

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE ACTIVE MEMORY CIVIL ASSOCIATION V. ARGENTINA

JUDGMENT OF JANUARY 26, 2024

(Merits, Reparations and Costs)

In the case of the *Active Memory Civil Association v. Argentina*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:*

Nancy Hernández López, President,
Rodrigo Mudrovitsch, Vice President,
Humberto A. Sierra Porto,
Eduardo Ferrer Mac-Gregor Poisot,
Ricardo C. Pérez Manrique, and
Patricia Pérez Goldberg,

also present,

Pablo Saavedra Alessandri, Registrar,**

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 62, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment structured as follows:

* Judge Verónica Gómez, an Argentine national, did not participate in the processing of this case or in the deliberation and signature of this judgment based on the provisions of Article 19(1) and (2) of the Court’s Rules of Procedure.

** The Deputy Registrar, Romina I. Sijniensky, excused herself from taking part in the processing of this case and in the deliberation of this judgment.

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I INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* On March 25, 2021, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of the “*Active Memory Civil Association (Victims and family members of the victims of the terrorist attack of July 18, 1994, on the headquarters of the Argentine-Israeli Mutual Association)*” against the Argentine Republic (hereinafter also “the State” or “Argentina”). The Commission indicated that the case referred to the alleged responsibility of the State “in relation to the terrorist attack perpetrated against the headquarters of the Argentine-Israeli Mutual Association ([hereinafter]) “AMIA” in Buenos Aires, on July 18, 1994, which resulted in the death of 85 people and serious injuries to at least 151 others, as well as the situation of impunity of these facts to date.”

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

- a) *Petition.* On July 16, 1999, the Inter-American Commission received a petition signed by the Active Memory Civil Association [*Asociación Civil Memoria Activa*] co-sponsored by the Center for Legal and Social Studies (CELS), the Center for Justice and International Law (CEJIL), and Dr. Alberto Luis Zuppi.¹
- b) *Friendly settlement procedure.* On March 4, 2005, a hearing was held between the representatives, the State, and the Commission. At the end of the hearing, the parties signed a memorandum under which the State accepted its international responsibility and the parties expressed their willingness to initiate a friendly settlement procedure.² However, on March 9, 2009, the petitioners indicated that none of the points that the State had agreed to had been fully complied with and, therefore, urged the Commission to adopt its admissibility and merits report. On November 4, 2009, the petitioners agreed to resume the friendly settlement procedure. However, on April 15, 2010, they reported that, as of that date, little progress had been made and, therefore, requested that the Commission continue analyzing the admissibility and merits of the case. On March 7, 2017, the State expressed its willingness to restart the friendly settlement procedure. However, the representatives rejected this proposal on May 15, 2017.
- c) *Admissibility and Merits Report.* On June 29, 2012, the Commission advised the parties of its decision to defer the decision on the admissibility of the matter and to examine this when analyzing the merits. On July 14, 2020, the Commission adopted Admissibility and Merits Report No. 187/20 pursuant to Article 50 of the Convention (hereinafter “the Merits Report”).
- d) *Notification to the State.* The State was served notice of the Merits Report on September 25, 2020, and granted two months to report on compliance with its recommendations. On March 10, 2021, after an extension of the

¹ In the brief submitted to the Commission on September 23, 1999, the petitioners indicated that Human Rights Watch/Americas would also co-sponsor the petition. However, according to information provided by the Commission in its Merits Report, Human Rights Watch ceased to participate in the procedure following the hearing held before the Commission on March 4, 2005.

² Cf. Record of the hearing held on March 4, 2005, during the 122nd period of sessions of the Inter-American Commission (evidence file, folios 10718 to 10724).

time limit had been granted, the State forwarded a report in which it acknowledged its responsibility in relation to all the violations declared in the Merits Report and indicated that it would not contest the alleged victims' request to submit the case to the Court.

3. *Submission to the Court.* On March 25, 2021, the Commission³ decided to submit to the jurisdiction of the Inter-American Court all the facts and human rights violations described in Admissibility and Merits Report No. 187/20. The grounds for this submission were the lack of substantive progress on some of the recommendations, the absence of a request for an extension by the State, the need for justice and full reparation for the victims, and the position expressed by the petitioners. The Court notes with concern that, more than 21 years elapsed between the presentation of the initial petition before the Commission and the submission of the case before the Court

4. *The Commission's requests.* Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violation of the rights established in Articles 4(1) (life), 5(1) (personal integrity), 8(1) (judicial guarantees), 13 (access to information), 24 (equality before the law) and 25(1) (judicial protection) of the Convention, in relation to the obligations established in Article 1(1) of this instrument, as well as the violation of Article 13 (access to information) in relation to the obligations established in Article 2 of the Convention. Additionally, the Commission asked the Court to order the State to adopt measures of reparation, and these are described and analyzed in Chapter VIII of this judgment.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representatives.* The submission of the case was notified to the State and to the representatives of the alleged victims⁴ on May 18, 2021.

6. *Brief with pleadings, motions and evidence.* On July 24, 2022, the representatives submitted their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief") in which they indicated their conformity with the contents of the Merits Report. In addition, they considered that the State was also responsible for the violation of judicial guarantees and judicial protection (Articles 8(1) and 25(1) of the Convention) in relation to the duty to adopt domestic legal provisions (Article 2) and for the violation of the right to personal integrity (Article 5 of the Convention) to the detriment of the families of the victims of the attack on the AMIA. Lastly, they requested additional measures of reparation to those required by the Commission.

7. *Answering brief.*⁵ On September 29, 2021, the State submitted to the Court its brief answering the submission of the case by the Commission, together with its

³ The Commission appointed then Commissioner Julissa Mantilla as its delegate before the Court. It also appointed then Deputy Executive Secretary, Marisol Blanchard Vera, together with Jorge Humberto Meza Flores, Ignacio Bollier and Paula Rangel Garzón, then Executive Secretariat experts, as its legal advisers.

⁴ The alleged victims were represented by the Active Memory Civil Association and the Center for Legal and Social Studies (CELS).

⁵ The State appointed Alberto Javier Salgado, Director for International Human Rights Litigation of the Ministry of External Affairs, International Trade and Worship, as its Agent, and Julia Loreto, lawyer,

observations on the pleadings and motions brief (hereinafter “answering brief”). In this brief, the State reiterated its acknowledgement of responsibility in the terms indicated below (*infra*, Chapter IV).

8. *Observations on the acknowledgement of responsibility by the State.* In briefs forwarded on October 22, 2021, the Commission and the representatives each presented their observations on the State’s acknowledgement of responsibility.

9. *Public hearing.* In an order of September 5, 2022, the President of the Court called the parties and the Commission to a public hearing on the merits and possible reparations and costs.⁶ The public hearing took place on October 13 and 14, 2022, during the Court’s 153rd regular session held in Montevideo, Uruguay.⁷ During the hearing, the Court received the statements of two alleged victims and the opinions of three experts. The judges of the Court also requested certain information and explanations from the parties and from the Commission.

10. *Amici Curiae.* The Court received four *amicus curiae* briefs submitted by: (a) the Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP) and the Instituto Latinoamericano de Seguridad y Democracia (ILSED);⁸ (b) the Legal Clinic of the Law School at the Universidad Católica Andrés Bello, Venezuela;⁹ (c) Agora International Human Rights Group, American Civil Liberties Union, Canadian Civil Liberties Association, Egyptian Initiative for Personal Rights, Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, KontraS, and the Legal Resources Centre as part of the International Network of National Civil

Directorate of International Human Rights Litigation of the Ministry of External Affairs, International Trade and Worship, Federico Efrón, National Director of National Legal Issues related to Human Rights, and Rodrigo Albano Robles Tristán, legal adviser to the National Directorate of International Legal Issues related to Human Rights, as its deputy agents. Subsequently, in a communication of September 21, 2022, the State indicated that the deputy agents in this case would be Natalia Lorena D’Alessandro, Head of the Special Unit for the Investigation of the AMIA Attack, and Rodrigo Albano Robles Tristán.

⁶ Cf. *Active Memory Civil Association v. Argentina*. Call to a hearing. Resolution of the President of the Inter-American Court of Human Rights of September 5, 2022. Available at: https://www.corteidh.or.cr/docs/asuntos/asociacion_civil_memoria_activa_05_09_22.pdf.

⁷ The following appeared at this hearing: (a) for the Inter-American Commission: Julissa Mantilla Falcón, then President of the Commission; Jorge Meza Flores, Deputy Executive Secretary; Ignacio Bollier and Paula Rangel, legal advisers; (b) for the representatives of the alleged victims: Diana Wasser, Adriana Reisfeld, Rodrigo Borda, Paula Litvachky, Diego Morales, Margarita Trovato and Erika Schmidhuber Peña, and (c) for the Argentine State: Alberto Javier Salgado, Director for International Human Rights Litigation of the Ministry of External Affairs, International Trade and Worship; Julia Loreto, lawyer, Directorate of International Human Rights Litigation of the Ministry of External Affairs, International Trade and Worship, Natalia Lorena D’Alessandro, Head of the Special Unit for the Investigation of the AMIA Attack, and Rodrigo Albano Robles Tristán, legal adviser to the National Directorate of International Legal Issues related to Human Rights.

⁸ The brief was signed by Alberto Binder, President of both organizations. It referred to the structural conditions of the intelligence services in Argentina and their impact on criminal investigations and the judicial system, as well as to the need to establish new legislation in this area.

⁹ The brief was signed by Jesús María Casal, Dean of the Law School; Aura Janesky Lehmann, Director of the Legal Clinic; Mariana Campos Villalba, Professor of the Human Rights Legal Clinic, and the participants in the Human Rights Legal Clinic, Hector Battistel, Miguelangel Sisirucá, Patricia Moreira and Shawnee Suárez. The brief referred to the right to the truth and, in particular, its collective dimension.

Liberties Organizations (INCLO),¹⁰ and (d) the International Human Rights Practicum at Boston College Law School.¹¹

11. *Information on new supervening facts.* On September 29, 2022, the representatives submitted a brief to the Court with information on new facts in this case relating to the difficulties encountered by the parties to have real access to the declassified information held by the AMIA Investigation Unit (hereinafter “UFI AMIA”). The Secretariat informed the Commission and the State that they could submit their observations on these facts during the public hearing or, respectively, with their final observations and arguments.

12. *Final written arguments and observations.* On November 14, 2022, the representatives submitted their final written arguments. On November 15, 2022, the State and the Commission submitted, respectively, their final written arguments and observations. The representatives attached an annex to their brief. Neither the State nor the Commission presented observations on this annex within the timeframe established by the Secretariat of this Court.

13. *Supervening information submitted by the State.* On April 19, 2023, the State forwarded a copy of Resolution PGN No. 13/2023 of April 4, 2023, establishing the Department for the Analysis of Declassified Documentation within the AMIA Investigation Unit. The representatives and the Commission submitted their observations on this brief on May 19, 2023. Additionally, on September 29, 2023, the State forwarded a copy of the note of the Special Investigation Unit for the AMIA Case attached to the Ministry of Justice and Human Rights of September 26, 2023, advising that the documentation relating to the case had been transferred and centralized in offices located in the Palacio Barolo. The representatives and the Commission submitted their observations on this brief on October 12, 2023.

14. *Deliberation of the case.* The Court deliberated on this judgment in virtual sessions held on January 25 and 26, 2024.

III JURISDICTION

15. The Inter-American Court has jurisdiction to hear this case pursuant to Article 62(3) of the American Convention because Argentina ratified the American Convention on Human Rights on September 5, 1984, and accepted the contentious jurisdiction of the Court on that date.

¹⁰ The brief was signed by Pavel Chikov, Executive Director of the Agora International Human Rights Group; Anthony Romero, Executive Director of the American Civil Liberties Union; Noa Mendelsohn Aviv, Executive Director of the Canadian Civil Liberties Association; Hossam Bahgat, Executive Director of the Egyptian Initiative for Personal Rights; Stéfanía Kapronczay, Executive Director of the Hungarian Civil Liberties Union; Liam Herrick, Executive Director of the Irish Council for Civil Liberties; Davis Malombe, Executive Director of the Kenya Human Rights Commission; Fatia Maulidiyanti, National Coordinator of KontraS, and Nersan Govender, National Director of the Legal Resources Centre. The brief referred to the case law of the European Court of Human Rights on information obtained by intelligence activities, and the obligation to take measures to prevent and to investigate deaths. It also referred to the right of access to information under European and international law.

¹¹ The brief was signed by Daniela Urosa, Director of the Practicum, and by Noah Botwinick, Sarah Kimia Pourshadi and Marija Tesla. It referred to human rights and international law in the fight against terrorism, analyzing the alleged violations in this case.

IV ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

A. Acknowledgement of responsibility by the State and observations of the Commission and the representatives

16. In the context of the procedure before the Commission, during the hearing held on March 4, 2005, the **State** acknowledged its responsibility as follows:

The Government acknowledges the responsibility of the Argentine State for the violation of the human rights denounced by the petitioners in the presentation made to the IACHR in this case: right to life (Art. 4 of the American Convention); right to physical integrity (Art. 5 AC); right to a fair trial (Art. 8 AC) and right to judicial protection (Art. 25 AC), and the obligation to guarantee rights (Art. 1(1) AC), in the following terms:

The State acknowledges responsibility due to the failure to comply with the duty of prevention because it had not adopted appropriate and effective measures to try to prevent the attack, taking into account that two years previously there had been a terrorist act against the Israeli Embassy in Argentina.

The State acknowledges responsibility because there was a cover-up of the facts, because there was a serious and deliberate failure to comply with the duty to investigate the unlawful act that occurred on July 18, 1994, and because this failure to conduct an adequate investigation resulted in an evident denial of justice. All of this was declared by Federal Oral Criminal Court No. 3 of the City of Buenos Aires in its judgment of October 29, 2004.¹²

17. By Decree No. 812/2005 of July 12, 2005, the President of the Argentine Republic at the time reiterated the acknowledgement of responsibility in similar terms.¹³ Then, in its answering brief, the State repeated its acknowledgement of responsibility in the terms of Decree No. 812/2005 and added that it acknowledged its responsibility "for the violation of the right of access to public information (and, ultimately, to the truth) as a result of actions taken up until the adoption of Decrees No. 395/15 by former President Cristina Fernández de Kirchner, and No. 213/2020, by President Alberto Fernández." It also indicated that it agreed with "the analysis made by the Inter-American Commission concerning the discriminatory aspect of the violation of the duty of prevention in this case." Consequently, the State considered that the Court "should conclude that the dispute had ceased." In this same answering brief, the State indicated that "the Court should conclude and declare that the Argentine State is internationally responsible for the human rights violations acknowledged in Decree 812/05, which were alleged by the Inter-American Commission, Active Memory, and the CELS, and described in the preceding paragraphs." Regarding reparations, it provided information on several steps taken to comply with them, and suggested other measures that could be adopted.

18. During the public hearing before the Court, the State clarified that:

The State's acknowledgement of responsibility includes all the human rights violations described in the submission of the case and in the [brief with pleadings,

¹² Record of the hearing held on March 4, 2005, during the 122nd period of sessions of the Inter-American Commission on Human Rights (evidence file, folios 10721 and 10722).

¹³ Cf. Decree No. 812/2005 of July 12, 2005. Official Gazette of the Argentine Republic of July 13, 2005 (evidence file, folios 10772 to 10774).

motions and evidence]. We have provided written information on the progress made in the legal system – by both the 2015 reforms and by the advances introduced by the 2020 reforms – in relation to secrecy, confidential funds, and the intervention of intelligence agents in investigations. However, we also wish to be very clear in pointing out that the State did not meet its international obligations. There was a deliberate failure to meet those obligations, or they were only partially met and with an unjustified delay; in neither case is international responsibility excluded. Second, we also wish to indicate that this acknowledgement encompasses what occurred up until 2005 and from then until today. Therefore, the acknowledgement includes the delays in the investigation, the discontinuance of the appeals against the partial acquittal of the prosecutors, the responsibility of the police, and the numerous violations of the right to dignity and integrity of the victims and their family members in their search for justice.

19. The **Commission** appreciated the acknowledgement of responsibility made by the State. However, it noted that, in its answering brief, the State had not referred explicitly “to the acknowledgment of all the facts or to the scope of its responsibility in the terms of the Merits Report and the brief of the representatives, because there were facts subsequent to the State’s acknowledgement in Decree [812/05] that, even though they were directly related to the facts acknowledged in this decree, constituted additional internationally wrongful acts that engaged the State’s responsibility.” Nevertheless, in its final observations following the public hearing, it considered that the acknowledgement made by the State “includes all the facts and violations contained in the Merits Report and in the brief with pleadings, arguments [*sic*] and evidence signed by the victims’ representatives.” The Commission also noted that differences also persisted between the representatives and the State in relation to the scope of, and the degree of compliance with, the measures of reparation and non-repetition. Moreover, in its final written observations, it indicated that “without prejudice to the breadth of the acknowledgement of responsibility by the Argentine State [...], the State has not fully redressed the violations for which it has acknowledged its responsibility.”

20. The **representatives**, in their observations on the State’s answering brief, appreciated the acknowledgment made, but considered that the factual and legal dispute had not ceased. They indicated that, in its answering brief, the State had not clarified whether it only acknowledged responsibility for the facts expressly included in its answering brief or whether this extended to all the facts described in the pleadings and motions brief. However, following the expansion of the acknowledgement during the public hearing, the representatives, in their final written arguments, considered that the State had “expanded its initial position and explicitly indicated that it acquiesced to all the facts and violations that [they had alleged] in [their brief with pleadings, motions and evidence].” Regarding the reparations, they alleged that the State’s position was unclear and therefore considered that the dispute had not ceased in that regard.

B. Considerations of the Court

B.1. The facts

21. In Decree No. 812/2005, Argentina did not explicitly refer to an acknowledgement of the facts. In addition, the State did not mention the factual framework in its answering brief when referring to the acknowledgement of responsibility. However, during the public hearing it clarified that the acknowledgement extended “to what happened up until 2005, and from then until today.” Accordingly, this Court finds that the State has acknowledged all the facts

described in the Commission's Merits Report, together with those clarifications provided by the representatives, including the supervening facts submitted by the latter in their brief of September 29, 2022. These facts refer to: (i) the attack on the headquarters of the Argentine-Israeli Mutual Association and the investigation headed by Federal Criminal and Correctional Court No. 9 of the Federal Capital; (ii) the investigation delegated to the Prosecution Unit to Investigate the Attack on the AMIA headquarters by Federal Criminal and Correctional Court No. 6 of the Federal Capital; (iii) the proceedings on the cover-up of the attack; (iv) the delays in the investigation, the discontinuance of the appeals against the partial acquittals, and the lack of access to the reports by the victims' families. Consequently, the Court considers that the dispute has ceased in relation to the facts of this case.

B.2. The legal claims

22. The Court takes into account the acknowledgement of responsibility made by the State during the procedure before the Commission, reiterated and expanded before this Court in both the answering brief and in the final oral arguments submitted during the public hearing. Owing to its breadth, this acknowledgement encompasses all the violations of the American Convention alleged by the Commission, as well as those alleged by the representatives in their pleadings and motions brief. Consequently, the Court finds that the dispute has ceased in relation to the violation of the rights to life, personal integrity, and equality (Articles 4(1), 5(1) and 24 in relation to Article 1(1) of the American Convention); to judicial guarantees and judicial protection (Articles 8(1) and 25 in relation to Articles 1(1) and 2 of the American Convention); the right of access to information, to the truth, and to judicial protection (Articles 13 and 25 in relation to Articles 1(1) and 2 of the American Convention), and the violation of the right to personal integrity of the families of the victims of the AMIA attack (Article 5 in relation to Article 1(1) of the American Convention).

B.3. Possible measures of reparation

23. In this case the dispute concerning the need to grant measures of reparation no longer exists. However, the Court must determine the specific measures to be adopted and their scope. Regarding measures of satisfaction, the State has suggested that the Court order the establishment of technical discussions with Active Memory and the CELS to facilitate implementation of the requested measures. It also suggested that any publications should include the transcript of the pleadings and motions brief.

24. With regard to the measures of non-repetition, the State indicated that diverse amendments have been made to the law in order to regulate the national intelligence system. In the case of the accessibility, care and organization of the documentation relating to the different court cases, the State acknowledged that both practical and material limitations have existed. However, it indicated that, since November 2022, opportunities for dialogue had been established with the different representatives of the victims of the attack in order to identify measures that would permit effective access to the information linked to the attack and the related offenses by the parties and by society as a whole. In a brief submitted on September 29, 2023, the State provided information on the transfer and centralization of the documentation related to the cases in offices located in the Palacio Barolo. Regarding the creation of a disaster response unit, the State indicated that measures had already been taken by the Ministry of Security and the Ministry of Defense.

25. In relation to the reform of the national security and intelligence system, the State stressed that a discussion on these aspects would have to take place under the constitutional mechanisms, as and when the Argentine people considered this appropriate. However, it considered that there were two omissions in the legislation: an absence of regulations on declassification requests, and the conditions for providing intelligence information in court cases.

26. Regarding measures of compensation, the State indicated that the Court should take into account that Law No. 27,139 of 2015 established the national redress mechanism provided for in the decree on the acknowledgement of responsibility. Three of the alleged victims in the instant case had accepted this mechanism and had received compensation. Moreover, Diana Wassner and her daughters had received compensation in the context of a case filed under domestic law. Also, regarding the request to provide compensation to Active Memory, it indicated that, under the inter-American system, compensation for pecuniary and non-pecuniary damage could only be granted to physical persons. In the case of costs and expenses, it considered that the global sum should not exceed a reasonable amount and that the Court should take into account that the domestic jurisdiction was processing four cases on the payment of legal fees for domestic proceedings.

B.4. Assessment of the scope of the acknowledgement of responsibility

27. The Court appreciates the State's acknowledgement of responsibility which makes a positive contribution to these proceedings, to the validity of the principles that inspire the Convention, and to the satisfaction of the need for reparation of the victims of human rights violations. The acknowledgement of international responsibility has full legal effects pursuant to Articles 62 and 64 of the Rules of Procedure and has a significant symbolic value as regards non-repetition of similar facts.

28. That said, also pursuant to Articles 62 and 64 of the Rules of Procedure, in exercise of its authority in relation to the international judicial protection of human rights, and since this is a matter of international public order that transcends the will of the parties, it is incumbent on this Court to ensure that acts of acquiescence are acceptable for the purposes of the inter-American system. In this task, the Court is not limited to confirming or taking note of the acknowledgement made by the State, or verifying the formal conditions of such acts; rather, it must weigh them against the nature and severity of the alleged violations, the demands and interest of justice, the particular circumstances of the specific case, and the position of the parties, so that it is able to determine, insofar as possible and in exercise of its jurisdiction, the truth of what occurred.¹⁴

29. In this case, the Court deems it necessary to deliver a judgment in which it determines the facts that occurred based on the State's acknowledgement of international responsibility and taking into account the evidence obtained. This will contribute to providing redress to the victims, avoiding a repetition of similar facts and, above all, satisfying the purposes of the inter-American jurisdiction.¹⁵

¹⁴ Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of María et al. v. Argentina. Merits, reparations and costs*. Judgment of August 22, 2023. Series C No. 494, para. 24.

¹⁵ Cf. *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of María et al. v. Argentina, supra*, para. 24.

30. The Court will analyze the scope of the State's international responsibility for the violation of the rights to life, personal integrity and equality recognized in Articles 4(1), 5(1) and 24 of the American Convention in relation to Article 1(1) of this instrument. It will also analyze the scope of the State's responsibility for the violation of the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument. Then, it will analyze the violation of the rights of access to information, and to judicial protection and the truth established by Articles 13 and 25, in relation to Articles 1(1) and 2 of the Convention, as well as the violation of the personal integrity of the families. Lastly, it finds it necessary to rule on the corresponding reparations.

V EVIDENCE

A. Admissibility of the documentary evidence

31. The Court received diverse documents submitted as evidence by the Commission and the parties together with their principal briefs (*supra* paras. 1, 6 and 7) and, as in other cases, these were admitted in the understanding that they had been submitted at the appropriate procedural moment (Article 57 of the Rules of Procedure)¹⁶ and their admissibility had been neither challenged nor contested.

32. In a brief received on September 29, 2022, the representatives reported new facts relating to verification of the complainants' lack of access to information, and the dismissal of the proceedings against court clerks of former Judge Galeano in the case concerning the cover-up. Eleven annexes were attached to this brief.¹⁷ The Secretariat advised the State and the Commission that they could present their observations on this documentation together with their final arguments. Neither of them contested its admissibility.

33. With their final arguments, the representatives submitted a copy of the resolution of Division I of the Federal Criminal and Correctional Chamber of October 14, 2022,

¹⁶ In general and according to Article 57(2) of the Rules of Procedure, documentary evidence may be submitted with the briefs submitting the case or with pleadings and motions, or with the answering brief, as applicable, and evidence forwarded outside those procedural moments is not admissible, subject to the exceptions established in the said Article 57(2) of the Rules of Procedure (namely, *force majeure*, grave impediment) or if it relates to a supervening fact; that is, one that occurred after the said procedural moments. Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Cajahuanca Vásquez v. Peru. Preliminary objections and merits*. Judgment of November 27, 2023. Series C No. 509, para. 50.

¹⁷ (1) Copy of the resolution of Judge Eduardo Rafecas of the Federal Criminal and Correctional Court of June 29, 2022, urging the Prosecution's AMIA Investigation Unit to provide, on a regular basis, documentation that had been processed and analyzed; (2) copy of the communication EXXP-MPF 2501/2022 of July 11, 2022, in which the interim Attorney General of the Nation, responded to the judge's request; (3) copy of the declassified documentation of the former Intelligence Secretariat relating to the attack on the AMIA/DAI headquarters, obtained by the UFI AMIA, May 2021; (4) Report of the UFI AMIA on the status of the investigation into the attack on the Argentine-Israeli Mutual Association dated July 2022; (5) copy of the resolution of Federal Criminal and Correctional Court No. 6, of September 21, 2021, ordering the digitalization of all the documentation in the case file; (6) Mossad report on the attack on the Israeli Embassy; (7) Final Mossad report on the attack on the AMIA, undated; (8) Request for prompt settlement of the matter filed by the complainants Reisfeld and Wassner in relation to the situation of the accused in the case on the local connection, filed in December 2021; (9) Resolution of Federal Criminal and Correctional Court No. 2 of May 17, 2022, dismissing the proceedings against several of former Judge Galeano's court clerks; (10) Appeal filed by the complainants Reisfeld and Wassner in Case No. 3446/12, undated, and (11) Legal memorial instead of a court hearing filed by the complainants Reisfeld and Wassner in Case No. 3446/12, undated.

revoking the dismissal of several of former Judge Galeano's court clerks in *D.G.S.J et al.* Re: appeal court bundle. Neither the State nor the Commission commented on this document.

34. On April 19, 2023, the State forwarded a copy of Resolution PGN No. 13/2023 of April 4, 2023, establishing the Department for the Analysis of the Declassified Documentation within the AMIA Investigation Unit. On September 29, 2023, the State forwarded a copy of the September 26, 2023, note of the Special Investigation Unit for the AMIA Case attached to the Ministry of Justice and Human Rights advising that the documentation relating to the case had been transferred and centralized in the Palacio Barolo. Neither the representatives nor the Commission contested the incorporation of these documents.

35. The Court recalls that, in relation to the procedural occasion to submit documentary evidence, under Article 57(1) of the Rules of Procedure, this should generally be submitted together with the briefs submitting the case or with pleadings and motions, or with the answering brief, as applicable. However, paragraph 2 of Article 57 of the Rules of Procedure establishes that, exceptionally and having heard the opinion of all those intervening in the proceedings, evidence may be admitted when it relates to a fact that occurred after the said procedural moments. The evidence submitted by the representatives together with their final arguments, and by the State on April 19 and September 29, 2023, refers to facts that occurred after the submission of the pleadings and motions brief and the answering brief, respectively. Moreover, neither the representatives nor the Commission contested its incorporation into the case file. Consequently, the Court admits the above documents presented by the representatives and the State pursuant to Article 57(2) of the Rules of Procedure.

36. With regard to the evidence submitted by the representatives on September 29, 2022, the Court notes that, although the documents identified as Annexes 6 and 7 are undated, these are reports that were incorporated into the domestic case file on September 1, 2022; therefore, they are documents that the parties took cognizance of after the submission of the brief with pleadings, motions and evidence. Consequently, the Court admits their incorporation into the case file pursuant to Article 57(2) of the Rules of Procedure.

37. In relation to the other documents annexed by the representatives, the Court notes that these are either undated or dated prior to the submission of the pleadings and motions brief. Due to the nature of the two undated documents (annexes 10 and 11), it may be supposed that they are subsequent to May 17, 2022. That said, the Court considers that these documents update the status of several of the cases that constitute the factual framework of this case; therefore they supplement the information presented by the representatives in their pleadings and motions brief and by the Commission in its Merits Report and are useful for this case. In addition, the Court underlines that neither the State nor the Commission contested their incorporation into the case file. Accordingly, in application of Article 58(a) of its Rules of Procedure, this Court decides to incorporate, *ex officio*, the documents listed as annexes 1, 2, 3, 4, 5, 8, 9, 10 and 11 into the body of evidence in the instant case.

B. Admissibility of the testimonial and expert evidence

38. The Court deems it pertinent to admit the statements provided during the hearing,¹⁸ as well as the affidavit,¹⁹ insofar as they are in keeping with the purpose defined by the President in the order requiring them (*supra* para. 9).

VI FACTS

39. In this chapter, the Court will establish the facts of the case, based on the acknowledgement of international responsibility made by the State, the factual framework submitted to its consideration by the Inter-American Commission, the evidence in the case file, and the arguments of the parties in relation to the following aspects: (A) The attacks on the Israeli Embassy and the AMIA headquarters; (B) The main efforts to investigate the attack on the AMIA headquarters; (C) The investigation into the attack on the AMIA headquarters headed by Federal Criminal and Correctional Court No. 9 of the Federal Capital (the "local connection"); (D) The investigation delegated to the UFI AMIA by Federal Criminal and Correctional Court No. 6 of the Federal Capital (the "international connection"); (E) The proceedings based on the alleged cover-up of the attack; (F) The legal framework for the regulation and access to information obtained by the intelligence services.

A. The attacks on the Israeli Embassy and the AMIA headquarters

A.1. The attack on the Israeli Embassy and the background to the attack on the AMIA headquarters

40. On March 17, 1992, at approximately 2:47 p.m., the Israeli Embassy in Buenos Aires suffered an attack that involved the detonation of explosive material in a Ford F-100 pickup truck, resulting in the death of 22 people with a further 350 injured.²⁰ Since the attack concerned an embassy,²¹ the investigation was entrusted to the Supreme Court of Justice and a public prosecutor before the court. In the ruling of December 23, 1999, the act was attributed "to the terrorist group known as the Islamic Jihad,

¹⁸ During the public hearing, the Court received the statements of alleged victims Adriana Reisfeld and Diana Wassner, as well as the expert opinions of Fernando Domínguez and Natalia Federman, proposed by the representatives, and of Blanca I. Bazaco, proposed by the Commission.

¹⁹ The Court received an affidavit from expert witness Martin Scheinin, proposed by the Commission.

²⁰ Cf. Report issued by Judicial Secretariat No. 3 of the Supreme Court of Justice on the status of the case relating to the attack on the Israeli Embassy, March 4, 2015, available at: <https://www.cij.gov.ar/nota-15040-Informe-sobre-el-estado-de-la-causa-relativa-al-atentado-a-la-Embajada-de-Israel.-Informe-de-la-Secretar-a-Judicial-N--3.-Dr-Canevari.html>, mentioned by the Commission in its Merits Report.

²¹ According to the Argentine Constitution:

Article 116. The Supreme Court and the lower courts of the Nation shall hear and decide all cases relating to aspects regulated by the Constitution and by the laws of the Nation, with the reservation established in paragraph 12 of Article 75, and by the treaties with foreign nations; cases concerning foreign ambassadors, charges d'affaires, and consuls; cases involving the Admiralty and the maritime jurisdiction, matters in which the Nation is a party; cases that arise between two or more provinces; between a province and the neighbors of another province; between the neighbors of different provinces, and between a province or its neighbors against a foreign state or citizen.

Article 117. In such cases, the Supreme Court shall exercise its jurisdiction on appeal, in accordance with the rules and exceptions established by Congress; but in all matters concerning ambassadors, charges d'affaires, and consuls, and in those in which a province may be a party, it shall exercise its jurisdiction inherently and exclusively.

the armed wing of Hezbollah.”²² This ruling dismissed the proceedings against one of the accused. The Court has no information as to whether anyone else has been charged since then. However, the 1999 ruling recorded that the Argentine intelligence services were following M.R., who was the cultural attaché at the Iranian Embassy in Buenos Aires at the time.²³ Furthermore, the telephones of the Iranian Embassy were intercepted; however, the content of this monitoring effort was mislaid.

41. No. 633 Pasteur Street was the site of a building containing the headquarters of the AMIA and of the Delegation of Argentine-Israeli Associations (hereinafter “the DAIA”), the Coordinator of the charitable institutions of the Argentine Jewish community, as well as the Tzedaká Foundation, among other organizations. As a result of the attack on the Israeli Embassy, a 24-hour surveillance service was set up to guard the block where this building was located under the responsibility of the 5th and 7th police stations of the Argentine Federal Police. Broadly speaking, the service consisted in surveillance and preempting suspicious behavior near the building. In addition, parking was prohibited on the block. Nevertheless, there was no coordination between the external security service, which was the responsibility of the Federal Police, and internal security, which was the responsibility of the Mutual’s security personnel.²⁴ Moreover, as of July 15, 1994, the patrol car parked on Pasteur Street was out of commission, with no battery and its police radio system inoperative.²⁵

42. Some days before the attack on the AMIA, the Brazilian citizen, W.R.D.S. went to the Argentine Consulate in Milan, Italy, to warn about a woman who had false Argentine identity documents and who had allegedly taken part in the attack on the Israeli Embassy. Following the attack on the AMIA headquarters, W.R.D.S. again communicated his suspicions to the Consulate, but they were considered inadmissible.²⁶ In addition, on July 17, 1994, and in the early morning hours the following day, several people observed a helicopter flying low over the AMIA building.

²² Supreme Court of Justice of the Nation. Ruling of December 23, 1999, in the context of the preliminary investigation by Police Station No. 15 of the crimes of explosion, homicide, aggravated injuries and damage, arts. 186, 80(4) and (5), 92 and 133 of the Criminal Code, due to the attack on the Israeli Embassy, available at: <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-embajada-israel-sumario-instruido-comisaria-15-averiguacion-delitos-explosion-homicidio-lesiones-calificadas-dano-arts-186-80-incs-4-5-92-133-codigo-penal-motivo-atentado-embajada-israel-excusacion-fa99000334-1999-12-23/123456789-433-0009-9ots-eupmocsollaf?&o=0&f=Total%7CFecha/1999%5B20%2C1%5D%7CEstado%20de%20Vigencia%5B5%2C1%5D%7CTema%5B5%2C1%5D%7COrganismo%5B5%2C1%5D%7CAutor%5B5%2C1%5D%7CJurisdicci%F3n%5B5%2C1%5D%7CTribunal/CORTE%20SUPREMA%20DE%20JUSTICIA%20DE%20LA%20NACION%7CPublicaci%F3n%5B5%2C1%5D%7CColecci%F3n%20tem%E1tica%5B5%2C1%5D%7CTipo%20de%20Documento/Jurisprudencia&t=325>, mentioned by the representatives in their pleadings and motions brief.

²³ Cf. Supreme Court of Justice of the Nations. Ruling of December 23, 1999, in the context of the preliminary investigation by Police Station No. 15 of the crimes of explosion, homicide, aggravated injuries and damage, arts. 186, 80(4) and (5), 92 and 133 of the Criminal Code, due to the attack on the Israeli Embassy, *supra*.

²⁴ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter V (evidence file, folios 2468 to 2471).

²⁵ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter V (evidence file, folio 2471).

²⁶ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter XIV (evidence file, folios 4702 to 4705).

