

OEA/Ser.L/V/II.161
Doc. 28
March 18, 2017
Original: Spanish

REPORT No. 21/17
CASE 11.738
REPORT ON MERITS

ELBA CLOTILDE PERRONE AND JUAN JOSE PRECKEL
ARGENTINA

Approved by the Commission at its session No. 2077 held on March 18, 2017
161st Regular Period of Sessions

Cite as: IACHR, Report No. 21/17, Case 11.738, Merits, Elba Clotilde Perrone and Juan José Preckel, Argentina, March 18, 2017.

REPORT No. 21/17
CASE 11.738
MERITS
ELBA CLOTILDE PERRONE AND JUAN JOSE PRECKEL
ARGENTINA
MARCH 18, 2017

I.	SUMMARY	2
II.	PROCEEDINGS BEFORE THE COMMISSISON	2
III.	POSITION OF THE PARTIES.....	3
	A. Position of the petitioners.....	3
	B. Position of the State	3
IV.	PROVEN FACTS.....	4
	A. Detention of Elba Clotilde Perrone and Juan José Preckel in 1976.....	4
	B. Employment status of Mrs. Perrone and Mr. Preckel	6
	C. Remedies pursued	8
	1. Administrative proceeding	8
	2. Judicial Proceedings.....	10
V.	ANALYSIS OF THE MERITS	15
	A. Preliminary issues	15
	B. Right to a fair trial and judicial protection (article 8.1 and 25.1 of the American Convention) in connection with article 1.1 of the same instrument.....	16
	1. Guarantee of a reasonable period of time	17
	2. Duty of sufficient justification of decisions as a protection of due process	18
VI.	CONCLUSIONS.....	20
VII.	RECOMMENDATIONS.....	20

REPORT No. 21/17
CASE 11.738
MERITS
ELBA CLOTILDE PERRONE AND JUAN JOSE PRECKEL
ARGENTINA
MARCH 18, 2017

I. SUMMARY

1. On December 23, 1996 and January 13, 1997, the Inter-American Commission on Human Rights (hereinafter, “the Commission,” “the Inter-American Commission” or “the IACHR”) received two petitions lodged by the Permanent Assembly for Human Rights (Asamblea Permanente por los Derechos Humanos,¹ hereinafter “the petitioners”), alleging that the Republic of Argentina (hereinafter “the State,” “the Argentine State” or “Argentina”) is internationally responsible for not paying Elba Clotilde Perrone and Juan José Preckel their wages during the time they were held in custody and then, in his case, lived in exile.

2. According to the petitioners, during the time of the Argentine military dictatorship, Mrs. Perrone and Mr. Preckel were public sector employees at the General Tax Directorate. They claimed that both of them were arbitrarily detained and held into custody, tortured and, after their release, banished into exile. The petitioners argued that Mrs. Perrone and Mr. Preckel pursued several remedies in the domestic courts in order to receive their lost earnings and other employee benefits from that period of time. They contended that the administrative and judicial decision-making bodies denied their claims and that it was tantamount to a denial of justice. They explained that these decisions were not adequately justified and reasoned and did not adhere to standards of due process of law.

3. The State argued that under Law No. 24.043, compensation was paid to both of the alleged victims for the different infringements endured by them during their deprivation of liberty, including the bodily harm inflicted upon them. It contended that said payment satisfied both of their claims for reparation stemming from the violation of their human rights. It alleged that the administrative and judicial rulings regarding their claims of lost wages were issued in keeping with due process and that the content of the rulings was grounded in provisions of domestic law.

4. After examining the available information, the Commission concluded that the Argentine State is responsible for the violation of the right to a fair trial and judicial protection, as established in Articles 8.1 and 25.1 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in connection with the obligations set forth in Article 1.1 of the same instrument, to the detriment of Elba Clotilde Perrone and Juan José Preckel.

II. PROCEEDINGS BEFORE THE COMMISSISON

5. In communications received on December 23, 1996 and January 13, 1997, the Permanent Assembly for Human Rights filed the complaint in the instant matter. Admissibility Report No. 67/99 of May 4, 1999² describes the processing of the case during the admissibility stage. The IACHR found the petition admissible in regard to the rights enshrined in Articles 3, 8, 21, 24 and 25 of the American Convention and in Article XIV of the American Declaration of the Rights and Duties of Man.

6. On May 13, 1999, the Commission notified the parties of the admissibility report. Additionally, the IACHR placed itself at the disposal of the parties to aid in possibly reaching a friendly settlement. On April 14, 2000, the petitioners submitted a communication to the IACHR putting forth their

¹ At a later date, the Fundación Angela María Aieta de Gullo para la Defensa y Promoción de los Derechos Económicos, Sociales y Culturales (FAMAG), as well as Juan Méndez, became petitioners.

² IACHR, Report No. 67/99, Case 11.738, Admissibility, Elba Clotilde Perrone and Juan José Preckel, Argentina, May 4, 1999.

willingness to reach a friendly settlement. On May 31, 2000, the Commission forwarded petitioners' communication to the State and asked it to reply within 60 days. On February 8, 2001, the State submitted a communication asserting that it did not accept engaging in a friendly settlement process. In the same communication, the State provided its observations on the merits. On June 15, 2001, the petitioners submitted their observations on the merits and asked the IACHR to proceed to the merits stage of the matter. At a later date, the Commission received communications on the merits from both parties and duly forwarded them to the opposing party.

III. POSITION OF THE PARTIES

A. Position of the petitioners

7. The petitioners specified that the purpose of their petition is not for the IACHR to rule on the State's liability for illegal detention, torture and exile, but rather on it not allowing Elba Clotilde Perrone and Juan José Preckel to collect their lost earnings from work for the time that they were held in custody and lived in exile. As such, the purpose of the instant matter in the admissibility report was confined to that issue alone.

8. By way of background, the petitioners noted that, in 1976, Mrs. Perrone and Mr. Preckel worked at the General Tax Directorate, an office under the Secretariat of the Treasury at the time. They describe that in July of that year, in the context of the military regime, both of them were arbitrarily detained and subjected to acts of torture. They reported that Mrs. Perrone was released in October 1982; Mr. Preckel was released in mid 1979 and was exiled to Germany from September 1979 to December 1984. The petitioners stated that both of them were compensated for these acts under Law No. 24.043 – Compensation for Former Detainees. They explained that this statute granted benefits to individuals who were arbitrarily detained during the time of the military dictatorship.

9. The petitioners alleged that the State violated the right to a fair trial and judicial protection of Mr. Perrone and Mr. Preckel. They contended that, in June 1988, both of them brought an administrative claim for payment of lost earnings and that, after resorting to different levels of appeal, the Supreme Court of Justice of the Nation denied their claims. They argued that the judge did not rule on the basis of the law and facts set forth in the claim brought by them and that the judge introduced a defense that had not been raised by the defendant agency at the proper time during the trial proceedings, which amounted to an arbitrary action by a judicial official. In the petitioners' view, this was an infringement of their right to a defense.

10. The petitioners argued that Mrs. Perrone's and Mr. Preckel's right to property and to fair remuneration for work was also violated, inasmuch as they were unable to collect wages, or receive other work-related benefits while they were unlawfully held in detention and subsequently lived in exile. They contended that the compensation they received under Law 24.043 did not include payment for the labor relationship they had with the General Tax Directorate.

