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REPORT No. 187/20
CASE 12.204

ADMISIBILITY AND MERITS

ACTIVE MEMORY CIVIL ASSOCIATION
(VICTIMS AND FAMILY MEMBERS OF THE VICTIMS THE TERRORIST ATTACK OF JULY 18, 1994 ON THE HEADQUARTERS OF THE ISRAELI-ARGENTIAN MUTUAL ASSOCIATION)

ARGENTINA

Approved by the Commission at its session No. 2179 held on July 14, 2020
176 Regular Period of Sessions

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I. INTRODUCTION

1. On July 16, 1999, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition signed by a group of victims and relatives of the victims of the terrorist attack perpetrated against the headquarters of the Israeli-Argentinian Mutual Association [*Asociación Mutual Israelita Argentina*](AMIA) organized through the Active Memory Civil Association [*Asociación Civil Memoria Activa*][1]. The petitioners affirmed that the Argentine State (hereinafter "the Argentine State", "the State" or "Argentina") is internationally responsible for the violation of its duty to prevent the terrorist attack that occurred on July 18, 1994, which caused the death of 85 people and serious injuries to the detriment of at least 151 other people ("the alleged victims"), and due to the state of impunity, to date, of the facts.

II. PROCEDURE OF THE PETITION BEFORE THE IACHR

2. The initial petition was presented on July 16, 1999 by the Active Memory Civil Association with the co-sponsorship of the Center for Legal Studies (CELS), the Center for International Law and Justice (CEJIL) and Dr. Alberto Luis Zuppi. On September 23, 1999, Human Rights Watch expressed its interest in participating as a co-petitioner. Likewise, on September 28, 1999, CELS indicated that Human Rights Watch would participate as a co-sponsor of the petition.

3. On August 3, 2000, the State sent a communication by means of which it made various considerations on the development of the investigation at the domestic level and extended an invitation to the IACHR to attend, as observer, the oral and public trial that would be held in the following months. For its part, on September 26, 2000, the IACHR received a brief from the petitioners in which they set out various arguments on admissibility and merits and expressed their consent to the appointment of an observer. On August 3, 2001, the IACHR decided to appoint its then president, Claudio Grossman, as an observer to the oral trial, which was scheduled to begin on September 24 of the same year. On February 22, 2005, Mr. Grossman issued his final report[2].

4. On March 4, 2005, a hearing was held between the representatives of the petitioners, the Argentine State, and members of the Inter-American Commission in the framework of the 122° Regular Period of Sessions of the IACHR. At the end of that hearing, the parties signed an agreement by means of which the Argentine State accepted its international responsibility, in accordance with the formulations contained therein. In the same act, the parties expressed their willingness to initiate a friendly settlement process in order to repair the consequences of the international crime. By means of Decree 812/05 dated July 12, 2005, the National Executive Power approved the actions and instructed the Ministries of the Interior and of Justice and Human

[1] On August 24, 1999, the IACHR received a communication from the Association Mothers of Plaza de Mayo - Línea Fundadora in which they expressed their support for the petitioners' complaint. In the same vein, the Commission received communications from the Service, Peace, and Justice Foundation on August 31, 1999, from the International Human Rights Law Group on September 16, 1999, from the organization of relatives of disappeared and detained for political reasons, on September 8, 1999, and from the Permanent Assembly for Human Rights on October 5, 1999. On April 18, 2019, at the request of Daniel Eduardo Joffe, the Commission indicated that his petition will be considered in a separate petition.

[2] Annex 1. Report signed by Dean Claudio Grossman, International Observer of the IACHR in the trial of Israeli-Argentinian Mutual Association (AMIA). February 22, 2005. Hereinafter: "Grossman Report". Annex 5 to the petitioner's communication dated November 11, 2019.

Rights to issue the necessary resolutions for the fulfillment of the objectives established in the work agenda attached to the mentioned minutes of agreement. According to the records in the file, Human Rights Watch has not been involved from that moment on.

5. In a brief dated March 9, 2009, the petitioners indicated the IACHR that none of the points that the State had agreed to had been fully complied. Consequently, they considered the friendly settlement process concluded and urged the approval of the admissibility and merits report. On July 1, 2009, the petitioners informed the Commission that they had held meetings with representatives of the State and that, in due course, they would report a possible resumption of the friendly settlement process. On November 4, 2009, in the framework of the 137° Period of Sessions of the Commission, a working meeting was held between the parties in which the petitioners agreed to resume the friendly settlement process until March 2010 provided that the State adopted a series of measures.

6. Finally, on April 15, 2010, the petitioners indicated to the IACHR that, as of that date, there had been little progress in the friendly settlement process, for which they requested that the study on the admissibility and merits of the petition resumed. On June 29, 2012, the Commission informed the parties of its decision to defer the admissibility analysis until the debate and decision on the merits, in application of Article 36 (3) of its Rules of Procedure. In a communication received on October 31, 2014, the petitioners forwarded their document with additional observations on the merits. On November 18, 2014, the Commission forwarded said document to the Argentine State. After requesting several extensions, the State submitted its brief with additional observations on the merits on September 28, 2015.

7. At the request of the petitioners, on July 27, 2015, the Commission entrusted the then Commissioner Paulo Vanucchi, in his capacity as rapporteur for Argentina, to attend as an observer to the opening hearing of oral trial held before the Federal Oral Criminal Court No. 2 into the cover-up of the attack.

8. On March 7, 2017, the State expressed its willingness to restart the friendly settlement process. On May 15, 2017, the petitioners rejected the proposal and reiterated their willingness to continue with the admissibility and merits process before the Commission.

9. Lastly during the 174° Period of Sessions held in the city of Quito, Ecuador from November 8 to 14, 2019, the IACHR, pursuant to Articles 30.5 and 37.5 of its regulations, convened the petitioners and the Argentine State to an oral hearing. On that occasion, the Commission received the testimonial statements of Diana Wassner and Adriana Reisfeld, offered by the petitioners, and listened to the considerations made by both the petitioners' representatives and those of the State[3].

III. POSITION OF THE PARTIES

A. The Petitioners

10. The petitioners reported that the attack took place at 09:53 a.m. on Monday, July 18, 1994, when a Renault Trafic van carrying a large explosive charge crashed into the entrance of the building that housed the headquarters of the Israeli-Argentinian Mutual Association, located at 633 Pasteur Street in the city of Buenos Aires. As a result of the explosion, 85 people lost their lives and at least 151 other people were injured to varying degrees.

11. In general, the petitioners argued that the AMIA attack is one of the most tragic occurrences in the recent history of Argentina and the region, which -more than 25 years after the facts- still remains unpunished, since the Argentine State has not provided any response to clarify what happened. This situation of impunity, they argued, is not due to the complexity of the event but to the political manipulation and deliberate state cover-up, which have affected the case since its inception.

[3] The audiovisual record of the hearing can be consulted at: https://www.youtube.com/watch?v=EyTmlo6Anos

12. The petitioners affirmed that the attack on the AMIA is not an isolated incident, but is linked to another terrorist attack that occurred on March 17, 1992 against the building of the Israeli Embassy in Argentina in which 22 people died and at least 346 were injured. This attack, the petitioners report, has not been clarified either and has also gone unpunished to date.

13. Regarding the duty of prevention of the Argentine State, the petitioners indicated that sufficient measures were not adopted to prevent the attack, even though the State was aware of the existing risk situation of the buildings linked to the Jewish community in Buenos Aires. In particular, they argued that there was a lack of diligent surveillance of the suspects of the first attack; dismissal of crucial intelligence information; lack of action or precaution in the face of the low-altitude overflight helicopter by the building during the early morning on the day of the attack; and lack of reinforced police control of the AMIA headquarters, since, at the time of the attack, the police vehicle destined to guard the building had no battery and the police had no other communications equipment other than a walkie-talkie.

14. In this regard, the petitioners argued that the State is responsible for the lack of prevention in relation to the right to life of the deceased persons and the right to integrity of the injured persons, for not having taken the measures that were reasonably expected to prevent the attack. The petitioners also added that after the attack the absence of a disaster contingency protocol was evident, and that no immediate measures were taken on border and immigration matters.

15. The petitioners also indicated that the Argentine State is responsible for the extensive and very serious irregularities that were committed during the investigation, which denote not only a failure to adopt the necessary measures to achieve a successful investigation, but also an intention to divert the investigation, covering up the foreign and local individuals responsible for the attack.

16. The petitioners reported that the initial investigation was carried out by the Federal Criminal and Correctional Court No. 9 and that it was brought to trial in 1999. During said investigation, they complained, the State intentionally failed to follow logical lines that arose of the investigation; the State directed the investigation towards innocent people; it set aside the rules of due process; the State agreed politically on the outcome of the case; it illegitimately deprived defendants of their liberty; extorted witnesses; diverted state funds; it ruled against local law; it hid files and prevented the complainants from accessing the judicial file.

17. The petitioners stated that, in 2004, the Federal Oral Criminal Court No. 3 declared the nullity of a large part of the investigation, considering that the action of the judge in charge of the investigation was partialized and that it affected the rights to due process and defense in court. In said judgment, the petitioners added that it was shown that the judicial investigation used false evidence obtained from illicit state activities deployed in order to accuse members of the Buenos Aires Province Police of being part of the local connection of the attack.