The aeronautical authorities had no record of this.²⁷ In addition, three minutes before the attack a truck left a dumpster in front of the AMIA building.²⁸

A.2. The attack on the AMIA headquarters

43. On July 18, 1994, at 9:53 a.m., an explosive charge equal to between 300 and 400 kilos of TNT mounted inside a Renault Trafic van was detonated in the vicinity of the building located at 633 Pasteur Street.²⁹ The explosion caused the partial collapse of the building and damage within a radius of 200 meters. As a direct result of the explosion, 85 people died and 151 were injured.³⁰

44. During the initial hours after the attack, the area was accessed by a large number of people unrelated to the rescue operation who sought to help or to locate a family member or acquaintance. The officials present at the scene of the crime failed to cordon off the area in order to control and regulate access, egress, and safe transfer of individuals and objects to and from the site of the attack.³¹

A.3. The connections between the attacks on the Israeli Embassy and the AMIA headquarters

45. Several official sources indicated that there was a connection between the motives and the authors of the two attacks. According to the report of the Supreme Court of Justice of the Nation on the investigation into the attack on the Embassy, information provided by witness "C" in the AMIA case led to the investigation of J.S.A.N., an Iranian diplomat responsible for the logistics in terrorist acts.³² Also, on September 20, 1995, a parliamentary committee was established with the mandate to conduct a joint follow-up of the attacks on the AMIA and the Israeli Embassy (*infra*, para. 50).

46. In addition, in his statement during the cover-up trial (*infra*, paras. 86 to 89) and in response to a question posed by the prosecution on when suspicions had arisen about the participation of M.R. in the attack on the AMIA, the then Head of the Operations Department of the Counterintelligence Directorate of the State Intelligence Secretariat, Antonio Horacio Stiuso, indicated: "[M.R.] had already appeared in the first one [this referred to the first attack, against the Israeli Embassy]; therefore, he was being monitored. In previous years he had even been seen inquiring about a Trafic

²⁷ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter V (evidence file, folios 2753 to 2760).

²⁸ Cf. Report. Observation by Dean Claudio Grossman, International Observer of the Inter-American Commission on Human Rights at the Trial concerning the Argentine-Israeli Mutual Association (AMIA), February 22, 2004 (evidence file, folio 10).

²⁹ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter V, A (evidence file, folios 2461 and 2462).

³⁰ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter V, A (evidence file, folio 2462).

³¹ Cf. Judgment handed down by Division II of the National Criminal Cassation Chamber on May 19, 2006 (evidence file, folio 5203).

³² Cf. Supreme Court of Justice of the Nations. Report on the status of the case concerning the attack on the Israeli Embassy. Report of Judicial Secretary No. 3, Dr. Canevari. Text available at: <https://www.cij.gov.ar/nota-15040-Informe-sobre-el-estado-de-la-causa-relativa-al-atentado-a-la-Embajada-de-Israel.-Informe-de-la-Secretar-a-Judicial-N--3.-Dr-Canevari.html>, mentioned by the representatives in their pleadings and motions brief.

on several occasions.”³³ In that same statement, in answer to a question about the rationale behind the request to intercept telephones linked to M.R., he indicated that “we already had the prior incident of the Embassy and we were already monitoring this type of individual [...]”³⁴ The court that heard the cover-up trial (*infra*, paras. 86 to 89), found it proved that M.R. had been under investigation since 1993 owing to his links to the attack on the Israeli Embassy and that he had been seen – because he was being followed – in the days leading up to the attack on the AMIA looking for a Trafic near Juan B. Justo Avenue.³⁵ According to the Grossman Report, during the investigation into the attack on the Embassy, M.R. could not be questioned, and he returned to Iran in 1998.³⁶

47. Furthermore, in 1992, the Intelligence Secretariat (hereinafter also “the SIDE”) created a special department to investigate the attack on the Embassy, known as the “Independence Court.” This court requested the permanent interception of several telephone lines belonging to the Shiite community, headed by M.R., noting that “the possibility of a new attack, inside the country or outside, cannot be discarded and if this occurred it would place us in a compromising position where it would be difficult to deny a certain degree of responsibility, at least at the intelligence level”; also that “the recent arrival and permanence within the Shiite community of a Hezbollah team, of Lebanese origin, its movements and the contacts detected within the community, as well as its background, give the investigation a degree of urgency that it did not have prior to this fact.”³⁷

B. The principal efforts to investigate the attack on the AMIA headquarters

48. This Court, reiterating the observations of the parties and the Commission, underscores the factual complexity of the instant case, which relates to one of the worst terrorist acts committed in Argentina. The factual complexity has been exacerbated by the numerous obstacles that have arisen throughout the investigation. In this judgment, the Court will endeavor to summarize the main points of the investigation, without trying to be exhaustive. For easier reading, in this section, the Court will present a list of the court cases that have been filed, as well as the initiatives established to try and elucidate what happened during the attack, and its investigation. The Court will also refer to the Memorandum of Understanding with Iran that provided for the creation of a truth commission on the facts, and the Mossad reports on the attacks on the Israeli Embassy and the AMIA headquarters.

B.1. Main court cases instituted

³³ Witness statement by Antonio Horacio Stiuso during the trial in case #1906 of Federal Oral Criminal Court No. 2 (cover-up case), hearing held on June 8, 2017 (evidence file, folio 39281).

³⁴ Witness statement by Antonio Horacio Stiuso during the trial in case #1906 of Federal Oral Criminal Court No.2 (cover-up case), hearing held on June 8, 2017 (evidence file, folio 39311).

³⁵ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folios 38595 and 38755).

³⁶ Cf. Report. Observation of Dean Claudio Grossman, International Observer of the Inter-American Commission on Human Rights at the Trial concerning the Argentine-Israeli Mutual Association (AMIA), February 22, 2004 (evidence file, folio 10).

³⁷ File of the “Jericó Case.” Independence Chamber. Volume II, box 288 of the information from the Terrorism Directorate of the former SIDE, processed by the Special Documentary Review and Analysis Group (GERAD), cited by the representatives in their pleadings and motions brief.

49. The following cases have been initiated to clarify what happened on July 18, 1994, and those responsible:

- The so-called "local connection": case before Federal Criminal and Correctional Court No. 9 of the Federal Capital presided by Judge Galeano, subsequently transferred to Federal Criminal and Correctional Court No. 6 presided by Judge Canicoba Corral. This case investigated the facts relating to Argentine citizens accused of providing logistic and operational support to the attack.
- The so-called "international connection": case also before Judge Galeano which was subsequently transferred to Federal Criminal and Correctional Court No. 6 of the Federal Capital. The purpose of this investigation was to clarify the identity of those who ordered and perpetrated the attack.
- The cover-up cases: these include a principal case – "AMIA cover-up" – initiated in 2000 that sought to clarify the cover-ups that occurred during the first stages of the investigation, and several cases that resulted from the investigation into the cover-up that sought to clarify aspects such as the threats against witnesses and the role of other officials in the cover-up, in particular the cases of "V. et al." and "Court clerks."
- The "Memorandum" case: this case was filed owing to a complaint by Prosecutor Nisman against former President Cristina Fernández and other political officials for the alleged cover-up of the attack.

B.2. Institutional initiatives

B.2.1. The Bicameral Committee to monitor the investigations into the attacks against the AMIA and the Embassy of the State of Israel

50. The Bicameral Committee to monitor the investigations into the attacks on the Israeli Embassy and the AMIA building was created on July 20, 1995, and it commenced work in September 1996. The Committee issued three reports on its activities between 1997 and 2001. In addition, the Committee summoned and received statements from different people who had intervened in the criminal proceedings, including one of Judge Galeano's court clerks, Claudio Adrián Lifschitz, who was among the first to denounce irregularities in the proceedings committed by Judge Galeano.³⁸

B.2.2. The Prosecution Unit to Investigate the AMIA Case (UFI AMIA)

51. Resolution No. 84-04 of 2004 of the office of the Attorney General of the Nation established the Prosecution Unit to Investigate the AMIA Case (UFI AMIA) with the mandate to intervene in the processing of all the cases related to the attack. It was established after the irregularities in the investigation into the attack came to light. Initially, it was headed by prosecutors Alberto Nisman and Marcelo Martínez Burgos, but the latter resigned in 2007. Prosecutor Nisman continued as head of the UFI AMIA up until his death in January 2015. After this, the UFI AMIA was headed by different representatives of the Public Prosecution Service.³⁹

³⁸ Cf. Report. Observation of Dean Claudio Grossman, International Observer of the Inter-American Commission on Human Rights at the Trial concerning the Argentine-Israeli Mutual Association (AMIA), February 22, 2004 (evidence file, folios 98 to 101).

³⁹ Cf. UFI-AMIA. Report on the status of the investigation into the attack on the Argentine-Israeli Mutual Association, July 2022 (evidence file, folio 44810).

52. At the date of this judgment, the UFI AMIA was headed by prosecutors Sebastián Basso and Gonzalo Miranda.⁴⁰ Currently, the UFI AMIA is responsible for the lines of investigation into the attack, and for advancing the investigation of the cover-up, in relation to both the aspects that have not yet reached the trial stage, and the appeals against judgments. In addition, it is responsible for the declassification, processing and management of the intelligence files.

B.2.3. The Special Unit to Investigate the Attack on the AMIA (UEI AMIA)

53. In June 2000, the Special Unit to Investigate the Attack on the AMIA (hereinafter “UEI AMIA” or “UEI”) was created, attached to the Ministry of Justice of the Nation, to provide direct assistance to the requirements of the court and the group of prosecutors in order to investigate the attack; it was also empowered to conduct its own investigations.⁴¹ In 2005, during the friendly settlement procedure before the Commission, Decree No. 812/05 was adopted by which the State undertook to strengthen this Unit.⁴² By Decree No. 229/06, the UEI AMIA was empowered to act as a complainant in cases relating to the AMIA attack.⁴³

54. In January 2016, Decree No. 108/16 was issued raising the UEI to the rank of a Secretariat within the Ministry of Justice and Human Rights of the Nation.⁴⁴ In addition to being a complainant in the cover-up trial, the main purpose of this Unit was to expedite the reform of the code of criminal procedure to permit a trial *en absentia*.

55. In March 2018, the Secretariat was dissolved by Decree No. 174/18⁴⁵ and the Unit was attached to the Memory, Truth and Justice program under the national leadership of the Human Rights Secretariat. In 2021, the decision was taken to again attach the Unit directly to the Ministry of Justice and Human Rights.⁴⁶

B.2.3. The Special Documentary Review and Analysis Group (GERAD)

56. This Group was created by Resolution PGN No. 1872/15 for the Public Prosecution Service to identify, organize and preserve the declassified material relating to the attack.⁴⁷ The objective of this group was “to order and describe the files that had been

⁴⁰ Cf. UFI-AMIA. Report on the status of the investigation into the attack on the Argentine-Israeli Mutual Association, July 2022 (evidence file, folio 44810).

⁴¹ Cf. Decree No. 452/2000 of June 8, 2000, <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=63288>, cited by the representatives in their pleadings and motions brief.

⁴² Cf. Decree No. 812/2005 of July 12, 2005. Official Gazette of the Argentine Republic of July 13, 2005 (evidence file, folios 10772 to 10774).

⁴³ Cf. Decree No. 229/2006 of March 1, 2006, Official Gazette of March 6, 2006 (evidence file, folio 10892).

⁴⁴ Cf. Decree 108/16 of January 12, 2016 (evidence file, folios 16784 and 16785).

⁴⁵ Cf. Decree No. 174/18 of March 2, 2018, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/307419/norma.htm>, cited by the representatives in their pleadings and motions brief.

⁴⁶ Cf. Resolution No. 537/2021 of June 30, 2021, of the Ministry of Justice and Human Rights, available at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/246418/20210702>, cited by the representatives in their pleadings and motions brief.

⁴⁷ Cf. Resolution PGN No. 3656/15 of November 12, 2015, available at: <https://www.mpf.gov.ar/resoluciones/pgn/2015/PGN-3656-2015-001.pdf>. This Resolution adopted the GERAD Protocol, and indicated that Resolution PGN No. 1872/15, adopting the UFI AMIA work plan, had provided for the creation and operation of the Special Documentary Inspection and Analysis Group within the UFI AMIA.

declassified, or were related to the investigation underway, in the different cases being processed; to elaborate the archival description tool for management of the documentation (inventories, catalogues and indexes) and, with the prosecutors, to contribute to the identification of relevant material for the investigation and for clarification of the facts from a historical perspective."⁴⁸

57. By Resolution PGN No. 13/2023 of April 4, 2023, the Attorney General of the Nation established, within the framework of the UFI AMIA, the Department for the analysis of the documentation declassified by Presidential Decrees Nos. 398/2003, 786/2003, 787/2003, 395/2015, 229/2017 and 213/2020. According to this resolution, the authority of the GERAD to analyze the documentation was transferred to this new Department.⁴⁹

B.3. The Memorandum of Understanding between Argentina and Iran

58. On January 27, 2013, the governments of Argentina and Iran signed a Memorandum of Understanding "on matters linked to the terrorist attack on the AMIA headquarters in Buenos Aires on July 18, 1994," in Addis Ababa, Ethiopia. It established that a Truth Commission would be created to issue a report, and also the possibility that the judicial authorities would meet in Teheran to question people identified by an INTERPOL Red Notice.⁵⁰

59. This Memorandum, adopted by law, was declared unconstitutional by Division I of the Federal Criminal and Correctional Chamber on May 15, 2014. The Division considered that:

[T]he Memorandum is presented as a bilateral treaty that, if it enters into force pursuant to the mechanism that it itself establishes, will give rise to reciprocal rights and obligations between the Argentine Republic and the Islamic Republic of Iran in relation to a matter that corresponds exclusively to the competence constitutionally assigned to the Judiciary, imposing significant limitations on the independent exercise of the jurisdictional function, the autonomy of the Public Prosecution Service, and the right to justice of the victims.⁵¹

60. Owing to this declaration of unconstitutionality, the Truth Commission was not established. Moreover, the Memorandum was never ratified by Iran.

B.4. The Mossad reports

⁴⁸ UFI-AMIA: New team to analyze the documentation declassified by the Executive Branch, available at: <https://www.fiscales.gob.ar/procuracion-general/ufi-amia-nuevo-equipo-para-analizar-la-documentacion-desclasificada-por-el-poder-ejecutivo/>, cited by the representatives in their pleadings and motions brief.

⁴⁹ Cf. Resolution PGN No. 13/2023 of the Attorney General of the Nation of April 4, 2023 (merits file, folios 704 to 707).

⁵⁰ The Memorandum was adopted by Law No. 26,843 of February 27, 2013. The complete text of the law can be found at: <https://www.argentina.gob.ar/normativa/nacional/Ley-26843-208948/texto>, cited by the representatives in their pleadings and motions brief.

⁵¹ Federal Criminal and Correctional Chamber. Division I. Judgment of May 15, 2014, available at: <https://www.cij.gov.ar/nota-13397-La-C-mara-Federal-declar--la-inconstitucionalidad-del-Memorandum-con-Ir-n-.html>. The application for amparo was filed by Pablo Reisman and July Schlosser, Vice President of the AMIA and President of the DAIA, respectively.

61. In July 2023, Mossad (the Israeli Institute for Intelligence and Special Operations) published two reports, one on the attack on the Israeli Embassy and the other on the attack on the AMIA headquarters. On September 1, 2023, the UEI obtained copies of both reports and incorporated them into the case file.⁵² The main conclusion that can be drawn from the report on the AMIA attack is that the highest authorities of the Islamic Republic of Iran and Hezbollah gave the order to perpetrate the attack against the AMIA, and that this attack was directed and executed on-site by Hezbollah, even though the Iranian intelligence representatives in Buenos Aires, based in the Iranian Embassy, were aware of the final preparations and the execution of the attack. In addition, the report completely ruled out the participation of Argentine nationals in the preparations or in the attack.⁵³ The Court has no information as to whether these reports were taken into account by the UFI AMIA.

C. The investigation into the attack on the AMIA headquarters headed by Federal Criminal and Correctional Court No. 9 of the Federal Capital ("the local connection")

62. The criminal investigation into the attack was assigned, by turn, to Federal Criminal and Correctional Court No. 9 of the Federal Capital, presided by Judge Juan José Galeano.

63. On July 25, 1994, a team of rescuers extracted from the rubble an engine part that had a serial number engraved on it compatible with those installed in Renault Trafic utility vehicles.⁵⁴ However, those who took part in this find committed errors when preparing the record of the recovery and failed to take statements from those who witnessed the discovery of the engine.⁵⁵ According to the automotive property registry, the engine corresponded to a Renault Trafic pickup owned by a company called "Messi S.R.L." Representatives of that company reported that, on March 7, 1994, the vehicle in question had been damaged by fire and that the insurance company, "Solvencia," had taken possession of the vehicle. That company failed to process the vehicle's withdrawal from circulation, and instead transferred it to the dealership, "Automotores Alejandro." On July 4, 1994, Carlos Telleldín acquired the Trafic from "Automotores Alejandro."⁵⁶

64. The subsequent investigation revealed that, on July 26 and 27, 1994, SIDE personnel and police agents from the Department for the Protection of the Constitutional Order of the Argentine Federal Police took a series of measures that were not reported in the case file to obtain information on the movements of Carlos Telleldín. In particular, it was considered proven that a group of officials spent more than 24 hours in Carlos Telleldín's home prior to his arrest and the formal search of

⁵² Cf. Mossad. Final report on the attack on the Embassy in Argentina (evidence file, folios 44826 to 44867) and Mossad. Final report on the attack on the AMIA (evidence file, folios 44870 to 44910). Added to the international case file by a brief submitted by the representatives on September 29, 2022.

⁵³ Cf. Mossad. Final report on the attack on the AMIA (evidence file, folios 44870 to 44910).

⁵⁴ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter V. B. (evidence file, folios 2761 to 2793).

⁵⁵ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter V. B. (evidence file, folios 2787 and 2788).

⁵⁶ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter VI. A. (evidence file, folios 2817 to 2852).

his domicile.⁵⁷ On July 27, 1994, Carlos Telleldín was arrested. He was accused of having delivered the vehicle to those responsible for planning the attack on the AMIA headquarters. He was summoned to provide a statement between 1994 and 1995, but he never provided information that would have advanced the investigation.⁵⁸

65. At the beginning of 1995, H.P.V., a retired officer of the Argentine Army, requested a private interview with Mr. Telleldín, and Judge Galeano agreed to this. The meetings took place on January 30 and February 2, 1995. H.P.V. attended the meetings with a SIDE agent named D.R.R., who was in charge of videotaping the conversations. It was considered that these meetings were the first stratagem used to obtain information from detainee Telleldín outside the procedural norms.⁵⁹ Additionally, between August and October 1995, the then president of the National Criminal and Correctional Appellate Chamber, Judge L.R.A., interviewed Carlos Telleldín on several occasions. As a result of those interviews, the judge informed Galeano that Carlos Telleldín had mentioned to her that those who received the vehicle with which the attack was carried out were police officers from the Province of Buenos Aires.⁶⁰ Additionally, Judge Galeano held two informal meetings with Carlos Telleldín on April 10 and June 1. The meetings were recorded by a hidden camera placed in his office by the judge. It could be observed that the judge, under the pretense of the alleged purchase of the copyright of a book, tried to reach an agreement with the accused on a statement in exchange for a sum of money.⁶¹

66. On July 5, 1996, Carlos Telleldín gave a new statement before Judge Galeano in which he indicated that he had been a victim of extortion by the Buenos Aires Police that culminated in the sale of the pickup to a person accompanying them.⁶² This led to the arrest and indictment of four police officers.⁶³ Subsequently, it would be proved that this change in the accused's position was the result of an "irregular action by the State designed to obtain the name of a perpetrator over and above what really happened, for which Carlos Telleldín was paid 400,000 dollars from a confidential fund of the SIDE administration to change his statement."⁶⁴

⁵⁷ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter IX (evidence file, folios 3841 and 3842).

⁵⁸ The statements were received on July 30, 1994, August 6 and 7, 1994, December 29, 1994, and April 4, 1995. A summary of these statements can be consulted in the judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter IV (evidence file, folios 1564 to 1671).

⁵⁹ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folio 3111 to 3120).

⁶⁰ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter VIII. E. (evidence file, folios 3152 and 3153).

⁶¹ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Title II, Chapter II (evidence file, folio 4857).

⁶² Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter IV (evidence file, folios 1633 to 1668).

⁶³ Cf. Report. Observation of Dean Claudio Grossman, International Observer of the Inter-American Commission on Human Rights at the Trial concerning the Argentine-Israeli Mutual Association (AMIA), February 22, 2004 (evidence file, folio 13).

⁶⁴ Cf. Press release of Federal Oral Criminal Court No. 3 of the Federal Capital of September 2, 2004, concerning the ruling in case No. 487/00, available at: https://www2.jus.gov.ar/AMIA/Comunicado_de_prensa.pdf, cited by the Commission in its Merits Report.

67. In February 2000, Judge Galeano ordered the closure of the preliminary investigation and, on February 26, 2000, issued an order to proceed to an oral trial against Carlos Telleldín and the four police officers.⁶⁵ Based on the rotation system, Federal Oral Criminal Court No. 3 of the Federal Capital (hereinafter also "TOF 3") was assigned to hold the trial at the oral stage. The hearing commenced on September 24, 2001. The proceedings were monitored by a delegation from the Inter-American Commission on Human Rights headed by Commissioner Claudio Grossman.⁶⁶

68. On October 29, 2004, the TOF 3 declared the nullity of the investigation led by Judge Galeano and acquitted all the accused.⁶⁷ The Public Prosecution Service and one of the complainants appealed this decision. On May 19, 2006, Division II of the National Cassation Chamber confirmed the appealed judgment.⁶⁸ In addition, Judge Galeano was separated from hearing those aspects of the investigation that had not yet been brought to trial. On August 3, 2005, the Trial Jury of the Judicial Council removed him from office based on improper performance of his duties.⁶⁹ On May 27, 2009, the Supreme Court of the Nation declared the special remedies filed by the Public Prosecution Service admissible and determined that Judge Galeano's lack of impartiality had been verified only as of October 31, 1995, the date of which the formal investigation of the police officers had begun. Consequently, Judge Galeano's investigations during the first 16 months were found to be valid.⁷⁰

69. The criminal prosecution in the case of the "local connection" was resumed and assigned to Criminal and Correctional Court No. 6, presided by Judge Rodolfo Canicoba Corral, who delegated this to the Prosecution's Unit to Investigate the Attack on the AMIA headquarters, headed by the Public Prosecutor Alberto Nisman, on February 8, 2005.⁷¹ In August 2012, an order was issued to proceed to trial in relation to Carlos Alberto Telleldín for the crime of aggravated homicide, concurrently with the crimes of repeated severe injuries, repeated minor injuries, and multiple damage.⁷² The oral trial began in May 2019.

⁶⁵ Cf. Report. Observation of Dean Claudio Grossman, International Observer of the Inter-American Commission on Human Rights at the Trial concerning the Argentine-Israeli Mutual Association (AMIA), February 22, 2004 (evidence file, folio 13).

⁶⁶ In a session held on August 3, 2001, the Commission appointed Claudio Grossman, its President at that time, as an International Observer for the AMIA case, responding to the Argentine government's proposal that it appoint an observer for the proceedings. The purpose of this mission was "to observe and monitor the oral trial of the 'AMIA CASE' and also, in general, to report on different aspects of this case in light of the petition lodged before the IACHR [...]." Report. Observation of Dean Claudio Grossman, International Observer of the Inter-American Commission on Human Rights at the Trial concerning the Argentine-Israeli Mutual Association (AMIA), February 22, 2004, (evidence file, folio 9).

⁶⁷ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, operative paragraphs (evidence file, folios 4909 to 4930).

⁶⁸ Cf. Judgment handed down by Division II of the National Criminal Cassation Chamber on May 19, 2006 (evidence file, folios 4933 to 5225).

⁶⁹ Cf. Ruling delivered by the Trial Jury of the Judicial Council in the case of "Dr. Juan José Galeano, ref. prosecution request" on August 3, 2005 (evidence file, folios 6316 to 6722).

⁷⁰ Cf. Judgment handed down by the Supreme Court of the Nation on May 27, 2009 (evidence file, folios 5287 to 5305).

⁷¹ Cf. UFI AMIA. Report issued by prosecutors Alberto Nisman and Marcelo Martínez Burgos on October 25, 2006 (evidence file, folio 5318).

⁷² Cf. Report on decision to send to trial signed by the Public Prosecutor, Head of the UFI AMIA, dated August 2012 (evidence file, folios 6120 to 6314).

70. On December 23, 2020, the court acquitted Carlos Telleldín. Among other arguments, it indicated that the prosecution had not demonstrated his responsibility because it had not proved that he was aware of the attack or that he had intended to collaborate with those who committed it. The court considered that:

[...] the only certainty we have been able to reach throughout the proceedings is that Telleldín was the last owner of the engine that was found among the rubble of the AMIA. Apart from this, there only remain questions that are impossible to answer with the elements compiled in the more than six hundred and sixty files and innumerable court bundles that comprise the case. Possibly, this enormous uncertainty is due to the unfathomable vicissitudes that this investigation has experienced for reasons that remain on the conscience of those who decided to alter its course.⁷³

D. The investigation delegated to the UFI AMIA by Federal Criminal and Correctional Court No. 6 of the Federal Capital (the “international connection”)

71. The purpose of this part of the investigation was to clarify the identity of those who ordered and perpetrated the attack.

D.1. The “Syrian lead”

72. Among the lines of investigation opened following the attack was the “Syrian lead,” which originated from a phone call received by Carlos Telleldín on July 10, 1994, from A.K.E., a Syrian national. The investigation also verified that, on July 9 and 10, 1994, Carlos Telleldín had published a classified advertisement in a newspaper offering a Renault Trafic vehicle for sale.⁷⁴

73. On the day of the attack, some minutes before the explosion, an employee of the company, Cascotera Santa Rita, owned by N.H., left a dumpster in front of the AMIA headquarters and took another dumpster to a building at 2657 Constitution Street. The company owned by A.K.E. was domiciled on the block where the dumpster was left.⁷⁵

74. Based on these elements, Judge Galeano ordered a telephone interception so as to directly monitor a series of telephone numbers linked to A.K.E., as well as the search of several buildings located on Constitution Street.⁷⁶ However, it was verified that Judge Galeano had deliberately “discontinued, interrupted and delayed the investigation” of these leads.⁷⁷ In fact, search warrants were not executed with no explanation, and recordings of the intercepted lines went missing.

⁷³ Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on March 26, 2021, in case No. 487/00 (evidence file, folio 40372).

⁷⁴ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, Chapter X (evidence file, folios 2741, 3956 and 3957).

⁷⁵ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 7245).

⁷⁶ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folios 7235 to 7237).

⁷⁷ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 7235).

75. In its judgment in the cover-up trial (*infra*, paras. 86 to 89), the court confirmed that this lead was the most concrete and substantial line of investigation in the proceedings, with the consequent need and importance of examining the hypothesis in greater depth.⁷⁸ However, this lead was not explored during the first years of the investigation and it was verified that those in charge of the trial took steps to divert attention from A.K.E. As one of the explanations for this diversion, the 2019 judgment underlined the links between the family of A.K.E. and that of former President Menem.⁷⁹

D.2. The investigation following the disqualification of Judge Galeano

76. Following the disqualification of Judge Galeano, the investigation was assigned to Federal Criminal and Correctional Court No. 6.

77. On October 25, 2006, prosecutors Martínez Burgos and Nisman of the UFI AMIA signed a report on the progress made in the investigation in which they concluded that it was I.H.B., a Lebanese national and member of Hezbollah, who had driven the vehicle and caused it to explode in front of the AMIA headquarters, blowing himself up; and that the responsibility for the attack could be attributed to the government of the Islamic Republic of Iran which had entrusted Hezbollah with its execution.⁸⁰ They reached this conclusion based on different leads arising from information provided by the SIDE and other investigation agencies. Accordingly, an international arrest warrant was issued for eight individuals.⁸¹ On November 7, 2007, INTERPOL registered the arrest warrants against six of the eight individuals with a red notice.⁸²

78. On May 20, 2009, the UFI AMIA filed charges against S.S.E.R., a Colombian national, as the person responsible for coordinating the local logistics of the attack.⁸³ On June 9, 2009, a warrant was issued for his arrest, and INTERPOL issued a red notice.⁸⁴ This Court has no information concerning subsequent actions in relation to this lead until 2019, when the UFI AMIA interviewed an individual detained in the

⁷⁸ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 7254).

⁷⁹ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up, Chapter III (c) "The link between the family [of A.K.E] and the Menem family" (evidence file, folios 7255 to 7268).

⁸⁰ Cf. Report issued by the UFI AMIA prosecutors dated October 25, 2006 (evidence file, folios 5318 to 6118).

⁸¹ These individuals were: A.A.H.B.R. (President of Iran from 1989 to 1997); A.F. (Minister of Intelligence and Security of Iran from 1989 to 1997); A.A.V. (Minister for Foreign Affairs of Iran from 1981 to 1997); M.R. (Commander of the Islamic Revolutionary Guards Corps); A.V. (Commander of the Islamic Revolutionary Guards Corps); M.R. (Cultural Attaché at the Embassy of Iran in Argentina between 1994 and 1998); A.R.A. (Third Secretary of the Embassy of Iran in Argentina between 1991 and 1994), and I.F.M. (Head of Hezbollah External Security Organization). Cf. Report issued by the UFI AMIA prosecutors dated October 25, 2006, evidence file, folios 6114 to 6117.

⁸² Cf. UFI AMIA Activities Report of December 2016 (evidence file, folio 6738). The report indicates that the registration with red notice was ordered of the Iranian citizens A.F., M.R., A.R.A., M.R., and A.R.A. and the Lebanese citizen, I.F.M.

⁸³ Cf. Report issued by the UFI AMIA prosecutor on May 20, 2009 (evidence file, folios 6760 to 6857).

⁸⁴ Cf. Report provided by the head of the UFI AMIA to the Director General for Human Rights of the Ministry of External Affairs, International Trade and Worship of the Nation on June 1, 2010 (evidence file, folio 6863).

United States of America, allegedly linked to S.S.E.R.⁸⁵ The UFI AMI also established that S.S.E.R had obtained Paraguayan nationality and the respective documentation.⁸⁶ In this regard, the 2022 UFI AMIA report indicated that “currently, investigations are being conducted aimed at obtaining probative evidence regarding those who could have provided collaboration in the region, in order to determine possible networks supporting the efforts of the accused.”⁸⁷ In addition, a lead was being explored of a connection between an attack on an Alas Chiricanas aircraft flying from Colón to Panama City on the day of the AMIA attack. The same organization took responsibility for the two attacks in a press release published in Lebanon a few days later.⁸⁸

79. In July 2016, the UFI AMIA advised that it was focusing its efforts on verifying the identity of I.H.B., the alleged driver of the Renault Trafic, by DNA testing.⁸⁹ Also, in compliance with an order of Federal Court No. 6, tests were performed to obtain the genetic profile of the biological remains that had been preserved. Moreover, during this assessment, information came to light regarding the existence of elements connected to the investigation in the Chemical Laboratory Division of the Federal Police that had not been inventoried and that were in a bucket in the laboratory’s freezer.⁹⁰

80. In addition, in 2016, the GERAD recovered an expert report of August 9, 1994, prepared by the Chemical Laboratory Division of the Federal Police which indicated that it had received the metallic fragments found in the bodies of the victims which had only been analyzed to determine the presence of explosives. Accordingly, in August 2016, the UFI AMIA requested the police laboratory to prepare a complete report of all the probative elements in its possession. This permitted an analysis of the fragments of the Trafic that had been extracted from the bodies of the victims and the unidentified genetic material found in the bucket in the freezer of the Chemical Laboratory Division.⁹¹

81. In a July 2017 activities report, the UFI AMIA indicated that genetic comparison tests had been performed on the material preserved in the laboratory of the Argentine Federal Police that revealed a genetic profile that did not correspond to any of the known victims. This appeared to support the hypothesis that the Trafic blown up in front of the AMIA building was driven by a suicide bomber.⁹² However, with the collaboration of U.S.A. authorities, this genetic profile was compared to that of one of I.H.B.’s brothers, and it was determined that the sample did not correspond to a paternal or maternal relative.⁹³ However, the analysis of the genetic samples found in the laboratories permitted the identification of victim No. 85 of the attack: Augusto

⁸⁵ Cf. Request for an extension of the preliminary investigation filed by the Public Prosecution Service on December 16, 2019 (evidence file, folio 41788)

⁸⁶ Cf. Investigation court bundle No. 399 “Regarding [S.S.E.R],” section 33, Federal Court No. 66 (evidence file, folio 42046 to 42050).

⁸⁷ UFI-AMIA. Report on the status of the investigation into the attack on the Argentine-Israeli Mutual Association, July, 2022 (evidence file, folio 44817).

⁸⁸ Cf. UFI-AMIA. Report on the status of the investigation into the attack on the Argentine-Israeli Mutual Association, July, 2022 (evidence file, folio 44817).

⁸⁹ Cf. UFI AMIA. Activities Report. July 2016 (evidence file, folios 6871 and 6872).

⁹⁰ Cf. UFI AMIA. Activities Report. December 2016 (evidence file, folio 6734).

⁹¹ Cf. UFI AMIA. Activities Report. December 2016 (evidence file, folios 6733 and 6734).

⁹² Cf. UFI AMIA. Activities Report. July 2017 (evidence file, folios 17432 and 17433).

⁹³ Cf. UFI AMIA. Activities Report. December 2017 (evidence file, folio 17474).

Daniel Jesús, who died in the attack together with his mother.⁹⁴ The discovery of the fragments of metal in the Chemical Laboratory Division of the Federal Police and their respective analysis helped confirm that the vehicle that exploded was a Traffic pickup.⁹⁵

82. The publication of the UFI AMIA activities reports ceased in December 2017, and was not resumed until 2022. In December 2019, the prosecution requested a further extension of the preliminary investigation stage,⁹⁶ and this was granted by the Federal Chamber on June 25, 2020.⁹⁷ The Chamber urged the UFI AMIA to “continue taking the steps that, given the content of certain court bundles, and in view of the perspectives envisaged by the public prosecutor, would appear to have some effectiveness in achieving prompt justice in the case.”⁹⁸

83. In May 2021, the UFI AMIA requested the dismissal of the proceedings against A.K.E. and other persons investigated in the context of the “Syrian lead.”⁹⁹ It considered that “following an extensive investigation, it has not been possible to collect probative elements that would allow us to assert that [A.K.E.] and/or [V.J.C.] participated, collaborated, or contributed in any way to the perpetration of the attack on the AMIA headquarters.”¹⁰⁰

84. Judge Daniel Rafecas, alternate member of Federal Criminal and Correctional Court No. 6, called for a hearing on June 7, 2022, to address the difficulties encountered by the parties to have real access to the declassified information held by the UFI AMIA. The hearing was attended by some of the complainants, one of the UFI AMIA prosecutors, the head of the UEI, and the court clerks. Following the hearing, the judge issued a resolution in which he urged the UFI AMIA to provide the parties on a regular basis with documentation that had been processed and analyzed, and to enable direct communication between the complainants and GERAD personnel. He also urged the Public Prosecution Service and the Ministry of Justice and Human Rights to provide GERAD with the necessary resources.¹⁰¹

85. On July 11, 2022, the Public Prosecution Service responded to the court’s requirement indicating that the UFI AMIA had regularly presented detailed reports to the court indicating the current status of the investigation, and that those reports were notified to the parties to the proceedings. It also indicated that it had drawn up a Manual on the systematization of the declassified documentation that provided the

⁹⁴ Cf. UFI AMIA. Activities Report. July 2017 (evidence file, folio 17433).

⁹⁵ Cf. UFI AMIA. Activities Report. December 2016 (evidence file, folio 6735).

⁹⁶ Cf. Request for an extension of the preliminary investigation filed by the Public Prosecution Service on December 16, 2019 (evidence file, folios 41772 to 41805).

⁹⁷ Cf. Resolution issued by the Federal Criminal and Correctional Chamber, Division I, in the case CFP 8566/1996/3/CA 109 on June 25, 2020 (evidence file, folios 42177 a 42187).