11. They further claimed that their right to equal protection under the law was violated, inasmuch as the agents of the public administration, who continued to work and those who did not, for reasons of *force majeure*, did collect their wages. The petitioners alleged that the status of Mrs. Perrone and Mr. Preckel as "detainees" must be considered an instance of *force majeure* and, therefore, meets the requirements under Article 14.c of the Rules of Leaves of Absence, Justifications and Exemptions of the National Public Administration - Decree No. 3413 of 1979. They explained that this legal provision sets out the rules for leaves of absence and justifications of personnel of the public administration.

B. Position of the State

12. The State recognized that the facts alleged by the petitioners relating to the arbitrary detention and bodily harm inflicted on Mrs. Perrone and Mr. Preckel did take place. It contended that under Law No. 24.043 – Compensation for Former Detainees, both of the alleged victims were paid indemnification for the infringements it had previously recognized, and that the payment must be deemed to have satisfied their claims.

13. The State argued that Article 9 of Law 24.043 establishes that “payment of the benefit implies relinquishment of all rights to indemnification for damages arising from deprivation of freedom, arrest, being kept under executive custody, death, or physical injury and shall exclude all other benefits or indemnification for the same cause.” It contended that the petitioners are unable to claim any additional payment, since all the individuals who have received indemnification were prevented from working or practicing their trade, industry, or profession and, consequently, from receiving payment for the same cause.

14. In regard to the failure to pay lost wages to Mrs. Perrone and Mr. Preckel, the State claimed that the administrative and judicial decisions were in keeping with due process and were based on application of domestic law. It explained that the proceeding brought by them was based on the Regulation on Investigations of Public Servants – Decree No. 1798/80. It noted that Article 39 of said Regulation provides that earnings are not to be paid when the suspension arises from actions unrelated to work. It argued that, consequently, the decisions followed the law in force at the time and the legal precedents of Argentine courts, which upheld that “no payment shall apply when there has been no legal consideration [provided in exchange].”

15. The State further alleged that in the admissibility stage, Mrs. Perrone and Mr. Preckel should have filed a suit for damages arising from the detention and subsequent removal from their jobs. It contended that under this remedy, they could have included the claims put forward in this case.

16. Additionally, the State argued that Mrs. Perrone and Mr. Preckel are entitled, without any time constraint imposed by the statute of limitations, to request recognition of the period of inactivity for purposes of retirement pension claims. It indicated that they are precluded from claiming any payment of lost earnings, because there was no legal consideration given in exchange by them.

IV. PROVEN FACTS

A. Detention of Elba Clotilde Perrone and Juan José Preckel in 1976

17. The facts described in this section were acknowledged by the Argentine State. In early July 1976, Elba Clotilde Perrone and Juan José Preckel were employees at the General Tax Directorate (DGI, from its Spanish initials), which at the time was under the Secretariat of the Treasury.³ The General Tax Directorate is the agency of the Argentine State in charge of the enforcement, collection, receipt and oversight of taxation.⁴

18. On July 6, 1976, a group of individuals dressed in civilian attire entered the residences of Mrs. Perrone and Mr. Preckel, in the city of Mar del Plata, Province of Buenos Aires.⁵ Based on the testimonies of Mrs. Perrone and Mr. Preckel, they were beaten by these individuals and accused of being “subversives” and of “endangering national security.”⁶

19. Both of them were held in detention at different police and military facilities until March 18, 1977.⁷ According to their testimonies, they were subjected to different forms of torture, such as electric shocks to the genitals, mouth and chest; beatings; death threats by simulated firing squad; as well as a lack of food and medical care.⁸

³ Initial petitions. State’s communication of October 31, 1997.

⁴ Federal Administration of Public Revenue. Available at: <https://www.afip.gob.ar/impositivaDefault.asp>

⁵ Initial petitions. State’s communication of October 31, 1997.

⁶ Testimony of Elba Clotilde Perrone. Annex 1 to initial petition on Elba Clotilde Perrone.

⁷ Initial petitions. State’s communication of October 31, 1997.

⁸ Testimony of Elba Clotilde Perrone. Annex 1 to initial petition on Elba Clotilde Perrone.

20. On March 18, 1977, both of them were advised that they were being detained under Decree No. 484, issued on February 23 that same year.⁹ Mrs. Perrone testified that she continued to be under arrest and that she was placed under the custody of the National Executive Branch.¹⁰

21. Mrs. Perrone testified that on October 16, 1982, she was released.¹¹ According to a judicial record, her status of detention was changed to supervised release pursuant to an order.¹² She further represented that she attempted to assert her right of option to leave the country, but her motion was denied several times.¹³

22. As for Mr. Preckel, on August 7, 1979, he was transferred to the Department of Foreign Affairs of the Federal Police in order to arrange for his departure from the country, under Decree No. 2664.¹⁴ Mr. Preckel claimed that, as a result of efforts made by the Embassy of Germany and Amnesty International, he successfully secured a visa to enable him to avail himself of the option to leave the country.¹⁵ On September 7, 1979, he traveled to Germany where he applied for political asylum and, in December 1984, he returned to Argentina.¹⁶

23. Mrs. Perrone and Mr. Preckel received indemnification compensation under Law No. 24.043 – Compensation for Former Detainees.¹⁷ Said statute establishes the following:

ARTICLE 1 – Any persons who were placed at the disposal of the National Executive Branch, while the state of siege was in force, under a decision of this branch or, in their status as civilians have endured detention by virtue of acts emanating from the military tribunals, regardless of whether or not they have brought a suit for damages, are eligible to benefit from this law, provided that they have not received any indemnification under a judgment of a court of law, based on the events covered in the instant law.

ARTICLE 2 – In order to benefit from this law, the persons mentioned in the previous article must fulfill one of the following requirements:

a) Having been placed at the disposal of the National Executive Branch prior to December 10, 1983.

b) As civilians, having been deprived of their liberty for acts emanating from military tribunals, regardless of whether or not there was a conviction in this jurisdiction.¹⁸

24. According to the State's representations, on July 25, 1995, Resolution No. 203 was issued granting Mrs. Perrone a benefit equivalent to the value of 2534 days payment encompassing the period of August 17, 1976 to July 25, 1983.¹⁹ The amount was \$144,875 (Argentine pesos).²⁰

⁹ Initial petitions. State's communication of October 31, 1997.

¹⁰ Testimony of Elba Clotilde Perrone. Annex 1 to initial petition on Elba Clotilde Perrone.

¹¹ Testimony of Elba Clotilde Perrone. Annex 1 to initial petition on Elba Clotilde Perrone.

¹² Record of the Institute of Detention of the Federal Capital, October 15, 1982. Annex 1 to initial petition on Elba Clotilde Perrone.

¹³ Testimony of Elba Clotilde Perrone. Annex 1 to initial petition on Elba Clotilde Perrone.

¹⁴ Official letter of the Penitentiary Service of the Province of Buenos Aires. Annex 1 to initial petition on Elba Clotilde Perrone.

¹⁵ Initial petitions.

¹⁶ Initial petitions. State's communication of October 31, 1997.

¹⁷ Initial petitions. State's communication of October 31, 1997.

¹⁸ Law No. 24.043.

25. The State further represented that on July 15, 1994, Resolution No. 2294 was issued granting Mr. Preckel a benefit equivalent to the value of 2647 days payment encompassing the period of July 30, 1976 to October 28, 1983.²¹ The amount was \$172,952 (Argentine pesos).²²

B. Employment status of Mrs. Perrone and Mr. Preckel

26. Two days after Mrs. Perrone and Mr. Preckel were detained, the General Tax Directorate opened an administrative investigation proceeding against them, as provided for under Article 36 of the Regulation on Investigations of Public Servants - Decree No. 1798/80, because of their absences from their work places.²³ Said decree provides that it is applicable to personnel covered under the basic legal regime of public servants and establishes the following, in the relevant portions:²⁴

Art. 36. When the agent is deprived of liberty, he shall be under preventive suspension, while the pertinent preliminary investigation is conducted, and shall be reinstated into service within two (2) days of regaining his liberty.