18. In this sense, the petitioners affirmed that, even after the cover-up maneuver was discovered, the judicial case continued to be conducted by the State Intelligence Secretariat and influenced by foreign agencies, for which reason, for years, no progress was made in determining the truth, since the investigation would be far from being exhaustive and impartial. In this sense, the petitioners argued that the lack of investigation was serious and deliberate and that the State did not adopt the minimum precautions to undertake a successful investigation, it also displayed its capacity to divert the investigation, thereby sealing the cover-up of the foreign and local individuals responsible for the attack.

19. The petitioners indicated that various judicial officials, the National Executive Branch, agents of the State Intelligence Secretariat (SIDE) and the Argentine Federal Police (PFA) were tried for covering up the attack and those who were truly responsible. They reported that in May 2019 the Federal Oral Criminal Court No. 2 issued a ruling that -despite characterizing the cover-up maneuvers as serious human rights violations- imposed criminal sanctions that the petitioners consider to be disproportionately low. Likewise, the petitioners argued that the conviction for the cover-up of the attack is still not final and that the investigation against several defendants remains to be advanced. Finally, they indicated that there was a lack of impartiality and independence of the judges and prosecutors in charge investigating the causes of the attack and the cover-up.

20. The petitioners highlighted that in 2005 the State recognized its international responsibility for the failure to prevent and investigate the attack and agreed to promote an agenda of measures aimed at redirecting the investigations. However, the petitioners pointed out that the State did not show significant progress in complying with such commitments, therefore the State would continue to incur in international responsibility.

21. Likewise, the petitioners alleged that both the judicial process for the attack and for the cover-up have not been carried out within a reasonable period of time. They indicated that, although the case is complex due to the magnitude of the events and the political structures involved, the delay has not been due to this, rather to the constant obstruction of the State and the multiple cover-up maneuvers that curtailed the investigation. Along these lines, they affirmed that the only reason the investigations are still continuing is because of the tireless fight of the victims' families.

22. The petitioners alleged that in the investigation there is a large accumulation of classified information that was not shared with them until 2001, while another large number of documents was kept secret until 2015. They indicated that the information they currently have is so abundant and complex that, by not providing advice or guidance to the complainants for their understanding, the State is not truly guaranteeing the full access and capacity to act of the victims. They also denounced that some files were located in places without any safeguards or protection to avoid their damage over time. In addition, they indicated that the State has not taken the necessary actions for other countries to share the information they have on the attack.

23. The petitioners indicated that the Argentine State also violated the right to humane treatment of the next of kin of the victims of the attack, both because of the suffering caused as a result of the particular circumstances of the violations perpetrated against their loved ones, and for the effort deployed and the steps taken to obtain justice. In particular, they referred to the tireless fight that the victims' families and the Active Memory organization have waged for more than 25 years in the search for truth and justice.

24. Finally, the petitioners stated that, despite their character as victims of the attack and plaintiffs in the judicial case, they do not have the possibility of corroborating the intelligence information incorporated into the investigation. They indicated that there would be evidence that the State knew or suspected that the attack could occur, as well as the identity of those who organized and participated in the attack, but that it was not seriously investigated, opting to cover up the facts.

25. The petitioners emphasized that the performance of intelligence agents as judicial auxiliaries deserves special attention because it was not until the moment when the secrecy covering their activities was lifted that the cover-up maneuvers were known, which explain the state of impunity of the investigation.

26. The petitioners asked the Commission to address the case as a serious violation of human rights. Likewise, they requested that the State be recommended to adopt a series of actions aimed at guaranteeing adequate reparation for the victims and other diverse measures of non-repetition, as well as various actions with the purpose of guaranteeing the right to the truth to sustain the collective memory of what happened.

27. By virtue of all of the above, the petitioners asked the Commission to declare the international responsibility of the Argentine State for the violation of the rights guaranteed in Articles 4, 5, 8, 13, and 25 of the Convention, in relation to Articles 1.1 and 2 of the same instrument.

B. The Argentine State

28. During the processing of the case before the Commission, the Argentine State acknowledged its international responsibility for the alleged violations and ratified its position through the enactment of Decree 812/05. Said norm expressly indicates that Argentina recognizes its responsibility for violations of the right to life, humane treatment, fair trial, and judicial protection, and the duty to guarantee of Article 1 (1) of the Convention.

29. In response to its acknowledgment of responsibility, the State argued that it was unnecessary to make observations regarding the merits of the case and confirmed on a number of occasions its willingness to reopen the dialogue process with the victims in order to jointly advance in the compliance with the agreed points.

30. Regarding compliance with the commitments agreed, the State first pointed out that the acknowledgment of responsibility was disseminated through the publication of the text of Decree 812 in two newspapers with national circulation. It also reported that the Grossman report is published and available on the website of the Ministry of Justice and Human Rights.

31. On the other hand, with regard to the investigation, the State reported that it has provided various resources to the Prosecution Unit in charge of the Investigation of the AMIA Attack under the Public Ministry (UFI AMIA) in order to guarantee a survey of all the information on the case that was on file with the Federal Intelligence Agency (AFI). In this regard, the State indicated that through Decrees 395/15 and 229/17 the declassification of all the documentation, notes, reports, and resolutions related to the investigation of the attack was ordered, which would be organized, systematized, preserved, and analyzed by the UFI AMIA.

32. The State also indicated that the AMIA Unit of the Ministry of Justice was strengthened, allowing the Executive Power to have an active participation as plaintiff in the processes related to the cover-up.

33. Regarding the measures of general scope to avoid the repetition of events such as those that occurred, the State detailed the progress made in creating a unit specialized in emergency management. It also mentioned the creation, in February 2015, of the Federal Intelligence Agency (AFI) through law 27.126. Regarding access to intelligence information by judges in investigations related to acts of terrorism, the State detailed the institutional channels through which the information would be shared since the creation of the AFI, and reported on the establishment of a Commission for the creation of a bank for data protection and intelligence files.

34. Finally, and regarding specific reparations for the victims of the AMIA attack, the State highlighted the enactment of Law No. 27.139 that establishes the right to obtain compensation for those who died or suffered serious or very serious injuries and their successors. Likewise, it indicated that the payment of costs and fees for the national and international proceedings has been handed over to the Ministry of Justice in order to continue its process.

IV. ACKNOWLEDGMENT OF RESPONSIBILITY BY THE ARGENTINE STATE

35. The State recognized its international responsibility by signing an agreement act with the petitioners and the IACHR on March 4, 2005. Said document states that:

> The Government recognizes 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 humane treatment (art. 5 AC); right to a fair trial (art. 8 AC) and right to judicial protection (art. 25 AC); and the guarantee obligation (art. 1.1 AC), in the following terms.
>
> In this sense, the State acknowledges the responsibility since there was a breach of the prevention duty for not having adopted the appropriate and effective measures to try to prevent the attack, taking into account that two years before the event another terrorist act had occurred against the embassy of Israel in Argentina.
>
> The State acknowledges the responsibility because there was a cover-up of the facts, because there was a serious and deliberate failure to carry out the investigation function of the illegal act that occurred on July 18, 1994, and because this failure to carry out an adequate investigation led to a clear denial of justice. All of this was declared by the Federal Oral Criminal Court No. 3 of the City of Buenos Aires in its judgment of October 29, 2004.

36. The Commission observes that, at the hearing held in the framework of its 174° period of sessions, the State referred to the acknowledgment of responsibility made in 2005 and the friendly settlement process concluded in 2012. On that occasion, the representatives of the State indicated that, despite the conclusion of

the friendly settlement process, the State continued to make progress on various issues that were on the work agenda, and they assured that in subsequent briefs, the petitioners were reiterated their willingness to resume a space for dialogue. Also, referring to both the attacks on the Israeli Embassy and the AMIA headquarters, they pointed out that:

> the political deficiencies and that of the police, security, intelligence services, and the judiciary, were left bare on March 17, 1992, which is inexcusable, and continued to be this way enabling that, two years after the first attack occurred, Buenos Aires was the target of a new attack. Under this pattern the first years of investigation, or lack thereof, were carried out under the responsibility of a federal judge without any experience or training in international terrorism, like the rest of his colleagues, a judiciary that was ancient in its technical and human resource structure, security and intelligence forces more concerned with covering up their own crimes and diverting the investigation rather than in providing evidence, and an executive branch that, in the best of cases, was not up to the task.

37. Additionally, the representatives of the State of Argentina added that:

> Clearly, the State mechanisms were not up to the task either in preventing the events, especially having had as a precedent the attack on the headquarters of the Israeli Embassy in Buenos Aires, nor in ensuring a judicial investigation that could provide an efficient response to the victims and society. This determined the recognition of responsibility through National Decree 812 of 2005.

38. At the same hearing, the State referred to the cover-up trial. In this regard, the representatives indicated that the oral trial began in August 2015 before the Federal Oral Criminal Court of Buenos Aires No. 2, which delivered its verdict in February 2019. They also indicated that in the first instance several convictions were issued, which account for a series of concealment maneuvers, of actions incompatible with the duties of public officials, and other crimes, they also indicated that the case was pending at the appeal stage.

39. On the other hand, the State indicated that a large part of the current efforts refer to collaborating and finding the necessary elements to advance in the processing of declassified information from the Intelligence Secretariat, the product of various decrees. Finally, the State also referred to the efforts made to recover files, indicating that currently 40% of the documentary material has been processed, and pending processing is audio and video documentary material found in the archive located in the Barolo building. Finally, they mentioned a number of legislative measures promoted for the benefit of the victims, as well as the trial *in absentia* and other international cooperation measures to advance the criminal process.

