government is responsible for the forced disappearance of Mr. Melo Prádenas, and that as a result, his human rights were violated by the Chilean Government.⁹⁵ The Chilean Government does not provide any information regarding Mr. Melo Prádenas's whereabouts after his disappearance, and the Rettig Commission is unable to locate any record detailing the events of his death.⁹⁶

February 8, 1992: Mr. Melo Prádenas's mother, Ms. María Iliá Prádenas Pérez, receives a compensatory bonus in the amount of 504,943 Chilean pesos (approximately \$1,328.07 USD) a month pursuant to Law 19.123 until her death on May 29, 2006.⁹⁷

⁸⁹ Órdenes Guerra v. Chile, Report on Merits, ¶ 77.

⁹⁰ Mercedes Navarrete v. Chile, Admissibility Report, Report No. 59/05, Inter-Am. Comm'n H.R., Case No. 12.520, ¶ 8 (October 12, 2005).

⁹¹ Órdenes Guerra v. Chile, Report on Merits, ¶ 78.

⁹² *Id.* ¶ 79.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* ¶ 80.

⁹⁶ *Id.*

⁹⁷ Órdenes Guerra v. Chile, Report on Merits, ¶ 81.

August 17, 2001: Mr. Melo Prádenas's brother, Mr. Carlos Gustavo Melo Prádenas, and his parents, Mr. Mario Melo Acuña and Ms. Prádenas Pérez, file a civil suit for compensation for damages in the Eighth Civil Court.⁹⁸

September 27, 2002: The Eighth Civil Court denies Mr. Carlos Melo Prádenas's claim after it concludes Mr. Carlos Melo Prádenas did not provide enough facts to prove the State's responsibility for Mr. Melo Prádenas's death.⁹⁹ The Court concludes that each plaintiff has already received compensation for this matter under Law 19.123.¹⁰⁰ The plaintiffs appeal the Court's judgment to the CAS.¹⁰¹

June 12, 2003: The CAS rejects plaintiffs' appeal, declares their claim void, and remands the case to the original court.¹⁰²

January 23, 2003: The Eighth Civil Court dismisses plaintiffs' case pursuant to its original ruling.¹⁰³

August 1, 2006: Mr. Melo Acuña starts receiving a monthly reparation pension in the amount of 360,674 Chilean pesos (approximately \$688.38 USD).¹⁰⁴ This award is based on there being a single beneficiary.¹⁰⁵ It is unknown whether Mr. Melo Prádenas's brother received a reparation award.¹⁰⁶

6. Events pertaining to Mr. Rodolfo Alejandro Espejo Gomez and his next of kin

August 15, 1974: Mr. Rodolfo Alejandro Espejo Gomez, an 18-year-old member of the Revolutionary Left Movement (Movimiento de Izquierda Revolucionaria; "MIR"), is arrested by members of the National Intelligence Directorate ("DINA") at his home in Santiago and

⁹⁸ Órdenes Guerra v. Chile, Report on Merits, ¶ 82.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Órdenes Guerra v. Chile, Report on Merits, ¶ 83.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

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is never seen again.¹⁰⁷ State authorities deny their responsibility for his detention.¹⁰⁸

February 8, 1991: The Rettig Commission concludes that State agents are responsible for Mr. Espejo Gomez's forced disappearance, which violated his human rights.¹⁰⁹

February 8, 1992: Pursuant to Law 19.123, Mr. Espejo Gomez's mother, Ms. Elena Alejandrina Gómez Vargas, receives a monthly pension award in the amount of 360,674 Chilean pesos (approximately \$948.62 USD) and also receives a compensatory bonus.¹¹⁰ It is unknown if Mr. Espejo Gomez's sister, Ms. Katia Espejo Gómez, also receives reparation benefits.¹¹¹

July 19, 2000: Ms. Katia Espejo Gómez and Ms. Gómez Vargas file a civil claim for compensation for damages for Mr. Espejo Gomez's death in the Seventeenth Civil Court.¹¹²

June 19, 2002: The Seventeenth Civil Court concludes that the State is in fact responsible for the death of Mr. Espejo Gomez,¹¹³ however, the Court denied their claim because the events occurred in 1974 and the statute of limitations under the Civil Code already passed.¹¹⁴ Ms. Katia Espejo Gómez and Ms. Gómez Vargas file an appeal against the Seventeenth Civil Court's judgment in the CAS.¹¹⁵

June 12, 2003: The CAS declares the plaintiffs' appeal void and remands the case back to the original court.¹¹⁶

June 2003: The Seventeenth Civil Court dismisses plaintiffs' case pursuant to its original ruling.¹¹⁷

¹⁰⁷ Órdenes Guerra v. Chile, Report on Merits, ¶ 84.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* ¶ 85.