Art. 37. When the agent is undergoing a proceeding for an incident unrelated to public service and the nature of the criminal offense that he is charged with is incompatible with performance of his duty, in the event no other duty can be assigned to him, his preventive suspension may be ordered until such time as judgment is issued in his criminal proceeding. (...)

Art. 39. Payment of wages for the period of the suspension shall conform to the following rules:

a) When it [the suspension] arises from events unrelated to service, the agent shall not be entitled to payment of any lost wages, except under Article 37, in the event that he is acquitted or the case is dismissed with prejudice in the criminal court and only for the period of time that he has remained free and his reinstatement has not been authorized.

b) When it arises from acts of service or related acts, the agent shall be entitled to receive the accrued lost wages for the time of suspension, only if in the respective administrative proceeding, he was not found at fault and sanctioned.

In the latter instance, should a minor sanction be applied, other than an expulsion, lost earnings shall be paid in the appropriate proportion and, should the sanction be expulsion (dismissal, exoneration), the earnings shall not be paid to him.²⁵

27. On July 27, 1976, the DGI forwarded a communication to the Air Defense Artillery Division noting that Mrs. Perrone and Mr. Preckel “have been absent from work for a time and that their next of kin have claimed that they were detained.”²⁶ The DGI contended that “because there was no written record of

[... continuation]

¹⁹ State’s communication of February 7, 2001.

²⁰ State’s communication of February 7, 2001.

²¹ State’s communication of February 7, 2001.

²² State’s communication of February 7, 2001.

²³ Initial petitioners. State’s communication of October 31, 1997.

²⁴ Regulation on Investigations. Decree No. 1798/80. Article 2.

²⁵ Regulation on Investigations. Decree No. 1798/80.

²⁶ Official Letter of the DGI, July 27, 1976. Administrative Investigation Proceeding. Annex to initial petition on Elba Clotilde Perrone.

such a detention (...) said absences must be deemed unjustified giving rise to the loss of their source of work.”²⁷ The same day, the Coronel of the Air Defense Artillery Division reported that Mrs. Perrone and Mr. Preckel were at the disposal of the military authorities.²⁸

28. On August 10, 1976, the DGI decided to place Mrs. Perrone and Mr. Preckel on preventive suspension.²⁹ The DGI took note that both of them were being held in detention and asserted that the suspension is proper, “without prejudice to the pertinent administrative investigation proceeding.”³⁰

29. On August 26, 1976, the DGI decided to open an administrative investigation proceeding in order to determine the status of Mrs. Perrone and Mr. Preckel.³¹ On October 21 of the same year, the Coronel of the Air Defense Artillery Division forwarded a communication to the DGI reporting that both of them were detained under suspicion of “belonging to a paramilitary organization.”³²

30. On April 10, 1979, the Board of Discipline of the DGI issued its ruling advising the investigation to be closed.³³ It noted that the evidence shows that Mrs. Perrone and Mr. Preckel were not tried in any military court proceeding or other court proceeding.³⁴

31. The Directorate of Technical and Legal Affairs decided that the proceeding against both of them is suspended until such time as they are able to testify.³⁵

32. In regard to Mrs. Perrone, she returned to her job at DGI on October 20, 1982.³⁶ On April 27, 1983, Mrs. Perrone submitted a note to the DGI claiming that she was not notified of the administrative investigation proceeding against her.³⁷ Under an order of the Investigating Official, the DGI took Mrs. Perrone’s testimony on August 23, 1983.³⁸

33. With respect to Mr. Preckel, on February 20, 1984, he filed a request with the DGI to reinstate him in his position.³⁹ On September 7 that year, the Chief of the Department of Human Resources of

²⁷ Official Letter of the DGI, July 27, 1976. Administrative Investigation Proceeding. Annex to initial petition on Elba Clotilde Perrone.

²⁸ Official Letter of the Coronel of the Air Defense Artillery Division, July 27, 1976. Administrative Investigation Proceeding. Annex to initial petition on Elba Clotilde Perrone.

²⁹ Official Letter of the DGI, August 10, 1976. Administrative Investigation Proceeding. Annex to initial petition on Elba Clotilde Perrone.

³⁰ Official Letter of the DGI, August 10, 1976. Administrative Investigation Proceeding. Annex to initial petition on Elba Clotilde Perrone.

³¹ Official Letter of the DGI, August 26, 1976. Administrative Investigation Proceeding. Annex to initial petition on Elba Clotilde Perrone.

³² Official Letter of the Coronel of the Air Defense Artillery Division, October 21, 1976. Administrative Investigation Proceeding. Annex to initial petition on Elba Clotilde Perrone.

³³ Ruling of the Board of Discipline of the DGI, April 10, 1979. Administrative Investigation Proceeding. Annex to initial petition on Elba Clotilde Perrone.

³⁴ Ruling of the Board of Discipline of the DGI, April 10, 1979. Administrative Investigation Proceeding. Annex to initial petition on Elba Clotilde Perrone.

³⁵ Claim before federal judge, June 24, 1988. Court records. Annex to initial petition on Elba Clotilde Perrone.

³⁶ Claim before federal judge, June 24, 1988. Court records. Annex to initial petition on Elba Clotilde Perrone.

³⁷ Official Letter from Elba Clotilde Perrone, April 27, 1983. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

³⁸ Testimony of Elba Clotilde Perrone, August 23, 1983. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

³⁹ Communication from Juan José Preckel, February 20, 1984. Administrative investigation proceedings. Annex to initial petition on Juan José Preckel.

the DGI held that it was proper for Mr. Preckel to be able to go back to his job because “based on the evidence in the investigation opened, there are no charges to level [against him].”⁴⁰

34. On October 16, 1984, the Director General of the DGI issued a resolution holding Mrs. Perrone and Mr. Preckel free of any responsibility.⁴¹ Consequently, the decision was made to close the case proceedings against both of them.⁴²

35. On February 4, 1985 Mr. Preckel resumed his position at DGI, following his return to Argentina.⁴³

C. Remedies pursued

1. Administrative proceeding

36. On April 27, 1983, Mrs. Perrone filed a request with DGI to process payment of earnings lost from the time she was detained until the time she was reinstated to her job.⁴⁴ She further clarified that her absences “were not due to [her own] will but that she was impeded from going to work [because she was detained].”⁴⁵

37. In May 1984, the Department of Legal Counsel of the DGI issued an advisory opinion deeming it viable to pay Mrs. Perrone her lost wages for the time of her detention.⁴⁶ The Department held as follows:

“It is a fair solution (...) that if Justice ultimately establishes that the agent has been unconnected to the crime, the Administration pays her wages lost during the time of the preventive suspension. (...) The arrest suffered by Perrone can easily be connected by following the reasoning adopted for a detention in a criminal proceeding, not so much because of its origins as because of its effects.”⁴⁷

38. Additionally, the Department found that the decision in this case entails “setting a precedent of general interest to the whole Administration.”⁴⁸ Consequently, it believed that the case should be heard by the Office of the Chief Legal Counsel of the Nation (Procuración del Tesoro de la Nación).⁴⁹

⁴⁰ Official Letter from the Chief of the Department of Human Resources of the DGI, September 7, 1984. Administrative investigation proceedings. Annex to initial petition on Juan José Preckel.