40. The Commission, as it did at the time of signing the agreement of March 4, 2005, expresses its approval for the acknowledgment of responsibility made by the Argentine State, since it represents a conducive measure to guarantee full validity of rights, in accordance with the principles that inspire the Inter-American Human Rights System[4]. The Commission also highlights that such recognition constitutes a step towards vindicating the rights of the victims of the attack and their next of kin.

41. Regarding the scope of this acknowledgment of responsibility, the Commission understands that the Argentine State explicitly and unequivocally accepted its responsibility for the breach of its duty to prevent the attack against the AMIA, which resulted in the death of 85 persons and injuries to at least another 151. Likewise, the Commission observes that the State acknowledged its responsibility for not having adequately and effectively investigated the facts, as there was a serious and deliberate breach of its investigative function.

42. The Commission notes that the representatives of the State, when referring to their acknowledgment of responsibility made in the last hearing, did not clearly and explicitly accept the responsibility of the State for those events that occurred after March 4, 2005, moment in which the aforementioned agreement was signed. Along these lines, the Commission understands that, although the State ruled on some events subsequent to 2005, they are not specific enough to understand the actions and omissions from which its international

[4] IACHR, Press Release No. 05/05. "Satisfaction of the IACHR with the acknowledgment of responsibility of the Argentine State in the AMIA case," March 4, 2005. Available at: https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=CIDH-5-S

responsibility would derive, as well as their corresponding scope and the legal effects that they could have until now.

43. In view of the situation described above, the Commission considers that the acknowledgment of responsibility of the Argentine State has full legal effects. Notwithstanding this, taking into account the Commission's role of guarantor of the inter-American public order, the aspects that continue to be controversial, and the need to determine the scope of the international responsibility of the Argentine State in order to provide the pertinent recommendations, the Commission concludes that it is necessary to comprehensively analyze the facts and all the substantive elements of this matter.

V. COMPETENCE ANALYSIS AND ADMISSIBILITY

A. Competence, duplication of procedures, and international *res judicata*

Competence Ratione personae:	Yes
Competence Ratione loci:	Yes
Competence Ratione temporis:	Yes
Competence Ratione materiae:	Yes, American Convention on Human Rights (ratification instrument deposited on September 5, 1984)
Duplication of procedures and International *res judicata*:	No

B. Exhaustion of domestic remedies and timeliness of the petition

44. According to the constant criterion of the IACHR, "(…) the analysis of the requirements set forth in Articles 46 and 47 of the Convention must be made in light of the situation in force at the time of the decision on admissibility or inadmissibility of the claim"[5].

45. In the present case, the petitioners argued that the case complies with the exception to the exhaustion of domestic remedies, both because the remedies have been ineffective in finding the truth of the facts, and because of the excessive and unjustified delay of justice, due to the intention of the State to avoid a true investigation. It indicated that it took 25 years for the oral trial of the only person accused of the attack to begin and 15 years for the officials involved in the diversion and cover-up of the investigation of the attack to be sentenced, however, it has not been possible to the date to determine the truth of what happened, nor to punish those responsible.

46. Regarding the position of the Argentine State, the Commission observes that in its first submissions it alleged failure to exhaust domestic remedies; However, in its subsequent communications it stated that, since the Argentine State assumed international responsibility through Decree 812/2005, it would be unnecessary to make observations regarding the merits of the matter. The State did not submit observations or arguments again regarding the admissibility of the case.

47. Taking into account that almost 26 years have passed since the beginning of the criminal proceeding without resolution, which should be the ideal way to clarify the facts and responsibilities through a diligent and *ex officio* investigation, the Commission considers that the exception provided for in Article 46.2 c) of the American Convention is applicable.

[5] IACHR, Report No. 15/15, Admissibility. Petition 374-05. Workers of the Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, para. 39. Also see: I/A Court H.R., *Case of Wong Ho Wing v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2015. Series C No. 297, para. 25.

48. For its part, Article 32 of the Commission's Rules of Procedure establishes that in cases in which the exceptions to the exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable period of time, at the Commission's discretion.

49. In the present case, the petition was received on July 16, 1999, five years after the attack and the initiation of the criminal investigation, which, as has been said, remains unresolved. The Commission considers that the petition was presented within a reasonable period of time and that the admissibility requirement regarding the timeliness of the petition is satisfied.

C. Colorable claim

50. The Commission considers that the facts presented in this case could characterize the violation of the rights to life, humane treatment, access to information, fair trial, and judicial protection, established in Articles 4, 5, 8, 13, and 25 of the American Convention, in relation to the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of the victims identified in this report. Likewise, in keeping with the *iura novit curiae* principle, the Commission determines that the facts could characterize the violation of the right to equal protection, established in Article 24 of the Convention.

VI. MERITS CONSIDERATIONS

A. Facts of the case

51. The Commission, consistent with what was stated on numerous occasions by the petitioners and by the representatives of the Argentine State, sees the need to begin its analysis on the merits by highlighting the factual complexity of this case, which has to do with one of the most serious terrorist acts committed to date in the Western Hemisphere.

52. The inherent complexity of the nature of this criminal act is aggravated when considering the multiple procedural alternatives that have occurred throughout more than 25 years of judicial investigation. Said investigatory phase was conducted by judges from various instances; representatives of all the public powers of the Argentine State participated in it; and a considerable volume of information was generated within it.

53. Consequently, and in order to facilitate the understanding of this report, the Commission has decided to dedicate this first section to an overview of the main events related to the attack on the AMIA and its investigation. In this way, the Commission aims to establish a global factual framework based on which - in subsequent chapters - the relevant and specific findings of fact will be presented to deal with each of the legal considerations and the subsequent conclusions.

1. The attack on the headquarters of the Israeli-Argentinian Mutual Association and the investigation headed by the Federal Criminal and Correctional Court No. 9 of the Federal Capital

54. Various judicial rulings issued in the national order have considered as proven that, at 9:53 am on July 18, 1994, an explosive charge equivalent to between 300 and 400 kilos of TNT, installed inside a Renault Trafic van was detonated in the vicinity of a building located at 633 Pasteur Street in the city of Buenos Aires, Argentina. This property housed, among other institutions, the headquarters of the Israeli-Argentine Mutual Association [*Asociación Mutual Israelita Argentina*](AMIA) and the Delegation of Israeli-Argentine Associations [*Delegación de Asociaciones Israelitas Argentinas*](DAIA) [6].

55. The explosion caused the collapse of part of the 633 Pasteur building. The subsequent shock wave generated by the explosion caused extensive damage to buildings and personal property located within a radius

[6] Annex 2. Judgement of the Federal Oral Criminal Court No. 3 of the Federal Capital dated October 29, 2004 (Hereinafter "Judgement of TOF 3"). Chapter V, p. 2351. Annex 1 to the petitioners' communication dated November 11, 2019. TOF 3 specified that the explosive charge was "*composed of ammonium nitrate, with the addition of aluminum, a heavy hydrocarbon, TNT, and nitroglycerin*", see also: Annex 2. Judgment of the TOF 3. Chapter V page. 2535. Annex 1 to the petitioners' communication dated November 11, 2019

of approximately 200 meters. As a direct consequence of the explosion, 85[7] people lost their lives and 151[8] were injured to various degrees.

56. The criminal investigation aimed at clarifying and determining the criminal responsibilities for the attack fell on -as of July 18 and by virtue of the system in force for the assignment of judicial case- the Federal Criminal and Correctional Court No. 9 of the Federal Capital under judge Juan José Galeano. As representatives of the Public Prosecutor's Office, the head of the Federal Criminal and Correctional Prosecutor's Office No. 9, Eamon Mullen, and the Deputy Prosecutor, José Barbaccia. The investigatory phase was governed by the rules in force in the Criminal Procedure Code of the Nation[9].

57. From the first moments after the attack, personnel from the fire department, the Argentine Federal Police, the Civil Defense, and even private citizens, were present at the site of the explosion and began the search and rescue of survivors, and the removal of debris. As part of this task, on July 25 a team of rescuers

