

García Lucero et al. v. Chile

ABSTRACT¹

This case is about a victim of General Augusto Pinochet brutal repression of political opposition. The victim was arbitrarily arrested and tortured before being sent into exile to the United Kingdom. While the events surrounding his arrest and torture fell outside the scope of the Court's jurisdiction, the Court found the subsequent failure to properly investigate the events, prosecute the culprits, and compensate the victim were found to be violations of the Convention.

I. FACTS

A. Chronology of Events

September 11, 1973: President Salvador Allende, of Chile, is overthrown and killed by a military coup led by General Augusto Pinochet.²

September 16, 1973: State military police arrest Mr. Leopoldo García Lucero, a nine-year employee at the Santiago de Chile racecourse.³ They arrest him because he actively supports a socialist political party.⁴

October 7, 1973: Mr. García Lucero is detained at the United Nations Conference on Trade and Development (“UNCTAD”) building.⁵ Then he is transferred to a military police post (“Police Station No. 1”).⁶ He is kept incommunicado with no official charges against him.⁷ At Police

1. Lorraine Hall, Author; Theodore Nguyen, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Ben Kirby, *Chile's 911: Survivors recall horrors of Pinochet coup, 40 years on*, CNN (Sept. 11, 2013), <http://www.cnn.com/2013/09/11/world/americas/chile-coup-anniversary-40/>.

3. García Lucero et al. v. Chile, Preliminary Objections, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 267, ¶¶ 62, 63 (Aug. 28, 2013).

4. García Lucero et al. v. Chile, Report on Merits, Report No. 23/11, Inter-Am. Comm'n H.R., Case No. 12.519, ¶ 36 (Mar. 23, 2011).

5. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations, n.48.

6. *Id.* ¶ 63.

7. *Id.*

Station No. 1, the military police torture him.⁸ They tie his hands and feet, blindfold him, beat his head, and submerge him under water.⁹ This is done every two to three hours.¹⁰ They also beat him violently.¹¹ One member of the military police beats him with the butt of a revolver or rifle to the point of scarring his face and almost blinding him in one eye.¹² They additionally threaten to kill his daughter in front of him.¹³ During this treatment, they ask him repeatedly about the leaders of the Popular Unity party, a political party in the State.¹⁴

October 9, 1973: The military police transfer him to the National Stadium, another detention center.¹⁵ Here, the torture is worse.¹⁶ The military police tie his hands, this time to a wooden post, and then a crane lifts him up, a cattle prod sends electric shocks into his body, and he is submerged in water.¹⁷ As a result of this torture, Mr. García Lucero loses all his teeth and suffers a broken left arm.¹⁸

December 1973: Mr. García Lucero's wife, Mrs. Elena Otilia García, discovers where he is detained and is able to see him for half an hour.¹⁹

Mr. García Lucero is transferred to a concentration camp, "Chacabuco," located in Antofagasta.²⁰ Here, he has emergency surgery on an inguinal hernia caused by the torture suffered at the National Stadium.²¹ He is allowed to see his family twice.²²

8. *Id.*

9. *Id.* n.50.

10. *Id.*

11. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations, n.50.

12. *Id.*

13. *Id.*

14. *Id.*

15. The October 9, 1973 date is derived from the files of the Documentation and Archives Foundation of the Solidarity Vicariate of the Archbishop of Santiago, provided to the Commission by the State, which indicate that Mr. García Lucero was detained on October 7, 1973, in the UNCTAD building and remained detained in the Chilean National Stadium and the Chacabuco detainee camp. *Id.* n.48. Further, the Report on the Merits states that Mr. García Lucero was transferred to the National Stadium after suffering "two days of torture" at UNCTAD. *See* García Lucero et al. v. Chile, Report on Merits, ¶ 37.

16. *See* García Lucero et al. v. Chile, Report on Merits, ¶ 37.

17. *Id.*

18. *Id.*

19. *Id.* ¶ 38.