⁴¹ Resolution of the Director General of the DGI, October 16, 1984. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁴² Resolution of the Director General of the DGI, October 16, 1984. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁴³ Initial petitions.

⁴⁴ Official Letter from Elba Clotilde, April 27, 1983. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁴⁵ Official Letter from Elba Clotilde, April 27, 1983. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁴⁶ Advisory opinion of the Department of Legal Counsel of the DGI, May 1984. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁴⁷ Advisory opinion of the Department of Legal Counsel of the DGI, May 1984. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁴⁸ Advisory opinion of the Department of Legal Counsel of the DGI, May 1984. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁴⁹ Advisory opinion of the Department of Legal Counsel of the DGI, May 1984. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

39. On May 28, 1985, the Directorate of Technical and Legal Affairs of the DGI issued an advisory opinion also deeming it viable to pay Mrs. Perrone back the earnings she lost during the time of the detention.⁵⁰ The Directorate made the following representation:

Using the premise that agent Perrone endured a punishment to the extent our highest court is empowered, which becomes unfair inasmuch as she was not subjected to any proceeding whatsoever (...) it is not out of line to recognize the claimant's wages for the time she was detained.⁵¹

40. The Directorate found that because of the uniqueness of the case at hand, its import and the lack of specific precedents regarding the issue involved, it would be the right thing for the case to be heard by the Office of the Chief Legal Counsel of the Nation (Procuración del Tesoro de la Nación).⁵²

41. On July 24, 1985, the General Directorate of Legal Affairs of the Ministry of Economy issued an advisory opinion also deeming it viable for Mrs. Perrone to be paid back the earnings she lost during the detention.⁵³ The Directorate held the following:

(...) while Circular No. 5/77 of the General Secretariat of the Office of the President of the Nation establishes that wages should not be paid for services not provided (...) it is obvious that in this instance, the appellant was precluded from showing up [for work] by virtue of acts of authority.⁵⁴

42. The Commission remarks that it does not have a copy of Circular No. 5/77. Notwithstanding, the IACHR notes that both parties have recognized that said document establishes that payment of earnings should not be made for periods in which the public servant [agent] has not actually provided services, unless an express provision of law so authorizes.⁵⁵

43. The Directorate held that taking into account the economic interest involved and in order to set administrative legal precedents in this regard, the Chief Legal Counsel of the Nation should be requested to intervene.⁵⁶

44. On July 2, 1985, Mr. Preckel filed an administrative claim with the DGI requesting recognition of his labor and employment benefit rights for the period of July 6, 1976 until the day he resumed working at said entity.⁵⁷

⁵⁰ Advisory opinion of the Directorate of Technical and Legal Affairs of the DGI, May 28, 1985. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁵¹ Advisory opinion of the Directorate of Technical and Legal Affairs of the DGI, May 28, 1985. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁵² Advisory opinion of the Directorate of Technical and Legal Affairs of the DGI, May 28, 1985. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁵³ Advisory opinion of the General Directorate of Legal Affairs of the Ministry of Economy, July 24, 1985. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁵⁴ Advisory opinion of the General Directorate of Legal Affairs of the Ministry of Economy, July 24, 1985. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁵⁵ For more information, see: Sistema Argentino de Información Jurídica.

⁵⁶ Advisory opinion of the General Directorate of Legal Affairs of the Ministry of Economy, July 24, 1985. Administrative investigation proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁵⁷ Judgment of the Judiciary of the Nation, November 1987. Administrative investigation proceedings. Annex to the initial petition on Juan José Preckel.

45. On September 19, 1986, the Office of the Chief Legal Counsel of the Nation issued an advisory opinion in which he found that the claims should be denied.⁵⁸ The Office of the Chief Legal Counsel argued as follows:

(...) the circumstance that Circular 5/77 of the General Secretariat (...) has determined a restrictive criterion on the subject of recognition of earnings without services rendered, imposes limiting it [the criterion] to the instances in which there exists an express provision of law.⁵⁹

46. On March 19, 1987, the General Director of the DGI issued Resolution No. 75/87 denying the request of Mrs. Perrone, which was filed in April 1983.⁶⁰ In said resolution, it specified that only her employee benefit rights could be recognized and, therefore, she must obtain a solution before the Union of Employee Benefits (Caja de Previsión).⁶¹

47. For its part, on December 17, 1987, the Ministry of Economy issued Resolution No. 1217 denying Mr. Preckel's request.⁶² The Ministry noted that the General Directorate of Legal Affairs of the Ministry found that the claim was appropriate.⁶³ It argued, however, that the Chief Counsel of the Nation issued a ruling in an analogous case to the this one – in reference to the case of Mrs. Perrone – finding that it was not viable to pay wages lost during the time that they did not show up to work.⁶⁴

2. Judicial Proceedings

48. On June 24, 1988, Mrs. Perrone and Mr. Preckel filed complaints, respectively, with a federal judge against the National State – General Tax Directorate.⁶⁵

49. The complaints are based on Article 14.c of the Rules on Leaves of Absence, Justifications and Exemptions of the National Public Administration - Decree 3413 of 1979.⁶⁶ Said provision establishes the following:

Art. 14. Agents are entitled to justification of absences with payment of wages when it is for the following reasons, and with the limitations established in each instance:

c) Special reasons: Absences caused by meteorological phenomena and cases of duly proven *force majeure*.⁶⁷

⁵⁸ Advisory opinion of the Office of the Chief Counsel of the Nation, September 19, 1986. Administrative investigation proceedings. Annex to the initial petition on Elba Clotilde Perrone.

⁵⁹ Advisory opinion of the Office of the Chief Counsel of the Nation, September 19, 1986. Administrative investigation proceedings. Annex to the initial petition on Elba Clotilde Perrone.

⁶⁰ Resolution No. 75/87 of the Director General of the DGI, March 19, 1987. Administrative investigation proceedings. Annex to the initial petition on Elba Clotilde Perrone.

⁶¹ Resolution No. 75/87 of the Director General of the DGI, March 19, 1987. Administrative investigation proceedings. Annex to the initial petition on Elba Clotilde Perrone.

⁶² Resolution No. 1217 of the Ministry of Economy, December 17, 1987. Administrative investigation proceedings. Annex to the initial petition on Juan Preckel.

⁶³ Resolution No. 1217 of the Ministry of Economy, December 17, 1987. Administrative investigation proceedings. Annex to the initial petition on Juan Preckel.

⁶⁴ Resolution No. 1217 of the Ministry of Economy, December 17, 1987. Administrative investigation proceedings. Annex to the initial petition on Juan Preckel.

⁶⁵ Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone. Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁶⁶ Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone. Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Juan Preckel.

50. In the complaints, it is argued that said provision justified payment of lost wages when the absences of the agents of the General Tax Directorate were caused by meteorological phenomena and in instances of duly proven *force majeure*.⁶⁸ They contended that the existence, validity and application of Circular No. 5/77 cited by the administrative authorities to deny their claim, did not prevent the recognition demanded by them, inasmuch as said circular sets forth that wages lost because of absences should not be paid, except when a provision of law provides otherwise.⁶⁹ They claimed that Article 14.c of the Rules on Leaves of Absence, Justifications and Exemptions of the National Public Administration specifically provides for said exception under the concept of *force majeure*.⁷⁰

51. Consequently, the purpose of Mrs. Perrone's complaint was to demand payment of lost wages from July 6, 1976 to October 19, 1982, for the leaves of absence that were caused and were not enjoyed nor paid, as well as recognition of position on the seniority roster for purposes of workers' and other benefits.⁷¹ The aim of Mr. Preckel's complaint was to demand payment for uncollected wages from July 6, 1976 to February 4, 1985, participation in the Stimulus Fund, unused leaves of absence and recognition of seniority for purposes of workers' and other benefits.⁷²

52. On February 6 and 12, 1992, the Federal Judge denied the claims of Mrs. Perrone and Mr. Preckel, respectively.⁷³ The Judge ruled as follows:

In truth it must be admitted that it was not the D.G.I. that ordered the arrest, subsequently found to be unjustified, and that it was the P.E.N. itself through the Ministry of the Interior, who carried out and brought about the state of affairs, which harmed the plaintiff. (...)