¹¹¹ *Id.*

¹¹² *Id.* ¶ 86.

¹¹³ Órdenes Guerra v. Chile, Report on Merits, ¶ 86.

¹¹⁴ *Id.*

¹¹⁵ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 72.

¹¹⁶ Órdenes Guerra v. Chile, Report on Merits, ¶ 86.

¹¹⁷ Mercedes Navarrete v. Chile, Admissibility Report, ¶ 8.

7. Events pertaining to Mr. Sergio Alfonso Reyes Naverrete and his next of kin

November 16, 1974: Mr. Sergio Alfonso Reyes Naverrete, a member of MIR, is arrested and detained by DINA agents at his home.¹¹⁸ He is not seen or heard from again.¹¹⁹

February 8, 1991: The Rettig Commission concludes that State agents are responsible for Mr. Reyes Naverrete's death, which violated his human rights.¹²⁰

February 8, 1992: Mr. Reyes Naverrete's mother, Ms. Magdalena Mercedes Naverrete Faraldo, receives a compensatory bonus and monthly pension in the amount of 360,674 Chilean pesos (approximately \$948.62 USD) pursuant to Law 19.123.¹²¹ Mr. Reyes Naverrete's wife, Ms. María Elisa Zepeda Rojas, also receives a compensatory bonus and monthly pension in the amount of 504,945 Chilean pesos (approximately \$1,328.07 USD).¹²² Mr. Reyes Naverrete's son receives a compensatory bonus and pension,¹²³ however, it is unknown whether Mr. Reyes Naverrete's brothers, Mr. Jorge Alberto Reyes Naverrete, Mr. Patricio Hernán Reyes Naverrete, and Mr. Víctor Eduardo Reyes Naverrete also receive any reparation benefits.¹²⁴

July 28, 2000: Ms. Naverrete Faraldo and Mr. Reyes Naverrete's brothers file a civil suit for compensation of damages caused by Mr. Reyes Naverrete's disappearance in the Seventeenth Civil Court.¹²⁵

June 19, 2002: The Seventeenth Civil Court concludes that the State is responsible for Mr. Reyes Naverrete's arrest and forced disappearance but dismisses the claim anyway because the events occurred in 1974 and

¹¹⁸ Órdenes Guerra v. Chile, Report on Merits, ¶ 87.

¹¹⁹ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 73.

¹²⁰ Órdenes Guerra v. Chile, Report on Merits, ¶ 87.

¹²¹ *Id.* ¶ 88.

¹²² Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 74.

¹²³ Órdenes Guerra v. Chile, Report on Merits, ¶ 88.

¹²⁴ *Id.*

¹²⁵ *Id.* ¶ 89.

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the applicable statute of limitations under the Civil Code already expired.¹²⁶

The plaintiffs file an appeal against the Seventeenth Civil Court's ruling in the CAS.¹²⁷ The CAS declares the plaintiffs' appeal void and remands the case back to the original court.¹²⁸

June 26, 2003: The Seventeenth Civil Court dismisses plaintiffs' case pursuant to its original ruling.¹²⁹

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

1. Events pertaining to Mr. Alcayafa Aldunate wife, Ms. Órdenes Guerra and his next of kin

July 14, 2003: Mr. Nelson Caucoto, a lawyer representing Mr. Alcayafa Aldunate's wife, Ms. Órdenes Guerra, files a petition to the Commission on their behalf.¹³⁰ The petition alleges that State is responsible for the suffering Ms. Órdenes Guerra experienced as a result of her husband's murder by State agents during the military régime in 1973.¹³¹ Furthermore, the petition argues that Chilean courts violated Ms. Órdenes Guerra's right to a fair trial and right to judicial protection as a result of the State civil court's refusal to grant her reparations.¹³²

February 18, 2005: The State requests that the Commission declare Ms. Órdenes Guerra's petition inadmissible.¹³³ The State argues that the events that occurred during the military regime took place before the

¹²⁶ Órdenes Guerra v. Chile, Report on Merits, ¶ 89.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Mercedes Navarrete v. Chile, Admissibility Report, ¶ 7.