20. *Id.*

21. *Id.*

22. García Lucero et al. v. Chile, Report on Merits, ¶ 38.

January 1974: Mr. García Lucero is transferred to the Ritoque detention camp.²³

February 1974: Mr. García Lucero is transferred to the Tres Álamos detention camp and is allowed to see family once a week.²⁴

November 1974: A decree by the Ministry of the Interior expels Mr. García Lucero from Chile.²⁵

June 12, 1975: Mr. García Lucero is escorted from Tres Álamos to the airport.²⁶ He leaves for the United Kingdom.²⁷ His family joins him.²⁸

April 18, 1978: The State enacts Decree Law No. 2,191, which grants amnesty to criminal actors who engaged in certain acts from September 11, 1973 to March 10, 1978, as long as the actors are not currently being prosecuted or convicted.²⁹

April 25, 1990: By Supreme Decree No. 355, the State creates the National Truth and Reconciliation Commission (the “Commission Rettig”) to discover the truth about human rights violations by examining the disappearances, executions, and torture resulting in deaths from September 11, 1973 to March 10, 1978.³⁰ The Commission Rettig also recommends that the State implement effective reparations, seek social integration, and create conditions for reconciliation.³¹

August 21, 1990: The State ratifies the American Convention on Human Rights and adopts several laws to help individuals exiled during the military regime reintegrate back into society.³²

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations, ¶¶ 61, 64. Mr. García Lucero’s family is made up of Mrs. García, their daughter Ms. Francisca Rocío García, and Mrs. García’s two daughters, Ms. María Elena Klug and Ms. Gloria Klug, who consider Mr. García Lucero their father. *Id.*

29. *Id.* ¶ 65.

30. *Id.* ¶ 66.

31. *Id.*

32. *Id.* ¶ 70; García Lucero et al. v. Chile, Admissibility Report, ¶ 23.

February 8, 1992: The State creates a National Compensation and Reconciliation Board under Law No. 19,123 to decide cases from the Commission Rettig and to provide social and legal services for victims' families.³³ These services include free comprehensive health care to qualifying persons such as those who lost their employment for political reasons.³⁴

August 12, 1993: The State publishes Law No. 19,234, which grants pensions to those who lost their employment for political reasons.³⁵

December 23, 1993: Mr. García Lucero sends a letter to the Program for the Recognition of Those Dismissed from their Employment for Political Reasons in Chile to be considered for a pension.³⁶

December 1, 1994: The State acknowledges that it received his letter.³⁷

December 1996: The National Compensation and Reconciliation Board ceases operation, and its functions are handed off to the Program for the Continuation of Law 19,123.³⁸

February 6, 1998: Mr. García Lucero's petition to be qualified as someone dismissed for political reasons is approved.³⁹ This grants him a monthly compensation in the amount of approximately \$278.43 per month for life under Law No. 19,234.⁴⁰

August 12, 2003: The State adopts Laws No. 19,980 and No. 19,962 to abolish criminal records for crimes relating to State Security, weapons control, and terrorist conduct from the military regime.⁴¹

November 28, 2004: Supreme Decree No. 1,040 is made public and

33. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations, ¶ 67.

34. *Id.* ¶ 68.

35. *Id.* ¶ 69.

36. *Id.* ¶ 75.

37. *Id.*

38. *Id.* ¶ 67.

39. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations, ¶ 77, n.75.

40. *Id.* ¶ 77.

41. *Id.* ¶ 71.

lists 27,153 political prisoners and victims of torture, including Mr. García Lucero.⁴²

December 24, 2004: Law No. 19,992 is published, the purpose of which is to establish a reparation pension and other benefits, including education, health, and housing, for political prisoners and tortured persons.⁴³

November 22, 2006: The State publishes Law No. 20,134, which establishes a bonus payment of approximately \$3,010 to those who lost their jobs for political reasons.⁴⁴

October 1, 2008: Mr. García Lucero testifies on tape that he has been unable find a job in the United Kingdom comparable to the one he lost in Chile.⁴⁵ He describes the impact of the torture that he still suffers today, including reliving the torture constantly when he looks in the mirror and sees the scars.⁴⁶ He states that the torture has left him almost entirely paralyzed.⁴⁷ He also explains that he does not speak English, so he feels isolated in the United Kingdom.⁴⁸ He expresses frustration that he cannot communicate with his grandchildren, who only speak English, and believes it would have been better if he had died.⁴⁹ He additionally mentions that those who tortured him went unpunished and this haunts him.⁵⁰ Finally, Mr. García Lucero states that the pension he receives is minimal and that his family cannot live on it.⁵¹

October 7, 2011: Attorney José Antonio Ricardi Romero files a complaint with the Santiago Court of Appeal based on Mr. García Lucero's torture, illegal detention, and exile and requests a special judge to clarify the facts of the case, find those responsible for the crimes,⁵² deter-

42. *Id.* ¶ 72.