⁹⁸ Resolution issued by the Federal Criminal and Correctional Chamber, Division I, in the case CFP 8566/1996/3/CA 109 on June 25, 2020 (evidence file, folios 42183 and 42184).

⁹⁹ The prosecution also requested the dismissal of the proceedings against Víctor José Chabán, Víctor Alejandro Mojo, Gabriel Meli, Edgardo Manuel Yema, Rodolfo Américo Setau, Marcelo Fabián Delacour, Antonio José Quiroga, N.H., Pablo Haddad, Javier Haddad and Guillermo Haddad. Cf. Requests for the dismissal of proceedings filed by the UFI AMIA on April 3 and 30, 2021 (evidence file, folios 44375 to 44561).

¹⁰⁰ Request for the dismissal of proceedings filed by the UFI AMIA on April 3, 2021 (evidence file, folio 44443).

¹⁰¹ Cf. Resolution issued by Federal Criminal and Correctional Court No. 6 on June 29, 2022 (evidence file, folios 44713 to 44717).

victims with easier and more efficient access.¹⁰² In addition, it explained that the GERAD had encountered difficulties to use the offices located in the Palacio Barolo and thus receive the material pending dispatch by the Federal Intelligence Agency (hereinafter also "the AFI").¹⁰³

E. The proceedings based on the alleged cover-up of the attack

E.1. The main "AMIA cover-up" case

86. In August 2000, an investigation was opened into the alleged crime of the cover-up of the attack. The investigation had its origin in the statement made by Claudio Lifschitz, Galeano's former court clerk, before the Bicameral Monitoring Committee in which he reported irregularities in the investigation into the attack on the AMIA headquarters.¹⁰⁴ This investigation had two major elements:

- 1) Investigation into the decision of Judge Galeano to order the disbursement of 400,000 dollars from a confidential budgetary item of the State Intelligence Secretariat to Carlos Telleldín so that he would state that he had delivered the Renault Trafic pickup to a group of police agents.
- 2) Investigation into whether the judicial officials in charge of the investigation impeded a more in-depth analysis of a line of investigation that linked A.K.E. and others around him to the attack (the "Syrian lead").

87. With regard to the first element, on September 19, 2006, Federal Criminal and Correctional Court No. 4 issued an indictment against former judge Galeano for the crimes of embezzlement, coercion, misrepresentation, unlawful deprivation of liberty, and malfeasance in office. In addition, others, including former SIDE agents, were prosecuted for the crime of embezzlement.¹⁰⁵ On June 29, 2007, the Federal Criminal and Correctional Appellate Chamber confirmed the decision. On August 14, 2013, Division II of the Federal Criminal Cassation Chamber rejected the appeal for annulment filed by the defense.¹⁰⁶

88. Regarding the second element concerning the "Syrian lead," on March 30, 2012, Federal Criminal and Correctional Court No. 4 terminated the pre-trial stage and sent

¹⁰² This is the UFI AMI document, "*Documentación desclasificada de la Ex Secretaría de Inteligencia vinculado al atentado a la sede de AMIAI/DAIA*" [Declassified documentation of the former Intelligence Secretariat linked to the attack on the AMIAI/DAIA headquarters] of May 2021 (evidence file, folios 44726 to 44798).

¹⁰³ Cf. Note No. EXP-MPF 2501/2022 issued by the interim Attorney General of the Nation, on July 11, 2022 (evidence file, folios 44719 to 44723).

¹⁰⁴ Claudio Lifschitz authored a book in which he described his complaint in relation to the irregularities in the investigation. In the preface, he explained that "on Tuesday, August 29, 2000, I was invited by the President of the Bicameral Committee that monitors the investigations into the attacks against the Israeli Embassy and the Amia, National Senator Dr. Luis Molinari Romero, to make a statement on what had already been made public by the oral and written media and on television, and to provide all necessary details on a wide-ranging report that the undersigned had officially presented to the Committee several weeks previously [...]." Lifschitz Claudio, *Amia: por qué se hizo fallar la investigación* (evidence file, folio 42793).

¹⁰⁵ Cf. Indictment issued by Federal Criminal Court No. 4 of September 19, 2006 (evidence file, folios 7969 to 8449).

¹⁰⁶ Cf. Resolution issued by Division II of the Federal Criminal Cassation Chamber of August 14, 2013 (evidence file, folios 8451 to 8501).

the matter to oral trial, linking former Judge Galeano, former President Carlos Menem and several SIDE officials to the proceedings.¹⁰⁷

89. The two elements of the investigation were unified at the oral trial stage and, on August 6, 2015, the hearings began before Federal Oral Criminal Court No. 2 of the Federal Capital (hereinafter also "TOF 2"). On February 28, 2019, the verdict was handed down sentencing Juan José Galeano, prosecutors Mullen and Barbaccia, and Police and SIDE officials to diverse terms of imprisonment and acquitting five other officials, including former President Menem.¹⁰⁸ The grounds for the judgment were published on May 3, 2019. It was considered that the two subterfuges had been proved: the failure to investigate the "Syrian lead," which at the time had been "one of the soundest hypotheses of the investigation,"¹⁰⁹ and the false accusation against the police officers.¹¹⁰

E.2. The related cases: "V. et al." and "Court clerks"

90. The purpose of the case of "V. et al." was to investigate the threats made against one of the police officers falsely accused by Carlos Telleldín, by L.E.V., former police chief of the Buenos Aires Police and others, based on a complaint filed in 1997. The case was sent first to TOF 3, but that court rejected jurisdiction and it ended up in TOF 2.¹¹¹ It was not until 2015 that several of the accused were indicted. That decision was confirmed by Division I of the Federal Criminal and Correctional Chamber on March 30, 2016,¹¹² and L.E.V., F.G.D. and M.N.P. were charged. In March 2017, an order was issued to send the case against L.E.V. and M.N.P. to trial.¹¹³

91. The date of the trial remains pending. However, in May 2021, Memoria Activa filed a recusal against one of the judges of the court. The recusal was rejected by the judge and on appeal, but at the date of this judgment, the decision is pending a remedy of complaint filed before the Supreme Court.¹¹⁴

92. Meanwhile, the purpose of the "Court clerks" case is to investigate the role of former Judge Galeano's court clerks and other officials in the negotiations for the payment to Carlos Telleldín, and for contributing to the failure to investigate the "Syrian lead." This case was detached from the main case on the cover-up because, in 2012, an order was issued to stay the proceedings against these officials. The

¹⁰⁷ Cf. Resolution of Federal Criminal and Correctional Court No. 4 of March 30, 2012, ordering the partial closure of the preliminary investigation and sending the case to trial (evidence file, folios 8503 to 8823).

¹⁰⁸ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, AMIA cover-up (evidence file, folios 6901 to 7929).

¹⁰⁹ Judgment handed down by Federal Oral Criminal Court No. 2 del 3 on May 3, 2019, AMIA cover-up (evidence file, folio 7391 and 7832).

¹¹⁰ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, AMIA cover-up (evidence file, folio 7625).

¹¹¹ Cf. UFI AMIA. Activities Report. July, 2017 (evidence file, folio 39519).

¹¹² Cf. Resolution issued by the Federal Criminal and Correctional Chamber, Division I, on March 30, 2016 (evidence file, folios 42477 to 42497).

¹¹³ Cf. Order to proceed to trial issued by Judge Sebastián Roberto Ramos on March 23, 2017 (evidence file, folios 42501 to 42531). The order did not require that Federico Guillermo Díaz be sent to trial as by then he was deceased.

¹¹⁴ Cf. Remedy of complaint filed by the complainants Reisfeld and Wassner before National Criminal Cassation Chamber on June 14, 2021 (evidence file, folios 42534 to 42546).

complainants in those proceedings filed an appeal against the dismissal. The Public Prosecution Service did not file an appeal and, since then, the case has proceeded merely due to the efforts of the complainants.

93. On December 11, 2014, Division I of the Federal Criminal and Correctional Chamber revoked the stay of proceedings against several officials and ordered, among other matters, that statements be taken from the accused, that the responsibility of the officials be investigated, and that regular reports be presented.¹¹⁵ On December 14, 2015, Federal Criminal and Correctional Court No. 4 ruled that there was insufficient evidence in the case.¹¹⁶ Following an appeal filed by Memoria Activa, Division I of the Federal Criminal and Correctional Chamber revoked the decision of insufficient evidence and removed the judge hearing the case.¹¹⁷

94. In view of the absence of procedural activity, Memoria Activa and the UEI filed requests for prompt settlement of the matter in December 2021.¹¹⁸ On May 7, 2022, Federal Criminal and Correctional Court No. 2 decided to prosecute the accused for lesser offenses, but discontinue the proceedings against them for the crime of cover-up.¹¹⁹ Memoria Activa appealed that decision in a remedy filed by the complainants Reisfeld and Wassner.¹²⁰ In a resolution of October 14, 2022, Division I of the Federal Criminal and Correctional Chamber admitted the complainants' appeal, and partially revoked the Correctional Court's decision, ordering the judge to make a new ruling on the procedural situation of the accused.¹²¹

E.3. The case on the Memorandum of Understanding

95. In January 2015, the head of the UFI AMIA at the time, Alberto Nisman, filed a criminal complaint before a Federal Criminal and Correctional Court accusing several state officials, including former president Cristina Fernández, of allegedly having elaborated a "criminal plan aimed at providing impunity to the accused who were Iranian nationals" by signing a Memorandum of Understanding with Iran.¹²²

96. Federal Court No. 3 disallowed the complaint based on the inexistence of a crime on February 26, 2015,¹²³ a decision that was confirmed by the Federal Appellate Court

¹¹⁵ Cf. Resolution issued by the Federal Criminal and Correctional Chamber, Division I, on December 11, 2014 (evidence file, folios 42615 and 42616).

¹¹⁶ Cf. Resolution issued by Federal Criminal and Correctional Court No. 4 on December 14, 2015 (evidence file, folios 42618 to 42767).

¹¹⁷ Cf. Resolution issued by Federal Criminal and Correctional Chamber, Division I, on May 7, 2016 (evidence file, folios 42769 to 42790).

¹¹⁸ Cf. Brief of December 2021 filed on behalf of the complainants Reisfeld and Wassner in case No. 3446/12 requesting prompt settlement of the matter (evidence file, folios 44912 and 44913).

¹¹⁹ Cf. Resolution issued by the Federal Criminal and Correctional Court No. 2 on May 7, 2022 (evidence file, folios 44915 to 45062).

¹²⁰ Cf. Remedy of appeal filed by the complainants Reisfeld and Wassner in case No. 3446/12 against the resolution issued on May 7, 2022 (evidence file, folios 45064 to 45085).

¹²¹ Cf. Resolution issued by the Division I of the Federal Criminal and Correctional Chamber on October 14, 2022 (evidence file, folios 45243 to 45332).

¹²² Cf. Complaint filed by Alberto Nisman as head of the UFI AMIA before Federal Judge Dr. Ariel Lijo on January 14, 2015, available at: https://especiales.lanacion.com.ar/multimedia/proyectos/pdf/denuncia-nisman.pdf?_ga=2.217989777.66007825.1701671521-1666771205.169625931.

¹²³ Cf. Judgment handed down by Federal Court No. 3 on February 26, 2015 (evidence file, folio 44625).

by a ruling on March 25, 2016. In turn, the prosecution service withdrew from the appeal filed by the prosecutor before the Appellate Chamber because it agreed that no crime existed. Nevertheless, in December 2016, following the change of government, the case was reopened based on the complaint filed by the DAIA and it was joindered to a case with a similar content. The two cases were sent to Federal Oral Criminal Court No. 8. The parties did not provide updated information on the status of this case.

F. Legislative framework for regulating and accessing information obtained by the intelligence services

97. The different judgments handed down in the context of the investigations into the attack, in particular the 2004 judgment in the AMIA I trial, and that of 2019 in the AMAI-Cover-up trial, together with Claudio Grossman's report, underline the significant involvement of the SIDE in all the investigations. Indeed, in its October 2016 report on the process for the declassification of confidential and secret information concerning the attack and its cover-up, the UFI AMIA indicated:

The process of declassifying the information generated or gathered by state agencies, and other institutions on the attack on the headquarters of the Israeli Mutual Association (AMIA) and its cover-up is an institutional action that is still not complete despite the passage of 22 years. The attack of July 18, 1994, was initially investigated with the collaboration of the State Intelligence Secretariat (SIDE) with a contribution from foreign services. Indeed, even today, the Federal Intelligence Agency (AFI), which replaced the SIDE, continues to collaborate, although less actively, on some specific aspects of the investigation. For this reason, much of the information on the attack and its cover-up was not available to the parties and, initially, they were unable to examine it.¹²⁴

98. Consequently, the Court must examine the legislative framework that regulated SIDE activities, and its evolution over time.

99. At the time of the attack, SIDE activities were regulated by Law No. 20,195 of February 28, 1973, which established the following in relation to access to information:

ARTICLE 10. All the activities of the State Information Secretariat, as well as its organization, functions and documentation, shall be classified as "Top Secret and Confidential" in the interests of national security and, for criminal effects, the provisions of the Criminal Code of the Argentine Nation concerning "Violation of Secrets" shall apply.

The State Information Secretariat shall determine the cases in which the preceding classification needs to be modified, based on the regulations that will be issued in due course.

100. This law was replaced by Law No. 25,520, National Intelligence Law of November 27, 2001. On this same issue, it stipulated that:

ARTICLE 16. The intelligence activities, the personnel assigned to them, the documentation and the databases of the intelligence agencies shall bear the security classification that is appropriate for the interests of domestic security, national defense, and the foreign affairs of the Nation.

¹²⁴ UFI AMIA, The process for declassification of confidential or secret information relating to the attack and its cover-up, October 2016 (evidence file, folio 8895).

Access to this information shall be authorized in each case by the President of the Nation or the official to whom this authority has been expressly delegated, with the exceptions established by this law.

The classification of the activities, personnel, documentation and databases referred to in the first paragraph of this article shall remain in place even when access to them must be provided to the courts in the context of a specific case or when they are required by the Bicameral Committee to Monitor Intelligence Agencies and Activities.

ARTICLE 17. The members of intelligence agencies, the legislators who are members of the Bicameral Committee to Monitor Intelligence Agencies and Activities and its staff, as well as the judicial authorities, officials and individuals who owing to their function or the specific circumstances have access to the information mentioned in Article 16 of this law, shall be sworn to the strictest secrecy and confidentiality.

The oath of secrecy shall subsist even though the functions due to which the classified information was known have ceased.

The violation of this obligation shall render offenders liable to the sanctions established in Volume II, Title IX, Chapter II, article 222 and/or 223 of the Criminal Code of the Nation, as applicable

ARTICLE 18. When, during the execution of intelligence or counterintelligence activities it shall be necessary to conduct the interception or recording of private communications of any type, the Intelligence Secretariat shall request the pertinent authorization from the court.

This authorization shall be given in writing and shall be substantiated, indicating the precise telephone number or numbers, or electronic addresses, or links to any other medium, whose communications it is intended to intercept or record.

101. Decrees Nos. 786/03¹²⁵ and 787/03¹²⁶ of September 18, 2003, created within the Intelligence Secretariat and in each law enforcement agency, an Information Gathering Unit (URI) to seek, collate and analyze the existing information and communicate its findings to the competent judges.

102. Decree No. 395/15¹²⁷ ordered the declassification of all the documentation that had been forwarded, in custody, by the Intelligence Secretariat to the UFI-AMIA, together with all additional documentation in the files of the former SIDE (now the Federal Intelligence Agency), and all other documentation that had not been opportunely provided to the case and that, at the date of the decree, was held by the Federal Intelligence Agency.

103. In 2015, the reform of the National Intelligence Law incorporated three categories for classifying information:

¹²⁵ Cf. Decree of the National Executive No. 786/03 of September 18, 2003, regarding the investigation of the attacks against the Embassy of the State of Israel and the headquarters of the Argentine-Israeli Mutual Association, available at: <https://www.argentina.gob.ar/normativa/nacional/Decree-786-2003-88546/texto>.

¹²⁶ Cf. Decree of the National Executive No. 787/03 of September 18, 2003, regarding the investigation of the attacks against the Embassy of the State of Israel and the headquarters of the Argentine-Israeli Mutual Association, available at: <https://www.argentina.gob.ar/normativa/nacional/Decree-787-2003-88547/texto>.

¹²⁷ Cf. Decree of the National Executive No. 395/15 of March 13, 2015, on Declassification of documentation, available at: <https://www.argentina.gob.ar/normativa/nacional/Decree-395-2015-244799/texto>.

ARTICLE 16 bis. The following security classifications are established that shall be observed by all the agencies of the National Intelligence System:

- (a) SECRET: Applicable to all information, documentation or material knowledge of which by non-authorized personnel could have a serious impact on the fundamental interests or vital objectives of the Nation, including, sovereignty and territorial integrity; the constitutional order and security of the State; public order and the life of the citizens; the fighting ability or security of the Armed Forces or their allies; the effectiveness or the security of operations of law enforcement agencies; the diplomatic relations of the Nation, and intelligence activities specifically determined and substantiated by the agencies of the National Intelligence System.
- (b) CONFIDENTIAL: Applicable to all information, documentation or material knowledge of which by non-authorized personnel could partially affect the fundamental interests of the Nation or violate functional principles, plans and methods of the branches of government, including, sovereignty and territorial integrity; the constitutional order and security of the State; public order and the life of the citizens; the fighting ability or security of the Armed Forces or of their allies; the effectiveness or the security of operations of law enforcement agencies, and the diplomatic relations of the Nation.
- (c) PUBLIC: Applicable to all documentation whose dissemination is not prejudicial to the agencies of the National Intelligence System and that, owing to its nature, permits dispensing with restrictions that limit disclosure of its contents, without this signifying that it may be disclosed outside the official sphere, unless the responsible authority stipulates this.

104. However, in 2016, the Intelligence Law was amended, returning to the secret regime prior to the 2015 reform.

105. In 2019, following a change in government, the 2015 Intelligence Law was re-established and it was decided to conduct an official audit of the Federal Intelligence Agency (former SIDE). Necessity and Urgency Decree No. 52/2019 of December 20, 2019, stipulated that the auditor should: (a) modify the organic and functional structure of the AFI; (b) modify its system for the use of funds reducing confidential items to the minimum essential for its operation, and (c) transfer to the Chief Cabinet Minister of the Nation the confidential funds that exceeded those necessary for the normal operation of the agency, for their reallocation to other public policies.¹²⁸ Additionally, Decree No. 214/2020 of March 4, 2020, reformed National Intelligence Law No. 25,520, determining that no intelligence agency could conduct repressive actions, possess coercive authority, or execute police or criminal investigation functions.¹²⁹

106. In the context of the case before this Court, by Resolution PGN No. 13/2023 of April 4, 2023, the Public Prosecution Service announced that it had decided to “create, within the AMIA Investigation Unit, a specific department to analyze all the declassified intelligence documentary evidence, and invited the victims, acting as complainants, to take part in the assessment process.”¹³⁰

¹²⁸ Cf. Decree of the National Executive DNU No. 52/2019 of December 20, 2019, ordering the audit of the Federal Intelligence Agency (evidence file, folios 43916 to 43920).

¹²⁹ Cf. Decree No. 214/2020 of March 4, 2020, amending National Intelligence Law No. 25,520 (evidence file, folios 43922 to 43924).

¹³⁰ Resolution PGN No. 13/2023 of the Public Prosecution Service of April 4, 2023 (merits file, folios 704 to 706).

107. A note of September 26, 2023, provided information on coordination between the UEI, the UFI AMIA, and the Federal Intelligence Agency resulting in the transfer and centralization of the documentation relating to the case in offices located in the Palacio Barolo. In this way, the documentation was centralized on the premises of a building attached to the Ministry of Justice and Human Rights, where UFI personnel, within their scope of competence, digitalize and analyze the documentation relating to the AMIA case.¹³¹

VII MERITS

108. This case refers to the international responsibility of Argentina for the violation of the rights established in Articles 4(1), 5(1), 8(1), 13, 24 and 25(1) of the American Convention, in relation to Article 1(1) of the Convention, as well as Article 13 in relation to Article 2 of this instrument, with regard to the terrorist attack perpetrated against the AMIA headquarters in Buenos Aires on July 18, 1994, which caused the death of 85 people and injuries to another 151, and also to the situation of impunity of the facts. Although the State has acknowledged its responsibility for the violation of these rights, in this chapter the Court finds it useful to rule on the violation of: (1) the rights to life, personal integrity and equality; (2) the rights to judicial guarantees and judicial protection; (3) the rights of access to information and to the truth, and (4) the right to personal integrity of the next of kin of the victims of the attack.

VII.1 RIGHTS TO LIFE, PERSONAL INTEGRITY, AND EQUALITY¹³²

A. Arguments of the parties and of the Commission

109. According to the **Commission** the attack against the AMIA headquarters constituted a terrorist act because it involved a violent action that caused the death or injury of dozens of people, resulted in a state of terror and panic in the population due to the method and violence used, represented a threat to the peace and security of society, and was aimed at causing harm to an identity group. It emphasized that the participation of state agents in the actions that violated the rights to life and personal integrity had not been proved. However, it considered that, in this specific case, the Argentine State had not taken reasonable measures to prevent the risk of the terrorist attack on the AMIA with repercussions on the violation of the rights to life, integrity, and equality and non-discrimination.

110. The Commission also noted that the attack on the AMIA had special characteristics because it was a terrorist attack against a site identified with the Argentine Jewish community. Thus, it considered that the terrorist attack also signified a form of discrimination against the victims because they belonged, identified with, or had some connection to the Argentine Jewish community. Consequently, the State's failure to take preventive measures, which gave rise to its international responsibility – even though it has not been proved that this was a deliberate action against the Argentine Jewish community – demonstrate that the State had not taken reasonable measures to protect a group susceptible of suffering a discriminatory attack.

¹³¹ Cf. Note No. 2023.114134741-APN-UIECA#MJ of the National Executive of September 26, 2023 (merits file, folios 735 and 736).

¹³² Articles 4(1), 5(1) and 24 of the Convention in relation to Article 1(1) of this instrument.

111. The **representatives** alleged that the State had not been diligent in adopting measures of prevention even though it had credible information that, following the attack on the Israeli Embassy, a second large-scale event could occur. They argued that the State knew of the risk of a new attack; however, it had not taken any appropriate and effective measure to deactivate the risk. Consequently, they concluded that the State was responsible for the total absence of measures and had therefore failed to comply with its obligation of due diligence to prevent the attack.

112. Regarding the right to equality and non-discrimination, they argued that the attack on the Israeli Embassy had already raised concerns among the Jewish community in Argentina that an act of this type could be repeated. They indicated that the State had not taken into account the special situation of lack of protection and vulnerability of the victims in this case. The State should have developed and applied all domestic and international laws and regulations in order to adopt reasonable, appropriate and effective measures to protect buildings linked to the Jewish community. They considered that there was "an aggravated [*sic*] duty of protection based on the obligations assumed with regard to specific protection for the cultural, linguistic and religious practices of the Jewish community."

113. The **State** reiterated that following Decree No. 812/2005 it had acknowledged its international responsibility due to the violation of the rights to life and personal integrity, in relation to the duty of prevention. Regarding the right to equality and non-discrimination, it indicated that it agreed with the Commission's analysis as regards the discriminatory aspect of the violation of the duty of prevention.

B. Considerations of the Court

B.1. General considerations on the obligation to prevent violations of the rights to life and personal integrity

114. The rights to life and personal integrity, recognized in Articles 4(1) and 5 of the Convention, have a special nature. According to Article 27(2) of this instrument, these rights form part of the non-derogable core of rights because they cannot be suspended in time of war, public danger, or other emergency that threatens the independence or security of a State Party.¹³³

115. This Court has established that compliance with the obligations derived from Articles 4 and 1(1) of the American Convention not only supposes that no one shall be deprived of their life arbitrarily (negative obligation), but also requires States to take all appropriate measures to protect and preserve the right to life (positive obligation),¹³⁴ pursuant to the duty to guarantee the full and free exercise of the rights of all persons subject to their jurisdiction.¹³⁵

116. The obligation to guarantee personal integrity also implies the State's duty to prevent violations of this right. This duty of prevention includes all those legal, political,

¹³³ Cf. *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 82, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012 Series C No. 252, para. 148.

¹³⁴ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of Baptiste et al. v. Haiti. Merits and reparations*. Judgment of September 1, 2023. Series C No. 503, para. 44.

¹³⁵ Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 153, and *Case of Baptiste et al. v. Haiti, supra*, para. 44.

administrative and cultural measures that promote the safeguard of human rights and ensure that possible violations of these rights are truly considered and treated as wrongful acts that, as such, are subject to sanctions for the person committing them. It also includes the obligation to compensate the victims for any detrimental effects. Moreover, it is evident that the obligation of prevention is one of means or conduct and non-compliance is not proved by the mere fact that a right has been violated.¹³⁶

117. This Court has established that the obligation of guarantee contained in Article 1(1) of the American Convention extends beyond the relationship between state agents and individuals subject to the State's jurisdiction and encompasses the duty to prevent, in the private sphere, third parties from violating the protected legal rights.¹³⁷ Nevertheless, the Court has considered that a State cannot be held responsible for every violation of human rights committed within its jurisdiction. The *erga omnes* nature of the treaty-based guarantee obligations of the State does not imply its unlimited responsibility for the acts of third parties. Thus, even though an act, omission or deed of an individual has the legal consequence of violating the rights of another individual, this cannot automatically be attributed to the State; rather, the specific circumstances of the case and the execution of the guarantee obligation must be considered.¹³⁸

118. Accordingly, to assess the State's responsibility in relation to its obligation of guarantee, it is necessary to verify: (1) whether, at the time of the events, there was a situation of real and immediate risk to the life and personal integrity of a specific individual or group of individuals; (2) whether the authorities knew, or should have known of this risk, and (3) whether, despite this knowledge, the competent authorities failed to adopt any measures that were reasonably necessary to prevent or avoid the consequences of that risk.¹³⁹ This verification does not reduce the role played by the knowledge that the state authorities should have of the contextual situation. This contextual knowledge is relevant to assess whether or not a specific act may constitute a real and immediate risk, and whether it should activate the authorities' response to defend the rights to life and personal integrity.¹⁴⁰

119. Consequently, the obligation to respect the rights to life and personal integrity recognized in Articles 4 and 5 of the American Convention entails the duty of States to refrain from acts that lead to their violation either by the direct intervention of their agents, or by the latter's collaboration, support, or acquiescence to others executing acts that violate them. In turn, the obligation to guarantee these rights entails the States' duty to prevent such actions, and to ensure that eventual violations of those rights are effectively considered and dealt with as wrongful acts that, as such, are subject to sanctions for those who commit them, in addition to the obligation to make reparation to the victims for their prejudicial effects.

¹³⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 175, and *Case of Baptiste et al. v. Haiti, supra*, para. 45.

¹³⁷ Cf. *Case of the "Mapiripán Massacre" v. Colombia. Judgment of September 15, 2005. Series C No. 134*, para. 111, and *Case of Baptiste et al. v. Haiti, supra*, para. 46.

¹³⁸ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006. Series C No. 140*, para. 123, and *Case of Baptiste et al. v. Haiti, supra*, para. 46.

¹³⁹ Cf. *Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 123, and *Case of Baptiste et al. v. Haiti, supra*, para. 47.

¹⁴⁰ Cf. *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs. Judgment of November 22, 2016. Series C No. 325*, para. 183, and *Case of Baptiste et al. v. Haiti, supra*, para. 47.

B.2. The duty of prevention in the context of countering terrorism

120. This Court has already emphasized that there is consensus throughout the world and, in particular, in the Americas, regarding “the threat that terrorism poses to democratic values and international peace and security, and [also for ...] the enjoyment of human rights and the fundamental freedoms.”¹⁴¹ Terrorism jeopardizes the rights and freedoms of all persons subject to the jurisdiction of the States Parties to the American Convention. Therefore, Articles 1(1) and 2 of the Convention oblige States Parties to adopt all adequate, necessary and proportionate measures to prevent and, when appropriate, investigate, prosecute and punish this type of act.¹⁴² According to the OAS resolution adopting the Inter-American Convention against Terrorism, “the fight against terrorism must be undertaken with full respect for national and international law, human rights, and democratic institutions, in order to preserve the rule of law, liberties and democratic values in the Hemisphere.”

121. Since 1963, the international community has adopted 19 international instruments on the suppression of terrorist acts.¹⁴³ These treaties emphasize the repression of terrorism and, in general, include provisions that require States parties to codify crimes related to terrorist activities, cooperate to prevent such crimes, and provide mutual assistance in related criminal proceedings.

122. In addition, the United Nations General Assembly has issued resolutions that establish the duty of States to prevent terrorism and in which it “calls upon all States to adopt further measures in accordance with [...] the relevant provisions of international law, including international standards of human rights, to prevent

¹⁴¹ Inter-American Convention against Terrorism, AG/RES. 1840 (XXXII-O/02), adopted at the second plenary session held on June 3, 2002, second and sixth paragraphs of the preamble of the Resolution. Available at: https://www.oas.org/juridico/english/ga02/agres_1840.htm. See also, *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs*. Judgment of May 29, 2014. Series C No. 279, para. 164, and *Case of Pollo Rivera et al. v. Peru. Merits, reparations and costs*. Judgment of October 21, 2016. Series C No. 319, para. 214.

¹⁴² Cf. *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, *supra*, para. 164.

¹⁴³ These are: (1) Convention on Offences and Certain Other Acts committed on Board Aircraft (1963); (2) Convention for the Suppression of Unlawful Seizure of Aircraft (1970); (3) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); (4) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); (5) International Convention against the Taking of Hostages (1979); (6) Convention on the Physical Protection of Nuclear Material (1980); (7) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988); (8) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); (9) and (10) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988) and its 2005 Protocol; (11) Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991); (12) International Convention for the Suppression of Terrorist Bombings (1997); (13) International Convention for the Suppression of the Financing of Terrorism (1999); (14) Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005); (15) Amendment to the Convention on the Physical Protection of Nuclear Material (2005); (16) International Convention for the Suppression of Acts of Nuclear Terrorism (2005); (17) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (2010); (18) Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (2010); (19) Protocol to amend the Convention on Offences and Certain Other Acts committed on Board Aircraft (2014). Argentina has ratified all these instruments, with the exception of the 2005 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, and the Protocol to amend the Convention on Offences and Certain Other Acts committed on Board Aircraft.

terrorism and to strengthen international cooperation in combating terrorism.”¹⁴⁴ Similarly, in 2006, the United Nations Global Counter-Terrorism Strategy was adopted with its plan of action. This strategy is composed of four pillars, namely: (1) Measures to address the conditions conducive to the spread of terrorism; (2) Measures to prevent and combat terrorism; (3) Measures to build States’ capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard, and (4) Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism. In particular, point 18 of the second pillar establishes that States resolve “[t]o step up all efforts to improve the security and protection of particularly vulnerable targets, such as infrastructure and public places, as well as the response to terrorist attacks and other disasters, in particular in the area of civil protection, while recognizing that States may require assistance to this effect.”¹⁴⁵ In his 2023 report to the General Assembly on “Terrorism and Human Rights,” the United Nations Secretary-General indicated that “States are obliged to take adequate preventive measures in order to protect individuals against acts of terrorism, including against reasonably foreseen threats to human rights, including the rights to life and security, posed by terrorist groups.”¹⁴⁶

123. In 2005, the United Nations Human Right Council decided to appoint a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. In his 2012 report, Ben Emmerson, the Special Rapporteur at the time, established a method for analyzing the State duty of prevention based on the case law of the European Court of Human Rights (ECHR) in the case of *Osman v. The United Kingdom*. In this regard, he indicated:

The right to life under article 6 of the Covenant cannot be construed in such a way as to place States in the position of guarantor against every terrorist threat, as this would impose a disproportionate burden on the authorities. However, in certain defined circumstances, public officials can come under a positive obligation to take operational measures to prevent a terrorist act from occurring. For such a positive operational obligation to arise, it must be established that (i) the authorities knew or ought to have known of (ii) the existence, at the relevant time, of a real and immediate (iii) risk to the life of an identified individual or group of individuals within its jurisdiction due to (iv) criminal acts of a third party, and that they failed to (v) take measures within the scope of their legal powers and available resources, and in conformity with their international obligations which, judged objectively and reasonably, might have been expected to avoid that risk.¹⁴⁷

¹⁴⁴ In 1994, the United Nations General Assembly issued the “Declaration on Measures to Eliminate International Terrorism” as an annex to its Resolution 49/60 of December 9, 1994, A/RES/49/60, available at: <https://docs.un.org/en/A/res/49/60>. This Declaration was supplemented by Resolution 51/210 of December 17, 1996, A/RES/51/210, available at: <https://docs.un.org/en/a/res/51/210>, and again in Resolution 59/46, “Measures to eliminate international terrorism,” of December 16, 2004, A/RES/59/46, available at: <https://docs.un.org/en/A/RES/59/46>.

¹⁴⁵ United Nations. General Assembly. United Nations Global Counter-Terrorism Strategy. Resolution 60/288 of September 20, 2006, A/RES/60/288, available at: <https://docs.un.org/en/a/res/60/288>.

¹⁴⁶ United Nations. General Assembly. “Terrorism and Human Rights.” Report of the Secretary-General, A/78/269 of August 2, 2023, available at: <https://docs.un.org/en/A/78/269>.

¹⁴⁷ United Nations. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson. Framework principles for securing the human rights of victims of terrorism, A/HRC/20/14, June 4, 2012, para. 20 available at: <https://docs.un.org/en/A/HRC/20/14>. Regarding this method, expert witness Martin Scheinin, who was also a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, indicated that some of its points do not include all types of terrorist attacks. In

124. At the regional level, in 2002, the Committee of Ministers of the Council of Europe issued its Guidelines on human rights and the fight against terrorism. Article I establishes that "States are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life."¹⁴⁸ Also, on May 16, 2005, the Council of Europe's Convention for the Prevention of Terrorism was adopted and, in its Article 3(1), it establishes the obligation of each Party to "take appropriate measures, particularly in the field of training of law enforcement authorities and other bodies, and in the fields of education, culture, information, media and public awareness raising, with a view to preventing terrorist offences and their negative effects while respecting human rights obligations [...]."¹⁴⁹

125. Meanwhile, the European Court of Human Rights, in the case of *Tagayeva and Others v. Russia*, which relates to a hostage-taking situation in a school in North Ossetia, established the responsibility of the State for the violation of Article 2 (right to life) because it had failed to take adequate measures of prevention to address the risk of a terrorist attack. The European Court considered that the authorities had sufficient specific information indicating that a terrorist attack against an educational establishment in the region was being planned. Nevertheless, they failed to take adequate measures to prevent the terrorists meeting up and preparing the attack, or to prevent their movements on the day of the attack. Measures of security in the school were not increased, and neither its staff nor the public were warned of the threat. Regarding the violation of Article 2 it indicated:

Turning to the question of positive obligation, the Court reiterates that Article 2 of the Convention may imply a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. For the Court to find a violation of the positive obligation to protect life, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of identified individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Such a positive obligation may apply not only to situations concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, but also in cases raising the obligation to afford general protection to society.¹⁵⁰

126. In 1999, the African Union adopted the Convention on the Prevention and Combatting of Terrorism which emphasized the need to "establish criminal offences for terrorist acts [...] and make such acts punishable by appropriate penalties," and the

particular, he found that the criterion that, at the relevant time, there is "a real and immediate risk," was "unnecessarily limited and partial if the intention is to present general evidence of the State's obligation of prevention in relation to terrorist acts." As an alternative, he proposed the following wording: "the existence of a known vulnerability to specific methods whose planning or use in terrorist attacks is recognized." Cf. Expert opinion provided by Martin Scheinin, (evidence file, folio 45176).

¹⁴⁸ Council of Europe. Committee of Ministers. Guidelines on human rights and the fight against terrorism, July 11, 2002. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805_e1e95.

¹⁴⁹ Council of Europe. Convention for the Prevention of Terrorism. Signed at Warsaw on May 16, 2005. Available at: [https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:22018A0622\(01\)&from=ES](https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:22018A0622(01)&from=ES).