¹³⁰ Órdenes Guerra v. Chile, Admissibility Report, ¶ 1.

¹³¹ *Id.* ¶ 1.

¹³² *Id.* ¶ 4.

¹³³ *Id.* ¶ 19.

State began efforts to reestablish itself as a democratic government.¹³⁴ The State further argues that it is dedicated to updating and adapting its conduct to conform to the standards established in international human rights treaties.¹³⁵ Further, the State asserts that it did not ratify the American Convention until August 21, 1990, and thus, is not required to provide reparations for events that took place before the date of ratification.¹³⁶ The State explains that all victims have benefitted from its current reparation policy enshrined in domestic law, and thus are not entitled to further reparations.¹³⁷

October 12, 2005: The Commission submits Admissibility Report 60/05 declaring Ms. Órdenes Guerra's petition admissible.¹³⁸ The Commission rejects the State's argument that her petition is inadmissible because her husband's murder took place before the American Convention went into effect.¹³⁹ Instead, the Commission concludes that the petitioner's allegations refer solely to the Chilean court's judgments issued after the American Convention went into effect, and the Commission considers such events to be independent from events that occurred during the Chilean military dictatorship.¹⁴⁰ Furthermore, the Commission agrees with petitioner's argument that she has pursued and exhausted all domestic remedies available to her under Chilean law, and the Supreme Court's final judgment prohibited any further judicial review.¹⁴¹

2. Events pertaining to Mr. Osorio Zamora's wife, Ms. Morales Compagnon and his next of kin

September 3, 2003: Mr. Nelson Caucoto, a lawyer representing Mr. Osorio Zamora's wife, Ms. Morales Compagnon files a petition to the Commission on her behalf.¹⁴² The petition alleges the State failed to provide reparations to Ms. Morales Compagnon and her children for the

¹³⁴ Órdenes Guerra v. Chile, Admissibility Report, ¶ 15.

¹³⁵ *Id.*

¹³⁶ *Id.* ¶ 16.

¹³⁷ *Id.*

¹³⁸ *Id.* ¶ 31.

¹³⁹ *Id.* ¶ 23.

¹⁴⁰ Órdenes Guerra v. Chile, Admissibility Report, ¶ 23.

¹⁴¹ *Id.* ¶ 27.

¹⁴² Morales Compagnon v. Chile, Admissibility Report, ¶ 1.

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suffering they experienced after State agents kidnapped and executed her husband during the military régime in 1973.¹⁴³

February 18, 2005: The State requests the Commission declare the petition inadmissible.¹⁴⁴ The State argues that the petition is inadmissible because the events that took place during the military régime giving rise to Ms. Morales Compagnon's request for reparations occurred before the State ratified the American Convention and thus, the complaint must be excluded from the Commission's jurisdiction.¹⁴⁵

October 12, 2005: The Commission submits Admissibility Report 61/05, which declares the petition admissible.¹⁴⁶ The Commission rejects the State's argument that the petition is inadmissible because Ms. Morales Compagnon's husband's murder took place before the American Convention went into effect.¹⁴⁷ The Commission concludes that the petitioner's allegations refer solely to the Chilean court's judgments issued after the American Convention went into effect, and the Commission considers such events to be independent from events that occurred during the Chilean military dictatorship.¹⁴⁸ Furthermore, the Commission agrees with petitioner's argument that she has pursued and exhausted all domestic remedies available to her under Chilean law, and the Supreme Court's final judgment prohibited any further judicial review.¹⁴⁹

April 8, 2008: The Commission combines Ms. Órdenes Guerra's case with Ms. Morales Compagnon's case.¹⁵⁰

3. Events pertaining to Mr. Cortés Álvarez's wife, Ms. Barraza Codoceo and his next of kin

October 24, 2003: Mr. Nelson Caucoto, a lawyer representing Mr. Cortés Álvarez's wife, Ms. Barraza Codoceo, files a petition to the

¹⁴³ Morales Compagnon v. Chile, Admissibility Report, ¶ 1.

¹⁴⁴ *Id.* ¶ 16.

¹⁴⁵ *Id.* ¶ 2.

¹⁴⁶ *Id.* ¶ 28.

¹⁴⁷ *Id.* ¶ 17.