43. *Id.* ¶ 73.

44. *Id.* ¶ 69.

45. García Lucero et al. v. Chile, Report on Merits, ¶ 58, n.63.

46. *Id.* ¶ 58.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* ¶ 59.

51. García Lucero et al. v. Chile, Report on Merits, ¶ 60.

52. These crimes are set forth in Articles 150, 150A, 150B, 296, and 395 in the State's Criminal Code, as well as in Article 330 of the Code of Military Justice. The victims' representatives contested before the Commission that these articles did not appropriately define the crimes of torture and unnecessary violence as required by international law. García Lucero et al. v. Chile,

mine financial obligations, and punish the perpetrators.⁵³ The case is forwarded to Judge Mario Carroza Espinosa.⁵⁴

October 13, 2011: Judge Espinosa declares himself incompetent to hear the case and forwards the case to the President of the Santiago Court of Appeal.⁵⁵

October 26, 2011: The case is forwarded to a Judge of the Thirty-fourth Criminal Court of Santiago (the “Criminal Court”).⁵⁶

November 9, 2011: The Criminal Court admits the case and issues a court order to investigate the crimes and perpetrators.⁵⁷

February 9, 2012: Mr. Ricardi requests the Criminal Court to summon the person responsible for the crimes against Mr. García Lucero and requests for complete information about the crimes.⁵⁸

February 15, 2012: The Criminal Court summons the individual allegedly responsible.⁵⁹

June 6, 2012: Acting as Mr. García Lucero’s official agent, Mr. Ricardi files a criminal complaint against those responsible for the crimes.⁶⁰ The complaint is admitted the next day.⁶¹

August 7, 2012: The Criminal Court receives a report that identifies three persons presumably responsible; however, their level of involvement is not indicated.⁶²

August 20, 2012: One of the identified suspects is summoned to testify

Judgment, Preliminary Objections, Merits, and Reparations, ¶¶ 81, 143.

53. *Id.* ¶ 81.

54. *Id.* ¶ 82.

55. *Id.*

56. *Id.* ¶ 83.

57. *Id.*

58. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations, ¶ 87.

59. *Id.*

60. *Id.* ¶ 91.

61. *Id.* ¶ 92.

62. *Id.* ¶ 94.

but does not appear; therefore, a warrant is issued for his arrest.⁶³

October 16, 2012: The Criminal Court receives a police report indicating the suspect has not been found but is rumored to be living abroad in an unidentified country.⁶⁴

Between October 30, 2012 and April 3, 2013: The Criminal Court orders the International Police of the Investigation Police of Chile to reveal information as to when the suspect entered and left the country.⁶⁵ When this information is not revealed, several more requests are made and go unanswered.⁶⁶

April 3, 2013: The Criminal Court orders the State to request Mr. García Lucero's political records and records of detention from the Museum of Memory and Human Rights.⁶⁷

August 28, 2013: Mr. García Lucero suffers from a variety of “mental and physical” disorders including heart conditions, “mobility difficulties”, “severe and complex post-traumatic stress” disorder, and symptoms of severe depression.⁶⁸ All these conditions require different treatments.⁶⁹

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

May 20, 2002: The organization Seeking Reparation for Torture Survivors (“REDRESS”) files Petition No. 350/02 with Inter-American

63. *Id.* ¶ 95.

64. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations, ¶ 98.

65. *Id.* ¶ 99.

66. *Id.* ¶ 100.

67. *Id.* ¶ 101.

68. *Id.* ¶ 80.