¹⁵⁰ Cf. ECHR. *Case of Tagayeva and Others. v. Russia*. Judgment of April 3, 2017, para. 482.

importance of mutual cooperation and assistance in judicial matters.¹⁵¹ Article 3 of its 2004 Protocol establishes the obligation of States Parties to “take all necessary measures to protect the fundamental human rights of their populations against all acts of terrorism.”¹⁵²

127. In addition, in 1971, the inter-American system adopted the Convention to Prevent and Punish the Acts of Terrorism taking the Forms of Crimes against Persons and Related Extortion that are of International Significance. In 1996, the Declaration of Lima to prevent, combat and eliminate terrorism was adopted establishing the need to adopt a new convention on this issue. Accordingly, on June 3, 2002, the Inter-American Convention against Terrorism was adopted, and this was ratified by Argentina on July 18, 2007. The purpose of this treaty is “to prevent, punish and eliminate terrorism” and, to this end, it establishes obligations for States to adapt their domestic laws, adopt measures to combat and eradicate terrorism financing, and establish measures aimed at cooperation and mutual legal assistance, among other matters.

B.3. Application to this specific case

128. As the Commission indicated in its Merits Report, it is not for this Court to make an assessment of the attack on the AMIA headquarters as would a criminal investigation. However, in order to examine the State’s obligation to prevent human rights violations, it must assess this event as a terrorist act, as the State has done in its acknowledgements of responsibility.¹⁵³ Even though, in this specific case, the participation of state agents in the attack that caused the death of 85 people and injured at least 151 more has not been proved, this does not exempt the State from its obligations concerning the duty of prevention in relation to the violation of the rights to life and personal integrity.

129. Indeed, even though States are not responsible for every terrorist act perpetrated by third parties in their jurisdiction, their responsibility may be engaged owing to omissions in the duty of prevention. Consequently, in keeping with the Court’s case law on the State duty of prevention (*supra*, paras. 114 to 119), it is necessary to prove that, in relation to the attack on the AMIA headquarters, the Argentine State: (i) knew or ought to have known of the situation of risk, (ii) and that this situation of

¹⁵¹ Cf. Africa Union. OAU Convention on the Prevention and Combatting of Terrorism, adopted on July 1, 1999. Available at: https://au.int/sites/default/files/treaties/37289-treaty-0020 - oau_convention_on_the_prevention_and_combatting_of_terrorism_f.pdf.

¹⁵² African Union. Protocol to the OAU Convention on the Prevention and Combatting of Terrorism, adopted on July 1, 2004. Available at: https://au.int/sites/default/files/treaties/37291-treaty-0030 - _protocol_to_the_oau_convention_on_the_prevention_and_combatting_of_terrorism_f.pdf

¹⁵³ Thus, in Decree No. 812/2005, the State acknowledged its responsibility “due to its failure to comply with the function of prevention because it had not adopted appropriate and effective measures to prevent the attack, taking into account that two years previously, there had been a terrorist attack on the Israeli Embassy.” Decree No. 812/2005 of July 12, 2005. Official Gazette of the Argentine Republic of July 13, 2005 (evidence file, folios 10772 to 10774). Also, in its answering brief in the proceedings before this Court, it indicated that “the Argentine Republic has strenuously condemned this attack of ‘murderous hate’ that harmed the Jewish community and the whole Argentine Nation [...]. Terrorist acts are a threat to international peace and security, life, peaceful coexistence, democratic stability and consolidation, and the economic and social development of nations. Therefore, as it has continuously and for many years vis-a-vis the whole international community, the Argentine Republic also on this occasion rejects international terrorism in all its forms and manifestations.” Moreover, at the domestic level, the courts classified this act as a crime against humanity. Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 7138).

risk was real and immediate, and (iii) it failed to take the measures that could reasonably be expected to avoid the materialization of that risk.¹⁵⁴

130. Regarding the knowledge of the risk, in its answering brief, the State expressly admitted that it “had not adopted appropriate and effective measures to prevent the attack, taking into account that two years previously there had been a terrorist attack on the Israeli Embassy.” On March 17, 1992, the Israeli Embassy had also suffered a terrorist attack which resulted in the death of 22 people and injured another 350. The attack on a diplomatic mission which had deep-rooted ties to the Jewish community of Buenos Aires suggested that a situation of risk existed for this community and its iconic sites. The building at 633 Pasteur Street housed several emblematic organisations for the Jewish community of Buenos Aires, such as the AMIA and the DAIA, and this made it a potential target. Therefore, following the attack on the Embassy, the State put in place a 24-hour surveillance service for the building at 633 Pasteur Street, thereby acknowledging this situation of risk. Also, it was proved that the SIDE was aware of the possibility of another attack in the country (*supra*, para. 47).

131. Regarding the real and immediate nature of the risk, first, this Court underscores that the State has retained the hypothesis that the same group was involved in both attacks, and it was the object of surveillance measures since at least 1992. Also, throughout the different investigations, a connection was demonstrated between both acts (*supra*, paras. 45 to 47). Moreover, it is clear that, following the attack against the Israeli Embassy, the investigation failed to identify the perpetrators and no one was charged in that case. This failure to investigate and punish those responsible created a situation of impunity and, as a result, an underlying situation of insecurity persisted. As Special Rapporteur Ben Emmerson explained:

Purely *ex post facto* assessments cannot be the sole basis for a finding of State responsibility for a violation of the right to life. They may however be of central importance when relevant authorities are called upon to conduct investigations for the purpose of identifying the lessons learnt from a terrorist incident, so that the authorities may be better able to prevent similar future incidents.¹⁵⁵

132. Additionally, prior to the attack on July 18, 1994, there had been two warning events. First, a Brazilian citizen went to the Argentine Consulate in Milan, Italy, to warn about a woman who had false Argentine identity documents and who had allegedly taken part in the attack on the Israeli Embassy (*supra*, para. 42). This incident demonstrates that there was a real risk because it refers to the possible entry into the territory of an individual with false documentation who was connected to a previous attack. Regarding this episode, the 2004 TOF 3 judgment indicated that the then Director of International Meetings of the SIDE had explained that:

[...] the actions of [W.R.D.S.], prior to the attack could be understood as a “warning by other means,” explaining this as a case in which the Intelligence Service of his country knew that “something was going to happen” in Argentina and, to avoid a formal communication, sent someone to the national Consulate to transmit the

¹⁵⁴ Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra*, para. 120, and *Case of Baptiste et al. v. Haiti*, *supra*, para. 47.

¹⁵⁵ United Nations. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson. Framework principles for securing the human rights of victims of terrorism, A/HRC/20/14, June 4, 2012, para. 22.

warning. He added that [W.R.D.S.] had also advised the Israeli authorities, through the Israeli Consulate in Milan, but they also paid no attention to him.¹⁵⁶

133. Second, on both the day of the attack and the previous day, several people had observed a helicopter flying low over the AMIA headquarters building. This incident revealed an unusual situation involving a building that was being guarded. Accordingly, all these elements contributed to determining the existence of a real and immediate risk or, at least, as described by expert witness Martin Scheinin, "the existence of a known vulnerability to specific methods whose planning or use in terrorist attacks is recognized."¹⁵⁷

134. Regarding whether the State adopted the measures that could reasonably be expected to avoid the materialization of this risk, this Court notes, first, that, following the attack on the Israeli Embassy, no measures were taken to prevent future attacks. In this regard, the 2004 TOF 3 judgment established:

Even though the country had suffered the tragic precedent of the attack on the Israeli Embassy on March 17, 1992, almost all the security officials who intervened in the oral hearing agreed that, following that incident, no measures were adopted to prevent future terrorist attacks, and no agencies were created that were adequately prepared to collaborate in the event of acts of this nature. Furthermore, the objectives set out in Law No. 24,059 which establishes that the internal security system shall "determine security policies and plan, coordinate, direct, control and support the national police effort to comply with those policies" (art. 6), have remained a mere wish list.¹⁵⁸

135. Specifically, regarding the protection of the building located at 633 Pasteur Street, it has been proved that it was under police surveillance. However, this protection was inadequate. First, there was no coordination between the police officers and the building's internal security agents. Also, after July 15, 1994, the patrol car that was guarding the street was out of commission, and its police radio system was inoperative (*supra*, para. 41), which reveals a negligent attitude on the part of the State.

136. In addition, it has been established that the State failed to investigate the information provided by W.R.D.S. or the helicopter overflight. Even though the Court is aware that there is no way of proving that these facts would have been determinant to avert the attack, it should be recalled that the obligation of prevention is an obligation of means and not of results. Consequently, it finds that it has been proved that the State was negligent and did not take reasonable measures to avoid a new attack and to protect a building that was a potential target.

137. Based on the above, and taking into account that the State has acknowledged its responsibility for the violation of Articles 4(1) and 5 of the Convention, this Court concludes that the State knew that a situation of real and immediate risk to the Jewish community existed and failed to take reasonable measures to avoid this risk. Accordingly, it finds that the State violated its obligation of prevention and, therefore,

¹⁵⁶ Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folios 4707 and 4708).

¹⁵⁷ Expert opinion provided by Martin Scheinin (evidence file, folio 45176).

¹⁵⁸ Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folios 4709 and 4710).

it is responsible for violating the rights to life and personal integrity of the victims of the attack established in the lists in Annexes 1 and 2 of this judgment.

138. Regarding the violation of the principle of equality and non-discrimination, in its answering brief, the State indicated that it “agreed with the analysis made by the Inter-American Commission in relation to the discriminatory aspect of the violation of the duty of prevention in this case” and, therefore, acknowledged this violation.

139. Consequently, this Court, based on the State’s acknowledgement of responsibility, declares the violation of the principle of equality and non-discrimination, established in Articles 1(1) and 24 of the Convention, to the detriment of the victims of the attack and their family members identified in the lists in Annexes 1, 2 and 3 of this judgment.

VII.2

RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION¹⁵⁹

A. Arguments of the parties

140. In general, the **Commission** verified that, more than 25 years after the events had occurred, the investigation had produced scant results and both the victims and Argentine society knew little about what happened in the attack on the AMIA and who was responsible. It considered that this was due to the State’s own actions that had contributed to generating multiple factors of impunity. During the first stage of the investigation (from the day of the attack until the TOF 3 judgment of October 29, 2004), the Commission considered that it had been fully proven that the state agencies in charge of the investigation took numerous actions aimed at intentionally obstructing the investigation and the identification of those responsible. It argued that these flaws were especially serious and represented an even greater violation of the rights of the victims to the truth and justice. During the second stage of the investigation, headed by the UFI AMIA from 2004 to date, the Commission also identified a series of acts and omissions that engaged the international responsibility of the State owing to the violation of the duty to investigate what happened with due diligence. It argued that, since the cover-up actions were perpetrated by its own agents, the State had an accentuated obligation to redirect the investigation, and conduct a serious and diligent investigation not only to rectify the irregularities that were committed and punish those responsible, but also to clarify the facts definitively. However, the Argentine State had not only failed to meet this accentuated obligation, but had also incurred international responsibility owing to the lack of due diligence in the investigation.

141. The **representatives** argued that there is still no certainty about what happened and about those who ordered and perpetrated the attack at the local and international level. They indicated that the investigation was not exhaustive and that, despite the different proceedings, the problems continue owing to a slow investigation without any real momentum that is not revealing the truth, or does so very belatedly. Thus, the State continued to incur international responsibility due to the failure to investigate the attack and its cover-up. Numerous factors of impunity continued and this revealed the failure to comply with the obligation of due diligence in the investigation. They added that the investigation was not conducted within a reasonable time. They also considered that, in this case, there had been a lack of impartiality and independence

¹⁵⁹ Articles 8 and 25(1) in relation to Article 1(1) of the American Convention.

that involved not only former Judge Galeano, but also different state officials, in both the process to investigate the attack and in the cases based on the cover-up.

142. The **State** emphasized that it had acknowledged its international responsibility for the violation of the rights to judicial guarantees and judicial protection, and also for the violation of the duty to investigate, pursuant to Decree No. 812/05. It added that the victims of the attack had still not been able to witness the prosecution of those responsible for the attack in a trial held in due and proper form, processed respecting the corresponding judicial guarantees. It added that logical lines of investigation had not been followed up on, and no interest had been shown in examining them further. It also indicated that, during the periods analyzed, the Memoria Activa victims had not had an impartial and independent judge; moreover, they had not been heard with the due guarantees, and did not have an effective remedy to obtain the truth and the punishment of those responsible. Accordingly, it concluded that the State was responsible for the violations recognized in Decree No. 812/05, and alleged by the Commission, Memoria Activa and the CELS.

B. Considerations of the Court

B.1. Access to justice and the duty to investigate

B.1.1. General considerations of the Court on access to justice and the duty to investigate

143. This Court has indicated repeatedly that the right of access to justice should ensure, within a reasonable time, the right of the alleged victims or their families that everything necessary is done to know the truth about what happened, to establish the respective responsibilities, and to punish those responsible.¹⁶⁰ To this end, and pursuant to the American Convention, States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be substantiated pursuant to the rules of due process of law (Article 8(1)), all under the general obligation of those States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).¹⁶¹

144. The Court recalls that the right of access to justice in cases of human rights violations requires that everything necessary is done to reveal the truth of what happened.¹⁶² This Court has also indicated that the duty to investigate is an obligation of means rather than results, which should be assumed by the State as an inherent legal duty and not as a mere formality preordained to be ineffective, nor as a step taken by private interests that depends upon the initiative of the victims or their families, or upon their offer of proof.¹⁶³ Accordingly, the Court has indicated that, for an investigation to be effective pursuant to the Convention, it must be conducted with due diligence, which means that the investigating body must, objectively, take all

¹⁶⁰ Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Rodríguez Pacheco et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2023. Series C No. 504, para. 96.

¹⁶¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 96.

¹⁶² Cf. *Case of Bulacio v. Argentina, supra*, para. 114, and *Case of Leguizamón Zaván et al. v. Paraguay. Merits, reparations and costs*. Judgment of November 15, 2022. Series C No. 473, para. 68.

¹⁶³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Baptiste et al. v. Haiti, supra*, para. 75.

those measures and make all those inquiries necessary to obtain the required result.¹⁶⁴ Therefore, to guarantee the effectiveness of the investigation omissions must be avoided when gathering evidence and following up on logical lines of investigation.¹⁶⁵

145. The Court also emphasizes that, pursuant to the right recognized in Article 8(1) of the American Convention, in relation to Article 1(1) of this instrument, States are obliged to guarantee the right of the victims or their family members to take part at all stages of the respective proceedings, so that they may file motions, receive information, provide evidence, present views and, in sum, assert their rights. The purpose of this participation must be access to justice, knowledge of the truth of what occurred, and provision of fair reparation.¹⁶⁶

B.1.2. The duty to investigate and punish those responsible for terrorist acts

146. Among other measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism, the United Nations Global Counter-Terrorism Strategy establishes the need for States:

To make every effort to develop and maintain an effective and rule of law-based national criminal justice system that can ensure, in accordance with our obligations under international law, that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts is brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms, and that such terrorist acts are established as serious criminal offences in domestic laws and regulations.¹⁶⁷

147. The United Nations has also emphasized the need to support the rights and needs of the victims of terrorism. The Secretary-General's report on progress made by the United Nations system in supporting Member States in assisting victims of terrorism indicated that:

Victims of terrorism require dedicated and targeted support to ensure that their physical, medical and psychosocial needs are met, their human rights are recognized and protected and their access to justice and compensation is guaranteed. They also require assistance to overcome challenges to the fulfilment of those rights and needs that they may face, including a lack of resources, constraints on obtaining access to available services, difficulties posed by cross-border attacks and not being recognized as a victim of terrorism.¹⁶⁸

¹⁶⁴ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of Maidanik et al. v. Uruguay. Merits and reparations*. Judgment of November 15, 2021. Series C No. 444, para. 139.

¹⁶⁵ Cf. *Case of the Serrano Cruz Sisters v. El Salvador, supra*, paras. 88 and 105, and *Case of Guerrero, Molina et al. v. Venezuela. Merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 424, para. 136.

¹⁶⁶ Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 233, and *Case of Members of Chichupac Village and the neighboring communities of the municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 328, para. 230.

¹⁶⁷ United Nations. General Assembly. United Nations Global Counter-Terrorism Strategy. Resolution 60/288 of September 20, 2006, A/RES/60/288, available at: <https://docs.un.org/en/a/res/60/288>.

¹⁶⁸ United Nations. Report of the Secretary-General. Progress made by the United Nations system in supporting Member States in assisting victims of terrorism, A/74/790, April 8, 2020, available at: <https://docs.un.org/en/A/74/790>.

148. In his 2023 report to the General Assembly on "Terrorism and human rights," the Secretary-General also indicated that "States should investigate, prosecute and punish perpetrators of human rights violations and harm caused by non-State entities."¹⁶⁹ Meanwhile, in 2012, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism presented a report containing framework principles for securing the human rights of victims of terrorism. In the report he indicated that:

The State's duty to investigate and prosecute terrorist suspects is directly linked to its obligation to end impunity and prevent future acts of terrorism. Individuals suspected, on objectively reasonable grounds, of having engaged in the incitement, preparation, instigation or commission of terrorist acts should be duly investigated and, if appropriate, prosecuted, convicted and punished according to the ordinary rules of criminal law and procedure, or else extradited to another State to face trial.¹⁷⁰

149. In addition, the Special Rapporteur established a series of minimum requirements for the investigation of terrorist acts. First, he indicated that, once the matter has come to the attention of the authorities, they must act *ex officio* and not wait for a formal complaint lodged by the deceased's next of kin. While there may be obstacles delaying progress in an investigation, it must be carried out with reasonable expedition. In all cases, once an investigation has been opened, the authorities must ensure that the next-of-kin are kept fully informed of its progress, and are provided with an adequate opportunity to participate. The investigation must be capable of leading to the identification and punishment of those responsible. Also, in cases where State responsibility is at issue the investigative authorities must be wholly independent from those potentially implicated. Moreover, there must be a sufficient element of public scrutiny of the investigation and its results to secure public accountability. Likewise, the authorities must have taken reasonable steps to secure and evaluate all potentially relevant evidence. In all cases, investigators must be genuinely impartial and must not harbor preconceptions about the matter they are investigating or the identity of those responsible for any fatalities. Lastly, if the investigation leads to criminal or other judicial proceedings, there must be a possibility for the effective participation of the next-of-kin.¹⁷¹

150. In the regional sphere, Article 15 of the Council of Europe Convention on the Prevention of Terrorism recognizes the obligation of States to investigate the facts of any alleged terrorist act and, as appropriate, prosecute or extradite the alleged perpetrator. In 2017, the Council of Europe adopted the Revised Guidelines on the protection of victims of terrorist acts which establish that States must effectively investigate terrorist acts without delay. In this regard, it established the following criteria for the investigation:

In this framework, special attention should be paid to victims without it being necessary for them to have made a formal complaint.

¹⁶⁹ United Nations. Report of the Secretary-General. Terrorism and Human Rights, August 2, 2023, A/78/269, available at: <https://docs.un.org/en/A/78/269>.

¹⁷⁰ United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson. Framework principles for securing the human rights of victims of terrorism, A/HRC/20/14, June 4, 2012, para. 34.

¹⁷¹ Cf. United Nations. General Assembly. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson. Framework principles for securing the human rights of victims of terrorism, A/HRC/20/14, June 4, 2012, para. 36.

States should ensure that their investigators receive specific victim-sensitive training on the needs of victims.

States should, in accordance with their national legislation, strive to bring individuals suspected of terrorist acts to justice and obtain a decision from a competent, independent and impartial tribunal within a reasonable time.

In cases where, as a result of an investigation, it is decided not to take action to prosecute a suspected perpetrator of a terrorist act, States should ensure that victims are able to ask for a review of this decision by a competent authority.

States should ensure that the position of victims is adequately recognised in criminal proceedings.¹⁷²

151. Additionally, the preamble to the Inter-American Convention against Terrorism reaffirms the need to take effective steps to punish terrorism. Similarly, the Inter-American Commission in its report on Terrorism and Human Rights underscored that "OAS Member States are obliged to guarantee the safety of their populations, which includes taking the measures necessary to investigate, prosecute and punish acts of terrorism."¹⁷³

B.1.3. Application to this specific case

152. The Court recalls that it does not have jurisdiction to determine any individual criminal responsibility that may arise from the facts of this case.¹⁷⁴ Therefore, its analysis will focus on the acts and omissions during the investigation and the criminal proceedings that can be attributed to the State in light of its international obligations concerning access to justice and the duty to investigate serious human rights violations in the context of terrorist acts with due diligence. In particular, regarding the collection and conservation of evidentiary material, this Court recalls that it is within the scope of its competence - coadjuvant and complementary — to review procedures during the domestic investigation,¹⁷⁵ which may lead to determining that there were due diligence shortcomings.¹⁷⁶ However, this is only admissible when there is evidence that the alleged shortcomings could have affected the investigation as a whole, so that "as time passes, the possibility of collecting and presenting evidence to clarify the facts and determine the corresponding responsibilities is unduly limited."¹⁷⁷

153. To determine shortcomings in due diligence, the Court will examine the different actions undertaken throughout the investigations in the AMIA case, dividing these into two stages as proposed by the Commission in its Merits Report. Accordingly, it will

¹⁷² Council of Europe. Steering Committee for Human Rights. Revised Guidelines of the Committee of Ministers on the protection of victims of terrorist acts, Nicosia, May 19, 2017, CM(2017)44-final, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680714acb

¹⁷³ CIDH. Report on Terrorism and Human Rights, October 22, 2002, OEA/Ser.L/V/II.116. Chapter II, para. 32.

¹⁷⁴ Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 37, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 203.

¹⁷⁵ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 222, and *Case of Bedoya Lima et al. v. Colombia. Merits, reparations and costs*. Judgment of August 26, 2021. Series C No. 431, para. 128.

¹⁷⁶ Cf. *Case of Yarce et al. v. Colombia, supra*, para. 282, and *Case of Bedoya Lima et al. v. Colombia, supra*, para. 128.

¹⁷⁷ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 172, and *Case of Bedoya Lima et al. v. Colombia, supra*, para. 128.

examine: (a) the investigation headed by Federal Criminal and Correctional Court No. 9 (from the time of the attack until the 2004 ruling declaring the annulment of the proceedings), and then (b) the actions undertaken in the investigation headed by the UFI AMIA (from 2004 to date).

a) Investigation headed by Federal Criminal and Correctional Court No. 9

154. During this stage, the State used its competence and institutional framework to distort the investigation. Structural problems, a lack of political will, and the duplicitous actions of state agents combined to obstruct the investigation and this has meant that, almost 30 years after the attack, it has been impossible to know the truth about the facts and to punish those responsible.¹⁷⁸

155. The lack of due diligence was such that, in 2004, the TOF 3 declared the annulment of a large part of the investigation.¹⁷⁹ To reveal these serious shortcomings in the obligation to conduct a diligent investigation of an act of terrorism of the scale of the AMIA case, and to demonstrate that the State apparatus itself was used to distort the investigation, the Court will proceed to describe the main investigative procedures that were conducted, without this list being exhaustive.

1. Initial procedures at the scene of the crime

156. The Court underscores that certain police and judicial officials responsible for coordinating the investigation into the attack and who were present at the site of the attack failed to comply satisfactorily with the duty to protect the scene of the crime, collect the evidence found there promptly and adequately, and ensure its chain of custody. In its judgment of May 19, 2006, Division II of the Criminal Cassation Chamber indicated that "the officials who intervened immediately after the explosion failed to cordon off the area in order to control and regulate entrance, egress, and safe transfer of people and objects to and from the site of the attack."¹⁸⁰ It also asserted that the work of searching for, assembling and conserving probative elements at the scene of the crime "was seriously affected by the lack of a coordinated plan [...] to ensure both the integrity and the reliability of elements [...] that could be relevant for the investigation of the attack."¹⁸¹

157. Regarding the discovery of remains of an engine of a Traffic vehicle among the rubble, the TOF 3 annulled the record of its recovery on July 25, 1994, prepared by members of the Firefighters Superintendence of the Argentine Federal Police. In particular, that court reprimanded the police for "not having shown the least interest

¹⁷⁸ In this regard, expert witness Fernando Domínguez indicated: "in addition to the absence of a criminal investigation system that was able to take on the AMIA case, corrupt officials many of whom were incompetent, lack of foresight and professionalism, absence of controls, and different interests in the search for the truth have been revealed. [...] Added to the lack of diligence and professionalism, and the inexistence of a special criminal investigation structure, deliberate actions were taken to distort the investigation." Expert opinion of Fernando Domínguez, (evidence file, folio 45192).

¹⁷⁹ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folios 111 to 4931).

¹⁸⁰ Judgment handed down by Division II of the National Criminal Cassation Chamber on May 19, 2006 (evidence file, folio 5203).

¹⁸¹ Judgment handed down by Division II of the National Criminal Cassation Chamber on May 19, 2006 (evidence file, folio 5209).

[...] in either receiving statements from those who witnessed the discovery of the engine, or conducting a reconstruction or inspection of the site where it was found.”¹⁸²

158. When a terrorist attack of this magnitude occurs, this Court recognizes that, during the initial moments, the priority of the authorities is concentrated on looking for survivors, and it takes into consideration the difficulty of collecting evidence in the context of events of this nature. However, in light of the principle of due diligence, the actions of those officials who failed to reliably document the circumstances in which diverse elements of great relevance for the investigation were found – particularly the parts of the Renault Trafic pickup engine – cannot be justified.

159. The Court has indicated that “the proper handling of the scene of the crime is a starting point for the investigation and, therefore, determinant to clarify the nature, circumstances and characteristics of the crime, as well as the participants in the act.”¹⁸³ According to relevant international standards, the investigators should, as a minimum, photograph this scene and any other physical evidence, and prepare a report describing any examination of the scene, the actions of the investigators, and the location of all the evidence collected.¹⁸⁴ In particular, the Court has emphasized that “it is difficult to rectify such failings in the initial investigation procedures, added to the loss of evidence that becomes irreparable.”¹⁸⁵ The Minnesota Protocol on the Investigation of Potentially Unlawful Death establishes the need to secure the scene of the crime, controlling the entrance and egress of individuals, and restricting access to trained personnel only.¹⁸⁶ Therefore, the Court finds that the State failed to comply with the due diligence required in the initial investigation procedures.

2. Measures taken at the domicile of Carlos Telleldín

160. The inquiries made into the remains of the engine allowed it to be linked to a car dealership and to Carlos Telleldín. Based on the statements made during the oral trial by several SIDE agents, and also police officers of the Department for the Protection of Constitutional Order of the Argentine Federal Police (DPOC), the TOF 3 reached the conclusion that, on July 26 and 27, personnel from those two agencies took “a series

¹⁸² Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folio 2788).

¹⁸³ *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 283, para. 209, and *Case of Velásquez Paiz et al. v. Guatemala.* Preliminary objections, merits, reparations and costs. Judgment of November 19, 2015. Series C No. 307, para. 152.

¹⁸⁴ Cf. United Nations. Office of the United Nations High Commissioner for Human Rights. Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) para. 65: “Every stage of evidence recovery, storage, transportation and forensic analysis, from crime scene to court and through to the end of the judicial processes, should be effectively recorded to ensure the integrity of the evidence. This is often referred to as the “chain of evidence” or “chain of custody.” Chain of custody is a legal, evidentiary concept requiring that any prospective item of evidence be conclusively documented in order to be eligible for admission as evidence in a legal proceeding. This includes the identity and sequence of all persons who possessed that item from the time of its acquisition by officials to its presentation in court. Any gaps in that chain of possession or custody can prevent the introduction of the item as evidence against a criminal defendant. Evidential material should be transported in a manner that protects it from manipulation, degradation and cross-contamination with other evidence.” On this point, see for example, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 305.

¹⁸⁵ *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 201.

¹⁸⁶ Cf. United Nations. Office of the United Nations High Commissioner for Human Rights. Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), para. 59.

of measures that were not included in the case file to identify Carlos Alberto Telleldín and to covertly obtain information on his movements and surroundings; all of this in the context of irregular negotiations between the investigating agencies – the State Intelligence Secretariat and the Argentine Federal Police – and relatives of the individual who had emerged as the main suspect in this serious incident.¹⁸⁷ Thus, Carlos Telleldín's domicile was searched without a court order. The police officers spent almost two days at the domicile, waiting for the arrest of Carlos Telleldín at the airport on his return from a trip. However, there is no record of these operations in the file.

161. According to the TOF 3 "[t]he informal raid carried out by the intelligence officials in the accused's domicile impaired the preservation of the probative elements there, thus invalidating the procedure that was subsequently conducted, converting it into a complete fiction."¹⁸⁸ On this point, this Court underscores that there is a failure to comply with the duty of due diligence when documentary evidence relevant for determining the facts is not preserved correctly because this has a direct impact on the success of the investigations.

3. Measures taken in the context of the "Syrian lead"

162. This lead stemmed from telephone calls between Carlos Telleldín and the phone number of a company belonging to A.K.E., some days before the attack. Also, according to the TOF 2 judgment of May 2, 2019, on the same day as the attack, the investigators had verified that, a few minutes before the explosion, "an employee of the company, Cascotera Santa Rita, owner by N.H., left a dumpster in front of the AMIA-DAIA headquarters and took away another dumpster stationed there to a domicile located at 2657 Constitution Street [...]."¹⁸⁹ A.K.E.'s company was domiciled in the same block in which the Cascotera Santa Rita dumpster was deposited. These two facts indicated the possible intervention of A.K.E. in the attack. Consequently, Judge Galeano ordered a telephone interception, with direct monitoring of a series of telephone lines linked to A.K.E., and ordered the Federal Police to proceed to search the domicile at 2695 Constitution Street, and two others located at 2633 and 2745 Constitution Street.¹⁹⁰

163. However, the TOF 2 found that the searches had been conducted successively rather than simultaneously, which prejudiced the success of the measure because the occupants of the second property may have been advised of the operation. That court also established that the police officers failed to search the property located at 2633 Constitution Street without providing any justification.¹⁹¹

164. During this investigation, and at the request of the SIDE, an order was issued for direct monitoring of the interception of three telephone lines. The interceptions were

¹⁸⁷ Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folios 3841 and 3842).

¹⁸⁸ Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folio 3843).

¹⁸⁹ Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 7245).

¹⁹⁰ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 7235).

¹⁹¹ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folios 7274 and 7275).

carried out on July 29 and 30, 1994.¹⁹² According to the laws and practice in force at the time, SIDE agents were in charge of both deciding how to intercept communications, and also monitoring the conversations directly and recording them on different devices.¹⁹³ However, Judge Galeano annulled these three interceptions at the request of the Secretary and Under-Secretary of Intelligence of the Nation. Consequently, the TOF 2 concluded that it was "inadmissible to conclude that the result of the telephone monitoring had no informative value without have made the corresponding analysis, which can be explained by the intention to deliberately obstruct and prejudice the line of investigation of A.K.E. by the auxiliary agents of justice, with the deliberate acquiescence of the judge of the case."¹⁹⁴ Furthermore, the tapes resulting from these interceptions,¹⁹⁵ and their transcripts subsequently disappeared from his custody.¹⁹⁶

165. In the opinion of the TOF 2, former Judge Galeano thereby avoided "producing all the evidence intended to clarify the responsibility of [A.K.E.] in the attack, a situation that meant that probative elements were lost which should have been produced immediately, and that were difficult to obtain with the passage of time, and this made it difficult to discover the truth."¹⁹⁷ That court also indicated that "during the first months of 1997, [...] in relation to [A.K.E.], the proceedings were almost at a standstill, not for lack of material, but rather due to the inaction of the judge."¹⁹⁸

166. The TOF 2 judgment of 2019 also reveals that the SIDE suspected that M.R. might be involved in both the attack on the Israeli Embassy and the attack on the AMIA headquarters.¹⁹⁹ However, this line of investigation was ignored by Judge Galeano and deliberately abandoned.²⁰⁰ Also, following the attack, M.R. was able to leave the country without any problem.²⁰¹ As a result of these stratagems, the investigation remained incomplete and it was not possible to further examine the links to M.R.

¹⁹² Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folios 7236 to 7238).

¹⁹³ Cf. Decree No. 1801/92 of September 29, 1992. Available at: <http://mepriv.mecon.gov.ar/Normas/1801-92.htm>.

¹⁹⁴ Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folios 7293 and 7294).

¹⁹⁵ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folios 7302 to 7311).

¹⁹⁶ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 7301).

¹⁹⁷ Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folios 7311 and 7312).

¹⁹⁸ Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 7344).

¹⁹⁹ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folios 7251 and 7252).

²⁰⁰ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folios 7344 and 7345).

²⁰¹ Cf. Report. Observation of Dean Claudio Grossman, International Observer of the Inter-American Commission on Human Rights at the Trial concerning the Argentine-Israeli Mutual Association (AMIA), February 22, 2004 (evidence file, folio 10).

167. To the contrary, investigations should be aimed at exploring all possible investigative lines that could permit identifying the perpetrators of a crime, and their subsequent prosecution and punishment.²⁰² Therefore, bearing in mind the evident omissions and the lack of due diligence in the custody of the evidence, the Court finds that the State failed to comply with its duty to investigate the facts seriously and exhaustively in order to discover the truth about the events.

4. *Actions of Judge Galeano in relation to the accused Telleldín*

168. During the first stage of the investigation, Carlos Telleldín was the only person accused of having had some degree of participation in the attack. While he was detained, he had a series of informal meetings with H.P.V., a retired officer of the Argentine Army, D.R.R., a SIDE agent, and Judge L.R.A. (*supra*, para. 65). The TOF 3 and 2 considered it proved that the actions of H.P.V., D.R.R. and L.R.A. signified “informal covert activities by the State to obtain a statement from Carlos Telleldín.”²⁰³

169. Furthermore, it was subsequently proved that Carlos Telleldín had received a sum of money from then Judge Galeano in exchange for implicating a group of police officers in the acquisition of the vehicle with which the attack was committed. Based on the witness statements provided by diverse authorities and SIDE agents in the oral trial held before the TOF 3, it was established that Carlos Telleldín, through his partner, had received the sum of 400,000 dollars from confidential funds entrusted to the State Intelligence Secretariat.²⁰⁴ Following this payment, the accused Telleldín gave a new preliminary statement on July 5, 1996, indicating that, on July 10, 1994, he had handed over the Trafic pickup to members of the province of Buenos Aires Police.²⁰⁵ The detention of four Buenos Aires police officers was based on this statement.

170. Consequently, at this stage, it was considered that two critical acts had been proved that distorted the investigation into the attack. First, the meetings between Carlos Telleldín and several individuals who were not involved in the preliminary investigation. The TOF 3 and 2 established that the purpose of those meetings was to pave the way for Carlos Telleldín to provide a statement which would allow the hypothesis implicating certain agents of the province of Buenos Aires Police in the preparation of the attack to be included in the investigation.²⁰⁶

171. Second, after several years of investigations, it was proved that Carlos Telleldín’s statement implicating the Buenos Aires police officers was obtained following a payment of 400,000 dollars from the confidential funds of the SIDE, an agency that was playing an active role at this stage of the investigation under then Judge Galeano.

²⁰² Cf. *Mutatis mutandi*, *Case of Myrna Mack Chang v. Guatemala*, *supra*, para. 277, and *Case of Tabares Toro et al. v. Colombia*, *supra*, para. 131.

²⁰³ Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folio 3147).

²⁰⁴ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folio 3243).

²⁰⁵ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 7474).

²⁰⁶ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folios 3157 to 3159).

The payment was only possible owing to the discretionary authority of the head of the State Intelligence Service to administer and apply confidential funds.²⁰⁷

172. From the time of this preliminary statement and up until 2004, the investigation headed by then Judge Galeano was focused only on the hypothesis of the so-called “local connection” based on the actions of Carlos Telleldín and the alleged involvement of the Buenos Aires police agents. This hypothesis was maintained to the point of bringing the case to an oral trial. Thus, for more than 10 years, the investigation was focused on an investigative line that had been deliberately fabricated by state agents, and this prevented examining other lines of investigation in greater detail, impeding the clarification of the attack in the years directly following its perpetration.