Circular 5/77 and the Regulation on Administrative Investigations (art. 39a) established that, non-performance of duties should not be paid for. (...)

It is the doctrine of the Supreme Court that, barring an express and specific provision for the particular instance, payment of wages for unperformed duties is not proper. (...)

(...) it is evident that the investigation conducted at the administrative agency in no way had any bearing on bringing about harm to the plaintiff and it is also clear that the provisions of circular 5/77 and Article 39 subsection A of the aforementioned Regulation precluded recovery or payment of lost wages; these precepts were not contested by the plaintiff who, furthermore, did not ask for compensation for the losses suffered based on her unjustified detention (...).

Moreover, it is difficult to accept, even though the D.G.I. belongs to the National State, that the claim, which could have been pursued based on the principle of "iura novit curia," as an action for damages (...) included "in integrum" the National State in its governing function;

[... continuation]

⁶⁷ Decree 3413 of 1979. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/19213/texact.htm>

⁶⁸ Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone. Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁶⁹ Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone. Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁷⁰ Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone. Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁷¹ Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁷² Complaint before federal judge, June 24, 1988. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁷³ Ruling of the Federal Judge, February 12, 1992. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone. Ruling of the Federal Judge, February 6, 1992. Judicial proceedings. Annex to initial petition on Juan Preckel.

that is to say; it would be like admitting that the D.G.I. would have to be accountable for eminently political acts of the Executive Branch itself.⁷⁴

2.1. Appeals filed by Juan José Preckel

53. In the case brought by Mr. Preckel, he appealed the ruling of the Federal Judge, arguing that, outside of Circular 5/77, there are “very specific grounds that would enable payment for services not performed,” as would be detention by State’s agents without opening investigation proceedings against him.⁷⁵ He contended that, additionally, said circular did provide for payment of wages lost for absences when a provision of law exists to allow it.⁷⁶ He further alleged that the Rules on Leaves of Absence, Justifications and Exemptions of the National Public Administration specifically allows payment of said wages for reasons of *force majeure*, as the arbitrary detention he endured would be.⁷⁷

54. On November 24, 1992, the Chamber of Appeals upheld the ruling of the trial court, noting that “payment of wages for services not provided is not proper” and that the provisions of law cited by the claimants would belong to the rules on leaves of absence, justifications, [which are] circumstances obviously different from the ones on the record in the case proceedings.⁷⁸ It also concluded that it was not the responsibility of the General Tax Directorate, a self-governing entity of the State, to bear the burden of the redress for damages stemming from the potential unlawful conduct of the National Executive Branch.⁷⁹

55. On that same day, Mr. Preckel filed a motion for leave to appeal to the Supreme Court.⁸⁰ Mr. Preckel alleged that Article 14.c of the Regulation on Leaves of Absence, Justifications and Exemptions of the National Public Administration and Article 192.a of Collective Labor Agreement No. 46/75E declare “the right of agents to justification and collection of wages for absences they have had in instances of properly proven *force majeure*.”⁸¹ He contended that the provisions cited constituted an exception to Circular 5/77 and should be applied in the instant matter.⁸²

56. On March 4, 1993, the Administrative Claims Chamber denied Mr. Preckel’s motion for leave to appeal.⁸³ The Chamber held that Mr. Preckel confined himself “to disagree with the assessment of [the appealed decision], without realizing that it was sufficient *prima facie* to disqualify the appealed ruling as a jurisdictional act because of the seriousness of the mistakes that are attributed to it.”⁸⁴

⁷⁴ Ruling of the Federal Judge, February 12, 1992. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone. Ruling of the Federal Judge, February 6, 1992. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁷⁵ Undated appeal. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁷⁶ Undated appeal. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁷⁷ Undated appeal. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁷⁸ Judgment of the Chamber of Appeals, November 24, 1992. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁷⁹ Judgment of the Chamber of Appeals, November 24, 1992. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁸⁰ Motion for leave to appeal to the Supreme Court, December 24, 1992. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁸¹ Motion for leave to appeal to the Supreme Court, December 24, 1992. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁸² Motion for leave to appeal to the Supreme Court, December 24, 1992. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁸³ Judgment of the Administrative Claims Chamber, March 4, 1993. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁸⁴ Judgment of the Administrative Claims Chamber, March 4, 1993. Judicial proceedings. Annex to initial petition on Juan Preckel.

57. Mr. Preckel filed a petition in error because of denial to appeal with the Supreme Court.⁸⁵ On May 21, 1996, the Supreme Court of Justice of the Nation ruled that the appeal filed by him is inadmissible and, therefore, denied the petition.⁸⁶ The Supreme Court only noted that its decision was based on Article 280 of the Code of Civil and Commercial Procedure of the Nation.⁸⁷ The Supreme Court judgment had one dissenting opinion from the Vice President, Eduardo Moline O'Connor, who wrote the following:

(...) the appellant is right in claiming that the ruling –to the extent that it resolves that it is not proper for the DGI to entertain a claim, the reason for which would be found in the unlawful actions of the National Executive Branch– has mentioned an untimely invoked defense. The problem is that, in keeping with the doctrine of this Court, it is inadmissible to include in litigation an un-alleged defense or one that is introduced at an improper time, in order for it to be possible to adequately discuss whether or not it is admissible and out of order; because, otherwise, it would entail an infringement of the right to due process protected under the constitution.⁸⁸

2.2. Appeals filed by Elba Clotilde Perrone

58. With respect to the case brought by Mrs. Perrone, on May 6, 1992, she appealed the ruling of the Federal Judge.⁸⁹ She contended that, in keeping with legislation in force at the time, particularly the Rules on Leaves of Absence, Justifications and Exemptions of the National Public Administration, claims may be filed for payment of lost wages, when the absences involved occur “because of special cases of *force majeure*.”⁹⁰

59. On September 21, 1993, the Chamber of Appeals reversed the ruling of the trial court agreeing with the merits of the appeal.⁹¹ The Chamber wrote the following in its ruling:

(...) an equitable solution (...) can be reached in keeping with the provisions of law which allowed justification of absences with payment of wages by agents in cases of duly proven *force majeure*. Examples of the aforementioned are D.G.I. Collective 46/75 (Article 192.a) in force at the time of the plaintiff's detention, and decree 3.413/79 (Article 14c) in effect as of the date of her reinstatement.⁹²

⁸⁵ Juan Preckel's petition in error because of denial of appeal, undated. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁸⁶ Ruling of the Supreme Court of Justice of the Nation, May 21, 1996. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁸⁷ Ruling of the Supreme Court of Justice of the Nation, May 21, 1996. Judicial proceedings. Annex to the initial petition on Juan Preckel. Article 280 of the Code of Civil and Commercial Procedure of the Nation: (...) When the Supreme Court reviews a motion for leave of appeal to it, accepting the cause shall entail the case file being transferred to it. The Court, at its reasoned discretion, and merely by citing this provision, shall deny the motion, for lack of sufficient federal offense or when the issues raised are unsubstantial or lacking great significance. (...).

⁸⁸ Ruling of the Supreme Court of Justice of the Nation, May 21, 1996. Judicial proceedings. Annex to initial petition on Juan Preckel.