[7] The people who lost their lives in the AMIA attack, according to the information presented by the petitioners in their communication on June 16, 2014, the TOF 3 ruling, and the update of the petitioners' information on the identity of a person initially designated as NN are: Silvana Alguea De Rodríguez, Jorge Antunez, Moisés Gabriel Arazi, Carlos Avendaño, Yanina Muriel Averbuch, Naum Band, Sebastián Barreiro, David Barriga, Hugo Norberto Basigli, Rebeca Violeta Behar De Jurin, Dora Belgorosky, Favio Enrique Bermúdez, Romina Ambar Lujan Boland, Emiliano Gaston Brikman, Gabriel Buttini, Viviana Adela Casabe, Paola Sara Czyzewski, Jacobo Chemau, Cristian Adrián Degtiar, Diego De Pirro, Ramón Norberto Diaz, Norberto Ariel Dubin, Faiwel Dyjament, Aída Mónica Feldman De Goldfeder, Alberto Fernández, Martín Figueroa, Ingrid Finkelchtein, Leonor Gutman De Finkelchtein, Fabián Marcelo Furman, Guillermo Benigno Galarraga, Erwin García Tenorio, José Enrique Ginsber, CynthiaVerónica Goldenberg, Andrea Judith Guterman, Silvia Leonor Hersalis, Carlos Hilu, Emilia Jakubiec De Lewczuk, Maria Luisa Jaworski, Augusto Daniel Jesús, María Lourdes Jesús, Analía Verónica Josch, Carla Andrea Josch, Elena Sofía Kastika, Esther Klin, León Gregorio Knorpe, Berta Kozuk De Losz, Luis Fernando Kupchi A, Agustín Diego Lew, Andrés Gustavo Malamud, Gregorio Melma, IleanaMercovic, Naon Bernardo Mirochnik, Mónica Nudel, Elias Alberto Palti, Germán Parsons, Rosa Perelmuter, Fernando Roberto Pérez, Abraham Jaime Plaksin, Silvia Inés Portnoy, Olegario Ramírez, Noemí Graciela Reisfeld, Félix Roberto Roisma, Marisa Raquel Said, Ricardo Hugo Said, Rimar Salazar Mendoza, Fabián Schalit, Pablo Schalit, Mauricio Schiber A, Néstor Américo Serena, Mirta Strier, Liliana Edith Szwimer, Naum Javier Tenenbaum, Juan Carlos Terranova, Emilia, Graciela Berelejis De Toer, Mariela Toer, MartaTreibman, Ángel Claudio Ubfal, Eugenio Vela Ramos, Juan Vela Ramos, Gustavo Daniel Velásquez, Isabel Victoria Núñez De Velázquez, Danilo Villaverde, Julia Susana Wolynski De Kreiman, Rita Worona, and Adhemar Zarate Loayza. See in this regard: Annex 2. Judgment of the TOF 3. Chapter V.A.5, p. 2361 to 2372. Annex 1 to the communication of the petitioners dated November 11, 2019.

[8] According to the TOF 3 ruling, the people who suffered serious injuries as a result of the attack were: Juan Carlos Álvarez, Raquel Angélica Álvarez, Fernando José Andrada, Pablo Ayala Rodríguez, Ana María Balaszczuk de Cernadas, Mónica Beatriz Barraganes, Hermelinda Bermin Bello, Sergio Luis Bondar, Jorge Eduardo Bordon, Gustavo Marín Cano, Moisés Chaufan, Rubén Samuel Chejfec, Humberto Chiesa, Mario Ernesto Damp, Horacio Dragubitzky, Jorge Osvaldo Ferretti, Leonor Marina Fuster, Adolfo Guido Guzmán, Norma Heler de Lew, Angélica Ester Leiva, Luciano Javier Luppi, Aldo Ernesto Macagno, Gregorio Marchak, Marta Beatriz Massoli de Luppi, Alejandro Mirochnik, Javier Horacio Miropolsky, Rosa Montano de Barreiros, Gladys Ernestina Perona de Lisazo, Raúl Alberto Sánchez, Daniel Osvaldo Saravia, Elena Schreiber de Falk, Gustavo Spinelli, Horacio Diego Velázquez, Martín José Viudez y Claudio Alejandro Weicman. En tanto que las personas que sufrieron lesiones leves fueron: Berta Abousky de Palais, Elvira Rosa Acosta, Isabel Ainwoiner de Peker, Jorge Miguel Andrada, Héctor Alberto Arce, Mónica Lucía Arnaudo de Yabiansky, Elena Atallah de Paleciz, Hugo Enrique Ávila, Claudio Baamnonte, Óscar Alberto Banega, Edmundo Horacio Baron, Julio Barriga Loayza, Alberto Brescia, Juan Antonio Brizuela, Martha Hilda Brodsky de Roffe, Luis Canzobre, Silvia Verónica Carrizo, Silvia Castillo Benítez, Blanca Ofelia Castillo Villanueva, Claudio Alejandro Castro, Lidia Bernardita Cazal Martí, María Elena Cena, Gustavo Cernadas, Paula Cernadas, Siphor Chalelachuili de Lapidus, Salomon Chencinski, Raquel Czertok de Chen, Diego Nolberto Díaz, Celia Dubini de Quiroga, Silvio Duniec, Edmundo Ruiz, Martha Raquel Finkelberg de Pirro, Carlos Alberto Flores, Adrián Pablo Furman, Eleuterio Galán, Francisco Gustavo Galán, Salustiano Galeano, Jos Adalberto Gallardo Nuesch, Raquel Ester Goberman, Oscar Alfredo Gómez, Arturo Gritti, Arturo Daniel Gritti, Ramón Máximo Gutmann, Miriam Magdalena Hoyos, Ernesto Víctor Ini, Dolores Insua Calo, Mario Kahan, Marcela Patricia Laborie San Miguel, Susana Cecilia Lacour, Israel Moisés Lapidus, José Longo, Inés Vicenta López de Duniec, Inés Zulema López, Ramón López, Salomon Lotersztein, Juan Aldo Luján, Jorge Alberto Machaca, Norma Gladys Mansilla, Olga Josefina Martínez, Zunilda Petrona Martínez, Pedro Martínez, José Eduardo Marzilli, Antonia Nelida Mastromauro, Luisa Miednik, Gregorio Oscar Militello, Ramona Miño, Laura Andrea Moragues, Oscar Orlando Moya, Alejandra Murcia, Mario Obregón, Liliana Cristina Olivo, Mario Antonio Ottolino, Lorena Verónica Pate, Marcial César Peleteyro, Gabriel German Peralta Ruíz, Omar Alfredo Pérez, Osvaldo Héctor Pérez, Daniel Alejandro Pomerantz, Rita Raquel Ramírez, Edgardo Roberto Ribrochi, Cecilia Alejandra Rikap, Ana María Rivas de Rikap, María Beatriz Rivera Méndez, Julio César Rodríguez, Alberto Roffe, Gabriel León Roffe, Carlos Romagnani, Ángela Romano de Delgado, Mariana Andrea Sandkovsky, Olga Magdalena Santillán, Adriana Beatriz Schettino, Esther Beatriz Segelis de Dobniewski, Sara Shimanski de Schapira, Adriana Verónica Rosa Sibilla, Víctor Hugo Siman, Simón Sneh, Julio Carlos Sosa, , Aida Eva Stolarsky de Bedne, Samuel Szurman, Adriana Marisa Tello, Daniel Tobal, Elías Néstor Tobal, Claudia Patricia Valdez, León Veliz Palmacio, Alejandro Daniel Verri, Claudia Cristina Vicente de Liano, Miguel Ángel Vinciguerra, Eduardo Waizer, Miguel Ángel Wehbi, Nicolás Wojda, Romina Yabiansky, Adolfo Yabo, Jaime Zaidman, and Leonardo León Zechin. See in this regard: Annex 2. Judgment of the TOF 3. Chapter V.A.6, p. 2372 to 2402. Annex 1 to the petitioners' communication dated November 11, 2019.

[9] Criminal Procedure Code. Law 23.984. Enacted on August 21, 1991. Available at: http://servicios.infoleg.gob.ar/infolegInternet/annexs/0-4999/383/texact.htm

extracted from the rubble an engine part that had a serial number engraved on it, compatible with those installed on Renault Trafic brand utility vehicles[10].

58. According to the automotive property registry, the seized engine in the AMIA rubble had been placed in a Renault Trafic van owned by a company called Messin S.R.L. Officials of the then State Intelligence Secretariat (SIDE) met with representatives of that company, who reported that on March 7, 1994 the Trafic van in question had been in a fire and that, towards the end of March, the insurance company "Solvencia" had paid the corresponding compensation and had taken over possession of the vehicle[11].

59. Subsequent investigations showed that the insurer "Solvencia" did not process the change of ownership of the vehicle from the motor vehicle registry as was its legal obligation, but instead transferred it, in the state it was in, to a car dealership called "Automotores Alejandro". On July 4, 1994, that is: two weeks before the AMIA attack, a man named Carlos Telleldín acquired the Trafic van from "Automotores Alejandro". The investigating judge ordered the arrest of Telleldín, who was arrested on July 27 by agents of the SIDE and the Argentine Federal Police at the Jorge Newbery Airport in the city of Buenos Aires[12].

60. For almost two years, Carlos Telleldín was the only person detained and formally accused of having some degree of participation in the attack. On his person hung, specifically, the accusation of having handed over the Trafic van to those responsible for planning or perpetrating the attack on the AMIA, knowing its final destination. Telleldín was summoned four times to give an statement during 1994 and 1995. In none of these statements did he provide information that would allow further investigation[13].

61. On July 5, 1996, Carlos Telleldín made a new statement before Judge Galeano. On that occasion, Telleldín "said that he was a victim of extortion by Buenos Aires Police personnel, which culminated in the sale of the Trafic van to a person who was accompanying them[14]. Four policemen, who were appointed at the time of the events to the investigation brigades of the towns of Lanús and Vicente López, were arrested and accused of being part of the local connection to the attack[15].

62. In February 2000, Judge Galeano ordered the investigatory phase closed and issued an order to raise an oral trial against Telleldín and the police officers who had received the Trafic van. Other people were also prosecuted for related crimes. The investigating judge kept in his office the portion of the investigation that aimed to determine the material author(s) of the attack and the local or international intellectual author(s) [16].

63. The Federal Oral Criminal Court No. 3 of the Federal Capital (TOF 3) was randomly assigned to serve as a trial court in the debate stage. The oral hearings began on September 24, 2001. As stated in the introduction, a representation of the IACHR, headed by Commissioner Claudio Grossman, monitored the trial as an observer and issued a report upon completion.