5. Conclusion regarding the first stage of the investigation

173. Based on the above, the Court concludes that, at this stage of the investigation, a series of irregularities occurred when conducting essential measures, and some lines of investigation were deliberately abandoned. In addition, it was proved that state agents – judges, and police and security agency personnel – coordinated actions to establish an accusatory hypothesis without any factual support, and this facilitated the cover-up of those really responsible for the attacks, impeding a diligent investigation that would have allowed the victims and society as a whole to know the truth about the events, and the punishment of those responsible.

174. Consequently, and taking into consideration the State’s wide-ranging acknowledgement of responsibility, the Court finds Argentina responsible for violating the rights to judicial guarantees and judicial protection, established in Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of this instrument.

b) Investigation headed by the UFI AMIA

175. On December 3, 2003, the Appellate Chamber decided to remove then Judge Galeano from hearing the part of the investigation into the attack that he was still in charge of, as well as from any other investigations related to this.²⁰⁸ Consequently, the judicial investigation was entrusted to Federal Court No. 6 under Judge Rodolfo Canicoba Corral. In February 2005, and following the TOF 3 judgment that annulled the charges against the Buenos Aires police agents as part of the local connection of the attack, Judge Canicoba Corral delegated the preliminary investigation of all aspects of the AMIA case to the UFI AMIA.

176. Based on the facts established in the preceding section, at the first stage the investigation was deliberately obstructed by an action of the State. Therefore, at this second stage, the State had a two-fold obligation: to undertake a diligent investigation into the attack, and to investigate and punish those responsible for the cover-up and the irregularities at the first stage of the investigation.

²⁰⁷ Article 9 of Law 20,195 of February 28, 1973. Accessible at: <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=119720>. Currently abrogated.

²⁰⁸ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folios 3047 and 3085).

1. *The UFI AMIA investigation reports*

177. From 2005 to 2015, the investigative activities of the UFI AMIA were essentially described in two reports issued in 2006 and 2009. When it assumed the investigation, the UFI AMIA had to contend with a significant volume of scattered information that needed to be sorted and systematized.²⁰⁹

178. In the first report, dated October 25, 2006, prosecutors Nisman and Martínez Burgos set out diverse arguments that had allowed them to reach the conclusion that “the attack perpetrated [...] against the AMIA headquarters was executed by the Lebanese terrorist organization, Hezbollah, at the behest of the supreme authorities of the government of the Islamic Republic of Iran at the time, and with the participation, at the local level, of Iranian diplomatic officials accredited to the country.”²¹⁰ In the same October 2006 report, the prosecutors asserted that the Renault Trafic pickup loaded with explosive that blew up in front of the AMIA building was driven by a suicide bomber, who was a Hezbollah militant of Lebanese nationality called I.H.B.²¹¹ He had been recruited by Hezbollah and then transferred to the triple border region between Argentina, Paraguay and Brazil, from where he had entered Argentine territory secretly with the help of sympathizers with that organization residing in the region.²¹²

179. They therefore asked the judge to issue an arrest warrant for a group of current and former public officials of the Islamic Republic of Iran, and for members of Hezbollah, in order to receive their preliminary statements pursuant to Argentine criminal procedural norms. In November 2007, and in the absence of judicial cooperation by the States in whose territory the accused were presumed to be residing, INTERPOL issued a red notice with regard to six of the eight individuals.²¹³ At the date of deliberation of this judgment, the red notices remain in force, with the exception of one corresponding to one of the accused, a Lebanese national, who died in 2008.²¹⁴

180. The second report of the UFI AMIA, dated May 20, 2009, focused on the charges filed against an individual called S.S.E.R. In the prosecutors’ opinion, this was the person who, from his place of residence in the triple border region, had “coordinated

²⁰⁹ The 2006 Report establishes that: “To give an approximate idea of the size and complexity of the case when the transfer of the proceedings ordered by the judge was executed, it can be indicated that, only in relation to the main body of proceedings, the investigation was contained in around 113,600 pages distributed in 568 files of 200 pages each, to which should be added more than 400 investigation bundles with different degrees of complexity, based on many other leads that have arisen during the investigation, and a considerable amount of annexed documentation that was incorporated into the case throughout the years, and which includes, for example, nearly 1,000 packages – of 7 or 8 court bundles each – with phone interception transcripts and approximately 1,500 files with information gathered by the former State Intelligence Secretariat (today the Intelligence Secretariat attached to the Presidency of the Nation), whose declassification and availability to the undersigned, as will be recalled, was opportunely ordered by the President of the Nation.” UFI AMIA, Report of Prosecutors Alberto Nisman and Marcel Martínez Burgos on October 25, 2006 (evidence file, folio 5319).

²¹⁰ UFI AMIA. Report issued by the prosecutors Alberto Nisman and Marcelo Martínez Burgos on October 25, 2006 (evidence file, folio 6098 and 6099).

²¹¹ Cf. UFI AMIA. Report issued by the prosecutors Alberto Nisman and Marcelo Martínez Burgos on October 25, 2006 (evidence file, folio 6009).

²¹² Cf. UFI AMIA. Report issued by the prosecutors Alberto Nisman and Marcelo Martínez Burgos on October 25, 2006 (evidence file, folios 6016 to 6023).

²¹³ Cf. UFI AMIA Activities Report. December 2016 (evidence file, folio 6738).

²¹⁴ Cf. UFI AMIA Activities Report. December 2016 (evidence file, folio 6741).

the arrival and departure, the logistics, and other activities of the task force responsible for executing the final stage of the attack.”²¹⁵ The respective judge issued an international arrest warrant and INTERPOL issued a red notice that is also in force at this time.²¹⁶ Following this report, no new reports were issued until 2015.

181. Starting in 2015, the team of prosecutors who assumed the leadership of the UFI AMIA took diverse measures, which were revealed to the family members and to public opinion by a series of bi-annual activities reports. According to these reports, the UFI AMIA was focused on the task of substantiating and strengthening the accusatory hypothesis described in its 2006 and 2009 reports, without discarding “the processing of other lines, not necessarily consistent with that thesis.”²¹⁷

182. In July 2016, the UFI AMIA reported that some of its efforts were focused on the genetic verification of the identity of I.H.B., the alleged driver of the Renault Trafic vehicle. The UFI AMIA also reported on the creation of the Special Documentary Review and Analysis Group (GERAD) to identify the relevant documentation for investigating the attack and, additionally, to guarantee its analysis and its accessibility to the parties to the proceedings.²¹⁸ The UFI AMIA also advised that it had initiated efforts to synthesize and systematize the evidence, to organize the volumes of information on the case, to process and regularize the confidential court bundles annexed to the principal case, and to explore channels for international cooperation and for maintaining the international arrest warrants, among other matters.²¹⁹

183. Publication of the UFI AMIA activities reports was discontinued in December 2017. Over the following years, various changes occurred in the composition of the UFI AMIA management team (*supra*, paras. 51 and 52) and it was not until 2022 that it presented another report. However, that report did not reveal any significant progress in the investigation since 2017.

184. The Court notes that, despite the efforts made to rectify the lack of due diligence recorded at the first stage of the investigation, the failure by the UFI AMIA to provide momentum to the investigation can still be noted. It was only over the period between 2015 and 2017 that reports were published revealing that progress had been made in the investigation. To the contrary, between 2009 and 2015, and 2017 and 2022, no reports were published, and this also preventing the victims from learning about any advances in the investigation.

185. Additionally, at this stage, grave errors in the handling of the evidence and, in general, a series of difficulties to move the investigation forward can be noted, and these are described below.

*2. Regarding the conservation and handling of the organic material
that was part of the investigation, and its use as evidence*

186. In the activities report of July 2016, the UFI AMIA recounted that the team of prosecutors that assumed the leadership of the investigation in February 2015 had

²¹⁵ UFI AMIA. Report issued by the UFI AMI prosecutors on May 20, 2009 (evidence file, folio 6763).

²¹⁶ Cf. UFI AMIA Activities Report. December 2016 (evidence file, folio 6738).

²¹⁷ UFI AMIA Activities Report. July, 2016 (evidence file, folio 6869).

²¹⁸ Cf. UFI AMIA Activities Report. July, 2016 (evidence file, folios 6873 and 6874).

²¹⁹ Cf. UFI AMIA Activities Report. July, 2016 (evidence file, folios 6876 to 6890).

proceeded, first, to inspect the Judicial Morgue “to personally verify all the organic and other material available to the investigation.” As a result of this inspection, the prosecutors ordered the preparation of “a meticulous inventory of the organic material kept in the morgue and verification of the conditions for its conservation and safeguard” in order “to determine precisely the number and quality of the samples obtained from the autopsies to establish whether they were suitable for an eventual analysis.”²²⁰

187. In addition, on September 8, 2016, the Chemical Laboratory Division of the Argentine Federal Police informed the UFI AMIA that elements connected to the investigation were present in their offices, including a red bucket with organic remains of victims that had been preserved in a freezer. The UFI AMIA indicated in its activities report that these remains were frozen tissue fragments.²²¹ These probative elements had not been inventoried previously and had been in the laboratory of the Argentine Federal Police since August 1994.

188. In complex cases, such as the attack on the AMIA, all the protocols for the conservation, recording, and examination of evidence must be followed. This Court has already indicated that the State has the obligation to ensure that probative material is recovered and preserved rigorously by competent professionals, using adequate procedures.²²² In the instant case, the Court notes with concern that it was not until 2015, more than 20 years after the facts, that a complete inventory of the forensic evidence was ordered. It also notes that the material collected was handled negligently because human remains were found in a bucket in a freezer in a forensic laboratory, without any identification. The authorities had held those remains since 1994. Even though the line followed by the UFI AMIA as of 2015 reveals positive results, in the sense that genetic testing of the remains enabled several investigative leads to be followed, the delay of more than 20 years in conducting those tests was unjustified and, therefore, the Court finds that this conduct constitutes non-compliance with the State’s duty to act with due diligence in the investigation of the facts.

3. *Identification of the driver of the car bomb*

189. From the very start of the investigation, the working hypothesis was that the attack had been caused by the detonation of an explosive charge placed in a Renault Trafic pickup. The TOF reached this conclusion in its 2004 judgment.²²³ In their 2006 Report, the UFI AMIA indicated that, owing to intelligence information and the statements of anonymous witnesses, they had evidence that a Lebanese citizen called I.H.B. was the driver of the vehicle.²²⁴ The report mentioned several measures taken to confirm the identity of the driver, including a witness statement by two brothers of

²²⁰ UFI AMIA Activities Report. July, 2016 (evidence file, folios 6871 and 6872).

²²¹ Cf. UFI AMIA Activities Report. December 2016 (evidence file, folio 6734).

²²² Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of Baptiste et al. v. Haiti, supra*, para. 80.

²²³ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folio 2545).

²²⁴ Cf. UFI AMIA. Report issued by prosecutors Alberto Nisman and Marcelo Martínez Burgos on October 25, 2006 (evidence file, folio 6009).

I.H.B. in the United States,²²⁵ and a comparison between photographs of the suspect and the Identikit reconstructed 72 hours after the attack by a witness who stated that he had seen the driver of the pickup.²²⁶ However, it was not until the December 2017 activities report that the AMIA provided information on the genetic comparison performed between the material found in the forensic laboratory and the profile of one of I.H.B.'s brothers.²²⁷ Even though the sample had been available since the start of the investigation, it was not until more than 22 years later that genetic testing was conducted that finally ruled out the possibility that the sample corresponded to I.H.B.

190. This Court notes that this entire investigative hypothesis was constructed on the basis of intelligence reports. Regarding the use of such sources, Martin Scheinin, in his 2009 report as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, indicated:

States may make use of certain preventive measures like covert surveillance or the interception and monitoring of communications, provided that these are case-specific interferences, on the basis of a warrant issued by a judge on showing of probable cause or reasonable grounds; there must be some factual basis, related to the behaviour of an individual which justifies the suspicion that he may be engaged in preparing a terrorist attack. This preventive, intelligence-led approach seeks to anticipate rather than to circumvent legal proceedings and can be a desirable, reasonable and proportionate method to identify risks or to find out more about suspicions against a terrorist suspect. However, States need to be aware that the first sentence of article 14(1) of the International Covenant on Civil and Political Rights is applicable in any matter dealt with by the judiciary and requires compliance with the basic principles of fair trial.²²⁸

191. Consequently, intelligence reports based on information obtained by anonymous sources, including by judicial officials responsible for the investigation, and from which it is possible to infer certain conclusions supported by presumptions or conjectures, may help guide the investigating authority. However, in circumstances in which it is sought to generate an investigative hypothesis based on such reports as grounds for possible criminal charges, prosecution and conviction, the protection of the sources and the methods used to gather intelligence information must be balanced against the right of the parties to the proceedings to monitor the State's evidence-gathering activities and cross-examine witnesses.²²⁹ Therefore, the State must be very thorough

²²⁵ Cf. UFI AMIA. Report issued by the prosecutors Alberto Nisman and Marcelo Martínez Burgos on October 25, 2006 (evidence file, folio 6031).

²²⁶ Cf. UFI AMIA. Report issued by the prosecutors Alberto Nisman and Marcelo Martínez Burgos on October 25, 2006 (evidence file, folio 6085).

²²⁷ Cf. UFI AMIA. Activities Report. December 2017 (evidence file, folio 40713).

²²⁸ United Nations. Human Rights Council. *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/10/3, February 4, 2009, para. 30, available at: <https://docs.un.org/en/A/HRC/10/3>.

²²⁹ This Court has had occasion to analyze the measures to protect the identity of witnesses. In this respect, it has considered that "among the guarantees recognized to the accused is that of being able to question the witnesses for and against them under the same conditions, in order to exercise their defense. The protection of the identity of a witness limits the exercise of this right because it prevents the defense from posing questions related to the possible enmity, prejudice and trustworthiness of the declarant, as well as others that permit arguing that the statement is false or erroneous." *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra*, para. 242, and *Case of Pollo Rivera et al. v. Peru, supra*, para. 205). Although these measures may be justified in certain exceptional cases, it is necessary to weigh the right to protection of life and safety against the right to a defense.

when undertaking all pertinent probative measures to provide sufficient substantiation to the version of the facts these are intended to support.

192. The Court observes that, in this specific case, more than 10 years passed before the authorities took steps to corroborate the information provided by the intelligence services regarding the identity of the driver of the car bomb; in particular, as regards the possibility of conducting genetic testing to confirm or refute his identity.

193. The Court, based on information provided by the Commission, considers that, in addition to conducting these DNA tests promptly, the authorities in charge of the investigation should have adopted a series of measures diligently and exhaustively in order to collect as much evidence as possible to support the version of the facts described in the intelligence reports. This included requiring the intelligence services to keep a written record of their activities to ensure that such information could constitute evidence in legal proceedings, or to facilitate the implementation of additional judicial measures.²³⁰

194. In this case, the duty to act with due diligence required the State to determine all the measures needed for a prompt and thorough investigation of the hypothesis concerning the identity of the driver of the car bomb by performing all the relevant tests, including the DNA analysis of the unidentified organic material that had been stored. Therefore, the Court again finds that the Argentine State violated the duty to investigate.

4. Determination of the identity of the so-called "victim 85"

195. While rescuing victims and removing rubble, the authorities discovered the body of an individual who could not be identified.²³¹ In its activities report of December 2016, the UFI AMIA indicated that it had verified that, when the autopsy was performed, three phalanges were removed from the body with no record of the fate of this sample. The UFI AMIA added that, years later, the body was placed in the common ossuary of the Chacarita Cemetery. In August 2016, based on the report on the genetic comparison of the organic samples of the victims' bodies obtained by the UFI AMIA, it was possible to establish that the body corresponded to Augusto Daniel Jesús, who was 20 years of age at the time of the attack.²³²

²³⁰ In this regard, Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Relator, has asserted that: "[w]hile intelligence services are ordinarily obliged to delete data that are no longer relevant to their mandate, it is important that this is not to the detriment of the work of oversight bodies or possible legal proceedings. Information held by intelligence services may constitute evidence in legal proceedings with significant implications for the individuals concerned; the availability of such material may be important for guaranteeing due process rights. Therefore, it is good practice for intelligence services to be obliged to retain all records (including original transcripts and operational notes) in cases that may lead to legal proceedings, and that the deletion of any such information be supervised by an external institution [...]." United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight, A/HRC/14/46, May 17, 2010, available at: <https://docs.un.org/en/a/hrc/14/46>.

²³¹ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folios 2482 and 2483).

²³² Cf. UFI AMIA. Activities Report. December 2016 (evidence file, folios 6732 and 6733).

196. This Court notes, once again, that more than 20 years had to pass for the genetic comparison to be performed even though the samples had been available since the start of the investigation.²³³ This lack of due diligence meant that, for more than 20 years, there was uncertainty about the identity of all the victims of the attack.

5. *Investigation into the cover-up of the attack*

197. In this case, it was determined that, to comply with its duty of due diligence, the State should not only have guaranteed the investigation into the attack, but also identified and punished those responsible for the cover-up stratagems that occurred during the first stage of the investigation. This Court has already established that “acts that reveal the obstruction of the administration of justice, such as the alteration or suppression of evidence, increase the diligence with which the State should act in the investigation.”²³⁴

198. The Court has indicated that the right of access to justice in cases of human rights violations must ensure, within a reasonable time, the right of the alleged victims or their family members that everything necessary it done to learn the truth of what happened and to investigate, prosecute and, as appropriate, punish those found responsible.²³⁵ No less important is the fact that, as the Court has indicated, a prolonged delay in the proceedings can, in itself, become a violation of judicial guarantees.²³⁶

199. The Court has established that the assessment of the reasonable time should be examined in each specific case in relation to the total duration of the proceedings, which may also include execution of the final judgment. Thus, it has considered four elements when analyzing whether the guarantee of a reasonable time has been met, namely: (a) the complexity of the matter;²³⁷ (b) the procedural activity of the interested party;²³⁸ (c) the conduct of the judicial authorities,²³⁹ and (d) the effects on

²³³ The Court has indicated that a State may be responsible for failing to order, obtain or assess evidence that would have been of great importance for the due elucidation of the facts. *Cf. Mutatis mutandi, Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 230, and *Case of Barbosa de Souza et al. v. Brazil. Preliminary objections, merits, reparations and costs. Judgment of September 7, 2021. Series C No. 435*, para. 131.

²³⁴ *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs. Judgment of November 14, 2014. Series C No. 287*, para. 499.

²³⁵ *Cf. Case of Bulacio v. Argentina, supra*, para. 114, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 96.

²³⁶ *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs. Judgment of June 21, 2002. Series C No. 94*, para. 145, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 99.

²³⁷ Regarding the analysis of the complexity of the matter, the Court has taken into account, among other criteria, the complexity of the evidence, the diversity of procedural parties or the number of victims, the time that has elapsed since the fact that must be investigated was known, the characteristics of the remedy contained in domestic law, and the context in which the violation occurred. *Cf. Case of Genie Lacayo v. Nicaragua. Preliminary objections. Judgment of January 27, 1995. Series C No. 21*, para. 78, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 100.

²³⁸ Regarding the activity of the party interested in obtaining justice, the Court has taken into consideration whether their procedural conduct has contributed in any way to unduly prolonging the proceedings. *Cf. Case of Cantos v. Argentina. Merits, reparations and costs. Judgment of November 28, 2002. Series C No. 97*, para. 57, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 100.

²³⁹ The Court has understood that, to achieve fully the effectiveness of the judgment, the judicial authorities must act promptly and without delay, because the principle of effective judicial protection

the legal situation of the alleged victim.²⁴⁰ The Court recalls that it is for the State to justify, based on the above criteria, the reasons why the proceedings have lasted more than a reasonable time and, if it does not do so, the Court has broad powers to make its own assessment in this regard.²⁴¹ Also, the Court reiterates that the total duration of the proceedings must be examined, from the first procedural act until the final judgment is delivered, including any appeals that may be filed.²⁴²

200. In this case, the Court notes that, although it concerns a complex matter, several procedural delays occurred that were not due to a lack of procedural activity by the interested parties; to the contrary, they were related to the conduct of the judicial authorities. In particular, in relation to the cover-up stratagems, the relevant facts were subject to judicial verification based on the probative elements produced in the TOF 3 judgment of 2004. Similarly, in the case of the failure to examine the “Syrian lead” in more detail, the probative elements were also present from the start of the investigation into the cover-up. Consequently, the substantiation of the two cases did not call for any significant probative activity because most of the evidence had been available to the courts from the start of the investigation into the attack. Despite this, the Court notes that both cases were only sent to trial in 2015, more than 15 years after the complaint had been filed that originated the investigation into the cover-up. As for the connected cases, “V. et al.” was not sent to trial until 2017 (*supra*, para. 90).

201. The Court also notes – in relation to both investigations – that, from the issue of the respective orders to proceed to trial until the first oral hearing, more than three years passed during which the processing of the case did not make any substantial progress. Indeed, the order to proceed to oral trial for the facts relating to the payment to Carlos Telleldín is dated May 12, 2011, and the order to discontinue the Syrian lead is dated March 30, 2012. However, the first oral hearing only took place in August 2015.²⁴³ Regarding “V. et al.,” the order to proceed to trial was issued in 2017²⁴⁴ and, according to the information submitted by the parties, a decision on the date of the trial remains pending (*supra*, para. 91). In the “Court clerks” case, which was detached from the principal case, following the dismissal of proceedings against the accused in

requires execution procedures be conducted without undue obstruction and delay, in order to achieve their objective in a rapid, simple and comprehensive manner. *Cf. Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of July 5, 2011. Series C No. 228, para. 106, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 100.

²⁴⁰ Regarding the general effects on the legal situation of the alleged victim, the Court has indicated that, to determine whether the time was reasonable, the effects caused by the duration of the proceedings on the legal situation of the individual concerned must be taken into account considering, among other factors, the matter in dispute. *Cf. Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2019. Series C No. 394, para. 148, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 100.

²⁴¹ *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 100.

²⁴² *Cf. Case of Suárez Rosero v. Ecuador. Reparations and costs.* Judgment of January 20, 1999. Series C No. 44, para. 71, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 100.

²⁴³ *Cf.* Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 6901).

²⁴⁴ *Cf.* Order to proceed to trial issued by Judge Sebastián Roberto Ramos on March 23, 2017 (evidence file, folios 42501 to 42531).

the principal case in 2012, the decision of insufficient evidence was revoked in 2016.²⁴⁵ Subsequently, no procedural activity was recorded and, therefore, Memoria Activa and the UEI had to file requests for prompt settlement of the matter in December 2021.²⁴⁶ It was not until May 7, 2022, that the court took the decision to put the accused on trial for less serious offenses, but this decision was revoked on October 14, 2022, ordering a new ruling on the accusation (*supra*, para. 94).

202. In this way, the investigation and prosecution of the cover-up has continued for more than a reasonable time. In the principal case, the oral hearings before the TOF 2 went on for more than three years and six months – the first hearing of the oral trial was held on August 6, 2015, and the verdict was pronounced on February 28, 2019 (*supra*, para. 89). Furthermore, the Court notes that the hearings were held sporadically, at a rhythm of three or four each month and that they were suspended on repeated occasions. In addition, several connected cases are still pending trial.

203. In summary, the Court underscores that the trial stage of the cover-up of the attack continued for more than seven years and the preliminary investigation stage for more than twelve years. In relation to the investigation of the complaint filed by Prosecutor Nisman in January 2015 for the possible crime of cover-up in the context of the signature of the Memorandum of Understanding between Argentina and Iran, no decision has yet been made. Additionally, no final judgments have been delivered in any of the cases, almost 20 years after the 2004 decision by the TOF 3.

204. Based on the above, the Court concludes that the period of more than twenty years for the different criminal proceedings based on the cover-up of the attack on the AMIA, without any firm determination of the responsibility of the different participants, is not compatible with the State's duty to investigate within a reasonable time, and this had resulted in a situation of impunity.

B.1.4. Conclusion on violation of the duty to investigate the attack and its cover-up

205. Based on the foregoing, the Court concludes that the State committed a serious violation of its duty to investigate one of the worst terrorist attacks in the history of the region. The breaches of due diligence involved a mishandling of the probative material and the scene of the crime, and also a flawed execution of the investigation. In addition, a series of subterfuges by state agents were verified that were designed to obstruct the investigation and conceal the true perpetrators who, to date, it has not been possible to identify, prosecute and eventually punish. In view of these concealment stratagems, the State had an additional duty to investigate and punish those responsible for this cover-up, and neither has this duty been executed diligently or within a reasonable time. Consequently, almost 30 years after the attack, there is still no clarity about what occurred, those responsible, or the reasons why the State used its judicial apparatus for a cover-up and to obstruct the investigation. This situation of impunity also contributes to the violation of other rights, such as the right to know the truth, which will be developed below, and facilitates and encourages the repetition of violent acts.

²⁴⁵ Cf. Resolution issued by the Federal Criminal and Correctional Chamber, Division I, on May 7, 2016 (evidence file, folios 42769 to 42790).

²⁴⁶ Cf. Brief of December 2021 requesting prompt settlement of the matter submitted on behalf of complainants Reisfeld and Wassner in case No. 3446/12 (evidence file, folios 44912 and 44913).

206. Therefore, the Court finds the State responsible for the violation of Articles 8 and 25(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the victims of the attack and their family members, listed in the annexes to this judgment.

B.2. Right to an impartial and independent judge

207. The Court reiterates that the right to be tried by an impartial judge or court is a fundamental guarantee of due process. In other words, the person on trial must have the guarantee that the judge or court presiding over his case brings to it the utmost objectivity.²⁴⁷ In this case, the Grossman Report and the judgments of the TOF 3 in 2004 and the TOF 2 in 2019 confirm the lack of impartiality and independence of Judge Galeano, who headed the investigation into the attack during the first stage. Indeed, as Commissioner Grossman summarized in his report:

The judges of the oral court decided that the accusation against the police officers for the attack was a hypothesis developed by Judge Galeano, with the support and collaboration of various officials. The culmination of this hypothesis was the pre-trial statement by Telleldin obtained in exchange for the payment of 400,000 dollars, money provided by the State Intelligence Secretariat at the request of the judge. Throughout the proceedings a series of actions were reported that were aimed at concealing the true origin of the accusation against the police officers and – despite this – at corroborating the lead against the police in the case file.²⁴⁸

208. In this way, and with evidence of the cover-up subterfuge, in its 2004 judgment, the TOF 3 found that the judge's lack of impartiality had been proved, considering that "[t]he whole factual basis for the accusation of homicide attributed to the officials was established maliciously, thereby violating not only the guarantee of impartiality of the judge, but also, as will be seen, the whole list of procedural principles of the existing constitutional hierarchy."²⁴⁹ The court, therefore, declared that Judge Galeano's decision ordering the investigation of the case and all the subsequent actions were null and void, and this resulted in the dismissal of the proceedings against all the accused.²⁵⁰ Judge Galeano was removed in 2005 and, following a lengthy process, in 2019 he was convicted of the crimes of embezzlement, malfeasance in office, aggravated unlawful deprivation of liberty, cover-up for personal benefit, and tampering with the evidence.²⁵¹ Other judicial officials were also charged with contributing to the cover-up; however, their cases – "V. *et al.*" and "Court clerks" – are still being processed (*supra*, paras. 90 to 94). Therefore, this Court underscores that, even though some domestic trials have been held in relation to an impartial judge, these

²⁴⁷ Cf. *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 171, and *Case of Olivera Fuentes v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of February 4, 2023. Series C No. 484, para. 123.

²⁴⁸ Report. Observation of Dean Claudio Grossman, International Observer of the Inter-American Commission on Human Rights at the Trial concerning the Argentine-Israeli Mutual Association (AMIA), February 22, 2004 (evidence file, folio 14).

²⁴⁹ Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004 (evidence file, folio 3055).

²⁵⁰ Cf. Judgment handed down by Federal Oral Criminal Court No. 3 of the Federal Capital on October 29, 2004, operative paragraphs (evidence file, folios 4909 to 4930).

²⁵¹ Cf. Judgment handed down by Federal Oral Criminal Court No. 2 on May 3, 2019, in case No. 1906 - AMIA cover-up (evidence file, folio 7913).

proceedings have not respected a reasonable time and, more than 20 years after the complaint, none of the convictions are final.

209. Judge Galeano's lack of impartiality during the initial stage of the case had serious consequences on the investigation into the attack because, for several years, this focused on a hypothesis developed on the basis of a cover-up subterfuge, disregarding other plausible leads at a crucial moment for the collection of evidence. Therefore, and as a direct result of this lack of impartiality, not a single person has been convicted and there is still no certainty regarding those responsible for the attack. Consequently, the Court finds the State guilty of failing to respect the guarantee of an impartial judge established in Article 8(1) of the Convention.

B.3. General conclusión on this chapter

210. Taking into account all the above, and the State's acknowledgement of responsibility, this Court finds it clear that, during the investigation into the attack and, subsequently, in the investigation of the cover-up stratagem, the State failed to comply with its duty to investigate a serious violation of human rights. This lack of diligence also resulted in an excessive delay in the investigations of the attack and the cover-up. Therefore, it also finds that there was a clear violation of the right to a reasonable time. Additionally, the cover-up subterfuges carried out by then Judge Galeano during the first stage of the investigation, duly verified by the TOF 2 in its judgment of May 3, 2019, also involved a violation of the guarantee of an impartial judge.

211. Based on the foregoing, almost thirty years after the attack, the truth of what happened is still unknown and none of those responsible for the attack or for its cover-up have been punished. Therefore, it has been the actions of the State itself that have prevented the victims and their families from knowing the truth about the facts through an investigation and criminal proceedings. Consequently, the State is responsible for violating the rights of access to justice and judicial guarantees recognized in Articles 8 and 25(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the family members of the victims of the attack listed in Annex 3 to this judgment.

VII.3 RIGHTS OF ACCESS TO INFORMATION²⁵² AND TO THE TRUTH²⁵³

A. Arguments of the parties and of the Commission

212. The **Commission** argued that, from the time of the attack and until the issue of Decree No. 395/2015, the State's legal regime established the classified nature of all the information produced by the SIDE, even the information related to the attack. It indicated that this restriction of the right of access to information was regulated, first, by Law No. 20,195 which established that all activities of the SIDE should be classified in the interests of national security and, later, by Law No. 25,520 which permitted the authorities in charge of judicial investigations to consult such information provided that they respected its confidential nature. The Commission argued that the State had not proved how the confidential nature of the information related to the attack on the AMIA met the objective of safeguarding national security. It indicated that this regulation

²⁵² Article 13 in relation to Articles 1(1) and 2 of the American Convention.

²⁵³ Articles 8, 13 and 25(1) in relation to Articles 1(1) and 2 of the American Convention.

did not allow weighing possible competing interests and, consequently, it was incompatible with the right to seek and receive information recognized in Article 13(1) of the Convention. It added that the alleged victims did not have any administrative or judicial remedies to contest the confidential nature of the information concerning the attack and its subsequent cover-up.

213. The Commission also argued that the State had failed to take appropriate steps to conserve the documentation held by the intelligence services and guarantee that the alleged victims could have adequate access to the information on the attack and its cover-up. It explained that this situation prevented the alleged victims “efficiently accessing the information held by the State, as well as analyzing and assessing the documentation, proposing new evidentiary measures and, in general, evaluating and monitoring the actions of the authorities in charge of the investigation.” Lastly, it considered that, due to the duration of the proceedings, the scant progress in the investigation, and the deliberate concealment of evidence, the State had violated the right to the truth of the alleged victims.

214. The **representatives** reiterated the allegations set out by the Commission. In particular, they argued that declassification had only been partial up until Decrees Nos. 395/2015 and 213/2020, and that problems still remained in relation to the real accessibility of the files linked to the attack on the AMIA. They explained that interpretive problems existed concerning the concept of “absolute declassification,” and that some documents were not included in the declassification process because they were held by other state agencies. They added that they did not have access to the Mossad Report on the attack on the AMIA which had been incorporated into the file on September 1, 2022, and parts of which had been disclosed by the Argentine press. They also argued that the State had violated Article 2 of the Convention because the National Intelligence Law did not establish the mechanisms for incorporating information produced by the intelligence services into court cases that were underway, and it failed to establish a transparent system for the use of confidential funds, or to define a precise procedure for classifying or declassifying intelligence information.

215. They also argued that actions taken by the State to compile and systematize the information on the attack were “extremely limited, deficient and erratic.” They indicated that the information processed by the GERAD had not been communicated to the general public, it did not include intelligence information produced by state agencies other than the AFI (formerly SIDE), and it did not respond to a process of historical reconstruction over and above the court cases being processed. They also argued that, owing to the large number of documents and the lack of technical support, it was complicated for the victims of the attack and their families to consult the declassified information satisfactorily. Lastly, they alleged that “by having delayed, concealed and distorted the investigation so much, it is evident that the State did not guarantee the right to the truth about what happened in the attack.”

216. The **State**, when acknowledging its international responsibility, indicated that there had been “a disproportionate and unjustified restriction *de jure* and *de facto* of specific rights to the truth and to access to public information, with an evident impact on the right to justice.” In particular, it explained that Decrees Nos. 52/2019, 213/2020 and 214/2020 ordered the publication of all the documentation held by state agencies that was linked to the attack on the AMIA, prohibited the participation of intelligence agents as court officers, and made the system of AFI confidential funds more transparent. It also indicated that Law No. 27,126 established different levels of security - “secret,” “confidential,” and “public” - and recognized the authority of the

Executive to declassify information when it considered this convenient for national security. It asserted that the AFI had adopted “General rules for the administrative and financial management of the funds allocated to operational expenses” to regulate the use of confidential funds. The rules established the need to make specific proposals for expenditures and be accountable for them by the presentation of vouchers or sworn statements.

217. It indicated that, since 2015, efforts had been made to provide the alleged victims with real access to the declassified information. It explained that the GERAD had been provided with material resources and physical space to perform its functions. It noted that, on November 10, 2022, the alleged victims had taken part in a working meeting with representatives of the Executive, the AFI, and the UEI-AMIA during which it was agreed that the state agencies “would undertake a thorough review of their files and internal units in order to verify the existence of documentation linked [to the attack].” Lastly, it acknowledged that the procedure to request the declassification of confidential information had not yet been regulated, and that no criminal norm existed that regulated the incorporation of intelligence information into criminal proceedings underway. Nevertheless, it argued that an eventual reform of the intelligence services required a public discussion which was over and above the purpose of the instant case.

B. Considerations of the Court

218. In this case, it has been established that one of the main obstacles to the due investigation of the attack and its cover-up was the manipulation of information resulting from intelligence activities (*supra*, para. 160 to 172). Consequently, the Court must now analyze how the recourse to such actions has affected the alleged victims’ right of access to information, and also their right to the truth. Therefore, after (1) recalling its standards on the right of access to information, the Court will refer (2) to the regulation of State intelligence activities within the framework of human rights and countering terrorism, and (3) the standards on conservation and accessibility of documentation originating from intelligence activities, before (4) applying these to this specific case. Lastly, it will analyze how all these considerations affect the right to the truth (5).

B.1 General considerations on the right of access to information

219. By expressly stipulating the right to seek and to receive information, Article 13 of the Convention protects the right of everyone to request access to the information held by the State, subject to the permitted exceptions indicated in the Convention.²⁵⁴ The Court has recognized the positive obligation of the State to provide requested information, so that the individual may have access to it or receive a reasoned response when, for some motive permitted by the Convention, the State limits access in a specific case.²⁵⁵ The Court also recalls that the right of access to information held by the State has both an individual and a social dimension, in the same way as the

²⁵⁴ Cf. *Case of Claude Reyes et al. v. Chile. Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, para. 77, and *Case of the San Juan Garifuna Community and its members v. Honduras. Preliminary objections, merits, reparations and costs*. Judgment of August 29, 2023. Series C No. 496, para. 123.

²⁵⁵ Cf. *Case of Claude Reyes et al. v. Chile, supra*, para. 77, and *Case of Núñez Naranjo et al. v. Ecuador. Merits, reparations and costs*. Judgment of May 23, 2023. Series C No. 492, para. 111.

right to freedom of thought and expression, which should be guaranteed by the State simultaneously.²⁵⁶

220. In its case law, the Court has emphasized the regional consensus that exists among Member States of the Organization of American States regarding the importance of access to public information. Specifically, protection of the right of access to public information has been the object of resolutions of the OAS General Assembly “urg[ing] Member States to respect and promote respect for everyone’s access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.”²⁵⁷ The OAS General Assembly has also indicated that access to public information is an essential requisite for the functioning of democracy, greater transparency, and good governance and has pointed out that, in a representative and participatory democratic system, the citizenry exercises its constitutional rights by means of broad freedom of expression and free access to information.²⁵⁸

221. Additionally, Article 4 of the Inter-American Democratic Charter stresses the importance of “[t]ransparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press” as essential components of the exercise of democracy.