⁸⁹ Appeal, May 6, 1992. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁹⁰ Appeal, May 6, 1992. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁹¹ Judgment of the Chamber of Appeals, September 21, 1983. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁹² Judgment of the Chamber of Appeals, September 21, 1983. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone.

60. The Chamber issued the following conclusion:

It does not seem unreasonable to think that the aforementioned detention of the plaintiff, and the unlawful protraction thereof (...) without being subjected to any trial proceeding, and without there being any proof of any disciplinary liability, constitutes a case of *force majeure* that justifies her failure to provide services and the payment of unearned income [to her]; (...) and those circumstances (...) lead to consider as fulfilled (...) the situation of exception set forth in resolution 5/77 and in the doctrine of the Supreme Court of Justice invoked in the appealed judgment. (...) The proposed solution is consistent with constitutional principles and protections (...) taking into account that a strict and objective application of the provisions of the law would lead to inequitable results.⁹³

61. Consequently, the Chamber recognized the right of Mrs. Perrone to collect her lost earnings.⁹⁴ The Chamber held that, notwithstanding, it was not admissible to adjust her position on the seniority roster or the benefits for periods of regular leave she was unable to use.⁹⁵

62. On October 15, 1993, the DGI filed an appeal with the Supreme Court against the judgment issued by Appeals Chamber.⁹⁶ The DGI alleged that the criterion of *force majeure* does not apply to the instant case.⁹⁷ It contended that “the plaintiff did not show up to work because she was arrested at the disposal of the National Executive Branch, a circumstance totally unconnected to the agency.”⁹⁸

63. On May 21, 1996, the Supreme Court of Justice of the Nation issued a judgment granting the appeal of the DGI and reversing the judgment of the Chamber of Appeals.⁹⁹ The Supreme Court wrote the following in its holding:

4. (...) the plaintiff did not show up for work for reasons unconnected to her will for almost six years; during that period of time, the employer did not order the termination of the relationship of public employment, which remained in effect without payment of wages.

5. The particularities of the case make it impossible to equate the case –suspension of the agent without collecting wages for reasons of deprivation of liberty caused by events out of the control of the public administration- with the rules of breach of relationship of public employment for justifiable absences. Both the legal framework provided by collective agreement 46/75E (...) clearly distinguish the investigation procedure to determine disciplinary responsibility, from the rules on leaves of absence and from the [procedure] for absences, without prejudice to a violation of the latter two triggering the first one.

6. It is not possible then, to formulate analogies based on the rules of exemptions and leaves of absence, but rather by applying the provisions pertaining to the disciplinary procedure or, as the case may be, by filling in the gaps with its principles.

⁹³ Judgment of the Chamber of Appeals, September 21, 1983. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁹⁴ Judgment of the Chamber of Appeals, September 21, 1983. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁹⁵ Judgment of the Chamber of Appeals, September 21, 1983. Judicial proceedings. Annex to initial petition on Elba Clotilde Perrone.

⁹⁶ Leave to appeal before the Supreme Court, October 15, 1993. Judicial proceedings. Annex to initial petition on Elba Clotilde.

⁹⁷ Leave to appeal before the Supreme Court, October 15, 1993. Judicial proceedings. Annex to initial petition on Elba Clotilde.

⁹⁸ Leave to appeal before the Supreme Court, October 15, 1993. Judicial proceedings. Annex to initial petition on Elba Clotilde.

⁹⁹ Judgment of the Supreme Court of Justice of the Nation, May 21, 1996. Judicial proceedings. Annex to initial petition on Elba Clotilde.

8. (...) there has not been an express provision that allows for an exception to the essential principle on the subject of wages, which is, that it is not proper to pay wages for unrendered services. It does not mean a denial of the consequences of the unlawful act of the de facto government from the perspective of responsibility of the National State, an issue that, procedurally and substantively, were not raised in the record of the case proceedings.¹⁰⁰

64. The petitioners reported that the Secretariat of Human Rights of the Nation issued an advisory opinion finding that “Articles 1, 2, 8, 21, 24 (of the Convention) and Articles XIV, XVII, XVIII and XXIII of the American Declaration have been violated.”¹⁰¹ They reported that on April 3, 2005, the Secretariat ratified its previous advisory opinion.¹⁰² They further noted that on April 3, 2009, the Under Secretary for the Protection of Human Rights ratified the previous advisory opinions.¹⁰³

V. ANALYSIS OF THE MERITS

A. Preliminary issues

65. First off, the Commission notes that throughout the merits stage, the State continued to put forward arguments relating to the requirement of prior exhaustion of domestic remedies, specifically with respect to civil action for damages against the National State. In this regard, the Commission recalls that the appropriate procedural time to make arguments on exhaustion of domestic remedies is during the admissibility stage, after which any discussion on said requirement is precluded.¹⁰⁴ As such, the Commission will analyze hereafter the facts and the arguments of the parties relating to the merits of the matter.

66. Secondly, the Commission reiterates its representations in the admissibility report regarding the purpose of the instant case. On this score, the Commission recalls that the purpose is confined to the claim of the alleged victims regarding uncollected payment of wages and benefits at the state agency where they were employees, as a consequence of their arbitrary deprivation of liberty and of exile in the case of Mr. Preckel. In this regard, and as has been confirmed by the petitioners, the detention, torture and exile themselves do not fall within the scope of the purpose of the instant case. The adequacy of the compensation received by the victims under Law No. 24.043 does not fall under the scope of the purpose either.

67. Notwithstanding the foregoing, the Commission recalls that both bodies of the system have issued rulings about the relationship between administrative reparations and other claims.

68. In the case of *García Lucero et al v. Chile*, the Inter-American Court held that:

(...) the existence of administrative programs of reparation must be compatible with the State’s obligations under the American Convention and other international norms and, therefore, it cannot lead to a breach of the State’s duty to ensure the “free and full exercise” of the rights to judicial guarantees and protection, in keeping with Articles 1.1, 25.1 and 8.1 of the Convention, respectively. In other words, the administrative reparation programs and other measures or actions of a legal or other nature that co-exist with such programs,

¹⁰⁰ Judgment of the Supreme Court of Justice of the Nation, May 21, 1996. Judicial proceedings. Annex to initial petition on Elba Clotilde.

¹⁰¹ Petitioners’ communication of October 10, 2006.

¹⁰² Petitioners’ communication of October 10, 2006.

¹⁰³ Petitioners’ communication of October 10, 2006.

¹⁰⁴ IA Court of HR. *Case of Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 265, para. 47.

cannot result in an obstruction of the possibility of the victims, pursuant to the rights to judicial guarantees and protection, filing actions to claim reparations.¹⁰⁵

69. In the same case, the Court wrote: “according to treaty-based rights, the establishment of domestic administrative or collective reparation programs does not prevent the victims from filing actions to claim measures of reparation.”¹⁰⁶

70. In turn, the Commission has ruled on the existence of different avenues to provide reparation to the victims in situations of serious human rights violations. In the “Commission’s view, the adoption of an administrative reparations program ought not to preclude other judicial avenues to access comprehensive reparations”¹⁰⁷ for the victims.