64. The TOF 3 in its judgment dated October 29, 2004 declared the nullity of the investigation led by Judge Galeano and acquitted all the accused. In a press release issued the same day, the Court reported that the evidence produced in the debate allowed it to reach the conclusion that "the interrogation of July 5, 1996 of Carlos Alberto Telleldín, in which he involved his accomplices in the attack, and for which testimony he received

[10] Annex 2. Judgment of the TOF 3. Chapter V.B "Nullities". P. 2650 to 2682. Annex 1 to the petitioner's communication dated November 11, 2019

[11] Annex 2. Judgment of the TOF 3. Chapter VI.A "the Trafic of 'Messin'. P. 2706-2734. Annex 1 to the petitioner's communication dated November 11, 2019.

[12] For an account of the circumstances surrounding the detention of Carlos Telleldin, see infra paras 163 to 168 and Annex 2. Judgment of the TOF 3. Chapter IX. P. 3681-3700. Annex 1 to the petitioner's communication dated November 11, 2019.

[13] The summary of the statements made by Telleldin in his investigative statements dated July 20, 1994, August 6 and 7, 1994, December 28, 1994, and April 4, 1995 can be consulted in: Annex 2. Judgment of the TOF 3. Chapter IV, pp. 1453-1522. Annex 1 to the petitioner's communication dated November 11, 2019.

[14] Annex 2. Judgment of the TOF 3. Chapter IV, pp. 1522-1557. Annex 1 to the petitioner's communication dated November 11, 2019.

[15] Annex 2. Judgment of the TOF 3. Chapter IV, page 1899. Annex 1 to the petitioner's communication dated November 11, 2019.

[16] Annex 1. Grossman Report. P. 5 to 7. Annex 5 to the petitioner's communication dated November 11, 2019.

the sum of four hundred thousand dollars or pesos, was the culmination of an irregular activity of the State aimed at obtaining an individual responsible for the attack, beyond what actually happened"[17].

65. The decision of the TOF 3 was appealed by the representatives of the Public Ministry and by one of the complainants. On May 19, 2006, Chamber II of the National Chamber of Criminal Cassation confirmed the appealed sentence[18]. On May 27, 2009, the Supreme Court of the Nation declared admissible the extraordinary appeal presented by the accusers and decided that the lack of impartiality of Judge Galeano had only been verified as of October 31, 1995 -at which time the investigation against the Buenos Aires police officers was formally initiated- and that, consequently, the declaration of nullity did not extend to the investigatory phase procedures that took place before that date[19].

66. The judgment of the Supreme Court of May 2009 resulted in the resumption of the criminal prosecution regarding the so-called "local connection" of the attack. The investigatory phase was assigned to the Criminal and Correctional Court No. 6 in charge of Judge Rodolfo Canicoba Corral, who delegated it to the Prosecutor's Unit for Investigation of the Attack at the AMIA Headquarters (UFI AMIA) headed at that time by the Attorney General Alberto Nisman[20]. The UFI AMIA was by then already participating in the investigation into the perpetrators and the international connection of the attack (see *infra* paras. 69 to 84)

67. In August 2012, Prosecutor Nisman filed a request for a trial with respect to Carlos Alberto Telleldín for the crime of qualified homicide, concurrently with the crimes of repeated serious injuries, repeated minor injuries, and multiple damages. The Prosecutor concluded in his decision that Telleldín delivered the Trafic van "conditioned for its criminal purpose, to the next link in the terrorist chain, with knowledge of who were receiving it and the purpose for which it would be used"[21].

68. According to the information provided by the parties, the second oral trial against Carlos Telleldín began in May 2019. At the time of approval of this report, said process is still ongoing[22].

2. The investigation delegated to the Prosecution Unit for the Investigation of the Attack on the AMIA Headquarters by the Federal Criminal and Correctional Court No. 6 of the Federal Capital

69. On December 3, 2003, and as a result of the recusal presented by the complaint of the Active Memory Civil Association, the Federal Court of Appeals removed Judge Galeano from hearing those sections of the investigation that had not been brought to oral trial. In August 2005, the Prosecution Jury of the National Judiciary Council decided to remove Judge Galeano from his post for poor performance of his duties as evidenced during the investigation of the attack[23].

70. The investigation fell to the head of Criminal and Correctional Court No. 6, which decided to delegate it to the representative of the Public Ministry. The procedural purpose of this file was focused on clarifying the identity of the material and intellectual authors of the attack. Through resolution 84-04 of the Attorney General's Office, the UFI AMIA was created with the mandate to "act [...] in the processing of the main proceeding in which the attack that occurred on July 18, 1994 is being investigated [...] and in all other cases

[17] Press release of the Federal Oral Criminal Court No. 3 of the Federal Capital in relation to the statement issued today in case 487-00, titled: "Telleldín, Carlos Alberto and others regarding qualified homicide... (attack on AMIA)" and its accumulations. Available at: https://www2.jus.gov.ar/AMIA/Comunicado_de_prensa.pdf

[18] Annex 3. Judgment of Chamber II of the National Chamber of Criminal Cassation dated May 19, 2006. Annex 7 of the petitioner's communication dated November 11, 2019

[19] Annex 4. Judgment of the Supreme Court of Justice of the Nation dated May 27, 2009. Annex 8 of the petitioner's communication dated November 11, 2019.

[20] Annex 5 Report of the Prosecutors in charge of the Prosecution Unit for the Investigation of the Attack on the AMIA dated October 25, 2006, (hereinafter: UFI AMIA 2006 Report) p. 1. Annex 12 to the petitioner's communication dated November 11, 2019.

[21] Annex 6. Report on the request for a trial signed by the Attorney General of the Prosecution Investigation Unit of the attack on the AMIA headquarters. Annex 10 of the petitioner's communication dated November 11, 2019

[22] Communication from the petitioners dated November 11, 2019.

[23] Annex 7. Final ruling of the Jury of Prosecution of Judges of the Nation in case No. 14 "Doctor Juan José Galeano / request for prosecution". Annex 35 of the petitioner's communication dated November 11, 2019.

that are related to that fact, as well as those related to the cover-up… ". Prosecutors Martínez Burgos and Nisman were appointed to head it. Subsequently, Prosecutor Nisman was in sole charge of the investigation.

71. On October 25, 2006, prosecutors Martínez Burgos and Nisman signed a lengthy report in which they stated that the progress of the investigation up to that point allowed them to conclude, firstly, that "the Lebanese citizen and member of Hezbollah, Ibrahim Hussein Berro, was the one who drove the Renault Trafic vehicle that on July 18, 1994 exploded in front of the AMIA headquarters, immolating himself in the act"[24]. Secondly, the prosecutors assured that "the responsibility for the attack on the AMIA headquarters rests on those who, at that time, exercised the government of the Islamic Republic of Iran […] its highest authorities at that time were the ones who made the decision to carry it out, they diagrammed its implementation, and entrusted its execution to the terrorist organization Hezbollah, the latter group that […] was in charge of the final phase of the operation that took place on July 18, 1994"[25].

72. In the same report dated October 25, 2006, the intervening prosecutors requested the international arrest of eight individuals, seven of Iranian nationality and one national of the Lebanese Republic, which were granted by the investigating judge. On November 7, 2007, INTERPOL ordered the registration as a red notice of the arrest warrants for six of the eight people named by Nisman and Martínez Burgos[26].

73. On May 20, 2009, the UFI AMIA issued a new report in which it accused a man of Colombian nationality named Samuel Salman El Reda as the person responsible, from his residence in the area of the triple border between Argentina, Brazil, and Paraguay, for having coordinated "the arrival and departure, the logistics operations, and the other activities carried out by the task force in charge of executing the final phase of the attack"[27]. On July 9, 2009, the judge in charge of the case ordered the national and international arrest of El Reda and INTERPOL issued a red notice against him[28].

74. On January 27, 2013, in the city of Addis Ababa, Ethiopia, the governments of the Argentine Republic and the Islamic Republic of Iran signed a Memorandum of Understanding "on the issues related to the terrorist attack on the AMIA headquarters in Buenos Aires on July 18, 1994". The memorandum provided for the creation of a Truth Commission composed of international jurists and representatives of Argentina and Iran, with the mandate to analyze the information presented by the authorities of both countries (art 1). Subsequently, the Truth Commission had to "issue a report with recommendations on how to proceed with the case" (art 4). The memorandum also established that the Truth Commission "and the Argentine and Iranian judicial authorities would meet in Tehran to proceed to interrogate those persons for whom Interpol has issued a red notice" (art 5).

75. The Memorandum of Understanding was approved by the Argentine Congress by Law 26.843 dated March 1, 2013[29]. Said law was declared unconstitutional by Chamber I of the Federal Criminal and Correctional Chamber. The decision became *res judicata* in December 2015. Consequently, the Truth Commission provided for by law 26.843 was never installed[30].