222. Consequently, State’s actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to the State’s jurisdiction to exercise the democratic control of those actions, and question, investigate and consider whether public functions are being performed adequately.²⁵⁹

²⁵⁶ Cf. *Case of “the Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs*. Judgment of February 5, 2001. Series C No. 73, para. 67, and *Case of Núñez Naranjo et al. v. Ecuador*, *supra*, para. 111.

²⁵⁷ Cf. OAS General Assembly, AG/RES. 2514 (XXXIX-O/09) of June 4, 2009, on “Access to public information: Strengthening democracy,” second operative paragraph. Furthermore, the standards established by the OAS Inter-American Model Law 2.0 on Access to Public Information indicates that any person requesting information from any public authority shall have the following rights: “(a) to be informed whether or not the Public Authority holds documents containing the information requested or from which that information may be derived; (b) if the Public Authority that received the request holds said documents, to be promptly notified accordingly; (c) if said documents are not delivered to the requester, to appeal the failure to deliver the information; (d) to make anonymous requests for information; (e) to request information without having to justify the reasons why it is being sought; (f) to be free from any discrimination that may be based on the nature of the request, and (g) to obtain the information free of charge or at a cost not exceeding the cost to reproduce the documents.” This Model Law “applies to any Public Authority belonging to any branch of government (executive, legislative and judicial) and at all levels of the internal governmental structure (central or federal, regional, provincial or municipal).” Furthermore, the Inter-American Model Law establishes that “[n]o public authority shall be exempt from the requirements established in this law, including the legislative and judicial branch, supervisory institutions, intelligence services, armed forces, police, other security bodies, Heads of State and government, and the divisions thereof.” Cf. Inter-American Model Law 2.0 on Access to Public Information, of the Organization of American States. Document OEA/Ser.D/XIX.12.2020, Articles 2 and 3. Available at: https://www.oas.org/en/sla/dil/docs/publication_InterAmerican_Model_Law_2_0_on_Access_to_Public_Information.pdf.

²⁵⁸ Cf. OAS General Assembly, Resolutions AG/RES. 1932 (XXXIII-O/03) of June 10, 2003; AG/RES. 2057 (XXXIV-O/04) of June 8, 2004; AG/RES. 2121 (XXXV-O/05) of June 7, 2005; AG/RES. 2252 (XXXVI-O/06) of June 6, 2006; AG/RES. 2288 (XXXVII-O/07) of June 5, 2007; AG/RES. 2418 (XXXVIII-O/08) of June 3, 2008, and AG/RES. 2514 (XXXIX-O/09) of June 4, 2009, all on “Access to public information: Strengthening of democracy.”

²⁵⁹ Cf. *Case of Claude Reyes et al. v. Chile*, *supra*, para. 86, and *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 213.

The Court has indicated that, in a democratic society it is essential that the State authorities act in accordance with the principle of maximum disclosure, based on the presumption that all information is accessible, subject to a limited system of exceptions.²⁶⁰

223. This Court has also established that, in cases of human rights violations, state authorities cannot resort to mechanisms such as official secrets or the confidentiality of the information, or reasons of public interest or national security, to refuse to provide the information required by the judicial or administrative authorities in charge of an ongoing investigation or proceeding,²⁶¹ and must include the parties in these administrative and judicial processes. State authorities are obliged to collaborate in the collection of evidence to achieve the objectives of the investigation and to refrain from undertaking actions that obstruct the progress of the investigation.²⁶²

B.2. General considerations on the State's intelligence activities and human rights, in particular in a context of countering terrorism

224. The Court understands the importance of the activities of State intelligence services or agencies, which are needed by civil, police and military authorities whose functions are essential for the protection of society as a whole – and also of individuals and their rights – against the different threats that may arise.²⁶³ Intelligence activities involve numerous tasks, performed using a variety of mechanisms and strategies designed to track, obtain, compile, sort, categorize, process, record, use, evaluate, analyze, interpret, produce, and disseminate different kinds of information, including personal data, which is useful and even essential for those responsible for conducting public affairs and developing security-related policies to be able to make sound, relevant and timely decisions that guarantee the protection of society, individuals and, ultimately, their rights and freedoms.²⁶⁴

225. In his 2009 report to the Human Rights Council, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism emphasized the main function of intelligence agencies in order to counter terrorism. In this regard, he indicated:

²⁶⁰ Cf. *Case of Claude Reyes et al. v. Chile*, *supra*, para. 92, and *OC-23/17*, *supra*, para. 224, and *Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of October 18, 2023. Series C No. 506, footnote 763.

²⁶¹ Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra*, para. 180, and *Case of Flores Bedregal et al. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of October 17, 2022. Series C No. 467, para. 138.

²⁶² Cf. *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168, para. 112, and *Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia*, *supra*, para. 1006.

²⁶³ Cf. *Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia*, *supra*, para. 525.

²⁶⁴ Cf. United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight, A/HRC/14/46, paras. 2 and 6, and Practice 1. See, ECHR, *inter alia*, *Case of Klass et al. v. Germany*, No. 5029/71, Judgment of September 6, 1978, para. 42; *Case of Rotaru v. Romania* [GS], No. 28341/95, Judgment of May 4, 2000, para. 47, and *Case of Segerstedt-Wiberg et al. v. Sweden*, No. 62332/00, Judgment of September 6, 2006, para. 88. See also, *Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia*, *supra*, para. 525.

In general terms the main function of intelligence agencies is to detect potential national security threats, including terrorist threats, by gathering data and information in such a way as not to alert those targeted, through a range of special investigative techniques such as secret surveillance, interception and monitoring of (electronic) communications, secret searches of premises and objects, and the use of infiltrators. These investigative techniques are effective measures that States may utilize to counter international terrorism. Their justification can be seen in the positive obligation of States under international human rights law to take preventive measures in order to protect individuals whose life or security is known or suspected to be at risk from the criminal acts of another individual, including terrorists.²⁶⁵

226. Even though the Court has accepted that States are authorized to conduct intelligence activities,²⁶⁶ it has also identified possible tensions between human rights and the activities of the intelligence services, which – in certain circumstances – are executed in secret to ensure the effective achievement of their objectives. The Court has indicated that the competent public intelligence agencies “must [...] be respectful, at all times, of the fundamental rights of persons” and be “subject to control by civil authorities, including not only those of the executive branch, but also, insofar as pertinent, those of the other public powers.” It added that “[m]easures to control intelligence activities must be especially rigorous because, given the conditions of secrecy under which these activities take place, they can result in the perpetration of human rights violations and unlawful criminal acts.”²⁶⁷

227. Recently, in *Members of the “José Alvear Restrepo” Lawyers Collective v. Colombia*, pursuant to its case law and international standards,²⁶⁸ the Court compiled the

²⁶⁵ United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, February 4, 2009, A/HRC/10/3, para. 26, available at: <https://docs.un.org/en/A/HRC/10/3>.

²⁶⁶ An overview of the domestic regulation of the States that have accepted the contentious jurisdiction of the Inter-American Court reveals the different norms that regulate the competence of certain agencies to undertake intelligence activities: (a) Argentine Republic: National Intelligence Act, Law No. 25,520, article 2 – which will be examined below; (b) Plurinational State of Bolivia: Organic Law of the National Police, Law No. 734, article 23; (c) Federative Republic of Brazil: Law No. 9,883 (Brazilian Intelligence System), article 1; (d) Republic of Chile: Law of the State Intelligence System, Law No. 19,974, article 4; (e) Republic of Colombia: Law No. 1621 of 2013 (statutory law on intelligence and counterintelligence activities) articles 2 and 4; (f) Republic of Costa Rica: General Police Act, Law No. 7,410, article 14; (g) Dominican Republic: Law No. 857 (National Investigations Department), article 1; (h) Republic of Ecuador: Law on State and Public Security, published on September 28, 2009, article 14; (i) Republic of El Salvador: Law on the State Intelligence Agency, Legislative Decree No. 554 of 2001, article 2; (j) Republic of Guatemala: Framework Law for the National Security System, Decree No. 18-2008, articles 23 and 24; (k) Republic of Haiti: Decree of November 25, 2020 (National Intelligence Agency), articles 2 and 5; (l) Republic of Honduras: National Intelligence Act, Decree No. 211-2012, article 2; (m) United Mexican States, National Security Act, published on January 31, 2005, articles 3 and 5; (n) Republic of Nicaragua: Sovereign Security Act of the Republic of Nicaragua, Law No. 919, articles 3 and 4; (ñ) Republic of Panama: Executive Decree No. 98 (Public Security and National Defense Council), article 3; (o) Republic of Paraguay: Law No. 5241 (National Intelligence System), articles 2 and 7; (p) Republic of Peru: Legislative Decree on Strengthening and Modernization of the National Intelligence System, Decree No. 1141, article 2; (q) Republic of Suriname: Constitution of Suriname, article 178 (Police functions), and (r) Oriental Republic of Uruguay: Law No. 19696 (National Intelligence System of the State) article 3.

²⁶⁷ Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra*, para. 284, and *Case of Members of the “José Alvear Restrepo” Lawyers Collective v. Colombia*, *supra*, para. 526.

²⁶⁸ In its judgment, the Court referred to the following instruments of soft law: the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (hereinafter “Johannesburg Principles”); the Tshwane Principles; the Inter-American Model Law 2.0 on Access to Public Information, Doc. OEA/Sec.General, DDI/doc. 3/20, March 18, 2020, which includes as Addendum A the

requirements and criteria to which intelligence activities should be subject in order to guarantee the effective protection of the human rights recognized in the American Convention and reinforce their legitimacy under the democratic system.²⁶⁹

228. First, intelligence services require a legal framework that, as precisely as possible, regulates the reasons determining the need to undertake intelligence activities, defines the content of such activities to avoid their arbitrary exercise, identifies the legitimate objectives of such activities, and stipulates the powers of the competent bodies and authorities that permit their control and the eventual determination of accountability.²⁷⁰

229. Second, intelligence activities should have a legitimate aim,²⁷¹ understood as one that is “necessary in a democratic society.” According to the American Convention, in particular Articles 13, 15, 16 and 22, the following are legitimate aims for the exercise of such activities: (a) the protection of national security; (b) the maintenance of public order; (c) the safeguard of public health, and (d) the protection of human rights.

230. Third, intelligence activities must meet the requirements of suitability, necessity and proportionality;²⁷² in other words, the inter-American jurisdiction must constantly

Inter-American Model Law on Document Management; Updated principles of the Inter-American Juridical Committee on privacy and protection of personal data, with annotations, Doc. OEA/Ser. Q, CJI/doc. 638/21, April 8, 2021; United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight, A/HRC/14/46, May 17, 2010; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40; The right to privacy in the digital age, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/27/37, United Nations General Assembly, Note of the Secretary-General, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, A/69/397.

²⁶⁹ Cf. *Case of Members of the “José Alvear Restrepo” Lawyers Collective v. Colombia*, *supra*, paras. 525 to 565.

²⁷⁰ Cf. United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight, A/HRC/14/46, May 17, 2010, Practices 3 and 4, and United Nations. Human Rights Council. Report of the Office of the United Nations High Commissioner for Human Rights. The right to privacy in the digital age, A/HRC/27/37, June 30, 2014, para. 23, available at: <https://docs.un.org/en/a/HRC/27/37>.

²⁷¹ Cf. United Nations. Human Rights Council. Report of the Office of the United Nations High Commissioner for Human Rights. The right to privacy in the digital age, A/HRC/27/37, June 30, 2014, para. 23. See ECHR, *inter alia*, *Case of Klass et al. v. Germany*, No. 5029/71, Judgment of September 6, 1978, para. 42; *Case of Rotaru v. Romania* [GS], No. 28341/95, Judgment of May 4, 2000, para. 47, and *Case of Big Brother Watch and Others v. The United Kingdom* [GS], No. 58170/13, 62322/14 and 24960/15, Judgment of May 25, 2021, para. 332.

²⁷² Cf. United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin. Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight, A/HRC/14/46, May 17, 2010, Practice 20; United Nations. Human Rights Council. Report of the Office of the United Nations High Commissioner for Human Rights. The right to privacy in the digital age, A/HRC/27/37, June 30, 2014, para. 23; United Nations. Human Rights Council. Report of the Special Rapporteur on the right to privacy, “Right to privacy,” A/HRC/40/63, October 16, 2019, para. 46, available at: <https://docs.un.org/en/A/HRC/40/63> and United Nations. Committee on the Rights of the Child. General Comment No. 25 (2021) on children’s rights in relation to the digital environment, CRC/C/GC/25, March 2,

apply the “proportionality test” when assessing and weighing up any measure that restricts human rights.²⁷³ In particular, it must be proved that: (a) the intelligence actions or operations undertaken are suitable and adequate to comply with the legitimate aim sought; (b) intelligence activities, in general, and the actions or methods used, in particular, must be necessary in the sense that they must be absolutely essential to achieve the objective sought, and that there is no less onerous method – owing to its interference in the rights that may be infringed – among all those other actions or strategies that are equally suitable to achieve the proposed aim, and (c) that intelligence activities are strictly proportionate so that the sacrifice inherent in the restriction of the right concerned is not exaggerated or excessive in relation to the advantages obtained from the said restriction and the achievement of the aim sought.²⁷⁴

231. Lastly, without prejudice to judicial oversight of particular measures or actions in specific situations,²⁷⁵ the legal framework must establish an institution, independent of the intelligence service and the Executive,²⁷⁶ of a parliamentary, administrative or judicial nature that, in addition to having the relevant technical expertise, should be empowered to exercise oversight functions, including complete and direct access to the information and data essential for it to execute its mandate.²⁷⁷

2021, para. 69, available at: <https://docs.un.org/en/crc/c/gc/25>. See also, ECHR, *inter alia*, *Case of Roman Zakharov v. Russia* [GS], No. 47143/06, Judgment of December 4, 2015, para. 236; *Case of Kennedy v. The United Kingdom* No. 26839/05, Judgment of May 18, 2010, para. 155, and *Case of Big Brother Watch and Others v. The United Kingdom* [GS], No. 58170/13, 62322/14 and 24960/15, Judgment of May 25, 2021, para. 334.

²⁷³ The African Court of Human and Peoples’ Rights has also indicated the need to comply with such requirements vis-à-vis measures that restrict rights. *Cf. Case of Ingabire Victoire Umuhoza v. Rwanda*, No. 004/2013, Judgment of December 5, 2014, paras. 126 to 166, and *Case of Lohé Issa Konate v Burkina Faso*, No. 003/2014, Judgment of November 24, 2017, paras. 132 to 163. See also, United Nations. Human Rights Committee. General Comment No. 27: Article 12 (Freedom of Movement), CCPR/C/21/Rev.1/Add.9, November 1, 1999, paras. 11 to 15.

²⁷⁴ *Cf. Inter alia, mutatis mutandis, Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, para. 79; *Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 197; *Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs.* Judgment of January 27, 2009. Series C No. 193, para. 76; *Case of Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 6, 2009. Series C No. 200, para. 129; *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, para. 85; *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra*, para. 164; *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 28, 2018. Series C No. 371, para. 162, and *Case of García Rodríguez et al. v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of January 25, 2023. Series C No. 482, paras. 156 to 158.

²⁷⁵ The European Court of Human Rights has indicated that, in view of their competences and the workload of the courts, “[t]he judge who has issued the surveillance warrant is not in a position to ensure effective oversight,” therefore this judicial “mechanism is insufficient to ensure that surveillance powers are not being abused.” *Cf. ECHR, Case of Ekimdzhev and Others v. Bulgaria*, No. 70078/12, Judgment of April 11, 2022, para. 337, and *Case of Roman Zakharov v. Russia* [GS], No. 47143/06, Judgment of December 4, 2015, para. 274.

²⁷⁶ *Cf. Case of Myrna Mack Chang v. Guatemala, supra*, para. 284, and *Case of Members of the “José Alvear Restrepo” Lawyers Collective v. Colombia, supra*, para. 564.

²⁷⁷ *Cf. United Nations. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/13/37, December 28, 2009, paras. 51 and 62, available at: <https://docs.un.org/en/A/HRC/13/37>; United Nations. Resolution 69/166 adopted by the General Assembly on December 18, 2014. The right to privacy in the digital age, A/RES/69/166, February 10, 2015, para. 4.d, available at:*

B.3. General considerations on the accessibility and conservation of documentation resulting from intelligence activities

232. Access to classified information, its proper storage and conservation, are essential to guarantee the right to the truth (*infra*, paras. 263 to 269) and to combat impunity. In 1997, Louis Joinet, United Nations Special Rapporteur, presented a set of principles to combat impunity,²⁷⁸ which indicated that “the right to know implies that archives must be preserved.” Similarly, the Commission on Human Rights, in a resolution on the right to the truth indicated that it was “[c]onvinced that States should preserve archives and other evidence concerning gross violations of human rights and serious violations of international humanitarian law to facilitate knowledge of such violations, to investigate allegations and to provide victims with access to an effective remedy in accordance with international law.”²⁷⁹

233. In 2007, the Office of the United Nations High Commissioner for Human Rights presented a report on the right to the truth in which it underlined the importance of the preservation of and access to archives of information relating to human rights violations. In this regard, it indicated:

Archives of human rights violations, originally intended to buttress repressive regimes of all kinds, are vital in making reparation for the injury suffered by victims of repression and in prosecuting those responsible for atrocities. They have an intrinsic value directly related to the exercise of victims’ rights, the work of the courts and non-judicial mechanisms for establishing the facts, the preservation of memory and history. The question of archives is closely bound up with the right to information, the fundamental right of each individual to have access to information on the public record relating to himself or herself.²⁸⁰

234. Regarding the classification of intelligence information and the right of access to information, the Court has recognized that, the purposes of intelligence activities may, in certain circumstances, make total or partial access to the archives of such state agencies unfeasible. In such cases, to ensure the compatibility of any restriction in this

<https://docs.un.org/en/a/res/69/166>; United Nations. Resolution 71/199 adopted by the General Assembly on December 19, 2016. The right to privacy in the digital age, A/RES/71/199, January 25, 2017, para. 5.d, available at: <https://docs.un.org/en/A/RES/71/199>; United Nations. Human Rights Council. Report of the Special Rapporteur on the right to privacy, A/HRC/34/60, September 6, 2017, paras. 38 and 39, available at: <https://docs.un.org/en/A/HRC/34/60>; United Nations. Human Rights Council. Report of the Office of the United Nations High Commissioner for Human Rights, The right to privacy in the digital age, Doc. A/HRC/39/29, August 3, 2018, para. 35, available at: <https://docs.un.org/en/A/HRC/34/60>; United Nations. Report of the Special Rapporteur on the right to privacy, Joseph A. Cannataci, A/75/147, July 27, 2020, para. 43, available at: <https://docs.un.org/en/A/75/147>, and United Nations. Resolution adopted by the General Assembly on December 16, 2020, A/RES/75/176, para. 7.d.m available at: <https://docs.un.org/en/A/RES/75/176>. See, Tshwane Principles, Principles 31 and 32.

²⁷⁸ United Nations. Economic and Social Council, Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/118, Question of the impunity of perpetrators of human rights violations (civil and political), E/CN.4/Sub.2/1997/20/Rev.1, October 2, 1997, available at: <https://docs.un.org/en/E/CN.4/Sub.2/1997/%2020/Rev.1>.

²⁷⁹ United Nations. Commission on Human Rights. Resolution 2005/66 on the right to the truth, April 20, 2005, available at: https://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-66.doc.

²⁸⁰ United Nations. Commission on Human Rights. Report of the Office of the United Nations High Commissioner for Human Rights, The right to the truth, A/HRC/5/7, June 7, 2007, para. 58, available at: <https://docs.un.org/en/A/HRC/5/7>.

regard with the American Convention, the criteria defined in inter-American case law for valid limitations to the right of access to information are applicable.²⁸¹

235. Any restriction of that right, such as classification of the information held by the intelligence authorities as secret must be previously established by law, respond to a legitimate and essential purpose in a democratic society, and comply with the requirements of suitability, necessity and proportionality in the circumstances of the specific case.²⁸²

236. In this regard, the Court considers that when the obligation of secrecy seeks to preserve national security, this obligation cannot be applied in general, but must be limited precisely and clearly to the information whose disclosure supposes a real and identifiable risk of significant harm to a legitimate national security interest. The information subject to the obligation of secrecy on these grounds must be established exhaustively, clearly and precisely by domestic law.²⁸³

237. In cases of gross human rights violations, States must determine the appropriate means for providing relevant information to clarify the facts, even if this information relates to the general interest of preserving national security. The Court has recognized that, in such cases, the right of access to information calls for the active participation of all the authorities involved, who are obliged to collaborate in the collection of evidence to achieve the objectives of the investigation and to refrain from carrying out acts that obstruct the investigation.²⁸⁴ It has also indicated that the State cannot shield itself behind reasons of national security in order to justify a refusal to provide information required by the judicial or administrative authorities in charge of an investigation or pending judicial proceedings.²⁸⁵

238. In addition, the secret or confidential nature of any particular information must never be understood as a measure of indefinite duration; rather, this nature and the resulting denial of access may remain in effect only as long as strictly necessary to meet the legitimate aim pursued, and this requires regular review of the continuing need.²⁸⁶ Moreover, the legal framework must establish mechanisms for declassifying and clearing intelligence files in order to allow public access to documents for which

²⁸¹ Cf. *Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia*, *supra*, para. 601.

²⁸² Cf. *Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia*, *supra*, paras. 601 and 602.

²⁸³ Similarly: United Nations. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, September 8, 2015, A/70/361, para. 47, available at: <https://docs.un.org/en/A/70/361>, and Principle 9 of the Tshwane Principles.

²⁸⁴ Cf. *Case of García Prieto et al. v. El Salvador*, *supra*, para. 112, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 138.

²⁸⁵ Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra*, para. 180, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 138. See, United Nations. Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework principles for securing the accountability of public officials for gross or systematic human rights violations committed in the course of States-sanctioned counter-terrorism initiative, A/HRC/22/52, April 17, 2013, paras. 40 and 41; Tshwane Principles, Principle 10, and Inter-American Model Law on Access to Public Information, Article 27.

²⁸⁶ Cf. Tshwane Principles, Principle 16, and *Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia*, *supra*, para. 607.

classification is no longer justified, and identify fixed periods for the automatic declassification of information.²⁸⁷

239. States are obliged to guarantee an adequate and effective procedure for processing and deciding requests for information. This procedure should establish timeframes for taking a decision and delivering the information, and should be managed by duly trained officials.²⁸⁸ Specifically, in cases involving the investigation of a punishable act, the decision to classify information as secret and refuse to disclose it can never depend exclusively on a state body whose members are accused of perpetrating the unlawful act,²⁸⁹ nor the final decision on the existence of the requested documentation left to their discretion.²⁹⁰

240. Lastly, when this type of information is held by the State, its authorities are duty bound to manage the information correctly, preventing it from being modified, lost, transmitted, or shared without authorization,²⁹¹ provided that the reasons why it is being kept secret persist, and whether or not access to that information has been denied by the competent authority. In *Herzog et al. v. Brazil*, the Court recognized the positive obligation of States to preserve the archives and other evidence relating to serious human rights violations in order to guarantee the right of free access to information in both its collective and individual dimension.²⁹² Also, in *Gelman v. Uruguay*, the Court ordered the adoption of appropriate measures to guarantee technical and systematized access to information kept in national security archives and the allocation of an adequate budget for this purpose, in the understanding that the investigation of serious human rights violations had been obstructed by the situation of the national security archives, which were dispersed and inadequately controlled.²⁹³

B.4. Application to this specific case

B.4. 1. Regarding the regulation of intelligence activities and its impact on access to information

241. Even though this matter was not regulated by any law, at the time of the facts, it was common practice for the SIDE to act as auxiliary agents of justice during criminal investigations.²⁹⁴ From the outset of the investigation into the attack on the AMIA, the

²⁸⁷ Cf. Tshwane Principles, Principle 17, and *Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia*, *supra*, para. 608.

²⁸⁸ Cf. *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 140.

²⁸⁹ Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra*, para. 181, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 139.

²⁹⁰ Cf. *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2010. Series C No. 219, para. 202, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 139.

²⁹¹ Cf. Tshwane Principles, Principle 15, Inter-American Model Law on Document Management, Article 15 and *Case of Members of the "José Alvear Restrepo" Lawyers Collective v. Colombia*, *supra*, para. 607.

²⁹² Cf. *Case of Herzog et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of March 15, 2018. Series C No. 353, para. 337.

²⁹³ Cf. *Case of Gelman v. Uruguay. Merits and reparations* Judgment of February 24, 2011. Series C No. 221, para. 282.

²⁹⁴ In this regard, expert witness Natalia Federman indicated "[a]s a general rule, documentation that left the intelligence system was labelled classified (private / secret / strictly secret, and confidential), and was incorporated into the court case in this way. The documentation was marked with a watermark containing a code in order to control who the copy had been delivered to if it was distributed. The secret

judicial authorities requested the collaboration of the SIDE so that its agents would act as auxiliary agents of justice. Over the years, and as a result of meetings and analysis of information, the SIDE produced numerous documents which were incorporated into the investigations.²⁹⁵ Additionally, during the preliminary investigation conducted by Federal Court 9, the SIDE headed numerous secret operations and procedures, which neither the petitioners nor the judges of the higher courts were privy to at the appropriate moment. Also, throughout the proceedings, statements were received from anonymous witnesses whose identity could not be verified by either the judges or the parties.²⁹⁶

242. Furthermore, the legal framework in force at the time of the facts gave the SIDE discretionary powers as regards the administration and application of confidential funds.²⁹⁷ In this specific case, this permitted the payment to Carlos Telleldín,²⁹⁸ initiating the whole cover-up subterfuge (*supra*, paras. 65 and 66).

243. As indicated *supra*, these practices hindered the proper investigation of both the attack and the cover-up. The use of classified information, by definition inaccessible to the parties, also had an impact on the right of access to information stemming from the failure to regulate intelligence activities at the time of the facts.

244. When the attack on the AMIA occurred, and until 2001, the actions of the SIDE were regulated by Law No. 20,195, article 10 of which established that "all the activities of the State Information Secretariat, and also its organization, functions and documentation are classified, in the interests of national security, as 'Strictly secret and confidential' [...]."²⁹⁹ In 2001, this law was replaced by Law No. 25,520 which established, among other matters, that information classified as secret could only be consulted by the judicial authorities, who were bound by the utmost secrecy and confidentiality.³⁰⁰

nature meant that the documentation was not shared equally with all the parties (prosecutors, complainants and defense). It was the court (in charge of the investigation at that level) that had all the information and, based on the strategies adopted, decided whether to share it with any or all of the parties. Following this decision authorization had to be requested from the National Executive in order to implement it. If the Executive authorized this, it was not equivalent to a declassification that permitted the document to become public for society in general; rather, the party concerned was bound by the obligation to keep the information secret. In most cases, this access to the document was restricted: it could not be copied and access was with witnesses." Expert opinion of Natalia Federman (evidence file, folio 45212).

²⁹⁵ Cf. UFI AMIA. The process for declassification of confidential or secret information on the attack and its cover-up, October 2016 (evidence file, folios 8905 and 8906).

²⁹⁶ For example, in his report, Commissioner Grossman indicated that, during the investigation under Judge Galeano, "anonymous witnesses were one of the ways – without legal support – used by the judge to incorporate evidence so that it could not be verified by the other parties." Report. Observation of Dean Claudio Grossman, International Observer of the Inter-American Commission on Human Rights at the Trial concerning the Argentine-Israeli Mutual Association (AMIA), February 22, 2004 (evidence file, folio 48).

²⁹⁷ Article 9 of Law No. 20,195 of February 28, 1973 (currently abrogated).

²⁹⁸ In his report, Commissioner Grossman indicated: "All the statements by SIDE officials concerning the payment agreed that: the money – 400,000 dollars – was provided by the Secretariat – specifically by its head, Hugo Anzorregui – at the request of Judge Galeano. The payment was made by two secret deposits made by different Secretariat agents [...]." Report. Observation of Dean Claudio Grossman, International Observer of the Inter-American Commission on Human Rights at the Trial concerning the Argentine-Israeli Mutual Association (AMIA), February 22, 2004 (evidence file, folio 51).

²⁹⁹ Law No. 20,195 of February 28, 1973 (currently abrogated).

³⁰⁰ Cf. Law No. 25,520 of December 3, 2001, arts. 16 to 18. Accessible at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/70000-74999/70496/norma.htm>.

245. Consequently, although the restrictions on access to the information produced by the SIDE was established by law, the Argentine State failed to prove how this was necessary for the protection of public order or national security in this case. To the contrary, this Court considers that the existence of a legal regime establishing the classified nature of all the information generated or stored by a state entity, without providing for safeguards that allowed possible opposing values or objectives to be weighed, is not compatible with the standards or proportionality that should rule intelligence activities (*supra*, para. 230), and is therefore contrary to the right to seek and to receive information recognized in Article 13(1) of the American Convention.

246. Furthermore, this law did not provide for any administrative or judicial remedy to contest the decision to classify as secret the documentation that the SIDE and other state intelligence agencies were incorporating into the investigation of the attack on the AMIA. The State did not contest this. Moreover, the Court has already established, "[w]hat is incompatible with the rule of law and effective judicial protection is not that there are secrets, but rather that these secrets are outside legal control; that is to say, that there are areas in which the authorities are not responsible because they are not regulated by law and are therefore outside any system of control."³⁰¹

247. This Court notes that the laws on intelligence activities have undergone several reforms during the investigation of the AMIA case. On December 3, 2001, Law No. 25,520 was promulgated and, in 2015, Law No. 27,126 enacted an in-depth reform of the former that involved, among aspects, the dissolution of the SIDE and the creation of the Federal Intelligence Agency. This law established that the highest authorities of the agency are appointed by the Executive, with the approval of the Senate.³⁰² It also stipulated classification procedures, creating three regimes for information: secret, confidential and public, and provided for the possibility of any person or organization who proved a legitimate interest filing a petition for declassification. In general, it established that the intelligence agencies must base their activities on the general principles outlined in Law No. 25,326 on the protection of personal data.

248. The new law also provided for control of the activities of the intelligence agencies through parliamentary oversight by the Bicameral Committee to Monitor Intelligence Agencies and Activities of the National Congress. In particular, this Committee has authority to supervise and monitor the special funds allocated to the intelligence services.

249. Decree No. 214/2020 amended paragraph 1 of article 4 of Law No. 25,520, expressly prohibiting intelligence agencies from intervening as auxiliary agents of justice and the AFI was intervened in order to establish a model that permitted greater accountability. In addition, AFI Resolution No. 1163/20 adopted the "General rules for the administrative and financial management of the funds allocated to operational expenses," which established a protocol for expenditures and accountability. Nevertheless, this protocol has not been published.

250. The Court has examined all the measures adopted since 2001 to align domestic law with international standards and best practice for the regulation of intelligence services. However, it notes that some problems remain in this area. The State itself, in its final written arguments, acknowledged that some aspects of domestic law

³⁰¹ *Case of Myrna Mack Chang v. Guatemala*, *supra*, para. 181, and *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 111.

³⁰² Article 15 of Law No. 25,520 amended by article 8 of Law No. 27,126.

remained to be resolved. In particular, it referred to the absence of regulations for declassification requests and the conditions for incorporating intelligence information into court cases. Therefore, despite the efforts made, the State's responsibility persists for the omissions in the regulation of intelligence activities, which, in turn, creates an obstacle for access to information on the attack and its cover-up.

B.4.2. The difficulties for real access to information on the attack and its cover-up

251. In their opinion, expert witnesses Blanca Bazaco Palacios and Antonio González Quintana indicated that "[i]t is not sufficient to legislate and recognize the right of access to the documents. Rather, to ensure the exercise of that right, it is also necessary to know what information the documents contain and have an infrastructure and essential services that make it possible to consult them."³⁰³ However, in this case, obstacles subsisted in relation to three pillars that guarantee the right of access to information: the legal aspect, information on the content of the archives, and the logistics.³⁰⁴

252. The Court recalls that it has verified that the State kept secret and sidetracked the investigation into the attack, delaying the judicial proceedings (*supra*, para. 205). These subterfuges obstructed access to information by the victims' family members. As the Court has reiterated, almost thirty years after the attack, there has been no judicial version of the facts of the attack or the cover-up. Moreover, at the state level, there have been no other attempts to reconstruct what happened; therefore, there is no official version of the events.

253. Furthermore, and as explained in the preceding section, even though they were parties to the proceedings, the families of the victims of the attack did not have access to the whole case file based on the excuses of classified information, secret court bundles, and anonymous witnesses. The Court appreciates the measures taken by the Executive, the Ministry of Justice, and the Intelligence Secretariat starting in 2003, exempting numerous intelligence officials and agents from the obligation to respect secrecy so as to enable them to appear at the oral trial before the TOF 3. The Court also considers that the issue of Decrees Nos. 786/03 and 787/03 which created, within the Intelligence Secretariat and in each of the security forces, an Information Release Unit to seek, compile and analyze existing information and communicate their findings to the competent judges, constituted a necessary measure to guarantee the petitioners' right to access information, and for them and the general public to know the truth.³⁰⁵

³⁰³ Expert opinion of Blanca Bazaco Palacios and Antonio González Quintana (evidence file, folio 45145).

³⁰⁴ According to expert witnesses Bazaco Palacios and González Quintana, the procedure for access to the archived documents is based on guaranteeing three pillars: (a) the legal pillar: every country has established, at least, legislation on archives that includes definitions of public archives and private archives, regulations on their conservation, and general principles concerning their accessibility for an investigation; (b) the pillar of knowledge of the content of the archives: this refers to the publicity on the archives and their auxiliary research instruments, and (c) the logistics pillar: which refers to the need to guarantee the material resources to ensure that consultation may take place. *Cf.* Expert opinion of Blanca Bazaco Palacios and Antonio González Quintana (evidence file, folio 45146).

³⁰⁵ *Cf.* National Executive Decree No. 786/03 of September 18, 2023, regarding the investigation of the attacks against the Embassy of the State of Israel and the headquarters of the Argentine-Israeli Mutual Association

254. However, the Court notes that the decision to begin examining the information held by the SIDE and the federal security forces, and to hand over custody of the documentary holdings to the UFI AMIA did not fully guarantee the alleged victims' right of access to information. Indeed, the only effect of Decrees Nos. 786/03 and 787/03 was to enable intelligence information to be shared with the state authorities in charge of investigating the attack; they did not provide for the elimination of the documents' security classification. Consequently, this information continued to be beyond the petitioners' reach even though they were parties to the proceedings.

255. Therefore, the absence of a coordinated declassification policy had an impact on access to the information on the case. Up until 2014, access to the classified information was characterized by "a greater level of secrecy and limited access to documents [...] and authorizations to testify."³⁰⁶ This situation continued up until the issue of Decree No. 395/15 in March 2015. This decree ordered the declassification of all the documentation that had been forwarded in custody to the UFI-AMIA by the Intelligence Secretariat (article 1), of the additional documentation that existed in the archives of the former SIDE (article 2), and of all other documentation that had not been provided to the case in a timely manner at the date the decree was issued, and that was held by the Federal Intelligence Agency (article 3). In consequence, according to the UFI-AMIA, all the information generated by the former SIDE "ceased to be classified as secret for the parties and was considered to be documentary evidence pursuant to the national Code of Criminal Procedure."³⁰⁷

256. The stage subsequent to 2015 was marked by the adoption of decrees that sought to provide increased transparency and access to the information. In particular, Decree No. 213/2020 issued on March 5, 2020, ordered that all the information provided by the State in the judicial proceedings and in the hearings of the oral trials be considered of a public nature, and authorized its release outside the official sphere when a judgment had been handed down in the different proceedings (article 1).