¹⁴⁸ *Id.*

¹⁴⁹ Morales Compagnon v. Chile, Admissibility Report, ¶ 24.

¹⁵⁰ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 2(c).

Commission on her behalf.¹⁵¹ The petition alleges the State failed to provide Ms. Barraza Codoceo and her children reparations after the State murdered her husband during the military régime in 1973.¹⁵²

February 18, 2005: The State requests that the Commission declare the petition inadmissible.¹⁵³ The State argues that Ms. Barraza Codoceo's husband's murder occurred before Chile ratified the American Convention, and thus, the facts of the complaint are excluded from the Commission's jurisdiction.¹⁵⁴

October 12, 2005: The Commission submits Admissibility Report 62/05, which declares the petition admissible.¹⁵⁵ The Commission rejects the State's argument that the petition is inadmissible because Ms. Barraza Codoceo's husband's murder took place before the American Convention went into effect.¹⁵⁶ The Commission concludes that the petitioner's allegations refer solely to the Chilean court's judgments issued after the American Convention went into effect, and the Commission considers such events to be independent from events that occurred during the Chilean military dictatorship.¹⁵⁷ Furthermore, the Commission agrees with petitioner's argument that he has pursued and exhausted all domestic remedies available to him under Chilean law, and the Supreme Court's final judgment prohibited any further judicial review.¹⁵⁸

April 8, 2008: The Commission combines Ms. Órdenes Guerra's case with Ms. Barraza Codoceo's case.¹⁵⁹

4. Events pertaining to the relatives of: (1) Mr. Melo Prádenas: Mr. Mario Melo Acuña, Mr. Carlos Gustavo Melo Prádenas, and Ms. Iliá María Prádenas Páez; (2) Mr. Vivanco Díaz: Ms. Adriana Vivanco Medina (3) Mr. Espejo Gómez: Ms. Katia Ximena Del Carmen Espejo Gómez, and Ms. Elena Alejandrina Vargas Gómez; and (4) Mr. Reyes

¹⁵¹ *Maria Barraza v. Chile*, Admissibility Report, ¶ 1.

¹⁵² *Id.*

¹⁵³ *Id.* ¶ 16.

¹⁵⁴ *Id.* ¶ 2.

¹⁵⁵ *Id.* ¶ 28.

¹⁵⁶ *Id.* ¶ 17.

¹⁵⁷ *Maria Barraza v. Chile*, Admissibility Report, ¶ 17.

¹⁵⁸ *Id.* ¶ 24.

¹⁵⁹ *Órdenes Guerra v. Chile*, Merits, Reparations, and Costs, ¶ 2(c).

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Navarrete; Ms. Mercedes Navarrete, Mr. Alberto Reyes Navarrete, Mr. Victor Eduardo Reyes Navarrete, and Mr. Patricio Hernán Reyes Navarrete

January 22, 2004: Mr. Nelson Caucoto, a lawyer representing the relatives of Mr. Melo Prádenas, Mr. Vivanco Díaz, Mr. Espejo Gómez, and Mr. Reyes Navarrete, files a petition to the Commission on their behalf.¹⁶⁰ The petition alleges the State failed to provide adequate reparations to the relatives of the four victims who were subjected to forced disappearances by the State during the military régime in 1973.¹⁶¹

February 18, 2005: The State requests that the Commission declare the petition inadmissible.¹⁶² The State argues that the events which occurred during the military régime took place before the American Convention was ratified and thus, the facts of the complaint are excluded from the jurisdiction of the Commission.¹⁶³

October 12, 2005: The Commission submits Admissibility Report 59/05, which declares the petition admissible.¹⁶⁴ The Commission rejects the State's argument and concludes that the petitioner's allegations refer solely to the Chilean court's judgments issued after the American Convention went into effect, and the Commission considers such events to be independent from events that occurred during the Chilean military dictatorship.¹⁶⁵ Furthermore, the Commission agrees with petitioner's argument that they have pursued and exhausted all domestic remedies available to them under Chilean law, and the Supreme Court's final judgment prohibited any further judicial review.¹⁶⁶ The Commission also concludes that the State did not submit observations regarding petitioner's the failure to exhaust domestic remedies.¹⁶⁷ The Inter-American Court held that the State's objection that domestic remedies have not yet been exhausted must be raised

¹⁶⁰ Mercedes Navarrete v. Chile, Admissibility Report, Report No. 59/05, Inter-Am. Comm'n H.R., Case No. 12.520, ¶ 1 (October 12, 2005).