76. On January 18, 2015, the body of Prosecutor Nisman was found lifeless at his home in the city of Buenos Aires. At the time of approval of this report, the circumstances of his death continue to be the subject of an investigation by the national courts. In February 2015, the Office of the Attorney General of the Nation appointed a work team made up of three prosecutors in charge of the UFI AMIA, who, with some changes in their composition, are currently leading the accusation against Carlos Telleldín, the investigation on the

[24] Annex 5. UFI AMIA 2006 Report p. 792. Annex 12 to the petitioners' communication dated November 11, 2019.
[25] Annex 5. UFI AMIA 2006 Report p. 22. Annex 12 to the petitioners' communication dated November 11, 2019.
[26] Annex 8. UFI AMIA. Management Report - December 2016, p. 15. Annex 19 to the petitioners' communication dated November 11, 2019.
[27] Annex 9. Report signed by the Prosecutor in charge of the Prosecution Unit for the Investigation of the Attack on the AMIA dated May 20, 2009 (hereinafter: UFI AMIA 2009 Report, page 30. Annex 16 to the petitioners' communication dated November 11, 2019.
[28] Annex 10. Report from the head of the UFI AMIA to the Director General of Human Rights of the Ministry of Foreign Affairs, International Trade, and Worship of the Nation dated June 1, 2010. Annex 1 to the State's communication dated July 29, 2010.
[29] Law 263843 enacted on February 27, 2013. Available at: http://servicios.infoleg.gob.ar/infolegInternet/annexs/205000-209999/208948/norma.htm
[30] Petitioners' communication dated November 11, 2019.

material and intellectual authors of the attack, and the litigation of the proceedings that were initiated in order to clarify the cover-up maneuvers[31].

3. The processes into the cover-up of the attack

77. In August 2000, and as a result of the testimony given by an employee of Federal Court No. 9 before the Bicameral Commission for the Follow-up of the Investigation of the Attacks on the Embassy of Israel and the AMIA, an investigation was opened for the alleged crime of covering up the attack[32].

78. This investigation gained relevance from the revelations that emerged during the oral and public debate carried out between 2001 and 2004 by the TOF 3 against Carlos Telleldín and the Buenos Aires police officers. At the end of that trial, as has been indicated, the Court reached the conclusion that the accusatory hypothesis upheld by Judge Galeano and the prosecutors "was armed in a perverse manner, thereby violating not only the judge's guarantee of impartiality, but [also] the entire catalog of procedural principles of inherent constitutional hierarchy"[33] (see *supra* para. 64).

79. The cover-up actions of the AMIA attack investigated since the year 2000 by national judges can be roughly summarized in two main points.

80. First, it is investigated the decision taken by Judge Galeano to order the disbursement of $400,000 dollars, from a secret budget item of the State Intelligence Secretariat, to the accused Carlos Telleldín, in order for him to declare that he had delivered the Renault Trafic van -whose remains were found in the ruins of the AMIA- to a group of members of the Police of the Province of Buenos Aires, thereby diverting the investigation into the attack.

81. Secondly, it is investigated whether the judicial officials in charge of the investigation -together with police officers who acted as investigative assistants, former leaders of organizations of the Jewish community in Argentina, intelligence agents, and senior officials of the National Executive Power during the presidency of Carlos Menem- prevented the thorough research of a line of investigation that linked an Argentine citizen of Syrian origin named Alberto Kanoore Edul and people around him to the attack.

82. The case for the cover-up was instructed by various judges of the Federal Criminal and Correctional jurisdiction of the City of Buenos Aires. On August 6, 2015, the debate hearings began before the Federal Oral Criminal Court No. 2 of the Federal Capital (TOF 2). On February 28, 2019, the Court communicated its verdict and on May 3 of the same year, it released the grounds for the judgment. The TOF 2 considered that the actions described in the preceding paragraphs were accredited and sentenced former Judge Juan José Galeano, prosecutors Mullen and Barbaccia, and police officers and the State Intelligence Secretariat to various prison terms. According to the information in the possession of the Commission, at the time of approval of this report, the TOF 2 decision is being reviewed by the appeal courts[34].

83. The Commission has been informed that various complaints have been filed in the national courts investigating the criminal responsibility of a group of people for facts related to the cover-up of the attack. Among the people who are charged in these cases are the then secretaries of the Federal Criminal Court 9, officials of the National Executive Power, and other individuals who participated in the investigation led by former Judge Galeano[35].

84. Finally, in January 2015, the then head of the UFI AMIA, Alberto Nisman, presented a criminal complaint before a Federal Criminal and Correctional Court in which he accused various state officials and individuals

[31] Annex 11. UFI AMIA. Management Report - July 2016. Annex 13 to the petitioner's communication dated November 11, 2019.
[32] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 69. Annex 2 to the petitioner's communication dated November 11, 2019.
[33] Annex 2. Judgment of the TOF 3. Chapter VIII, pp. 2944. Annex 1 to the petitioner's communication dated November 11, 2019
[34] Petitioner's communication dated November 11, 2019. Page 50 to 51.
[35] Petitioner's communication dated November 11, 2019. Page 63 to 66.

allegedly close to them of having drawn up "a criminal plan aimed at providing impunity to the accused of Iranian nationality" through the signing of the so-called "Memorandum of Understanding between the Argentine Republic and the Islamic Republic of Iran on the issues related to the terrorist attack on the AMIA headquarters in Buenos Aires on July 18, 1994"[36]. The Commission has been informed by the petitioners that the aforementioned complaint continues being investigated by the Argentine judicial authorities, as of the date of approval of this report[37].

B. Rights to life and humane treatment (Article 4.1 and 5.1 of the American Convention) and the right to equal protection (Article 24) in relation to Articles 1.1 of the Convention

85. The rights to life and humane treatment are enshrined in Articles 4 and 5 of the American Convention on Human Rights. They are essential, since, in accordance with Article 27.2 of the Convention, they form part of the non-derogable core of rights that cannot be suspended even in cases of war, public danger, or other threats. Consequently, States have the duty to adopt all necessary and appropriate measures to protect and preserve the rights to life and integrity[38].

86. The Inter-American Court has indicated that the obligation of Article 1.1 of the Convention in relation to the right to life "not only presupposes that no person is arbitrarily deprived of their life (negative obligation), but also requires that the States adopt all appropriate measures to protect and preserve the right to life (positive obligation), in accordance with the duty to guarantee the full and free exercise of the rights of all persons under its jurisdiction"[39]. Likewise, the right to humane treatment implies the duty of the State to prevent and investigate possible acts of torture, other cruel, inhuman, or degrading treatment, or acts of the State or third parties that harm the bodily integrity of the human person.

87. Since its first judgment in a contentious case, the Inter-American Court indicated that:

> Article 1.1 is essential to determine whether a violation of human rights recognized by the Convention can be attributed to a State Party. In effect, said article places the States Parties in charge of the fundamental duties to respect and guarantee, in such a way that any impairment to the human rights recognized in the Convention that can be attributed, according to the rules of international law, to action or omission of any public authority, constitutes a fact attributable to the State that compromises its responsibility in the terms provided by the same Convention[40].

88. The international responsibility of the State can be based on acts or omissions of any power or organ of the State that violate the American Convention and is generated immediately by the attributed international wrongdoing. In these cases, in order to establish that there has been a violation of the rights of the Convention, it is not necessary to determine, as occurs in domestic criminal law, the guilt of the authors or their intention. Similarly, it is not necessary to individually identify the agents to whom the violating acts are attributed. It is sufficient to demonstrate "that actions or omissions have been verified which have allowed the perpetration of these violations or that there is an obligation of the State that has been breached by it"[41].

89. Throughout the jurisprudential development of the Commission and the Court, the contents of the obligations to respect and guarantee have been defined in accordance with Article 1.1 of the Convention.

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[36] The persons denounced were: Cristina Fernández, Héctor Timerman, Luis Ángel D'Elia, Fernando Luis Esteche, Jorge Alejandro Khalil, Andrés Larroque, Héctor Luis Yrimia, and Ramón Allan Héctor Bogado

[37] Petitioner's communication dated November 11, 2019. Page 35.

[38] IACHR, Case 12.270. Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, para. 186; I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 80.

[39] I/A Court H.R., *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. 245.

[40] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 164.

[41] I/A Court H.R., *Case of Gonzalez Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para.133; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 112.

Regarding the obligation to respect, the Court indicated that "according to Article 1.1, any form of exercise of public power that violates the rights recognized by the Convention is illegal. In this sense, in all circumstances in which an organ or official of the State or of a public institution unduly harms one of such rights, there is a case of non-observance of the duty to respect enshrined in that article"[42].

90. Regarding the obligation to guarantee, the Inter-American Court has established that it implies the duty of the States Parties to the Convention to organize the entire governmental apparatus and, in general, all the structures through which the exercise of public power, in such a way that they are capable of legally ensuring the free and full exercise of human rights. As a consequence of this obligation, the States must prevent, investigate, and punish any violation of the rights recognized by the Convention and also seek the restoration, if possible, of the right violated and, where appropriate, the reparation of the damages caused by the violation of human rights[43].

91. Specifically, regarding the duty of prevention, the Court has indicated that a State may be responsible for the lack of due diligence by not adopting measures that prevent human rights violations committed between individuals within its jurisdiction. However, the *erga omnes* nature of the States' conventional guarantee obligations does not imply an unlimited liability of the States against any act or fact by individuals[44]. The States' duties to adopt prevention and protection measures in the relationships between particulars are conditioned on i) whether the State had or should have been aware of a risk situation; ii) if said risk was real and immediate; and iii) whether the State adopted the measures that were reasonably expected to prevent said risk from occurring[45].

92. Likewise, the Court has held that the duty of prevention encompasses "all those measures of a legal, political, administrative, and cultural nature that promote the safeguarding of human rights and that ensure that eventual violations thereof are effectively considered and dealt with as an illicit act that, as such, is liable to carry penalties for those who commit them, as well as the obligation to compensate the victims for their harmful consequences"[46]. In addition, it has indicated that the obligation to prevent is of means or behavior and its non-compliance is not proven by the mere fact that a right has been violated.