69. *Id.*

Commission on Human Rights on the behalf of Mr. García Lucero.⁷⁰

March 15, 2005: The State objects to admissibility because after Mr. García Lucero's detention the State became a democracy again and ratified several human rights treaties.⁷¹ Moreover, the State argues inadmissibility because the facts giving rise to the claim occurred prior to the State's ratification of the American Convention.⁷²

October 12, 2005: The Commission declares the case admissible in Admissibility Report No. 58/05.⁷³

March 23, 2011: The Commission issues Report on Merits No. 23/11.⁷⁴ It finds that the State violated 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), and Article 5(1) (Right to Physical, Mental, and Moral Integrity), all in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights).⁷⁵ The Commission recommends that the State: (1) compensate Mr. García Lucero and his next of kin, factoring in his exile and disabilities; (2) ensure that he and his next of kin have both medical and psychiatric treatment; (3) eliminate the effects of Decree Law No. 2191 because of its incompatibility with the American Convention; and (4) investigate the facts with the goal of punishing those responsible.⁷⁶

B. Before the Court

September 20, 2011: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁷⁷

1. Violations Alleged by Commission⁷⁸

70. García Lucero et al. v. Chile, Admissibility Report, ¶ 1.

71. *Id.* ¶¶ 23, 28.

72. *Id.* ¶ 26.

73. García Lucero et al. v. Chile, Admissibility Report.

74. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations, ¶ 4(c).

75. *Id.*

76. García Lucero et al. v. Chile, Report on Merits, "Recommendations" ¶¶ 1–5.

77. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations, ¶ 1.

78. *Id.* ¶ 3.

To the detriment of Mr. García Lucero and his family:

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

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)

2. Violations Alleged by Representatives of the Victims⁷⁹

Same Violations Alleged by Commission, plus:

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

Article 8 (Obligation to Investigate and Prosecute)

Article 9 (Right to Compensation for Victims) of the Inter-American Convention to Prevent and Punish Torture

Between March 26, 2013 and April 21, 2013: The Court receives amici curiae briefs from Mr. David James Cantor, Director of the Refugee Law Initiative of the School of Advanced Study, University of London (RLI); Nimisha Patel of the School of Psychology, University of East London; and Víctor Rosas Vergara, attorney and Vice President of Union of Former Political Prisoners of Chile (*Unión de Ex Prisioneros Políticos de Chile*; UNExPP).⁸⁰

August 28, 2013: The Court rejects the State's preliminary objection that the Court lacks material competence because the State's position is unclear and therefore the state did not justify its argument.⁸¹ The Court finds ample precedents to support that temporal competence⁸² is satis-

79. REDRESS serves as the representatives of the victims. *Id.* ¶ 6.

80. This date was derived from the Judgment, Preliminary Objections, Merits, and Reparations. The event was written without an exact date. However, it was listed in between two other events dated March 26, 2013 and April 21, 2013, respectively. *See id.* ¶ 11.

81. *Id.* ¶ 27.

82. Temporal competence refers to the Court's jurisdiction. When the State ratified the American Convention and recognized the Court's competence, it restricted the scope of the Court's jurisdiction to events that occurred after March 11, 1990. *See id.* ¶ 17.

fied if the facts are independent and occur after the date the Court's competence is recognized.⁸³ Thus, the Court concludes that the facts relating to the political imprisonment, torture and exile will only be foundational information, and it will not rule on those issues because those events occurred before March 11, 1990.⁸⁴ However, the Court will consider whether the State complied with its duty to investigate and provided appropriate remedies as these events are independent and within the Court's temporal jurisdiction.⁸⁵ The Court also finds that since the State did not mention that the victims failed to exhaust domestic remedies before the Commission, the State will not be able to raise that objection now.⁸⁶

III. MERITS

*A. Composition of the Court*⁸⁷

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

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

August 28, 2013: The Court issues its Judgment on Preliminary Objections, Merits, and Reparations.⁸⁸

83. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations, ¶ 30.

84. *Id.* ¶ 35.

85. *Id.* ¶ 38.

86. *Id.* ¶¶ 43–44.

87. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations. As a national of Chile, Judge Eduardo Vio Grossi did not take part in the deliberations and decision of this case. *Id.* n.*.

88. García Lucero et al. v. Chile, Judgment, Preliminary Objections, Merits, and Reparations.

The Court found unanimously that the State had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right to Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture to the detriment of Mr. García Lucero,⁸⁹ because:

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right to Recourse Before a Competent Court) of the Convention serve to ensure judicial remedies for victims of human rights violations.⁹⁰ These protections ensure that the State will, without delay, take necessary action to discover the facts surrounding the human rights violations and punish those responsible.⁹¹

Here, the State became aware of the human rights violations on December 23, 1993, when it received Mr. García Lucero's letter requesting classification as a person dismissed from his employment for political reasons.⁹² The State was again made aware of the violations when Mr. García Lucero's name was included on an official list of victims.⁹³ In addition, the State could have classified the acts as gross human rights violations or crimes against humanity.⁹⁴ Therefore, the Court determined the State had an obligation to investigate without delay.⁹⁵ The Court further determined that the State violated this obligation by waiting until October 7, 2011 to start the investigation, over sixteen years after the State initially became aware of the situation.⁹⁶

Because of this extensive investigatory delay despite the State's prior knowledge of Mr. García Lucero's torture and human rights violations,

89. *Id.* "Operative Paragraphs" ¶ 2.

90. *Id.* ¶ 121.

91. *Id.*

92. *Id.* ¶ 126.

93. *Id.*

94. *Id.*

95. *Id.* ¶ 127.

96. *Id.*

*the Court found that the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right to Recourse Before a Competent Court) of the American Convention.*⁹⁷

*Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture impose on the State obligations to investigate torture and punish those responsible.*⁹⁸ *The Court emphasized that investigations need to be conducted immediately upon notice of the violation, and the State must use any legal means possible to determine fault and punish those responsible.*⁹⁹ *Moreover, Article 8 (Obligation to Investigate and Prosecute) mandates an investigation by State authorities based on, at a minimum, an accusation or well-founded belief.*¹⁰⁰ *Failure of the State to fulfill these obligations will be considered a more serious gross human rights violation when the violations are systematic.*¹⁰¹

*First, the State was aware that Mr. García Lucero was tortured while in the custody of the State based on Mr. García Lucero's December 23, 1993 letter.*¹⁰² *Because Article 1 (Obligation to Prevent and Punish Torture) requires the State to hold perpetrators responsible in a court of law, the Court found that when the State excessively delayed domestic proceedings surrounding Mr. García Lucero's treatment for sixteen years, it violated his Article 8(1) (Right to a Hearing Within Reasonable Time Before a Competent and Independent Tribunal) in relation to Article 1 (Obligation to Prevent and Punish Torture) of the American Convention to Prevent and Punish Torture.*¹⁰³

*Second, Mr. García Lucero was subjected to various forms of torture, including beatings and threats to kill his daughter in front of him.*¹⁰⁴ *The Court determined that this treatment amounted to torture and cruel, in-*

97. *Id.* ¶ 138.

98. *Id.* ¶ 121.

99. *Id.* ¶ 122.

100. *Id.*

101. *Id.* ¶ 123.

102. *Id.* ¶ 121.

103. *Id.* ¶¶ 121, 127.

104. *Id.* n.50.

human, and degrading treatment under Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) the American Convention to Prevent and Punish Torture.¹⁰⁵ Because the State domestic courts delayed proceedings to hold the perpetrators responsible, it failed to take the obligatory effective measures to prevent such treatment under Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment).¹⁰⁶

Third, with regard to Article 8 (Obligation to Investigate and Prosecute) the State became aware of Mr. García Lucero's human rights violations from his December 23, 1993 letter, which was reaffirmed when his name appeared on an official list of victims.¹⁰⁷ Therefore, the State had more than an accusation or well-founded belief that would impose the duty to investigate on the State.¹⁰⁸ Thus, the State violated its obligation to investigate and punish the individuals responsible for the torture under Article 8 (Obligation to Investigate and Prosecute).¹⁰⁹

The Court found unanimously that the State had not violated:

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right to Recourse Before a Competent and Independent Tribunal) of the American Convention in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 9 (Right to Compensation for Victims) of the Inter-American Convention to Prevent and Punish Torture, in relation to the possibility of filing reparations claims, to the detriment of Mr. Lucero,¹¹⁰ because:

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right to Recourse Before a Competent and Independent Tribunal) of the Convention recognize that these rights apply to civil actions, creating an obligation to compensate the victim.¹¹¹ The compensation must be appropriate and proportional

105. *Id.* ¶¶ 121, 126.