B. Right to a fair trial and judicial protection (article 8.1¹⁰⁸ and 25.1¹⁰⁹ of the American Convention) in connection with article 1.1¹¹⁰ of the same instrument

71. The Commission has held that States parties to the Convention are obligated to provide for effective judicial remedies to victims of human rights violations, which must be substantiated in accordance with the rules of due process of law.¹¹¹

72. In this regard, the Commission has established that Article 25 of the American Convention is directly related to Article 8.1 of the same instrument, which enshrines the right of every person to be heard with the protections of due process of law and within a reasonable time, by a competent, independent and impartial judge or tribunal.¹¹²

73. As for the scope of protection afforded by Article 25 of the Convention, the Court has written that said article “states, in ample terms, the obligation corresponding to the States to offer, all people submitted to its jurisdiction, an effective judicial remedy against acts that violate their fundamental rights. It also states, that the guarantee enshrined therein applies not only to the rights included in the Convention, but also to those acknowledged by the Constitution or a law.”¹¹³

¹⁰⁵ IA Court of HR. *Case of García Lucero et al v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2013. Series C No. 267. Para. 190.

¹⁰⁶ IA Court of HR. *Case of García Lucero et al v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2013. Series C No. 267. Para. 192.

¹⁰⁷ IACHR. Principal Guidelines for Comprehensive Reparations Policy *Lineamientos principales para una política integral de reparaciones*, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008, para. 5.

¹⁰⁸ Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹⁰⁹ Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

¹¹⁰ The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

¹¹¹ IACHR. Access to Justice as a Guarantee of Economic, Social and Cultural Rights. OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 177.

¹¹² IACHR, Report No. 26/09, Case 12.440, Wallace de Almeida, Brazil, March 20, 2009, para. 119.

¹¹³ IA Court of HR. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197. Para. 59. Citing. *Cfr. Judicial Guarantees in States of Emergency (articles. 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 23; *Case of Salvador Chiriboga v. Ecuador*. Preliminary Objections and Merits. Judgment of May 6, 2008. Series C No. 179, para. 57.

74. Similarly and of particular relevance to the instant case, the Inter-American Court has written the following:

When establishing the international responsibility of the State for the violation of the human rights embodied in Articles 8.1 and 25 of the American Convention, a substantial aspect of the dispute before the Court is not whether judgments or administrative decisions were issued at the national level or whether certain provisions of domestic law were applied with regard to the violations that are alleged to have been committed to the detriment of the alleged victims of the facts, but whether the domestic proceedings ensured genuine access to justice, in keeping with the standards established in the American Convention, to determine the rights that were in dispute.¹¹⁴

75. Based on the foregoing, the Commission notes that its analysis in this matter will focus on determining whether or not administrative and judicial proceedings brought by the victims respected the rights to a fair trial and judicial protection, without getting into whether or not, under domestic law, they were correct in their claims as to uncollected wages and benefits from the time of her deprivation of liberty in the case of Mrs. Perrone, and, in the case of Mr. Preckel, of his deprivation of liberty and exile.

76. In particular, the Commission will rule on the guarantee of a reasonable period of time as well as the duty to provide a basis in law and fact for decisions, both of which are protected under Article 8.1 of the Convention. Based on the decisions, the Commission will examine whether or not the remedies pursued in domestic courts were effective to settle the claims of the alleged victims, as provided for under Article 25 of the Convention.

1. Guarantee of a reasonable period of time

77. Article 8.1 of the American Convention establishes as one element of due process that courts must decide the cases submitted to them within a reasonable period of time. Thus, a protracted delay can even constitute, in and of itself, a violation of fair trial guarantees.¹¹⁵

78. In the instant case, the Commission finds it appropriate to look at the time elapsed from the date the administrative claim was filed until the final judicial decision, bearing in mind that an administrative claim is a prior step to be able to resort to the courts. As such, the total length of the administrative and judicial proceedings brought by Mrs. Perrone and Mr. Preckel was twelve and a half years. The IACHR takes note that the State offered no justification whatsoever for this delay. Under the provisions of Article 8.1 of the American Convention, the Commission must take into consideration, in light of the particular circumstances of the case and given the failure to provide any justification for the delay, the four elements listed hereunder in order to examine whether or not the period of time was reasonable, which are: i) the complexity of the matter; ii) the procedural activity of the interested party; iii) the conduct of the judicial authorities; and iv) the adverse effect on the legal situation of the person involved in the proceeding.¹¹⁶

79. In regard to complexity, the IACHR notes that the matter was not complex. The Commission underscores that both the petitioners and the State acknowledged that neither of the two proceedings entailed extensive investigative steps, inasmuch as the dispute was essentially about the law and the specific issue to be settled was whether or not it was legal to pay lost wages to Mrs. Perrone and Mr. Preckel.

¹¹⁴ IA Court of HR. *Case of Dismissed Congressional Employees (Aguado Alfaro et al) v. Peru*. Judgment of November 24, 2006. Series C No. 158, para. 106.

¹¹⁵ IA Court of HR. *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 166; *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs, Judgment of November 22, 2005. Series C No. 136, para. 85; and the *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 160.

¹¹⁶ IA Court of HR. *Case of the Massacre of Santo Domingo v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, para. 164.

80. As to involvement of the interested parties, the Commission notes that both Mrs. Perrone and Mr. Preckel closely followed and moved their cases forward. Based on the documentation submitted by the parties, in no way can it be construed that their activity has amounted to obstruction or unwarranted delay.

81. With respect to the conduct of the judicial authorities, the IACHR underscores the protracted length of time that each level of appeal took to hear the complaints filed by the plaintiffs and no information appears in the case file to justify such a span of time. The Commission notes that during the administrative phase of the cases, the requests of Elba Clotilde Perrone and Juan José Preckel were heard at different levels of consultation by several bodies. The IACHR notices that during this phase, said bodies in some instances took more than one year to issue an opinion on the dispute without providing good cause for the delays. The Commission also notes based on the documentation submitted by the parties that, during the judicial phase, no extensive investigation was conducted at the different levels of appeal of the cases. The IACHR further notes that the State did not provide any justification either for the delay in processing and ruling on these cases.

82. The Commission deems it unnecessary to rule on the fourth element in the instant case.

83. In short, the Commission finds that, in light of the particulars of the matter and the State's failure to provide justification, the length of time of more than twelve years for the administrative and judicial proceedings to be completed surpasses any period of time that could be deemed as reasonable. Consequently, the IACHR concludes that the Argentine State is responsible for violation of the guarantee of reasonable period of time, as established in Article 8.1 of the American Convention, in connection with the obligations set forth in Article 1.1 of the same instrument, to the detriment of Elba Clotilde Perrone and Juan José Preckel. In violating this right to due process of law in ruling on domestic remedies, the Commission concludes that this also constituted a violation of the right to judicial protection, as provided for in Article 25.1 of the Convention, in connection with Article 1.1 of the same instrument.

2. Duty of sufficient justification of decisions as a protection of due process

84. Both the Inter-American Commission and Court have repeatedly held that, in general, the protections set forth under Article 8 of the American Convention do not only apply to criminal proceedings, but also to proceedings of other types.¹¹⁷ Specifically, as for proceedings in which rights or interests of persons are at stake, the "due process guarantees" set forth in Article 8.1 of the American Convention are applicable, including the right to sufficient grounds for decisions.¹¹⁸

85. The Inter-American Court has held that the duty to provide reasoned justification of decisions is one of the "due process guarantees" included in Article 8.1 to safeguard the right to due process of law.¹¹⁹ In this regard, said Court has specified that due justification of decisions "is the exteriorization of the reasoned justification that allows a conclusion to be reached."¹²⁰ The duty to provide grounds for decisions is a guarantee linked to proper administration of justice, which protects the right of citizens to be tried under reasons provided by law, and lends credibility to legal decisions in the framework of a democratic

¹¹⁷ IA Court of HR. *Case of Baena Ricardo et al v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 126-127; *Case of the Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 69-70; and *Case of López Mendoza v. Venezuela*. Merits, Reparations and Costs. Judgment of September 1, 2011 Series C No. 233, para. 111. Also see: IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello et al "Magistrates of the Supreme Court of Justice," Ecuador, March 31, 2011, para. 102.