93. The principle of equality and non-discrimination is recognized in Articles 1 (1) and 24 of the Convention, and has a *jus cogens* character, on which rests the legal framework of the national and international public order that permeates the entire legal system. By virtue of the principle of equality, States must refrain from taking actions that in any way are directed, directly or indirectly, to create situations of *de jure* or *de facto* discrimination. The notion of equality stems directly from the unity of nature of the human race and is inseparable from the essential dignity of the person, against which any situation is incompatible that, considering it superior to a certain group, leads to treating it with privilege; or that, conversely, considering it inferior, it is treated with hostility or in any way discriminated against from the enjoyment of rights that are recognized by those who do not consider themselves to be in such a situation[47].

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[42] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 169; See also IACHR, Report No. 11/10, Case 12.488, Merits, Members of the Barrios Family, Venezuela, March 16, 2010, para. 91.

[43] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166.

[44] I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para.117.

[45]The jurisprudence of the European Court regarding the elements indicating the duty of prevention has been taken up by the Inter-American Court in several of its judgments. In this sense, see: /A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 124 I/A Court H.R., *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. 284; I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 124.

[46] I/A Court H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283, para. 283.

[47] I/A Court H.R., *Case of Velásquez Paiz et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307, para. 173; I/A Court H.R., *Case of Flor Freire v. Ecuador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2016. Series C No. 315, para. 110. I/A Court H.R., *Case of I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para. 238.

94. Given that the American Convention does not have an explicit definition of discrimination, the Court has taken into account various instruments of international law to define it as "any distinction, exclusion, restriction, or preference based on certain grounds, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other social condition, and whose object or result is to nullify or impair recognition, enjoyment, or exercise, under conditions of equality, of human rights and fundamental freedoms of all people"[48]. Likewise, it should be noted that there is no exhaustive list of prohibited categories of discrimination, but rather that the expression "any other social condition" in Article 1.1 of the American Convention must be interpreted from the perspective of the option most favorable to the person and of the evolution of fundamental rights in contemporary international law[49].

95. As the IACHR has pointed out, the development of the right to equality and non-discrimination makes it possible to identify various definitions of it. For example, one concept is related to the prohibition of arbitrary difference of treatment -understanding by difference of treatment distinction, exclusion, restriction, or preference; another is related to the obligation to create conditions of real equality *vis-à-vis* groups that have historically been excluded and are at greater risk of being discriminated against. Likewise, and linked to these two definitions, there is that of indirect discrimination or disproportionate impact of norms, actions, or policies that seem neutral but that have differentiated effects in certain group[50]. Likewise, the Inter-American Court has indicated on indirect discrimination that "international human rights law not only prohibits deliberately discriminatory policies and practices, but also those whose impact is discriminatory against certain categories of people, even when the intention cannot be proven discriminatory"[51].

96. The principle of equality in the American Convention has two important references in Articles 1.1. and 24 of the Convention. On the one hand, Article 1.1 of the Convention is a general norm whose content extends to all the provisions of the treaty and establishes the obligation of the States Parties to respect and guarantee the full and free exercise of the rights and freedoms recognized therein. "without any discrimination." That is, whatever the origin or the form it assumes, any treatment that may be considered discriminatory with respect to the exercise of any of the rights guaranteed in the Convention is, per se, incompatible with it"[52]. On the other hand, article 24 provides the right to equal protection, and is applicable in the event that discrimination refers to unequal protection of the domestic law or its application[53].

- **The duty of prevention in the context of the fight against terrorism**

97. According to the Inter-American Convention against Terrorism, acts of terrorism constitute "a serious criminal phenomenon that deeply worries all member states, threatens democracy, impedes the enjoyment of human rights and fundamental freedoms, threatens the security of the States, destabilizing and undermining the foundations of the entire society, and seriously affects the economic and social development of the States of the region"[54]. In view of the seriousness of such acts, in international law there are several instruments aimed at the prevention, suppression, and eradication of the different forms of terrorist violence.

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[48] I/A Court H.R., *Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights).* Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 62.

[49] IACHR. Report No. 112/12. Case 12.828. Merit. *Marcel Granier and others*. Venezuela. November 9, 2012, para. 160; and IACHR. Report No. 75/15. Case 12.923. Merit. *Rocío San Miguel Sosa and others*. Venezuela. October 28, 2015, para. 171. IACHR. *Report on Poverty and Human Rights in the Americas.* OEA / Ser.L / V / II.164 Doc. 147. September 7, 2017, para. 153.

[50] IACHR, Merits Report No. 85/10. Case 12.361. Gretel Artavia Murillo and others (In vitro fertilization). Costa Rica, para. 125.

[51] I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 234; I/A Court H.R., *Case of expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 263.

[52] I/A Court H.R., *Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights).* Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 63.

[53] I/A Court H.R., *Case of expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 262.

[54] General Assembly of the OAS, Inter-American Convention against Terrorism, June 3, 2002.

98. Within the framework of public international law, there are 19 international instruments related to the fight against terrorism[55]. Some of them refer to civil aviation, international protection of diplomatic agents, hostage-taking, protection of nuclear material, maritime navigation, explosive materials, terrorist bombing, financing of terrorism, and nuclear terrorism. The set of instruments includes provisions that require States parties to cooperate in the prevention of terrorist crimes and mutual legal assistance in criminal proceedings related to terrorist crimes; that terrorist crimes are included among extraditable crimes in all extradition treaties between States parties and that obligate States parties not to consider certain terrorist crimes as political crimes, crimes related to a political crime, or crimes inspired by political motives, to the effects of extradition[56].

99. The United Nations General Assembly has issued resolutions on measures to eliminate international terrorism[57]. Specifically, the United Nations General Assembly issued Resolution A/RES/51/210 of January 16, 1997, on measures to eliminate international terrorism[58]. Said resolution indicates in its second paragraph that "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes [which] are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be used to justify them".

100. In turn, the Security Council has issued several Resolutions on the matter. Specifically, in the year 2001, Resolution 1373 was approved; Resolution 2178 was approved in 2014; and Resolution 2396 was approved in 2017. All of them expand on prevention, investigation, and international cooperation measures, considering that terrorism is a threat to international peace and security. On September 8, 2006, the United Nations General Assembly approved the United Nations Global Counter-Terrorism Strategy, whose Plan of Action includes measures related to the duty of States to prevent the occurrence of terrorist attacks[59].

101. On the other hand, within the United Nations, the reports of the United Nations Rapporteurs on the promotion and protection of human rights and fundamental freedoms in the fight against terrorism have established various guidelines for States. In his 2012 Report, the Special Rapporteur, Ben Emmerson stated that "the duty of the State to defend national security and its obligation to ensure the protection of the human rights of those under its jurisdiction constitute a series of complementary, simultaneous, and mutually reinforcing obligations"[60].

102. At the regional level there are also several instruments. On February 2, 1971, the General Assembly of the OAS approved the Convention to prevent and punish the acts of terrorism taking the form of crimes against

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[55] United Nations. National Security Council. Committee against Terrorism. See: https://www.un.org/sc/ctc/resources/international-legal-instruments/

[56] IACHR, Report on Terrorism and Human Rights. October 22, 2002. Chapter II A, para. 33.

[57] United Nations. General Assembly. Measures to eliminate international terrorism. A/RES/49/60. February 17, 1995; and A/RES/51/210 of January 16, 1997.

[58] United Nations. General Assembly. Measures to eliminate international terrorism. A/RES/51/210 of January 16, 1997.

[59] The Strategy begins by outlining general measures to address the conditions that promote the spread of terrorism. It then refers to measures to prevent and combat terrorism, among which are, among others: "[to] ensure that the perpetrators of terrorist acts are arrested and prosecuted or extradited, in accordance with the relevant provisions of national and international law, in particular human rights law, refugee law, and international humanitarian law"; "[I]ntensify efforts at the national level and bilateral, subregional, regional, and international cooperation, as appropriate, to improve border and customs controls in order to prevent and detect the movement of terrorists, and prevent and detect the illicit trafficking of, among other things, small arms and light weapons, conventional ammunition and explosives, and nuclear, chemical, biological, or radiological weapons and materials […]", as well as "[i]ntensify activities and cooperation at all levels, as appropriate, to improve the security of the manufacture and issuance of identity and travel documents, and prevent and detect their alteration or fraudulent use, while recognizing that the States may need assistance to do so". In addition, it includes "[i]ntensifying all activities aimed at improving 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, particularly in the sphere of civil protection, while recognizing that States may need assistance for this purpose". United Nations. General Assembly. United Nations global strategy against terrorism. Resolution approved on September 8, 2006. A/RES/60/288.

[60] 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 ensuring the human rights of victims of terrorism*. June 4, 2012. A/HRC/20/14, para. 18.

persons and related extortion that are of international significance[61]. The OAS also adopted the Declaration of Lima to Prevent, Combat, and Eliminate Terrorism, which approximated a definition of terrorism by stating that "as a serious manifestation of deliberate and systematic violence aimed at creating chaos and fear in the population, generating death and destruction, and constitutes a reprehensible criminal activity"[62].

103. Likewise, on June 3, 2002, the OAS General Assembly approved the Inter-American Convention against Terrorism, with the stated object and purpose of preventing, punishing, and eliminating terrorism[63]. Said Convention establishes in Article 4 that "each State Party, to the extent that it has not done so, shall establish a legal and administrative regime to prevent, combat, and eradicate the financing of terrorism and to achieve effective international cooperation in this regard, which should include"[64].