257. The Court recognizes that these decrees concerning declassification of the information on the attack and its cover-up, as well as the adoption, in 2016, of the Law on access to public information, constitute efforts towards meeting the obligation to guarantee access to information. The Court understands that, after 2020, all the information provided by the State in proceedings in which judgment has been delivered, is of a public nature. However, as expert witness Natalia Federman pointed out: "The complex web of decrees and resolutions that regulate this specific case has had different interpretations as regards accessibility for the parties."³⁰⁸ Also, these norms have not provided the public with real access to the declassified information. To a great extent, the documents are held in the custody of the court, which is not organized to provide access to the general public.

258. Accordingly, this Court underscores, as did the Commission in its Merits Report, that the notions of declassification and accessibility could not be assimilated. The concept of declassification refers to an administrative act whose purpose is to withdraw or lift the secret nature of a document or series of documents. Meanwhile, accessibility relates to the physical conditions that enable third parties to consult the documents or

³⁰⁶ Expert opinion of Natalia Federman (evidence file, folio 45239).

³⁰⁷ UFI AMIA. The process for declassification of confidential or secret information on the attack and its cover-up, October 2016 (evidence file, folio 8902).

³⁰⁸ Expert opinion of Natalia Federman (evidence file, folio 45236).

documentary holdings that were previously declassified. To guarantee the accessibility of the documentation and, in general, the exercise of the right of access to information, the declassification decision needs to be accompanied by the implementation of proactive policies of categorization, organization, and systematization of the archives. As the Court has already stressed, "in a democratic society, it is essential that state authorities act in accordance with the principle of maximum disclosure, based on the presumption that all information is accessible, subject to a limited system of exceptions."³⁰⁹ Accordingly, it is clear that, as conceived in the inter-American sphere, the right of access to information also includes this duty of physically enabling access. This is merely the State's compliance with its obligations in good faith, which prevents it from ignoring its duty of care and conservation. These actions are particularly important in the case of voluminous documentary holdings such as those relating to the AMIA case.

259. Consequently, despite the legal framework, access to the information is not real owing to the failure to process it and the considerable number of documents. In addition, diverse problems have been noted relating to the conservation of the documents when they were in the custody of the SIDE.³¹⁰ In 2015, the Special Documentary Review and Analysis Group (GERAD) was created attached to the UFI AMIA, and this represented a step forward in guaranteeing both the State's obligation to preserve any type of documentation related to the attack, and the right of the parties to access this information. However, in the first UFI AMIA activities report published in July 2016, the prosecutors indicated that, the documentation held by the AFI, "in many cases [...] was duplicated and badly compiled, and in a very poor state of conservation and care. Nevertheless, in some cases, previously unknown material was found." They also indicated that the documentary holdings had not been digitalized and that, in the AFI storage facility, they had observed "deficient conditions of space, hygiene, temperature and humidity that jeopardize the conservation of the documentation and contribute to its deterioration."³¹¹

260. Therefore, to fully meet its obligation to provide real access to the information, the State should also guarantee proper conservation, preservation and access to this information. On this point, the United Nations High Commissioner for Human Rights has indicated that:

Preservation requires a secure building with adequate space for all the records, appropriate environmental conditions for each physical type of material stored, containers to protect the records, and equipment to play, duplicate and conserve the records. In archives with human rights materials, protecting the records from intruders is a serious concern. The records may need to be transferred to a more secure storage location, a set of fire and intrusion alarms may need to be installed or a new guard service may be needed. [...] In addition to the security and environmental concerns, the archives must conserve the physical records. [...] Staff need to be trained in basic preservation techniques, and additional training will be required for persons handling special electronic and audiovisual formats.³¹²

³⁰⁹ *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, *supra*, para. 199.

³¹⁰ Cf. Record signed by Vanina L. Capurro, notary public, attached to the Government's General Notary Office, dated March 16, 2015 (evidence file, folios 8916 to 9722).

³¹¹ UFI AMIA Activities Report July 2016 (evidence file, folio 6875).

³¹² Office of the United Nations High Commissioner for Human Rights. Rule of Law Tools for Post-conflict States: Archives 2015. p. 21, available at: www.ohchr.org/sites/default/files/Documents/Publications/HR_PUB_14_4_Archives_en.pdf.

261. A deficient preservation of documentary holdings linked to a case of severe human rights violations over long periods has serious implications for the State's international responsibility because it prevents the victims and their family members from accessing all the information held by the State.³¹³ On this point, in particular, Principle 15 of the Principles to combat impunity establish that "[a]ccess to archives shall be facilitated in order to enable victims and their relatives to claim their rights. Access shall be facilitated, as necessary, for persons implicated, who request it for their defence [...]."³¹⁴

262. Consequently, the Court concludes that the Argentine State has still not complied with its obligation to guarantee the petitioners real and effective access to the state archives containing information relating to the attack on the AMIA.

B.5. The right to the truth

263. As this Court has indicated, "everyone, including the next of kin of victims of severe human rights violations, has the right to know the truth," and this means that "they should be informed of all that happened in relation to those violations."³¹⁵ In general, the right to the truth is related to the State's obligation to take steps to "clarify the facts of violations and to identify the perpetrators."³¹⁶ In particular, the Court recalls that judicial proceedings play a significant role in providing redress to the victims, who advance from being passive subjects in relation to the public authorities, to individuals who claim their rights and take part in the administrative or judicial proceedings in which the violations of their rights are investigated.

264. The Court has also established that the realization of this right is of interest not only to members of the victims' families, but also to society as a whole, because it facilitates prevention of this type of violation in the future.³¹⁷ The right to the truth "entitles the victim, his or her relatives and the public at large to seek and obtain all relevant information concerning the commission of the alleged violation"³¹⁸ and, in cases such as this one, the process by which this violation was covered up.

265. This Court's case law has established that, even though the right to the truth is essentially included in the right of access to justice, it is not limited to the procedural

³¹³ This Court has established as a State obligation to ensure the right to the truth that it must "guarantee, to agents of justice and to society as a whole, public systematized access to the archives that contain information that is relevant for the investigation in cases involving human rights violations" (*Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232, para. 212, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 208).

³¹⁴ United Nations. Economic and Social Council. Commission on Human Rights. Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, February 8, 2005.

³¹⁵ Cf. *Case of Trujillo Oroza v. Bolivia. Reparations and costs.* Judgment of February 27, 2002. Series C No. 92, para. 100, and *Case of Guzmán Medina et al. v. Colombia. Merits, reparations and costs.* Judgment of August 23, 2023. Series C No. 495, para. 92.

³¹⁶ Cf. *Case of Gómez Palomino v. Peru, Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 136, para. 80, and *Case of Tabares Toro et al. v. Colombia, supra*, para. 88.

³¹⁷ Cf. *Case of Gómez Palomino v. Peru, supra*, para. 78, and *Case of Tabares Toro et al. v. Colombia, supra*, para. 88.

³¹⁸ Cf. United Nations. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/24/42, August 28, 2013, para. 20, and *Case of Herzog et al. v. Brazil, supra*, para. 332.

or judicial truth. This right is broad and autonomous, and therefore its violation may affect different rights contained in the American Convention, depending on the specific context and circumstances; for example, the rights to judicial guarantees and judicial protection recognized in Articles 8 and 25 of the treaty,³¹⁹ or the right of access to information protected by Article 13.³²⁰

266. Added to this, the State is not exempt from positive obligations to guarantee the right to the truth and access to archives merely by alleging that the information required by the judge in charge of investigating the facts of this case is non-existent or was destroyed.³²¹ The State is obliged to find this information using all possible means. To comply with this duty, the State must make a substantial effort and provide all necessary resources to reconstruct the information.³²² Accordingly, declassification of and access to the documents of the security forces are essential to ensure a transparent investigation.³²³

267. In the instant case, the many deficiencies of the State in relation to the determination of the historical truth about the attack, as well as its direct responsibility in the cover-up subterfuge have been established in the preceding chapters. On this basis, the Court has found it proved, and the State has acknowledged its responsibility for, both the negligence in the investigation, and the actions taken by public officials in the cover-up and to obstruct the investigation. The Court has also revealed the difficulties faced by the families of the victims of the attack to access information on the case, particularly information resulting from intelligence activities. Consequently, they have been prevented from knowing, fully and completely, what happened to their family members, the reasons for the attack and its cover-up, and also the perpetrators. Even though judicial proceedings have been instituted to determine the pertinent responsibilities for these facts, they have also been subject to obstructions and delays as determined previously. To date, what really happened during the attack, and its perpetrators, are still unknown.

268. The Court also stresses that the right to know the truth relates not only to the victims as individuals, but extends to society as a whole, which “has both a right to know and a responsibility to remember.”³²⁴ This Court has emphasized throughout its case law, the two-fold dimension of the right to the truth, consisting of an individual right to know the truth for the victims and their families, and also a right of society as a whole.³²⁵ Thus, Argentine society should be made aware of facts such as those of this case, owing to their

³¹⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 181, and *Case of Tabares Toro et al. v. Colombia*, *supra*, para. 87.

³²⁰ Cf. *Case of Members and Militants of the Patriotic Union v. Colombia*. Preliminary objections, merits, reparations and costs. Judgment of July 27, 2022. Series C No. 455, para. 479, and *Case of Tabares Toro et al. v. Colombia*, *supra*, para. 87.

³²¹ Cf. *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 139.

³²² Cf. *Case of Herzog et al. v. Brazil*, *supra*, para. 334, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 139.

³²³ Cf. *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 136.

³²⁴ Cf. Human Rights Council. Report of the Office of the United Nations High Commissioner for Human Rights, Right to the truth, A/HRC/12/19, August 21, 2009, para. 5, available at: <https://docs.un.org/en/A/HRC/12/19>.

³²⁵ Cf. *Case of Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 479. On this point, the European Court of Human Rights has also ruled on the impact of an inadequate investigation involving the right to the truth “not only for the applicant and his family, but also for other victims of similar crimes and the general public, which had the right to know what had happened.” Cf. ECHR, *Case of El Masri v. Former Yugoslav Republic of Macedonia*, No. 39630/09, December 13, 2012, para. 191.

severity and scope, so that it may reflect on them and, thereby, avoid their repetition.

269. Consequently, the Court considers that, in this case, the right to the truth was violated in relation to access to justice and to information to the detriment of the victims of the attack and their family members.

B.6. Conclusion on the chapter

270. Based on the all the foregoing, the Court considers that the Argentine State violated – to the detriment of the surviving victims of the attack and their families³²⁶ – the right of access to information established in Article 13 of the American Convention, as well as the right to know the truth based on the violation of the rights to judicial guarantees, judicial protection, and access to information established in Articles 8(1), 25(1) and 13 of the American Convention, in relation to Articles 1(1) and 2 of this instrument.

VII.4

RIGHT TO PERSONAL INTEGRITY OF THE NEXT OF KIN³²⁷

A. Arguments of the parties and of the Commission

271. The **Commission** considered that the serious human rights violations suffered by the victims in this case affected the mental and moral integrity of their next of kin. The mere fact of being a family member of a victim of a terrorist act of the magnitude of the AMIA attack generated severe suffering. In this specific case, in the Commission's opinion, this suffering was exacerbated by the situation of impunity of the case, which can be directly attributed to the State owing to the actions of its agents. Therefore, it concluded that the State had violated the right to mental and moral integrity of the next of kin of the alleged victims.

272. The **representatives** stressed the efforts made by the victims' families, through the Active Memory Association, to keep the memory of the attack alive, and for the State to finally investigate and punish all those responsible for the main attack and the cover-up. They also referred to the personal impact that the attack and the corresponding judicial proceedings have had on the next of kin of the alleged victims.

273. The **State** did not comment specifically on this point. However, these violations were included in its acknowledgement of responsibility.

B. Considerations of the Court

274. The Court has repeatedly indicated that the next of kin of victims of human rights violations may also, in turn, be victims.³²⁸ The Court has considered that it is possible to declare that the right to mental and moral integrity of "the direct family" or other individuals with close ties to the victims has been violated based on the additional suffering they have endured as a result of the particular circumstances of the violations perpetrated against their loved ones, and due to the subsequent acts or omissions of

³²⁶ Established in the lists contained in Annexes 2 and 3 of this judgment.

³²⁷ Article 5 in relation to Article 1(1) of the American Convention.

³²⁸ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 176, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 145.

the state authorities in relation to those facts,³²⁹ taking into account, among other matters, the steps taken to obtain justice and the existence of close family ties.³³⁰

275. In the Global Counter-Terrorism Strategy, the United Nations General Assembly underlined the importance of supporting victims of terrorism and their families as one of the measures to counter the conditions conducive to the spread of terrorism.³³¹ In its eighth review of the Strategy, it reaffirmed this need for support for victims and their families and underlined the need “to ensure that victims of terrorism are treated with dignity and respect, [and] that their right of access to justice and redress mechanisms, as provided for in applicable domestic law and in accordance with principles of international law, is fully respected.” It also encouraged States to include in their national counter-terrorism strategies the need to provide “victims and their families with proper support and assistance immediately after an attack and in the long term.”³³²

276. Similarly, the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in his report on the Framework principles for securing the human rights of victims of terrorism, stressed the importance of the participation of victims and their families in criminal proceedings and that “[p]rofessionals should brief victims or their next of kin as to their rights, and direct them to institutions where they can obtain the required assistance.” He also indicated that victims and their families have the right to form representative organizations and the duty of the State to provide full and effective reparation that includes, as appropriate, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.³³³

277. In this case, it has been proved that 85 people died and 151 people were injured in the attack on the building that housed the AMIA headquarters. The petitioners in the procedure before the Commission authenticated the following as direct family members of these victims:

1. Adriana Reisfeld, sister of Noemí Reisfeld who died in the attack.
2. Lucía Oroño Reisfeld, daughter of Noemí Reisfeld.
3. Ana Clara Oroño Reisfeld, daughter of Noemí Reisfeld.
4. Diana Wassner, widow of Andrés Malamud, who died in the attack.
5. Débora Malamud, daughter of Andrés Malamud.
6. Astrid Malamud, daughter of Andrés Malamud.
7. Jorge Lew, father of Agustín Lew who died in the attack, and husband of Raquel Lew, who was injured as a result of the attack.
8. Nicolás Lew, son of Raquel Lew and brother of Agustín Lew.

³²⁹ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 145.

³³⁰ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 163, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 145.

³³¹ Cf. United Nations. General Assembly Resolution A/RES/60/288 of September 8, 2006. United Nations Global Counter-Terrorism Strategy, available at: <https://docs.un.org/en/a/res/60/288>

³³² United Nations. General Assembly. The United Nations Global Counter-Terrorism Strategy: eighth review. Draft resolution submitted by the President of the General Assembly, June 21, 2023, A77/L.78, available at: <https://docs.un.org/en/A/77/L.78>.

³³³ Cf. United Nations. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson. Framework principles for securing the human rights of victims of terrorism, A/HRC/20/14, June 4, 2012, paras. 37, 67 and 51.

278. The Court considers that the serious violations suffered by the direct victims of the AMIA attack violated the mental and moral integrity of their next of kin. It is evident that, in itself, the loss of a family member in a terrorist attack causes severe suffering. But, in this specific case, this suffering – produced by the State’s failure to comply with its duty of prevention (*supra*, paras. 128 to 137) – was exacerbated by the State’s conduct following the attack; in particular, the very serious failure to comply with the duty to investigate, and the cover-up subterfuges, which created a situation of impunity that can be directly attributed to the agents of the State.

279. In her statement during the public hearing, Adriana Reisfeld indicated with regard to the impact of the attack and the efforts to obtain justice: “the frustration, this is the most overwhelming feeling; great frustration because we haven’t obtained justice; there was no genuine investigation and we have not been supported by any of the successive governments in the 28 years since the attack, or in the 23 years since we approached the [...] Commission.”³³⁴ She added, in reference to the effects on her personally: “It affects you physically because it moves you to think that that there are so many people who are willing [...] and yet the State was always absent; we had an absent State for 28 years; it is so sad. Any other attack in the world, we experience it ourselves. Oklahoma, Atocha, the Twin Towers, and I don’t know how many other attacks, these were clarified rapidly; however, no one has been arrested in the AMIA case.”³³⁵

280. Meanwhile Diana Wassner, in her statement during the public hearing, stressed the victimization that the families of the victims of the attack have endured, as follows:

One says to oneself, why I am here; I always thought that I was not the victim because it is Andrés who died and it is he who lost the whole life that I was not losing because I was living it. During my last statement, which was before the Inter-American Commission in Quito, I realized that we were also victims of all this, and even though, to some extent, we had not been the direct victims – because we were not there at that moment – we were victims of everything that happened afterwards, of all the impunity, and everything that occurred, and of everything that could have been avoided, because – I don’t know – this is about everything that should have been prevented and that the State did not prevent. These are the consequences, 28 years later, one is in this place where one feels a victim, where one has been victimized, where one has been mistreated, and one asks why. I often ask myself why, and that is where one says, well – some things are fair and other unfair, and some things are difficult so many years after.³³⁶

281. This Court, as did the Commission, underscores that, essentially, it was due to the activism and procedural participation of the victims’ families that the irregularities in this case have become known and that the investigation has advanced. It was the State’s failure to meet its obligation to investigate, the unjustified delays in the proceedings and, in general, the failure to clarify the facts and the situation of impunity, that resulted in their feelings of anguish, sadness and frustration.

282. In particular, Adriana Reisfeld, Diana Wassner and Jorge Lew, through Active Memory, have played an essential role in providing impetus to the investigation and

³³⁴ Statement by Adriana Reisfeld during the public hearing on November 13, 2022.

³³⁵ Statement by Adriana Reisfeld during the public hearing on November 13, 2022.

³³⁶ Statement by Adriana Reisfeld during the public hearing on November 13, 2022.

the judicial proceedings.³³⁷ However, they have had to face numerous obstacles that have prevented their effective participation in the investigation and the judicial proceedings. In response to a question by one of the Court's judges concerning the prosecutors, the declarant Diana Wassner indicated that this "is a mere illusion because they never summon the families or our lawyers to come and see how the case is advancing, never provide us with any information [...]"³³⁸ Regarding communications with the prosecutors, the Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings indicates that "[m]eetings between victims, investigators, and prosecutors can help alleviate victims' feelings of helplessness and encourage trust in the system through transparency. Victims can ask questions so that they can have realistic expectations of the judicial process. Lawyers should strive to provide information in layman's terms wherever possible."³³⁹ Furthermore, problems with the systematization of the existing information and evidence on the attack (*supra*, paras. 205 and 206) have also prevented the victims from having real access to the sources that could clarify what happened during the attack, and this also contributes to their mental suffering. Indeed, the Framework principles for securing the human rights of victims of terrorism establish that "[t]he victim or the victim's family must in all cases be provided with the information necessary to exercise any rights they may have in domestic law to participate in criminal proceedings against the suspected perpetrator."³⁴⁰

283. Based on all the above, the Court concludes that the State violated the right to mental and moral integrity recognized in Article 5(1) of the Convention, in relation to the obligation to respect rights established in Article 1(1) of this instrument, to the detriment of Adriana Reisfeld, Lucía Oroño Reisfeld, Ana Clara Oroño Reisfeld, Diana Wassner, Débora Malamud, Astrid Malamud, Jorge Lew and Nicolás Lew.

VIII REPARATIONS

284. Pursuant to Article 63(1) of the American Convention, the Court has held that every violation of an international obligation which results in harm creates a duty to make adequate reparation, and that this provision reflects a customary norm that

³³⁷ Adriana Reisfeld, Adriana Wassner and Jorge Lew have not only been declarants in the different domestic proceedings, they have also provided impetus to many of these as complainants, on behalf of Active Memory. During the public hearing, Adriana Reisfeld stated that she had been a declarant "four [times]; twice during the trials, which was very difficult because they really harassed us with the questions as if we had something to do with the crime. We just claimed a right that any citizen in the world has, which is to justice; however, they always harassed us because of this. And, the third time was before the Commission, but well, that led to another statement, which was very difficult, that has affected me physically ever since." Statement by Adriana Reisfeld during the public hearing on November 13, 2022.

³³⁸ Statement by Diana Wassner during the public hearing on November 13, 2022.

³³⁹ Global Counterterrorism Forum. Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings. September 27, 2013. Good practice No. 12. Available at: https://www.thegctf.org/documents/10162/72352/13sep19_madrid+memorandum.pdf

³⁴⁰ United Nations. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson. Framework principles for securing the human rights of victims of terrorism, A/HRC/20/14, June 4, 2012, para. 37.

constitutes one of the fundamental principles of contemporary international law on State responsibility.³⁴¹

285. Reparation of harm brought about by the violation of an international obligation requires full restitution (*restitutio in integrum*) whenever possible, which includes the restoration of the prior situation. If this is not possible, the Court will order measures to guarantee the rights that have been violated and to redress the consequences of the violations.³⁴² Therefore, the Court has seen the need to award different measures of reparation in order to provide comprehensive redress for the harm; thus, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, as well as guarantees of non-repetition, are particularly relevant for the harm caused.³⁴³

286. The Court has established that reparations must have a causal nexus to the facts of the case, the declared violations, the proven harm, and also the measures requested to repair the resulting harm. Therefore, the Court must observe the concurrence of these factors to rule appropriately and pursuant to law.³⁴⁴

287. Taking into account the violations of the American Convention declared in the preceding chapter, and in light of the criteria established in its case law on the nature and scope of the obligation to make reparation,³⁴⁵ the Court will now examine the claims submitted by the Commission and the representatives, as well as the respective arguments of the State in order to establish measures to redress those violations.

A. Injured party

288. The Court reiterates that, pursuant to Article 63(1) of the Convention, it holds as an injured party anyone who has been declared a victim of the violation of any right in this instrument. Therefore, it considers that the victims of the attack³⁴⁶ and their family members identified in the lists annexed to this judgment are the injured party and, in their capacity as victims of the violations declared in Chapter VII, they will be the beneficiaries of the following measures ordered by the Court.

³⁴¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Córdoba v. Paraguay. Merits, reparations and costs*. Judgment of September 5, 2023. Series C No. 505, para. 115.

³⁴² Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 26, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 152.

³⁴³ Cf. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 152.

³⁴⁴ Cf. *Case of Ticona Estrada v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Córdoba v. Paraguay, supra*, para. 115.

³⁴⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 26, and *Case of Córdoba v. Paraguay, supra*, para. 116.

³⁴⁶ Regarding the victims of the attack, both the Commission and the representatives considered that they are the 85 people who died and the 151 people who were injured, based on chapter V.A.5 of the TOF 3 judgment of October 29, 2004 (evidence file, folios 2472 to 2512). However, one of the injured, Daniel Eduardo Joffe, expressly asked the Commission not to be considered a victim in this case because he has filed a separate petition. In a note of April 18, 2019, the Commission informed the parties that, in the case of Eduardo Joffe, "his situation as alleged victim will not be considered in the context of this case." Therefore, in this case, the Court will consider the persons identified in Annexes 1 and 2 of this judgment as victims of the attack.

B. Obligation to investigate

B.1. Investigation, determination, prosecution and eventual punishment of those who ordered and perpetrated the attack

289. The **Commission** asked that the State “conduct and conclude, effectively and within a reasonable time, the investigation into the facts of the case, in order to prosecute and punish all those who ordered and perpetrated the serious human rights violations [that had been] declared.” In particular, it indicated that “the State must continue the judicial investigations to clarify the attack on the AMIA headquarters and punish all those who ordered and perpetrated the attack, as well as those who have obstructed the investigations or been involved in the cover-up. To verify progress, the State must resume the practice of periodically publishing the UFI-AMIA activities reports.” It also indicated that Argentina “must hold regular meetings with the families to inform them about the progress of the investigations.”

290. Furthermore, it asked that the State “[a]dopt measures so that the judges and prosecutors in charge of the investigations related to the attack on the AMIA can obtain all relevant information to know the truth, and to prosecute and punish those responsible, even if the information is subject to any type of confidentiality or state secret, [and] that all the information held by the State regarding the attack on the AMIA be duly safeguarded and preserved.”

291. The **representatives** asked that the State “conduct the expedite, wide-ranging, systematic and thorough investigations required to determine, prosecute and, as appropriate, punish all those who ordered and perpetrated the attack and its cover-up, guaranteeing the right to the truth and immediate access to all the information related to the attack on the AMIA and the cover-up.”³⁴⁷

³⁴⁷ To meet this obligation, they asked that the State: (a) re-direct the relevant investigations into all those who ordered, perpetrated or participated in the attack and its cover-up, exhaustively, with due diligence, and without omitting any evidence or logical lines of investigation; (b) appoint to the UFI AMIA personnel who are suitable, honest and committed to the truth and to human rights, and also assign sufficient personnel, budget and resources to meet the obligation to investigate, [and] re-establish the role of the AMIA Special Investigation Unit attached to the Executive Branch, with personnel who are suitable, honest and committed, and provide it with the powers and resources to centralize the executive activities of collaboration with the judicial authorities, furtherance of administrative or disciplinary actions, and any other relevant action to obtain the truth and justice. Consultation with the victims must be guaranteed when selecting the heads of the UFI AMIA and the UEI, and the process must comply with the inter-American standards for the selection of officials; (c) refrain from resorting to the application of amnesty laws or arguing the statute of limitations, non-retroactivity of criminal law, *res judicata*, or the principle of *non bis in idem* or any other similar exemption from responsibility in order to evade the obligation to investigate and prosecute those responsible for the attack or its cover-up; (d) ensure that the competent authorities conduct the corresponding disciplinary and criminal investigations, *ex officio*, and that, to this end, they are able to access and use all the necessary logistic and scientific resources to collect and process evidence and, in particular, are empowered to have full access to the pertinent documentation and information whether or not this has been declassified; (e) guarantee that it will free from the obligation of secrecy anyone required to testify in cases relating to the attack or the cover-up, and that their statements will be public; (f) guarantee that the declassification process conducted by the GERAD will advance within a reasonable time, ensuring the conservation of the archives that it protects. This means, *inter alia*, guaranteeing: the physical conservation of the documents; the existence of repositories, services and equipment in the archives; the organization of and respect for the documentary holdings; the allocation of financial resources and personnel; the elaboration of descriptive instruments and additional tools, and the existence of adequate equipment for reading audiovisual or computerized documents; (g) declassify all the investigations, and the administrative and judicial files, as well as all the court bundles and information directly or indirectly related to the attack and its cover-up held by the National Executive or the UFI AMIA and grant full access to the complainants, victims and society; (h) take the necessary measures to ensure that all the files directly or

292. The **State** did not refer to this point.

293. Bearing in mind that, in this judgment, the Court found it proved that Argentina had failed to comply with its obligation to investigate, prosecute and punish those responsible for the attack on the Argentine-Israeli Mutual Association (*supra* paras. 205 and 206), the Court establishes that the State must forthwith remove all the obstacles, *de facto* and *de jure*, that maintain total impunity in this case, and initiate, continue, promote and/or re-open the necessary investigations to individualize, prosecute and, as appropriate, punish those responsible for the facts of this case and establish the truth about what happened, all within a reasonable time, taking into account the time that has passed since the attack occurred. In particular, the following criteria must be met:

- a) Considering the severity of the facts and taking into account that, at the domestic level, they have been classified as crimes against humanity, the State may not apply amnesty laws or the statute of limitations, or shield itself behind arguments such as State secrets, or the confidentiality of the information, which in reality are pretexts for hindering the investigation;
- b) The State must determine the identity of those who ordered and perpetrated the facts. Due diligence in the investigation means that all state authorities are obliged to collaborate in the collection of evidence; therefore they must provide the judge of the case with all the required information, avoiding omissions in the collection of evidence, following logical lines of investigation, and refraining from acts that obstruct the progress of the investigation;³⁴⁸
- c) The State must ensure that the competent authorities involved in the case have the necessary human, logistic, material, technical and scientific resources to perform their tasks in a satisfactory, independent and impartial manner and, in particular, have the authority to access the documentation and information that is relevant to investigate the reported facts, and conduct promptly those actions and inquiries that are essential to clarify what happened,³⁴⁹ and
- d) The State must ensure that anyone taking part in the investigation, including the victims or their representatives, witnesses and agents of justice, have due guarantees for their safety.³⁵⁰

indirectly related to the attack and its cover-up that are still held in different public agencies are located, declassified, systematized, analyzed and made available to the prosecution, the parties and the general public; (i) establish a mechanism within the GERAD to ensure that the parties [are able] to truly access the declassified information, in particular providing access to the inventories, and instructions for identifying relevant documents, and (j) provide regular reports to victims and family members on the progress or results of the investigations, and require state agencies involved in the investigation of the attack and its cover-up to publish quarterly reports.

³⁴⁸ Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra*, para. 277, and *Case of Tabares Toro et al. v. Colombia*, *supra*, para. 131.

³⁴⁹ Cf. *Case of Vásquez Durand et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of February 15, 2017. Series C No. 332, para. 203, and *Case of Tabares Toro et al. v. Colombia*, *supra*, para. 132.

³⁵⁰ Cf. *12 Guatemalan cases. Monitoring compliance with judgments in relation to the obligation to investigate, prosecute and, as appropriate, punish those responsible for the human rights violations*. Order of the Inter-American Court of Human Rights of November 24, 2015, considering paragraph 167, and *Case of the Massacre of Los Josefinos Village v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 3, 2021. Series C No. 442, para. 143.

294. Pursuant to its reiterated case law,³⁵¹ the Court considers that the State should ensure the full access and capacity to act of the victims or their family members, as well as the associations they have created – for example, Active Memory – at all stages of the investigation and prosecution of those responsible in keeping with domestic law and the guarantees of the American Convention. Additionally, the results of the corresponding proceedings must be published so that Argentine society may know the facts that are the subject of this case, as well as those responsible.³⁵²

B.2. Administrative, disciplinary or criminal measures for state officials responsible for obstructing the investigations

295. In previous case,³⁵³ in response to specific violations, the Court has established that the State must initiate, as applicable, disciplinary, administrative or criminal actions under domestic law, against those responsible for different procedural and investigative irregularities. In this case, it has been proved that the initial investigation into the attack suffered from serious deficiencies and irregularities, and the authorities in charge of the investigation deliberately distorted it, all of which represented a cover-up subterfuge that is the main reason why the attack remains in impunity to date (*supra* paras. 173 and 174).

296. The Court takes into account that several proceedings against those responsible for the cover-up of the attack are now at an advanced stage (*supra*, paras. 86 to 96). Therefore, it orders that the State continue these proceedings within a reasonable time in order to apply the corresponding sanctions to those found responsible.

C. Measures of satisfaction

C.1. Publication and dissemination of the judgment

297. The **Commission** did not refer to this point.

298. The **representatives** requested “publication in the Official Gazette and in two national newspapers of the official summary of the judgment,” and also “the complete text of the judgment on easily accessible webpages of the Judicial Information Center [...], the National Congress [...] and the Executive [...] in a legible font.”

299. The **State** indicated that it “will agree to whatever the Court orders in this regard.”

300. The Court, as in other cases,³⁵⁴ establishes that the State must publish, within six months of notification of this judgment, in a legible font: (a) the official summary of this judgment prepared by the Court, once, in the Official Gazette; (b) the official summary of this judgment prepared by the Court, once, in a national communications medium, and (c) this judgment in its entirety, available for at least one year, on an

³⁵¹ Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Tabares Toro et al. v. Colombia*, *supra*, para. 133.

³⁵² Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*, *supra*, para. 118, and *Case of Flores Bedregal v. Bolivia*, *supra*, para. 179.

³⁵³ Cf. *Case of the Dos Erres Massacre v. Guatemala*, para. 233 d), and *Case of María et al. v. Argentina*, *supra*, para. 183.

³⁵⁴ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Córdoba v. Paraguay*, *supra*, para. 128.

official website of the National Executive and on the website of the National Judiciary, accessible to the public from the initial page. The State must inform the Court immediately when it has made each of the publications ordered, irrespective of the one-year timeframe for presenting its first report established in operative paragraph 21 of this judgment.

301. In addition, within six months of notification of this judgment, the State must publish this judgment on the social network accounts of the Ministry of Justice and of the Supreme Court of the Nation. The publication must indicate that the Inter-American Court has delivered judgment in this case declaring the international responsibility of Argentina and provide a link to the complete text of the judgment. Each of these institutions must make this publication at least five times, in working hours, and it must remain published on its social network profiles. The State must inform this Court immediately when it has made each of the publications ordered, irrespective of the one-year timeframe for presenting its first report established in operative paragraph 21 of this judgment.

C.2. Public act to acknowledge international responsibility

302. The **Commission** asked that the Court order “an act of public apology to all the victims of the attack.”

303. The **representatives** asked that “an act of public acknowledgement be held with the participation of senior authorities of the Executive, Legislature and Judiciary, with widespread dissemination.”

304. The **State** indicated that it “will agree to whatever the Court orders in this regard.”

305. The Court establishes, as it has in other cases,³⁵⁵ that the State must hold a public act to acknowledge its international responsibility in which it must refer to the human rights violations declared in this judgment. The victims of this case must be present in the act if they so wish. The State must reach agreement with the victims or their representatives on the organization of this public act, as well as on details such as the place and date, and provide the means required to facilitate their presence in this act. If the victims indicate their willingness to take part in this act in person, the State must provide the necessary protection measures for their participation, and also cover their corresponding transportation and accommodation expenses. If the victims are unable to attend the act, the State must ensure their virtual participation or that of their families. The state authorities who must be present or take part in this act must be senior State officials, and the Judiciary must also be represented. The act must be disseminated by the media and the social networks, and the State must hold this act within one year of notification of this judgment.

C.3. Audiovisual documentary

306. The **Commission** requested “that an audiovisual documentary be made on the facts of this case, the victims, and the search for justice of their families.”

³⁵⁵ Cf. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 469, and *Case of Núñez Naranjo et al. v. Ecuador. Merits, reparations and costs*. Judgment of May 23, 2023. Series C No. 492, para. 160.

307. The **representatives** did not refer to this point.

308. The **State** indicated that it “will agree to whatever the Court orders in this regard.”

309. The Court deems it pertinent to order that a documentary be made on the facts of this case because such initiatives are significant for both the preservation of the memory and the satisfaction of the victims, as part of the recovery and restoration of the historical memory. Therefore, the Court finds it appropriate that the State make an audiovisual documentary on the facts of this case, the violations verified in this judgment, the impact that all of this had on the victims, and the search for justice by the victims and their families. The production of the documentary must be coordinated with the victims or their family members, and the State must assume all production and distribution costs. In addition, the documentary must be transmitted by a national television channel, once, following two-weeks’ notice to the families and the representatives; it should also be made available on the internet platforms of the Presidential Office, the Ministry of Justice and Human Rights, and the Judiciary for one year. The State has two years from notification of this judgment to complete this audiovisual documentary and distribute it.

C.4. Creation of a historical archive

310. The **representatives** asked “that, to guarantee fully the right to the truth and to disseminate widely the facts of the case and the gravity of the State’s cover-up subterfuges, it should create a historical archive on the facts of the attack, the investigation and the cover-up, and the role of Memoria Activa, available to the general public.”

311. The **State** indicated that it “will agree to whatever the Court orders in this regard,” and suggested that it order technical discussions with Active Memory and the CELS in order to implement this measure.

312. The Court reiterates the importance of knowing the truth about the events, not only for the victims and their next of kin, but also for society as a whole. Therefore, it underscores the need to adopt measures that allow the general public to be informed about what happened in both the attack and, subsequently, the cover-up subterfuge; also, so that such facts are not repeated. Consequently, it orders the creation of a historical archive, accessible to the general public, on the facts of the attack, the investigation, the cover-up, and the role played by the victims’ associations – in particular Active Memory – to clarify the truth. The design of this archive must be coordinated by establishing a technical working group with the victims of the attack, their family members and their representatives, and the competent state authorities. The working group must be set up within one year of notification of this judgment. The State must provide the funding for the creation and maintenance of this archive.

D. Guarantees of non-repetition

D.1. Measures relating to prevention, investigation and intelligence agencies

313. The **Commission** required the State to “[a]dopt and implement the policies and measures necessary to establish a mechanism for the management and accountability of the confidential budget items allocated to the intelligence agencies of the Argentine State [to] guarantee the appropriate recording of such funds, the legality of their execution, and

their timely external control.” It also required the State to “[d]esign and implement education and training programs for all members of the federal security and intelligence agencies, as well as the members of the Judiciary of the Nation, to strengthen their capacity to prevent and investigate complex crimes related to the fight against terrorism.”