106. *Id.* ¶¶ 121, 138.

107. *Id.* ¶ 126.

108. *Id.* ¶¶ 122–23.

109. *Id.* ¶¶ 121, 138.

110. *Id.* “Operative Paragraphs” ¶ 3.

111. *Id.* ¶ 195.

to the seriousness of the violation and specific facts of each case.¹¹² In addition to the requirements of the American Convention, the State's Domestic Law No. 19,992 establishes that victims of torture and political imprisonment have a right to physical rehabilitation and educational benefits, including medical care, psychological treatments, legal services, and social services.¹¹³

In order for a victim to be entitled to these benefits, the victim must make a claim; therefore, the State must allow victims to bring claims and have access to the remedies.¹¹⁴ The State has two avenues for filing claims for reparations.¹¹⁵ The first is a finance proceeding, which is commenced by a civil judicial complaint.¹¹⁶ The second is a claim for reparation in conjunction with a criminal proceeding.¹¹⁷ The State's Civil Code establishes that a claim must be brought before the statute of limitations, or four years following the event that led to the claim.¹¹⁸

Here, since the State recognized that Mr. García Lucero was the victim of political imprisonment and torture, the State had an obligation to provide him with adequate compensation.¹¹⁹ However, in regards to rehabilitation and education, it is unclear whether Mr. García Lucero could receive these benefits because he lived abroad.¹²⁰ Therefore, the Court needed to determine if the State provided the legal framework to allow victims abroad to make such claims.¹²¹ The Court found that while the civil code had a statute of limitations of four years, the State courts have allowed victims to bring claims for human rights violations that occurred during the military regime even after the statute of limitation had run.¹²²

The Court held that Mr. García Lucero could have filed a "finance proceeding" but did not.¹²³ Although Mr. García Lucero was deprived of

112. *Id.* ¶ 196.

113. *Id.* ¶¶ 196–97.

114. *Id.* ¶ 200.

115. *Id.* ¶ 201.

116. *Id.*

117. *Id.*

118. *Id.* ¶ 203.

119. *Id.* ¶ 195.

120. *Id.* ¶ 199.

121. *See id.* ¶ 202.

122. *Id.* ¶ 204.

123. *Id.* ¶ 206.

certain measures, because he lived in the United Kingdom, he never tried to file any claim to question this denial of benefits.¹²⁴ Therefore, the Court found insufficient evidence to determine that the State prevented Mr. García Lucero or his family from filing claims.¹²⁵ Since Mr. García Lucero could have filed claims but did not, the Court found the State did not violate Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right to Recourse Before a Competent and Independent Tribunal) of the Convention, in relation to Article 1(1) (Obligation of Non-Discrimination), as well as Article 9 (Right to Compensation for Victims) of the Inter-American Convention Against Torture in relation to filing claims for reparation.¹²⁶

The Court did not rule on:

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention¹²⁷ because:

*In determining whether the State violated Article 2 (Obligation to Give Domestic Legal Effect to Rights), the Court examined the following relevant domestic laws: Law No. 2,191; Article 15 of Law No. 19,992; Articles 150 A and 150 B of the Criminal Code; and Article 330 of the Code of Military Justice.*¹²⁸

*In a prior case, Almonacid Arellano et al. v. Chile, the Court found Law No. 2,191, which granted amnesty to those responsible for human rights violations during the military regime, was invalid because it was incompatible with the Convention.*¹²⁹ *Namely, the Court explained that crimes against humanity such as torture cannot go unpunished.*¹³⁰ *Therefore, the Court ordered the State to stop using this law as a means to block investigation, prosecution, and punishment of those responsible for human rights violations.*¹³¹ *Moreover, the Court declared in Barrios Altos v. Peru that states cannot grant amnesty for acts such as torture,*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* “Operative Paragraphs” ¶ 4.