¹¹⁸ IA Court of HR. *Case of Barbani Duarte et al v. Uruguay*. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234, para. 118; and *Case of Claude Reyes et al v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 118.

¹¹⁹ IA Court of HR. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para. 118.

¹²⁰ IA Court of HR. *Case of Chaparro Álvarez and Lapo Ñiquez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 107.

society.¹²¹ Therefore, decisions adopted by national bodies that could affect human rights must be duly justified, because, otherwise, they would be arbitrary decisions.¹²² As such, reasoning behind a ruling and certain administrative acts must make it possible to know what facts, grounds and laws or regulations the official used as the basis for making the decision, and thus be able to rule out any indicia of arbitrariness.¹²³ Additionally, reasoned justification of decisions stands as proof to the parties that they have been heard and, in those instances that the decisions are appealable, provides them with an opportunity to criticize the ruling and conduct further examination into the matter at issue before higher decision-making bodies.¹²⁴

86. Similarly, the IACHR has held that there is an intrinsic relationship between the existence of sufficient justification and the opportunity to challenge decisions and formulate an adequate defense within the framework of subsequent remedies.¹²⁵

87. Based on the proven facts, Mrs. Perrone and Mr. Preckel pursued administrative and judicial remedies to request payment of lost wages and benefits for the time of their deprivation of liberty and exile, respectively. Both at the administrative and judicial levels, the peremptory decisions denied the request based on Circular No. 5/77 of the General Secretariat of the Office of the President of the Nation, which establishes that payment of wages or salaries for periods of time in which public servants have not actually provided their services should not be made, unless an express provision of law so authorizes it.

88. The Commission notes that Mrs. Perrone's and Mr. Preckel's argument was that under Circular No. 5/77, payment of lost wages is indeed permitted when a provision of law so authorizes it. In support of this assertion, they cited that Article 14.c of the Rules on Leaves of Absence, Justifications and Exemptions of the Public Administration would be the provision of law that would authorize payment of lost wages, inasmuch as it allows for payment in "case of duly proven *force majeure*." The IACHR notes that both of the plaintiffs contended that their arbitrary detention, which was acknowledged by the State, would be grounds to be counted as *force majeure*.

89. Without getting into a determination as to whether this argument is correct or not, which would go beyond the competence of the IACHR, inasmuch as it would be dealing with an issue of domestic law, the Commission notes that the argument was not manifestly unreasonable. This can be inferred from the fact that the Department of Legal Counsel of the DGI and the Directorate of Technical and Legal Affairs of the Ministry of Economy, each issued advisory opinions supporting making payment to Mrs. Perrone and Mr. Preckel of their lost wages for the time they were arbitrarily detained. The Commission finds that the reasonableness of the argument, which is backed by the aforementioned entities, makes it all the more relevant to have sufficient and adequate justification for finding that this argument is groundless.

90. The Commission notes that the administrative decisions of the DGI and of the Ministry of Economy merely declared the claim of Mrs. Perrone and Mr. Preckel to be groundless. The IACHR notices that in these decisions, no basis or grounds were provided for rejecting the arguments put forth in favor of the plaintiffs in the advisory opinions issued by the above-referenced Directorates.

91. In the sphere of judicial remedies, the Commission notes that the decisions issued by the Federal trial court Judge in February 1992 do not include any reference to the arguments put forth in the

¹²¹ IA Court of HR. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para. 118.

¹²² IA Court of HR. *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, paras. 152 and 153.

¹²³ *Case of Claude Reyes et al v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 122.

¹²⁴ IA Court of HR. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para. 118.

¹²⁵ IACHR, Report No. 42/14, Case 12.453, Merits, Olga Yolanda Maldonado Ordóñez, Guatemala, July 17, 2014, para. 98.

complaints, particularly regarding the applicability of the concept of “*force majeure*” as provided for in Article 14.c of the Rules on Leaves of Absence, Justifications and Exemptions of the National Public Administration.

92. This failure to provide sufficient justification continued both in the judgment of the Chamber of Appeals of November 1992, in the case of Mr. Preckel, as well as in the judgment of the Supreme Court of Justice of May 1996, in the case of Mrs. Perrone. In these decisions, while the judicial authorities did mention the Rules on Leaves of Absence, Justifications and Exemptions of the National Public Administration, they only noted said normative body was not applicable as one of the exceptions established in Circular No. 5/77, and gave no reasons for reaching said conclusion. In particular, the IACHR notes that in said decisions no grounds were provided for the crux of the dispute, that is, in what way did the situation of arbitrary detention of both of the plaintiffs not constitute a “*case of force majeure.*” The Commission reiterates that in keeping with one of the due process guarantees, domestic authorities must examine “fully and genuinely” the claims and arguments of the affected person,¹²⁶ which has a special connection to the duty to provide sufficient and adequate justification of decisions, the content of which was described above.

93. Lastly, the Commission notes that in both the administrative and judicial decisions, the context in which Elba Clotilde Perrone and Juan José Preckel made their requests was not examined. Taking into consideration that their absence from work was a result of arbitrary detention and torture in the case of both victims, and of exile in the case of Mr. Preckel, the Commission finds that the administrative and judicial authorities were obligated to consider in their decisions that the claim arose from and was related to the effects of serious human rights violations. On the contrary, the approach taken by all of the decision-making bodies was to regard the case as an ordinary labor claim. The IACHR finds that it was relevant for the authorities to take these facts into account when issuing their decisions.

94. Based on the foregoing considerations, the IACHR concludes that the judicial and administrative authorities violated the right to sufficient and adequate justification of decision, established as one of the due process guarantees enshrined in Article 8.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Elba Clotilde Perrone and Juan José Preckel. Consequently, because this guarantee of due process in decisions on domestic remedies has been violated, the Commission concludes that this has also constituted a violation of the right to judicial protection, as established in Article 25.1 of the Convention, in connection with Article 1.1 of the same instrument.

VI. CONCLUSIONS

95. In view of the preceding considerations of fact and law, the Commission concludes that the State of Argentina is responsible for the violation of the right to a fair trial and judicial protection, enshrined in Articles 8.1 and 25.1 of the American Convention, in connection with the obligations set forth in Article 1.1 of the same instrument, to the detriment of Elba Clotilde Perrone and Juan José Preckel.

96. As to the rights established in the other provisions included in the admissibility report, the Commission finds that there is not sufficient evidence to establish international responsibility of the Argentine State with regard to them.

VII. RECOMMENDATIONS

97. Based on the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE STATE OF ARGENTINA TO

¹²⁶ IACHR, Report No. 42/14, Case 12.453, Merits, Olga Yolanda Maldonado Ordóñez, Guatemala, July 17, 2014, para. 89. Also see: Corte IDH. *Case of the Constitutional Court (Camba Campos et al) v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2013. Series C No. 268, para. 181; and IA Court of HR. *Case of Barbani Duarte et al v. Uruguay*. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234, para. 120.

1. Provide for the necessary measures to make effective judicial recourse available to Elba Clotilde Perrone and Juan José Preckel, whereby in compliance with the guarantees of sufficient justification and reasonable time, it can be established whether or not there are valid grounds for their claims with regard to payment of lost wages and employees' benefits.

2. In the event that the victims do not wish to seek said judicial remedy, due to the passage of time, adopt measures to provide comprehensive reparation for the denial of justice to them, as declared in the instant report.