314. The **representatives** required the State to: (a) “regulate the incorporation of information obtained by the intelligence agencies into criminal proceedings as judicial evidence;”³⁵⁶ (b) “reform the legislation and its regulations on national intelligence, the police, and access to public information to adapt them to international standards on access to intelligence information and information allegedly kept confidential based on national security;”³⁵⁷ (c) “create a specialized federal investigation agency, with a training program and professionals trained to undertake this type of case”; (d) “publish the protocol for the administration of confidential funds that, in 2020, the AFI reported had been prepared, but was not published,” and (e) ensure that “that the Public Prosecution Service and the forensic agencies develop protocols and provide training on the collection and preservation of evidence in complex cases such as this one.”

315. The **State** indicated that it “will agree to whatever the Court orders.” However, it described actions taken by Argentina in relation to “the central characteristics of the National Intelligence System, the reforms undertaken by the National Executive (particularly in relation to the treatment of confidential funds), and its actions with

³⁵⁶ To this end, they indicated that the following should be regulated: (a) how prosecutors work with the information produced by intelligence agencies; (b) the requirements that intelligence information should meet to enable it to be incorporated as evidence in criminal investigations, and to ensure that it is in keeping with the standards for any probative material, and (c) elimination of the confidentiality of anyone who wishes to introduce evidence in a criminal investigation.

³⁵⁷ In particular: (a) clarify and reinforce the principle of maximum disclosure of the regulations, activities, documentation, and information produced and stored by the AFI and the police, and define restriction presumptions exhaustively in order to satisfy the criteria of strict legality, necessity and proportionality; (b) redefine the categories for classifying information, and standardize them in keeping with international protocols; (c) eliminate the omissions and contradictions created by the interplay between the law and the previous regulatory decrees that continue in force; (d) create special public regulations for the production and storage of AFI information and documentation, which includes the elaboration and publication of an index of the classified documentation, and the definition of custody criteria; (e) clarify the rules for access to secret or confidential information by the judicial authorities who need this in a specific case, as well as by the Bicameral Committee of the National Congress to monitor the Federal Intelligence Agency; (f) define an automatic time frame for declassification based on the passage of time and regulate a procedure for requesting declassification before the end of this time frame; (g) establish an active declassification policy; (h) regulate more precisely the prohibition to disclose information on physical and legal persons compiled by the AFI and stored in their databases; (i) establish an adequate system of internal and external control in this regard, and (j) establish that no exceptions may be made to access to information when serious human rights violations are involved.

regard to declassified information.”³⁵⁸ Regarding measures of prevention, it considered that “the Court should find that the claim had already been satisfied.”³⁵⁹

316. This Court notes that, although the State has made efforts to improve its domestic laws on the regulation of the intelligence services, regulatory obstacles and omissions still subsist, in particular with regard to the conditions for entering intelligence information into court cases. Therefore, it requires the State, within two years, to take the necessary legislative measures to regulate the incorporation of information obtained by the intelligence agencies as judicial evidence. This legislation must regulate: (a) the way in which the information is forwarded to the prosecutors in charge of the investigation, guaranteeing transparency, and (b) the requirements that intelligence information should comply with to be able to incorporate it as evidence in an investigation.

317. In addition, the Court orders that, within two years, the State must implement, under the Public Prosecution Service, a training program on recourse to information

³⁵⁸ Regarding the National Intelligence Service, it indicated that “the activities of the intelligence system in our country is regulated by Law No. 25,520 [...] enacted on December 3, 2001; this was the first regulation of the legal, organic and functional bases of the intelligence system [...]. In 2015, Law No. 27,126 was enacted, amending all those elements of Law No. 25,520 that had proved to be insufficient – and, in many aspects, prejudicial – for truth and justice. [It indicated that] national intelligence legislation was governed by the principles of transparency, disclosure and maximum legality, and expressly subordinated the actions of the intelligence agencies to the provisions of the Constitution, human rights treaties acceded to currently or in future, and any other norm that establishes rights and guarantees. [It pointed out that] the new law dissolved the SIDE and created the Federal Intelligence Agency, with the general mission of heading and coordinating the system, and producing intelligence to defend the Nation from international threats. It also regulates the procedures for the classification of information [and] establishes that any person or organization that proves a legitimate interest may file a declassification petition before the National Executive. [The State indicated that] all activities of the intelligence agencies are subject to parliamentary control by the congressional Bicameral Committee to Monitor Intelligence Agencies and Activities, and they may only maintain the confidentiality of funds that are necessary for intelligence work, knowledge of which could affect the normal execution of activities, [and that] the laws in force establish a series of penalties for those agents who violate their obligations.”

The State also advised that “Decree No. 52/2019223 [...] amended the first paragraph of article 4 of Law No. 25,520, expressly prohibiting intelligence agencies from intervening as auxiliary agents of justice. Based on this decree, the AFI was also intervened in order to consolidate a model that allowed for accountability before society in application of the principles of disclosure, transparency, efficiency and effectiveness, which also had an impact on the treatment of the confidential funds, because it established that only those funds necessary for the intelligence work could retain this nature [...].”

“Regarding access to information, [the State indicated] that it was during examination of the “AMIA I” case that former President Néstor Carlos Kirchner, who had recently assumed office, declassified the identity of certain spies and confidential documents that previous administrations had kept secret. [...] More recently, on March 4, 2020, Decree No. 213/20233 was issued, and pursuant to paragraph (c) of art. 16 bis of Law No. 25,520 and its amendments [...], it declassified all the information provided by the National State to the judicial proceedings in which judgment has been handed down in relation to the attack against the AMIA, its cover-up, and related crimes, [and] declared the absolute declassification of all the information and documentation related to the attack, its cover-up and related crimes in all the offices of the National Public Administration.

³⁵⁹ On this point, it indicated that “[t]he Ministry of Security is entrusted with the function of coordinating actions to resolve special situations or emergencies in the territory of the Nation, and also the National System for Integrated Risk Management and Civil Defense, [as well as] a National Directorate for Disaster Risk Prevention and Reduction, and a National Directorate for Civil Defense Operations.” It also indicated that the Ministry of Defense “has the mandate of organizing the coordination and deployment of the armed forces in emergencies or disasters in the territory of the Nation [...]. To this end, attached to the Ministry is a Secretariat for Military Coordination in Emergencies – which executes the institutional coordination and deployment of the armed forces to carry out prevention and rapid response tasks, activities, and actions in emergencies and natural disasters – and under this Secretariat, there is a Sub-Secretariat for Executive Coordination and Planning in Emergencies – which plans the measures and actions required to assist private, provincial and national entities deal with natural disasters or those caused by individuals.”

obtained from intelligence activities. This training program must be addressed to all federal prosecutors and must take into account the standards and good practices outlined in this judgment. The program must be incorporated into the training curricula or study plans of the said officials. In this regard, the State must submit an annual report to the Court for five years following implementation of the training program indicating the actions it has implemented in this area.

D.2. Access to information

318. The **Commission** asked that the State “[a]dopt measures to ensure that judges and prosecutors in charge of the investigations into the attack on the AMIA are able to obtain all relevant information to learn the truth, and to prosecute and punish those responsible, even if the information is subject to some type of confidentiality or state secrecy.” It also asked the State to “ensure that the petitioners and the victims of the attack can access the information linked to the case.”

319. The **representatives** asked that the State “guarantee that the declassification procedure carried out by the GERAD goes forward within a reasonable time, ensuring the conservation of the archives”; and that “the declassification encompasses all the investigations, and administrative and judicial files, as well as all the court bundles and information directly or indirectly related to the attack and its cover-up.” They also asked that all the archives on the case be “located, declassified, systematized, analyzed, and made available to the prosecutors, the parties and the general public.” They insisted that this was necessary to guarantee real access to the declassified information, and that the victims be informed on a regular basis.

320. The **State** alleged that Decree No. 213/20 had established the public nature of any information provided by the State to the judicial proceedings on the attack against the AMIA in which a judgment has been handed down, and also declared the absolute declassification of all the information and documentation related to the attack, its cover-up, and related crimes in all the offices of the National Public Administration. Regarding accessibility, it recognized that practical limitations had existed; however, it indicated that the UFI “is working to find resources and ways to reduce these limitations and improve the parties’ access to the declassified documentation.” It indicated also that measures had been taken to incorporate digital tools into the case file, to centralize the documentation, and to establish a department for the analysis of the declassified documentation within the UFI AMIA.

321. The Court underlines the efforts made by the State in relation to the declassification and accessibility of the information. However, as it has stressed in the preceding chapters, obstacles still exist to guaranteeing real public access to the information on one of the worst terrorist attacks suffered in the Americas. It therefore orders that, within two years, the State take the necessary administrative, legislative and any other measures to regulate requests to declassify the documents.

322. Furthermore, in order to guarantee real access to all the information on the case, within two years, the State must: (a) take the necessary administrative, legislative and any other measures to give the victims and the complainants full access to all the investigations, and administrative and judicial files, as well as all the court bundles and information linked directly or indirectly to the attack and its cover-up that are held by the Executive or by the UFI AMIA, and that has been declassified; (b) continue the administrative measures to ensure that all the archives related to the attack and its cover-up are located in the same physical space. This space should ensure the proper

conservation of the documents and allow public consultation of the information that has been declassified in accordance with the standards outlined in paragraphs 260 to 262 of this judgment.

323. The Court takes note of the information forwarded by the State on April 19, 2023, concerning the adoption of Resolution PGN No. 13/2023 of April 4, 2023, which established that the UFI AMIA would create a specific department for the analysis of all the declassified intelligence documentation and the GERAD's activities would be transferred to it. The Court considers that this decision is a positive measure, but it must be implemented and accomplished effectively. Therefore, it orders that, within one year, the State must take administrative measures to implement this specific analysis department. In particular, the State must guarantee the provision of a budget and human resources to enable it to perform its task.³⁶⁰ Additionally, this department must ensure constant communication with the victims and the complainants and, to this end, must issue bi-annual activities reports which should also be made public.

324. Furthermore, and to guarantee real access to the information, the new department must compile and systematize the declassified information, ensuring that it is digitalized and creating consultation instructions. This task must be guided by best practices for archive management and must possess a reference system that provides information on the content of the archives in order to facilitate the search for documents. This measure must continue until all the information on the attack and its cover-up held by the public authorities has been systematized, and must be completed within five years at the most.

E. Other measures requested

325. The **Commission** asked that the State "organize commemorative acts that contribute to preserving the truth and memory in relation to the attack on the AMIA as an essential step towards dignifying the victims who died and their families.

326. It also asked that the State "disseminate the basic principles and norms for the protection of human rights, with special emphasis on the protection of fundamental freedoms and the guarantees of due process in the context of the fight against terrorism." To this end, it considered that "the public apologies and training programs for State authorities [...] should] include a component on violations of the right to equality and non-discrimination" pursuant to inter-American standards. It also requested the "[a]doption and implementation of measures to strengthen the State's capacity to prevent terrorist attacks that constitute discriminatory acts."

327. The **representatives** asked for "the adoption and subsequent ratification of the Inter-American Convention against All forms of Discrimination and Intolerance, and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance."

328. The **State** indicated that it "will agree to whatever the Court orders in this regard."

³⁶⁰ On this point, expert witnesses Bazaco and González emphasized the need for the participation of "sufficient expert personnel with technical training in archival standards, document management regulations, technological tools, and specific computerized systems, as well as archival best practice and ethics." Expert opinion of Blanca Bazaco Palacios and Antonio González Quintana (evidence file, folio 45167).

329. The Court considers that the delivery of this judgment and the reparations ordered in this chapter are sufficient and appropriate to redress the violations suffered by the victims and, therefore, does not find it necessary to order additional measures. However, it urges the State to ratify the Inter-American Convention against All forms of Discrimination and Intolerance, and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.

F. Compensation

330. The **Commission** asked that the State “[m]ake adequate pecuniary and non-pecuniary reparation for all the human rights violations identified to the detriment of the victims.”

331. The **representatives** requested \$25,000 dollars for Adriana Reisfeld and for each of her nieces, Lucía and Ana Clara Oroño Reisfeld; for Diana Wassner and each of her daughters, Débora and Astrid; and for Jorge Lew and his son, Nicolás. They also asked that “Memoria Activa be granted the sum of \$10,000 owing to its numerous efforts to maintain awareness of the facts of the attack and its cover-up.” Lastly, it requested “a separate reparation for Diana Wassner, Debora and Astrid Malamud of a total of \$10,000 dollars, owing to all the actions they had to file to claim full compensation for the death of Andrés Malamud.”

332. The **State** indicated that “Law [No.] 27,139, of 2015, established the national reparation mechanism that had been opportunely pledged and which is in keeping with the criteria defined in the Court’s case law for similar cases”; that “Jorge Lew, Ana Clara Oroño Reisfeld and Lucía Oroño Reisfeld had benefited from the compensation included therein” and that “the sums established in that law which will be updated when considering the amount that corresponds to those who have not yet received compensation; this is the case of Adriana Reisfeld and Nicolás Lew. It also explained that “Diana Wassner de Malamud, Débora Malamud and Astrid Malamud were plaintiffs in [a] case in which compensation for damage was assessed.” Regarding the compensation requested for Active Memory, it indicated that “the inter-American system only permitted payment of compensation for pecuniary and non-pecuniary damage to physical persons.” Therefore, it considered that the Court “should consider such compensation when examining the admissibility of the amounts requested.”

333. In the specific case of Diana Wassner, it indicated that “[she] and her daughters had received compensation from the national State for Mr. Malamud’s death in the attack. In 1994, they became eligible for a one-time grant of \$55,000 (fifty-five thousand pesos) pursuant to Decree [No.] 1216/94. They also benefited from an indemnity of \$1,162,220 (one million one hundred and sixty-two thousand two hundred and twenty pesos) in bonds, and \$26,400 (twenty six thousand four hundred pesos) in cash, in the context of case [No.] 2787/97.” Consequently, it considered that the Court “should not grant the amount claimed for the concept in question, because the method of payment for compensation accorded by the court had been accepted.”

334. In its case law, the Court has developed the concepts of pecuniary and non-pecuniary damage and the situations in which this should be compensated. Thus, the Court has established that pecuniary damage involves the loss of or detriment to the victims’ income, the expenses incurred as a result of the facts, and the monetary

consequences that have a *causal nexus* with the facts of the case.³⁶¹ Added to this, it has established that non-pecuniary damage may include the suffering and distress caused to the direct victims and their family members, the impairment of values that are highly significant to them, and also other non-pecuniary changes in the living conditions of the victims or their families.³⁶²

335. In this regard, the Court underscores that, by Decree No. 812/2005 of July 12, 2005, which referred to the acknowledgement of responsibility made by the State in the hearing before the Commission on March 4, 2005, Argentina committed to: "(6) Promote the enactment of a law on reparation for all the victims of the attack." The national reparation mechanism was established by Law No. 27,139 of May 18, 2005, supplemented by Regulatory Decree No. 1823/2015. Article 1 of the law established that: "the persons who died or suffered severe or very severe injuries due to the attack perpetrated against the headquarters of the Argentine-Israeli Mutual Association (AMIA), located at 633 Pasteur Street, in the Autonomous City of Buenos Aires, on July 18, 1994, shall have the right to receive, once, a special benefit through their heirs and successors or in person, as applicable, whether or not they have filed an action for damages against the national State." Therefore, the Court finds that already, at the domestic level, and based on the acknowledgement of responsibility made by the State before the Commission, a mechanism was created to compensate the victims of the attack for the violations of their rights to life and personal integrity. This mechanism was not disputed by the representatives who expressly indicated that "the criteria outlined in Reparation Law No. 27,136 on the characteristics of the down payment or the reductions that should be made from the reparatory amount established by law are not in question here."

336. This Court considers that, when establishing full reparation for the next of kin of the victims identified in this case, it must take into account the harm suffered owing to the violation of the rights to due process, access to justice, access to information, personal integrity, and the truth. The Court underscores that the representatives only requested compensation for eight family members of the victims, and the case file does not contain information on other family members of the victims of the attack.

337. Consequently, the Court finds it appropriate to make a determination, in equity, to redress the pecuniary and non-pecuniary damage jointly and uniformly and as compensation for this damage, considering also the different human rights violations suffered by the next of kin of the victims of the attack identified in this case. Accordingly, it orders the State to pay the sum of US\$50,000.00 (fifty thousand United States dollars) to each of the following groups of victims, to be distributed equally between them: (a) Adriana Reinfeld and her nieces, Lucía and Ana Clara Oroño Reinfeld; (b) Diana Wassner and her two daughters, Debora and Astrid Malamud, and (c) Jorge Lew and his son, Nicolás. According to the representatives, Jorge Lew died on July 24, 2019, and therefore the sum corresponding to him must be delivered to his heirs pursuant to domestic law. The above sums must be paid, without prejudice to the amounts that have already been paid or that are pending payment owing to the

³⁶¹ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 180.

³⁶² Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 186.

application of the compensation mechanism established at the domestic level by Law No. 27,136 or administrative or judicial decisions concerning the facts of this case.

G. Costs and expenses

338. The **Commission** did not refer to this point.

339. The **representatives** requested the sum of “446,500 dollars” for Active Memory owing to “the sums paid to the lawyers as honoraria since 1997,” annual expenditure from 1997 to date “for the organization’s operations” and as reimbursement to “Adriana Reisfeld, Diana Wassner and Jorge Lew [...] owing to the expenses they incurred in the course of their efforts at the national and international level.” They also asked “that 25,000 dollars be delivered to the Center for Legal and Social Studies (CELS) based on its work during the processing of the international case starting in 1999,” and 45,000 dollars more for “expenses of travel to the IACHR.”

340. The **State** pointed out that “the global amount for costs and expenses should not exceed a reasonable *quantum*” and “contested [...], as very high, the sums claimed for honoraria.” It added that “the sums requested [...] are much higher than those claimed domestically for the same case.”

341. The Court reiterates that, pursuant to its case law, costs and expenses form part of the concept of reparation because the actions undertaken by the victims in order to obtain justice at both the national and the international level entail disbursements that should be compensated when the international responsibility of the State has been declared in a judgment. Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes the expenses generated before the authorities of the domestic jurisdiction, and also those originating during the process before the inter-American system, taking into account the circumstances of the specific case, and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.³⁶³

342. In the instant case, the Court notes that the case file does not include sufficient probative material to support the costs and expenses incurred by the representatives or the victims in relation to the processing of the case before the Commission and the Court. However, it considers that such procedures necessarily entailed pecuniary disbursements and, therefore, determines that the State should deliver US\$60,000.00 (sixty thousand United States dollars) to the Active Memory Civil Association and US\$20,000 (twenty thousand United States dollars) to CELS for costs and expenses. It should also deliver to Adriana Reisfeld, Diana Wassner and Jorge Lew a total of US\$20,000.00 (twenty thousand United States dollars) each for the same concept. The sum granted to Jorge Lew must be delivered to his heirs pursuant to domestic law. At the stage of monitoring compliance with judgment, the Court may establish that the State should reimburse the victims or their representatives for any reasonable expenses incurred at that procedural stage.³⁶⁴

³⁶³ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, paras. 42, 46 and 47, and *Case of Córdoba v. Paraguay*, *supra*, para. 155.

³⁶⁴ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra*, para. 291, and *Case of Rodríguez Pacheco et al.*, para. 196.

H. Method for complying with the payments ordered

343. The State must pay the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in the judgment directly to the victims identified in this judgment, to CELS and to the Active Memory Association, pursuant to the provisions of paragraphs 337 and 342.

344. If any of the beneficiaries should be deceased before they receive the respective compensation, this must be delivered directly to their heirs, pursuant to the applicable domestic law.

345. The State must comply with its pecuniary obligations by payment in United States dollars or, if this is not possible, the equivalent in Argentine currency, using the highest exchange rate – and the one most advantageous to the beneficiaries allowed by domestic law – in effect at the time of the payment, to make the respective calculation. At the stage of monitoring compliance with judgment, the Court may make a prudent adjustment of the equivalent of the amounts paid in Argentine currency, to avoid exchange rate variations substantially affecting the purchasing power of the sums involved.

346. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it should prove impossible to pay the amounts established within the indicated timeframe, the State shall deposit the said amounts in their favor in a deposit account or certificate in a solvent Argentine financial institution, in United States dollars, and in the most favorable financial conditions permitted by banking law and practice. If the corresponding compensation is not claimed, after ten years the sums shall be returned to the State with the interest accrued.

347. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses must be delivered to the persons and organizations indicated in full, as established in this judgment, without any deductions derived from possible taxes and charges.

348. If the State should fall into arrears, it must pay interest on the amounts owed, based on the bank interest rate on arrears in the Argentine Republic.

IX OPERATIVE PARAGRAPHS

349. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To accept the acknowledgement of responsibility made by the State, pursuant to paragraphs 27 to 30 of this judgment.

DECLARES,

Unanimously, that:

2. The State is responsible for the violation of the rights to life and personal integrity recognized in Articles 4(1) and 5 of the American Convention, in relation to Article 1 of this instrument, to the detriment of the victims of the attack established in the lists contained in Annexes 1 and 2, pursuant to paragraphs 128 to 137 of this judgment.

3. The State is responsible for the violation of the principle of equality and non-discrimination established in Articles 1(1) and 24 of the Convention, to the detriment of the victims of the attack and the family members established in the lists contained in Annexes 1, 2 and 3, pursuant to paragraph 139 of this judgment.

4. The State is responsible for the violation of access to justice and the judicial guarantees recognized by Articles 8 and 25(1) of the Convention in relation to Article 1(1) of this instrument, to the detriment of the family members of the victims of the attack, identified in the list in Annex 3, pursuant to paragraphs 143 to 211 of this judgment.

5. The State is responsible for the violation of the right of access to information established in Article 13 of the American Convention, as well as the right to know the truth based on the violation of the rights to judicial guarantees, judicial protection, and access to information established in Articles 8(1), 13 and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the surviving victims of the attack and their family members established in the lists in Annexes 2 and 3, pursuant to paragraphs 241 to 270 of this judgment.

6. The State violated the right to mental and moral integrity established in Article 5(1) of the Convention, in relation to the obligation to respect rights established in Article 1(1) of this instrument, to the detriment of the family members of the victims of the attack identified in the list in Annex 3, pursuant to paragraphs 274 to 283 of this judgment.

AND ESTABLISHES

Unanimously, that:

7. This judgment constitutes, *per se*, a form of reparation.

8. The State shall remove all the obstacles *de facto* and *de jure*, that maintain total impunity in this case, and shall initiate, continue, promote and/or reopen the necessary investigations to individualize, prosecute and, as appropriate, punish those responsible for the facts of this case and shall establish the truth of what happened, all within a reasonable time, pursuant to paragraphs 293 and 294 of this judgment.

9. The State shall continue processing the pending proceedings against those responsible for the cover-up of the attack within a reasonable time, in order to apply, as appropriate, the corresponding sanctions to those found responsible, pursuant to paragraph 296 of this judgment.

10. The State shall make the publications indicated in paragraphs 300 and 301 of this judgment.

11. The State shall conduct a public act to acknowledge international responsibility pursuant to paragraph 305 of this judgment.

12. The State shall produce a documentary on the facts of this case and shall ensure its dissemination pursuant to paragraph 309 of this judgment.

13. The State shall create a historical archive accessible to the general public on the facts of the attack, the investigation, the cover-up, and the role of the victims' associations in the clarification of the truth, pursuant to paragraph 312 of this judgment.

14. The State shall adopt the necessary legislative measures to regulate the conditions for entering intelligence information into court cases, pursuant to paragraph 316 of this judgment.

15. The State shall implement a training program, pursuant to paragraph 317 of this judgment.

16. The State shall take the necessary legislative, administrative and other measures to regulate requests for the declassification of documents, pursuant to paragraph 321 of this judgment.

17. The State shall take the necessary legislative, administrative and other measures to give full access to the victims and their representatives, and to the complainants in the different judicial proceedings, to all the investigations, and administrative and judicial files, and all the court bundles and information directly or indirectly related to the attack and its cover-up that are held by the Executive Branch or the UFI AMIA and that have been declassified, pursuant to paragraph 322 of this judgment.

18. The State shall continue to take administrative measures to ensure that all the files related to the attack and its cover-up are located in an adequate physical space that guarantees the proper preservation of the documents and allows the public to consult the information that has been declassified, pursuant to paragraph 322 of this judgment.

19. The State shall guarantee implementation of the specific department for the analysis of all the declassified documentary intelligence evidence within the UFI AMIA, ensuring that the information is compiled and systematized, following best practices in archive management, pursuant to paragraphs 323 and 324 of this judgment.

20. The State shall pay the amounts established in paragraphs 337 and 342 of this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, pursuant to paragraphs 343 to 348 of this judgment.

21. The State, within one year of the notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it, without prejudice to the provision established in paragraph 301 of this judgment.

22. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with its provisions.

DONE, at San José, Costa Rica, on January 26, 2024, in the Spanish language.

I/A Court HR. *Case of the Active Memory Civil Association v. Argentina. Merits, reparations and costs.* Judgment of the Inter-American Court of Human Rights of January 26, 2024. Judgment adopted in San José, Costa Rica.

Nancy Hernández López
President

Rodrigo Mudrovitsch

Humberto A. Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Ricardo C. Pérez Manrique

Patricia Pérez Goldberg

Pablo Saavedra Alessandri
Registrar

So ordered,

Nancy Hernández López
President

Pablo Saavedra Alessandri
Registrar

ANNEX 1

List of those who died in the attack

- 1) Silvana Sandra Alguea de Rodríguez,
- 2) Jorge Lucio Antúnez,
- 3) Moisés Gabriel Arazi,
- 4) Carlos Avendaño Bobadilla,
- 5) Yanina Muriel Averbuch,
- 6) Naum Band,
- 7) Sebastián Julio Barreiros,
- 8) David Barriga Loaiza,
- 9) Hugo Norberto Basiglio,
- 10) Rebeca Violeta Behar de Jurin,
- 11) Emilia Graciela Berelejis de Toer,
- 12) Fabio Enrique Bermúdez,
- 13) Emiliano Gastón Brikman,
- 14) Víctor Gabriel Buttini,
- 15) Viviana Adela Casabe,
- 16) Jacobo Chemaue,
- 17) Paola Sara Czyzewski,
- 18) Diego Ricardo de Pirro,
- 19) Cristian Adrián Degtiar,
- 20) Ramón Nolberto Díaz,
- 21) Norberto Ariel Dubín,
- 22) Faiwel Dyjament,
- 23) Aída Mónica Feldmand de Goldfeler,
- 24) Alberto Fernández,
- 25) Martín Antonio Figueroa,
- 26) Ingrid Elizabeth Finkelchtein,
- 27) Fabián Marcelo Furman,
- 28) Guillermo Benigno Galagarra,
- 29) Edwin Yonny García Tenorio,
- 30) José Enrique Ginsberg,
- 31) Cynthia Verónica Goldenberg,
- 32) Andrea Judith Guterman,
- 33) Leonor Amalia Gutman de Finkelchtein,
- 34) Silvia Leonor Hersalis,
- 35) Carlos Isaac Hilu,
- 36) Emilia Jakubiec de Lewczuk,
- 37) María Luisa Jaworski,
- 38) Augusto Daniel Jesús,
- 39) María Lourdes Jesús,
- 40) Analía Verónica Josch,
- 41) Carla Andrea Josch,
- 42) Elena Sofía Kastika,
- 43) Esther Raquel Klin de Fail,
- 44) León Gregorio Knorpel,
- 45) Berta Kozuk de Losz,
- 46) Luis Fernando Kupchik,
- 47) Agustín Diego Lew,
- 48) Romina Ambar Luján Bolan,
- 49) Andrés Gustavo Malamud,

- 50)Gregorio Melman,
- 51)Ileana Sara Mercovich,
- 52)Naon Bernardo Mirochnik,
- 53)Mónica Graciela Nudel,
- 54)Isabel Victoria Núñez de Velásquez,
- 55)Elías Alberto Palti,
- 56)Germán Parsons,
- 57)Rosa Perelmutter,
- 58)Roberto Fernando Pérez,
- 59)Abraham Jaime Plaksin,
- 60)Silvia Inés Portnoy,
- 61)Olegario Ramírez,
- 62)Noemí Graciela Reisfeld,
- 63)Félix Roberto Roisman,
- 64)Marisa Raquel Said,
- 65)Ricardo Hugo Said,
- 66)Rimar Salazar Mendoza,
- 67)Fabián Gustavo Schalit,
- 68)Pablo Néstor Schalit,
- 69)Mauricio Schiber,
- 70)Néstor Américo Serena,
- 71)Dora Shuldman de Belgorosky,
- 72)Mirtha Alicia Strier,
- 73)Liliana Edith Szwimer,
- 74)Naum Javier Tenenbaum,
- 75)Juan Carlos Terranova,
- 76)Mariela Toer,
- 77)Marta Andrea Treibman de Duek,
- 78)Ángel Claudio Ubfal,
- 79)Eugenio Vela Ramos,
- 80)Juan Vela Ramos,
- 81)Gustavo Daniel Velásquez,
- 82)Danilo Norberto Villaverde,
- 83)Julia Susana Wolynski de Kreiman,
- 84)Rita Noemí Worona, y
- 85)Ademar Zárate Loayza.

ANNEX 2

List of those injured as a result of the attack

- 1) Berta Abousky de Palais,
- 2) Elvira Rosa Acosta,
- 3) Juan Carlos Álvarez,
- 4) Raquel Angélica Álvarez,
- 5) Jorge Miguel Andrada,
- 6) Fernando José Andrada,
- 7) Isabel Anwoiner de Peker,
- 8) Héctor Alberto Arce,
- 9) Mónica Lucía Arnaudo de Yabiansky,
- 10) Elena Atallah de Paleciz,
- 11) Hugo Enrique Ávila,
- 12) Pablo Ayala Rodríguez,
- 13) Claudio Baamonde,
- 14) Ana María Balaszczuk de Cernadas,
- 15) Óscar Alberto Banega,
- 16) Edmundo Horacio Baron,
- 17) Mónica Beatriz Barraganes,
- 18) Julio Barriga Loayza,
- 19) Hermelinda Bermin Bello,
- 20) Sergio Luis Bondar,
- 21) Jorge Eduardo Bordón,
- 22) Alberto Brescia,
- 23) Juan Antonio Brizuela,
- 24) Martha Hilda Brodsky de Roffe,
- 25) Gustavo Martín Cano,
- 26) Luis Canzobre,
- 27) Silvia Verónica Carrizo,
- 28) Silvia Castillo Benítez,
- 29) Blanca Ofelia Castillo Villanueva,
- 30) Claudio Alejandro Castro,
- 31) Lidia Bernardita Cazal Martí,
- 32) María Elsa Cena,
- 33) Gustavo Cernadas,
- 34) Paula Cernadas,
- 35) Siphor Chalelachuili de Lapidus,
- 36) Moisés Chaufan,
- 37) Rubén Samuel Chejfec,
- 38) Salomón Chencinski,
- 39) Humberto Chiesa,
- 40) Raquel Czertok de Chen,
- 41) Mario Ernesto Damp,
- 42) Diego Nolberto Díaz,
- 43) Horacio Dragubitzky,
- 44) Celia Dubini de Quiroga,
- 45) Silvio Duniec,
- 46) Jorge Osvaldo Ferretti,
- 47) Martha Raquel Finkelberg de Pirro,
- 48) Carlos Alberto Flores,
- 49) Adrián Pablo Furman,

- 50) Leonor Marina Fuster,
- 51) Eleuterio Galán,
- 52) Francisco Gustavo Galán,
- 53) Salustiano Galeano,
- 54) Jos Adalberto Gallardo Nuesch,
- 55) Raquel Ester Goberman,
- 56) Oscar Alfredo Gómez,
- 57) Arturo Gritti,
- 58) Arturo Daniel Gritti,
- 59) Ramón Máximo Gutmann,
- 60) Adolfo Guido Guzmán,
- 61) Norma Heler de Lew,
- 62) Miriam Magdalena Hoyos,
- 63) Ernesto Víctor Ini,
- 64) Dolores Insúa Calo,
- 65) Mario Kahan,
- 66) Marcela Patricia Laborie San Miguel,
- 67) Susana Cecilia Lacour,
- 68) Israel Moisés Lapidus,
- 69) Angélica Ester Leiva,
- 70) José Longo,
- 71) Inés Zulema López,
- 72) Ramón López,
- 73) Inés Vicenta López de Duniec,
- 74) Salomón Lotersztejn,
- 75) Juan Aldo Luján,
- 76) Luciano Javier Luppi,
- 77) Aldo Ernesto Macagno,
- 78) Jorge Alberto Machaca,
- 79) Norma Gladys Mansilla,
- 80) Gregorio Marchak,
- 81) Olga Josefina Martínez,
- 82) Zunilda Petrona Martínez,
- 83) Pedro Martínez,
- 84) José Eduardo Marzilli,
- 85) Marta Beatriz Massoli de Luppi,
- 86) Antonia Nelida Mastromauro,
- 87) Luisa Miednik,
- 88) Gregorio Oscar Militello,
- 89) Ramona Miño,
- 90) Alejandro Mirochnik,
- 91) Javier Horacio Miropolsky,
- 92) Rosa Montano de Barreiros,
- 93) Laura Andrea Moragues,
- 94) Oscar Orlando Moya,
- 95) Silvia Alejandra Murcia,
- 96) Mario Obregón,
- 97) Liliana Cristina Olivo,
- 98) Mario Antonio Ottolino,
- 99) Lorena Verónica Pate,
- 100) Marcial César Peleteyro,
- 101) Gabriel German Peralta Ruiz,
- 102) Omar Alfredo Pérez,

- 103) Osvaldo Héctor Pérez,
- 104) Gladys Ernestina Perona de Lisazo,
- 105) Daniel Alejandro Pomerantz,
- 106) Rita Raquel Ramírez,
- 107) Edgardo Roberto Ribrochi,
- 108) Cecilia Alejandra Rikap,
- 109) Ana María Rivas de Rikap,
- 110) María Beatriz Rivera Méndez,
- 111) Julio César Rodríguez,
- 112) Alberto Roffe,
- 113) Gabriel León Roffe,
- 114) Carlos Romagnani,
- 115) Ángela Romano de Delgado,
- 116) Edmundo Ruiz,
- 117) Raúl Alberto Sánchez,
- 118) Mariana Andrea Sandkovsky,
- 119) Olga Magdalena Santillán,
- 120) Daniel Osvaldo Saravia,
- 121) Adriana Beatriz Schettino,
- 122) Elena Schreiber de Falk,
- 123) Esther Beatriz Segelis de Dobniewski,
- 124) Sara Shimanski de Schapira,
- 125) Adriana Verónica Rosa Sibilla,
- 126) Víctor Hugo Siman,
- 127) Simón Sneh,
- 128) Julio Carlos Sosa,
- 129) Gustavo Spinelli,
- 130) Aida Eva Stolarsky de Bedne,
- 131) Samuel Szurman,
- 132) Adriana Marisa Tello,
- 133) Daniel Tobal,
- 134) Elías Néstor Tobal,
- 135) Claudia Patricia Valdez,
- 136) Horacio Diego Velásquez,
- 137) León Veliz Palmacio,
- 138) Alejandro Daniel Verri,
- 139) Claudia Cristina Vicente de Liano,
- 140) Miguel Ángel Vinciguerra,
- 141) Martín José Viudez,
- 142) Eduardo Waizer,
- 143) Miguel Ángel Wehbi,
- 144) Claudio Alejandro Weicman,
- 145) Nicolás Wojda,
- 146) Natasha Yabiansky
- 147) Romina Yabiansky,
- 148) Adolfo Yabo,
- 149) Jaime Zaidman, and
- 150) Leonardo León Zechin.

ANNEX 3
Family members

- 1) Adriana Reisfeld,
- 2) Lucía Oroño Reisfeld,
- 3) Ana Clara Oroño Reisfeld,
- 4) Diana Wassner,
- 5) Débora Malamud,
- 6) Astrid Malamud,
- 7) Jorge Lew, and
- 8) Nicolás Lew.