¹⁶¹ *Id.*

¹⁶² *Id.* ¶ 18.

¹⁶³ *Id.* ¶ 2.

¹⁶⁴ *Id.* ¶ 32.

¹⁶⁵ *Id.* ¶ 19.

¹⁶⁶ Mercedes Navarrete v. Chile, Admissibility Report, ¶ 26.

¹⁶⁷ *Id.* ¶ 27.

during the first stages of the proceeding; otherwise, the State waives this defense.¹⁶⁸

April 30, 2009: The Commission joins this case with the previously combined three other cases because they all focus on similar incidents of identical patterns of conduct.¹⁶⁹

November 30, 2016: The Commission issues Merits Report No. 52/16.¹⁷⁰ The Commission concludes that the State violated Article 1(1) (Obligation of Non-Discrimination), Article 2 (Obligation to Give Domestic Legal Effect to Rights), Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and Article 25(1) (Right of Recourse Before a Competent Court) of the American Convention to the detriment of Maria Laura Órdenes Guerra, Ariel Luis Antonio, Marta Elizabeth, Augusto Oscar, Gloria Laura Astris and Maria Laura Elena Alcayaga Ordenes; Lucía Morales Compagnon, Jorge Roberto, Carolina Andrea, Lucía Odette and María Teresa Morales Osorio; Alina María Barraza Codoceo, Eduardo Patricio, Marcia Alejandra, Patricia Auristela, Nora Isabel, Hernán Alejandro Cortés Barraza; Mario Melo Acuña, Ilia María Pradenas Pérez and Carlos Gustavo Melo; Pamela Adriana Vivanco; Elena Alejandrina Vargas; and Magdalena Mercedes Navarrete and Alberto, Patricio Hernán and Víctor Eduardo Reyes Navarrete.¹⁷¹

The Commission declares that the application of the statute of limitations under the Civil Code to the victims' civil actions for reparation bars their access to justice and their right to receive reparation.¹⁷² The Commission recommends that the State: (1) adopt measures that provide the victims with the ability to file their claims in civil court and obtain a decision with respect to reparations; and (2) develop legislative, administrative, and other measures to ensure non-repetition and to prohibit the application of the statute of limitations under the Civil Code to civil actions for reparation in other similar cases.¹⁷³

¹⁶⁸ Mercedes Navarrete v. Chile, Admissibility Report, ¶ 27.

¹⁶⁹ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 2(c).

¹⁷⁰ Órdenes Guerra v. Chile, Report on Merits, ¶ 1.

¹⁷¹ *Id.* ¶ 130.

¹⁷² *Id.* ¶ 129.

¹⁷³ *Id.* "Recommends" ¶ 1-2.

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B. Before the Court

May 17, 2017: The Commission submits the case to the Court, after the State failed to adopt its recommendations.¹⁷⁴

1. Violations Alleged by Commission¹⁷⁵

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

Article 25(1) (Right of Recourse Before a Competent Court)

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 Victims¹⁷⁶

Same Violations Alleged by Commission.

III. MERITS

*A. Composition of the Court*¹⁷⁷

Eduardo Ferrer Mac-Gregor Poisot, President

Humberto Antonio Sierra Porto, Judge

Elizabeth Odio Benito, Judge

Eugenio Raúl Zaffaroni, Judge

L. Patricio Pazmiño Freire, Judge

¹⁷⁴ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 3.

¹⁷⁵ Órdenes Guerra v. Chile, Report on Merits, ¶ 4.

¹⁷⁶ *Id.* ¶ 1. The Commission appointed family members for each members as follows: María Laura Órdenes Guerra, Ariel Luis Antonio Alcayaga Orders, Marta Elizabeth Alcayaga Orders, Augusto Oscar Amador Alcayaga Orders, Gloria Laura Astris Alcayaga Orders and María Laura Elena Alcayaga Orders; Lucía Morales Compagnon, Jorge Roberto Osorio Morales, Carolina Andrea Osorio Morales, Lucía Odette Osorio Morales and María Teresa Osorio Morales; by Alina María Barraza Codoceo, Eduardo Patricio Cortés Barraza, Marcia Alejandra Cortés Barraza, Patricia Auristela Cortés Barraza, Nora Isabel Cortés Barraza and Hernán Alejandro Cortés Barraza; by Mario Melo Acuña, Ilia María Prádenas Pérez and Carlos Gustavo Melo Prádenas; by Pamela Adriana Vivando Medina; by Elena Alejandrina Gómez Vargas and Katia Ximena Espejo Gómez; and of Magdalena Mercedes Navarrete Faraldo, Jorge Alberto Reyes Navarrete, Patricio Hernán Reyes Navarrete and Víctor Eduardo Reyes Navarrete.