128. *Id.*

129. *Id.* ¶ 150.

130. *Id.* ¶ 151.

131. *Id.* ¶ 150.

*illegal and arbitrary executions, and forced disappearances because these rights are non-derogable.*¹³²

*By virtue of the fact that Law No. 2,191 existed when the State learned of the torture of Mr. García Lucero, the State could have used it as an obstacle to domestic remedies.*¹³³ *While the Court found there was potential for such an abuse, there was no evidence to suggest that the Law was used to prevent Mr. García Lucero from seeking justice before or after October 7, 2011.*¹³⁴ *More importantly, the Court found in this case, as in Almonacid Arellano et al. v. Chile, that Law No. 2,191 could not be a barrier to domestic remedies because it cannot be used to protect those responsible for human rights violations.*¹³⁵

*The Court also found that article 15 of Law No. 19,992 was an obstacle to domestic remedies and could not be analyzed in the context of this case because the representatives did not identify protected information that would have been useful to the investigation.*¹³⁶ *The Court also pointed out that this law actually would have allowed Mr. García Lucero access to publish or provide third parties with documents, reports, statements, and testimony that related to him.*¹³⁷ *Finally, the Court could not analyze this law because the provision was not applied in Mr. García Lucero's case.*¹³⁸

*The Court found it was inappropriate to rule on articles 150 A and 150 B of the Criminal Code and article 330 of the Code of Military Justice because it was never indicated how these apply to this case.*¹³⁹ *In addition, the Court found it was inappropriate to rule on the statute of limitations and "semi-prescription" because the facts did not show it was applied in this case or impeded the investigation.*¹⁴⁰

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and

132. *Id.* ¶ 152.

133. *Id.* ¶ 154.

134. *Id.*

135. *Id.* ¶ 150.

136. *Id.* ¶ 156.

137. *Id.*

138. *Id.*

139. *Id.* ¶¶ 159, 161.

140. *Id.* ¶ 160. "Semi-prescription" is a State domestic law mechanism that allows sentences to be reduced under certain circumstances, thus causing disproportionate punishments to the respective crimes. *Id.* ¶ 144, n.153.

22 (Freedom of Movement and Residence) of the Convention¹⁴¹ because:

The Court did not rule on Article 5(1) (Right to Physical, Mental, and Moral Integrity) because the arguments related to this claim relied on the same facts about the State’s failure to act that were discussed prior, and it is not the Court’s responsibility to rule on arguments that have been decided under other treaty obligations.¹⁴² The Court did not rule on Article 5 (Right to Humane Treatment) in relation to reparations because it found no evidence that Mr. García Lucero or his family ever tried to file claims.¹⁴³ The Court did not rule on Article 22 (Freedom of Movement and Residence) of the Convention because the claim was time barred.¹⁴⁴

C. Concurring and Separate Opinions

[None]

IV. REPARATIONS

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

A. Specific Performance (Measure of Satisfaction and Non-Repetition Guaranteed)

1. Judgment as a Form of Reparation

The Court indicated that the Judgment itself is a *per se* form of reparation.¹⁴⁵

2. Investigate, Prosecute, and Punish Those Responsible

The State must continue to investigate the facts to find those re-

141. *Id.* “Operative Paragraphs” ¶ 5.

142. *Id.* ¶ 129.

143. *Id.* ¶¶ 129, 206.

144. *Id.* ¶ 210.