¹⁷⁷ Judge Eduardo Vio Grossi, of Chilean nationality, did not participate in the deliberation of the Judgment. *Id.* n. *.

Pablo Saavedra Alessandri, Secretary

B. Decision on the Merits

November 29, 2018: The Court issues its Judgment on Merits, Reparations and Costs.¹⁷⁸

The Court found unanimously that Chile had accepted partial international responsibility,¹⁷⁹ because:

The State fully accepted the facts set forth in the Commission's Merit Report regarding violations of judicial guarantees.¹⁸⁰ Thus, the Court concluded all disputes regarding the facts in the case had ceased.¹⁸¹ Furthermore, the State acknowledged the victims were entitled to reparations but the Court held a controversy regarding what constituted adequate reparations existed between the parties.¹⁸² The State argued that any physical, moral, and psychological damage resulting from the human rights violations could not be remedied with individualized material damages.¹⁸³ Rather, the State asserted the proper reparation needed to be uniform for all victims and should consist of remembrance, justice, and social and welfare benefits to the victims and their relatives.¹⁸⁴ The Court acknowledged the State's partial acceptance of responsibility and held it would briefly discuss the human rights violations, and, more importantly, resolve the controversy surrounding reparations.¹⁸⁵

The Court found unanimously that Chile had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and Article 25(1) (Right of Recourse Before a Competent Court) in relation to Article 1(1) (Obligation of Non-Discrimination), and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of

¹⁷⁸ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 148.

¹⁷⁹ *Id.* "Resolution Points," ¶ 1.

¹⁸⁰ *Id.* ¶ 25.

¹⁸¹ *Id.*

¹⁸² *Id.* ¶ 30.

¹⁸³ Órdenes Guerra v. Chile, Report on Merits, ¶ 43.

¹⁸⁴ *Id.*

¹⁸⁵ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 31.

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the relatives of Mr. Alcayafa Aldunate, Mr. Osorio Zamora, Mr. Cortés Álvarez, Mr. Vivanco Diaz, Mr. Melo Prádenas, Mr. Espejo Gomez, and Mr. Reyes Navarrete,¹⁸⁶ because:

The Court held, in light of the serious judicial guarantee violations which the State accepted responsibility for, the claimants must be given an opportunity to seek reparations from the State for the suffering caused by the State's past actions.¹⁸⁷ The Court explained that civil actions seeking reparations for past human rights violations are not subject to the application of a domestic statute of limitation.¹⁸⁸ The United Nations Working Group on Enforced or Involuntary Disappearances first made this declaration in 1989.¹⁸⁹ Then, in 1993, Mr. Theo Van Boven, the Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Serious Violations of Human Rights, opined that states do not have the option to apply a domestic statute of limitations to cases involving human rights violations because the inapplicability is a consequence for participation in the most hateful crimes.¹⁹⁰ Mr. Van Boven recognized that the passage of time does not erase victims' memories of the human rights violations they endured; in fact, the passage of time amplified their post-traumatic stress, which often required ongoing medical, psychological, and social care.¹⁹¹

Furthermore, the Court recognized that in some cases involving serious human rights violations, domestic statute of limitations laws do not prevail over the norms imposed on the State by international treaties that

¹⁸⁶ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, "Resolution Points" ¶ 2. Relatives included: María Laura Órdenes Guerra, Ariel Luis Antonio Alcayaga Orders, Marta Elizabeth Alcayaga Orders, Augusto Oscar Amador Alcayaga Orders, Gloria Laura Astris Alcayaga Orders and María Laura Elena Alcayaga Orders; Lucía Morales Compagnon, Jorge Roberto Osorio Morales, Carolina Andrea Osorio Morales, Lucía Odette Osorio Morales and María Teresa Osorio Morales; by Alina María Barraza Codoceo, Eduardo Patricio Cortés Barraza, Marcía Alejandra Cortés Barraza, Patricia Auristela Cortés Barraza, Nora Isabel Cortés Barraza and Hernán Alejandro Cortés Barraza; by Mario Melo Acuña, Iliá María Prádenas Pérez and Carlos Gustavo Melo Prádenas; by Pamela Adriana Vivando Medina; by Elena Alejandrina Gómez Vargas and Katia Ximena Espejo Gómez; and of Magdalena Mercedes Navarrete Faraldo, Jorge Alberto Reyes Navarrete, Patricio Hernán Reyes Navarrete and Víctor Eduardo Reyes Navarrete

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* ¶ 79.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* ¶ 80.

¹⁹¹ *Id.*

the State had ratified.¹⁹² The purpose of such international treaties is the protection of victims' and their family members' rights to receive reparations for the State's violations.¹⁹³ By ratifying international treaties into existence, Chile obligated itself to recognize and protect the victims' right to full reparation.¹⁹⁴ Thus, in this instance, Chile must recognize and protect the victims' right to full reparation for the damage caused by the State's most serious crimes,¹⁹⁵ and the existence of a contradictory domestic law does not exempt Chile from complying with its legal responsibility to repair.¹⁹⁶

The Court agreed with the Commission that in the Chilean jurisdiction, the only legal remedy available to access for compensation for crimes against humanity is the civil action for compensation.¹⁹⁷ Here, Chilean judicial authorities rejected all of the victims' demands for civil compensation by applying the domestic statute of limitations law.¹⁹⁸ The Court found that restricting victims' rights to compensation for crimes against humanity was disproportionate to the severity of the harmful effect that such restriction had on humanity in the aggregate.¹⁹⁹ The Court stressed the importance of a victim's fundamental right to reparations for serious human rights violations committed during the military dictatorship in 1973 and refused to apply a different standard to such a fundamental issue.²⁰⁰

The Court also addresses the State's defense that all victims had already received compensatory benefits for their damages.²⁰¹ The Court held that administrative reparations under the terms of Law No. 19123 were not exclusive from judicial reparations, and therefore the victims were not estopped from obtaining both forms of compensation.²⁰² Further, the State's administrative reparations program only established a system of

¹⁹² *Órdenes Guerra v. Chile, Merits, Reparations, and Costs*, ¶ 80.

¹⁹³ *Id.*

¹⁹⁴ *Id.* ¶ 85.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* ¶ 86.

¹⁹⁸ *Órdenes Guerra v. Chile, Merits, Reparations, and Costs*, ¶ 86.

¹⁹⁹ *Id.* ¶ 87.

²⁰⁰ *Id.* ¶ 88.

²⁰¹ *Id.* ¶ 96.

²⁰² *Id.*

*welfare pensions; it was not appropriate that the State assumed that this program repaired all moral damage inflicted upon victims.*²⁰³

*C. Concurring Separate Opinion of Judge Humberto Antonio
Sierra Porto*

Judge Sierra Porto issued a concurring opinion wherein he specifically addressed three separate topics: (1) the State's motivation to disregard the prescription of civil action for damages in human rights violations cases, (2) the use of the principle of complementarity regarding reparations, and (3) the control of conventionality and the disadvantage of using conventionality as measure of repair.²⁰⁴

First, Judge Sierra Porto declared that the Court correctly ruled that the domestic statute of limitations and amnesty provisions are inadmissible and unenforceable in cases regarding crimes against humanity.²⁰⁵ Judge Sierra Porto found no reasoning in this case that supported the inalienability of civil actions.²⁰⁶ Instead, the Court based its ruling on conclusions of law found in multiple other judicial and legislative bodies.²⁰⁷ Here, the Court should have interpreted the American Convention on the basis to international law using sources of soft law, comparative constitutional law, and the Commission's findings instead of simply listing a series of sources without any real reasoning to support its conclusion in order to set a precedent for the resolution of future cases.²⁰⁸

Next, Judge Sierra Porto agreed with the Court's ruling that administrative reparations under the terms of Law No. 19123 are not exclusive from judicial reparations, and that victims are not estopped from obtaining both forms of compensation.²⁰⁹ However, the Court used this principle of complementarity differently from that which it followed in other jurisprudence.²¹⁰

²⁰³ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 96.

²⁰⁴ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, Separate Opinion of Judge Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 372, ¶ 1 (November 29, 2018).

²⁰⁵ *Id.* ¶ 5.

²⁰⁶ *Id.* ¶ 7.