145. *Id.* “Operative Paragraphs” ¶ 6.

sponsible and punish them accordingly.¹⁴⁶ The Court found the delay in the investigation was excessive, and the new investigation must consider domestic norms and the regional system of human rights.¹⁴⁷ In addition, Decree Law No. 2,191 cannot be used as an obstacle to this investigation.¹⁴⁸

3. Publicly Acknowledge International Responsibility

The Court ordered that the State must publish the Judgment once in the Official Gazette and on an official website that is accessible abroad for one year.¹⁴⁹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court did not award any pecuniary damages because this compensation relates to events that occurred before March 11, 1990, and it was not proven that Mr. García Lucero's property or earning potential was affected by these facts.¹⁵⁰

2. Non-Pecuniary Damages

The Court awarded \$30,924¹⁵¹ to Mr. García Lucero because the State waited fourteen years after it learned about the violations to open investigations.¹⁵² In addition, Mr. García Lucero waited forty years for justice, and he is elderly and disabled.¹⁵³ The Court found it was important to consider the impact of the delay and the fact that Mr. García

146. *Id.* ¶ 220, "Operative Paragraphs" ¶ 7.

147. *Id.* ¶ 220.

148. *Id.* ¶ 223.

149. *Id.* ¶ 226.

150. *Id.* ¶ 244.

151. The original amount of 20,000 pounds sterling was converted to U.S. dollars using the conversion chart available at <http://fxtop.com/en/currency-converter-past.php>.

152. *Id.* ¶ 246.

153. *Id.*

Lucero moved abroad because of the events.¹⁵⁴

3. Costs and Expenses

With regard to the costs and expenses, the Court determined that the representatives waived their right to claim legal costs associated with litigating the case.¹⁵⁵ Thus, the Court determined that costs and expenses were not in dispute and not necessary to award.¹⁵⁶

4. Total Compensation

\$30,924

C. Deadlines

The State must conclude the investigation within a reasonable time.¹⁵⁷

The State must publish the Judgment in the Official Gazette and on an official website that can be accessed from abroad for one year within six months following notice of the Judgment.¹⁵⁸

The State must pay the non-pecuniary damages within one year following notice of the Judgment.¹⁵⁹

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

April 17, 2015: The State fully complied with its obligation to publish the Judgment in both the Official Journal of the Republic of Chile and on the home page of the Ministry of Justice for one year.¹⁶⁰ The Court also concluded that the State fully complied with its obligation to pay

154. *Id.*

155. *Id.* ¶ 247.

156. *Id.*

157. *Id.* ¶ 220.

158. *Id.* ¶ 226.

159. *Id.* ¶ 248.

160. García Lucero et al. v. Chile, Monitoring Compliance with Judgment, Order of the Court, ¶ 26, “Resolves” ¶ 1 (Apr. 17, 2015).

the non-pecuniary damages.¹⁶¹

The State partially complied with its obligation to pursue the investigation of Mr. García Lucero's case because the complaint remains in the indictment stage of the criminal proceedings.¹⁶² In addition, only one of the alleged perpetrators has been investigated.¹⁶³ The Court required the State to include in its next compliance report information on the developments of the investigation, the efforts of the State to identify the other perpetrators, and clarification on how the evidence will be obtained.¹⁶⁴ The Court will continue to monitor compliance as to this obligation.¹⁶⁵

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[García Lucero et al. v. Chile, Preliminary Objections, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 267 \(Aug. 28, 2013\).](#)

2. Decisions on Merits, Preparations and Costs

[García Lucero et al. v. Chile, Preliminary Objections, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 267 \(Aug. 28, 2013\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[García Lucero et al. v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Apr. 17, 2015\).](#)

161. *Id.* ¶¶ 32–33.

162. *Id.* ¶¶ 13, 14, 21, “Resolves” ¶ 2.

163. *Id.* ¶ 14.

164. *Id.* ¶ 21.

165. *Id.* “Resolves” ¶ 2.

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[García Lucero et al. v. Chile, Admissibility Report, Report No. 58/05, Inter-Am. Comm'n H.R., Case No. 12.519 \(Mar. 2, 2006\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[García Lucero et al. v. Chile, Report on Merits, Report No. 23/11, Inter-Am. Comm'n H.R., Case No. 12.519 \(Mar. 23, 2011\).](#)

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

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Ben Kirby, *Chile's 911: Survivors recall horrors of Pinochet coup, 40 years on*, CNN (Sept. 11, 2013), <http://www.cnn.com/2013/09/11/world/americas/chile-coup-anniversary-40/>.

Unravelling a tortured past, ECONOMIST (Dec. 2, 2004), <http://www.economist.com/node/3446874>.