²⁰⁷ *Id.*

²⁰⁸ *Id.* ¶ 8.

²⁰⁹ *Id.* ¶ 10.

²¹⁰ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, Separate Opinion of Judge Sierra Porto ¶ 12.

Judge Sierra Porto concluded that the Judgment established an additional measure of reparation.²¹¹ The Court acknowledged that the Chilean Supreme Court has issued varying decisions regarding an adequate interpretation of its duty to exercise conventionality control.²¹²

However, because interpretations may vary in the future, the Court considered that it was appropriate to exercise conventionality control in other similar cases, such as a guarantee of non-repetition.²¹³

IV. REPARATIONS

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

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

1. Judgment as a Form of Reparation

The Court noted that the Judgment itself is a form of reparation.²¹⁴

2. Publish the Judgment

The Court ordered the State to publish judgment within six months in an official gazette and on an official website for the duration of one year.²¹⁵ The Court noted that the State must immediately notify the Court once each publication is made available regardless of any time period restriction.²¹⁶

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

²¹¹ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, Separate Opinion of Judge Sierra Porto, ¶ 23.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, “Resolution Points,” ¶ 2.

²¹⁵ *Id.* ¶ 125.

²¹⁶ *Id.*

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The Court did not award pecuniary damages.

2. Non-Pecuniary Damages

The Court awarded a fixed amount of \$180,000 in favor of each of the victims, payable to each victim directly.²¹⁷ If the victim entitled to an award is no longer alive or dies during the period that the State is still obligated to pay, then the payment will be distributed evenly between the decedent's children or rightful recipients, in accordance with the applicable domestic law.²¹⁸ The Court noted that in the event that the State entered into default, the State must pay interest on the amount due coinciding with the default bank interest in Chile.²¹⁹

3. Costs and Expenses

The Court awarded \$10,000 for the reimbursement of costs and expenses for the work made in the litigation of the case internally and internationally.²²⁰ The Court required that the amount set be delivered directly to the representative.²²¹ The Court also reserved the right to order reimbursement to the victims for any reasonable expenses incurred during the monitoring and compliance stage.²²²

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

\$4,870,000

C. Deadlines

The State must comply with the order of the Court by publishing the official summary and Judgment within six months from the date of the Judgment.²²³

The State must report its compliance measures to the Court within one year from the date of notification of the Judgment, explicitly state which state authorities or institutions are responsible for implementing

²¹⁷ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 124.

²¹⁸ *Id.* ¶ 142-143.

²¹⁹ *Id.* ¶ 147.

²²⁰ *Id.* ¶ 140.

²²¹ *Id.*

²²² *Id.*

²²³ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, ¶ 125.

the compliance measures and include a work schedule that the State plans to abide by in fulfilling the court orders.²²⁴

The State must pay the compensation awards and costs and expenses within one year of the notification of the Judgment.²²⁵

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

Órdenes Guerra v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 372 (November 29, 2018).

Órdenes Guerra v. Chile, Merits, Reparations, and Costs, Separate Opinion of Judge Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 372 (November 29, 2018).

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

²²⁴ Órdenes Guerra v. Chile, Merits, Reparations, and Costs, “Resolution Points” ¶ 6.

²²⁵ *Id.* ¶ 141.

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5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

Órdenes Guerra v. Chile, Admissibility Report, Report No. 60/05, Inter-Am. Comm'n H.R., Case No. 12.521 (October 12, 2005).

Morales Compagnon v. Chile, Admissibility Report, Report No. 61/05, Inter-Am. Comm'n H.R., Case No. 12.522 (October 12, 2005).

Maria Barraza v. Chile, Admissibility Report, Report No. 62/05, Inter-Am. Comm'n H.R., Case No. 12.523 (October 12, 2005).

Mercedes Navarrete v. Chile, Admissibility Report, Report No. 59/05, Inter-Am. Comm'n H.R., Case No. 12.520 (October 12, 2005).

3. Provisional Measures

[None]

4. Report on Merits

Órdenes Guerra v. Chile, Report on Merits, Report No. 52/16, Inter-Am. Comm'n H.R., Case No. 12.521 (November 30, 2016).

5. Application to the Court

Órdenes Guerra v. Chile, Letter of Submission, Inter-Am. Comm'n H.R., Case No. 12.521 (May 17, 2017).

VIII. BIBLIOGRAPHY

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