104. In 2002 the Inter-American Commission on Human Rights issued the Terrorism and Human Rights Report, in which it noted that manifestations of terrorist violence in the Americas, in addition to posing a serious threat to the protection of human rights, frequently they have affected governments and democratic institutions; and noted that international law obligates member states to adopt the necessary measures to prevent terrorism and other forms of violence and to guarantee the safety of their citizens[65]. It also reiterated the need for States, when adopting anti-terrorist measures, to comply with their international obligations, including those of international human rights and humanitarian law[66].

105. Regarding the definition of terrorism, in said Report the Commission indicated that unlike the UN Convention against Terrorism, the Inter-American Convention against Terrorism refrains from giving a detailed definition of terrorism and, instead, includes the crimes defined in ten international treaties on terrorism that exist to date[67]. The Commission noted:

> At the same time, the fact that terrorism *per se* may not have a specific meaning under international law does not mean that terrorism is an indescribable form of violence or that states are not subject to restrictions under international law when developing their responses to such violence. To the contrary, it is possible to identify several characteristics frequently associated with incidents of terrorism that provide sufficient parameters within which states' international legal obligations in responding to terrorist violence may be identified and evaluated. The United Nations General Assembly, for example, has developed a working definition of terrorism for the purposes of its various resolutions and

[61] OAS, Convention to prevent and punish the acts of terrorism taking the form of crimes against persons and related extortion that are of international significance, February 2, 1971.

[62] OAS, Declaration of Lima to prevent, combat, and eliminate terrorism.

[63] OAS, Inter-American Convention against Terrorism. June 3, 2002.

[64] Said Convention was adopted after the attack on the AMIA, so its content presented in this Report will not be taken into account as a source of direct obligations for the Argentine State, without prejudice to which it is considered pertinent to refer to it by way of illustration in view of the fact that it represents the consensus of the American States on the matter and the consecration of pre-existing obligations in the same treaty.

[65] IACHR, Report on Terrorism and Human Rights. October 22, 2002. Chapter II A, para. 33. Chapter I A, Para. 3.

[66] IACHR, Report on Terrorism and Human Rights. October 22, 2002. Chapter II A, para. 33. Chapter II A Para. 22.

[67] Inter-American Convention Against Terrorism, *supra* note 8, Article 2(1) ("For the purposes of this Convention, "offenses" means the offenses established in the international instruments listed below: a. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970. b. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971. c. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973. d. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979. e. Convention on the Physical Protection of Nuclear Material, signed at Vienna on March 3, 1980. f. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1988. g. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988. h. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988. i. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997. j. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999. (2) Upon depositing its instrument of ratification to this Convention, a state party that is not a party to one or more of the international instruments listed in paragraph 1 of this article may declare that, in application of this Convention to such state party, that particular instrument shall be deemed not to be included in that paragraph. The declaration shall cease to have effect as soon as that instrument enters into force for that state party, which shall notify the depositary of this fact. (3) When a state party ceases to be a party to one of the international instruments listed in paragraph 1 of this article, it may make a declaration, as provided in paragraph 2 of this article, with respect to that instrument").

declarations on measures to eliminate terrorism, namely "[c]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes [which] are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be used to justify them." These and other authorities suggest that characteristics common to incidents of terrorism may be described in terms of: (a) the nature and identity of the perpetrators of terrorism; (b) the nature and identity of the victims of terrorism; (c) the objectives of terrorism; and (d) the means employed to perpetrate terror violence

106. The Commission indicated that terrorist violence can take many forms and vary according to contexts of peace or armed conflict. Likewise, it highlighted that the behavior of actors other than States, including terrorists and terrorist groups, has implications for the evaluation of the obligations of the States regarding the protection of human rights in the continent"[68].

107. Specifically, in relation to the international responsibility of States for the occurrence of terrorist acts in their jurisdiction, the Commission indicated that, within the framework of its obligations regarding the right to life, ″cannot be interpreted in a way that puts State in a situation of guarantor regarding any terrorist threat, as this would impose a disproportionate burden on the authorities. However, in certain established circumstances, public officials may be subject to a positive obligation to take operational measures to prevent a terrorist act from occurring"[69].

108. Specifically, regarding the duty of prevention, the Commission observes that in order to determine when the State is responsible for the absence of prevention, the Report of the UN Special Rapporteur presents the following analysis methodology: "(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" [70]. The Rapporteur emphasized that "States are required to establish effective mechanisms for identifying potential future threats of terrorist attack, to analyze the information with reasonable care, to reach an informed risk assessment and to take appropriate action"[71]. He added that the activities of intelligence organizations must be fully compliant with international human rights law. Likewise, within the framework of the duty of prevention and about the real danger, it stated that "[p]urely *ex post facto* assessments cannot be the sole basis for a finding of State responsibility for a violation of the right to life[72].

1. Specific facts related to the prevention of the attack

109. On March 17, 1992, approximately two years before the attack on the AMIA headquarters, an attack took place at the headquarters of the Israeli Embassy located in the city of Buenos Aires, as a result of an explosion of explosive material in a Ford F-100 pickup. The attack caused the destruction of the diplomatic headquarters and damaged nearby buildings and vehicles parked in the area. 22 people died and more than 350 were injured[73].

[68] IACHR, Report on Terrorism and Human Rights. October 22, 2002. Chapter II A, para. 33. Chapter II A, para. 22.
[69] 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 ensuring the human rights of victims of terrorism*. June 4, 2012. A/HRC/20/14, para. 20.
[70] 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 ensuring the human rights of victims of terrorism*. June 4, 2012. A/HRC/20/14, para. 20.
[71] 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 ensuring the human rights of victims of terrorism*. June 4, 2012. A/HRC/20/14, para. 21.
[72] 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 ensuring the human rights of victims of terrorism*. June 4, 2012. A/HRC/20/14, para. 22.
[73] Supreme Court of Justice of the Nation. Press Release "Report on the status of the case concerning the bombing of the Israeli Embassy." March 4, 2015.

110. The investigation of the attack on the Embassy was in charge of the Supreme Court of Justice of the Nation. By the date of the AMIA attack, the Argentine judicial authorities had not yet issued any resolution of merit on the attack on the Israeli Embassy. Through the resolution of December 23, 1999, the act was attributed "to the terrorist group called Islamic Jihad, the armed wing of Hezbollah"[74]. To date, there is no information that indicates that there are people convicted for the act.

111. After the attack on the Israeli Embassy, a 24-hour surveillance service was set up to guard the street where the AMIA building was located, which was in charge of the 5th and 7th police stations of the Argentine Federal Police[75]. Some of the custody measures consisted of taking photographs of the vicinity of the building, observations or filming, prohibiting parking on Pasteur street at 600 and avoiding, as far as possible, that the cars stopped in the vicinity of the building. The policemen were rotated by quarters, so that two uniformed men were always present. In addition, there was a control and supervision service in charge of the external officer of the two police stations to control and record any irregularities[76].

112. Days before the attack on the AMIA building, the Brazilian citizen Wilson Roberto Dos Santos went to the Argentine consulate in Milan, Italy, and informed the consul Norma Fasano about the identity of a woman whom he considered strange and who, in his opinion had a false Argentine passport and identity card. Dos Santos indicated that he told the consul that the woman he was referring to had participated in the attack on the Israeli Embassy in Buenos Aires[77]. Dos Santos stated that after the attack on the AMIA he went again to Consul Fasano to insist on his suspicions of the participation of a person in the attacks on the Embassy and the AMIA, to which she would have responded that "the basis of his suspicions, that is, the illegality of the Argentine documentation [...], were not sufficient to initiate an investigation"[78].

113. In the last hours of July 17, 1994, and in the early morning hours of the following day, several people observed and heard a helicopter fly low over the AMIA building[79]. The aeronautical authority had no record of it[80].

114. Specifically in relation to the custody of the place before the AMIA attack, the TOF 3 found that from the testimonies received it emerged that "that at least from Friday the 15th until the morning of the following Monday, the patrol car stationed on the street Pasteur was not working because its battery had no charge. For that reason, the custody did not have, in those days, the communications equipment installed in the police car; this deficiency was addressed, according to the statements of several of the above-mentioned police officers, by using a manual communication device - "H.T." - provided by those in charge of the internal custody of the mutual"[81].

115. According to what was stated in the "Grossman Report", it is stated that in the investigatory phase carried out by Judge Galeano it is mentioned that three minutes before the attack a truck left a tipper vehicle in front of the AMIA, near the place where the car bomb would later explode. However, the judge did not believe that the explosives had been there, and the Court reached the same conclusion[82]. According to the Grossman

[74] Supreme Court of Justice of the Nation. Press Release "Report on the status of the case concerning the bombing of the Israeli Embassy." March 4, 2015.
[75] In this regard, the TOF 3 ruling explains "The demarcation between the jurisdictions of the 5th and 7th police stations was precisely Pasteur street, spanning from the building line towards the end of the first, while the street and the sidewalk were in the orbit of the second. For this reason, the mobile team was made up of police officers from both units; the driver of the mobile unit belonged to the 7th police station while the non-commissioned officer in charge of the unit was assigned to the other unit". Annex 2. Judgment of the TOF 3. Chapter V.A. p. 2358. Annex 1 to the petitioner's communication dated November 11, 2019.
[76] Annex 2. Judgment of the TOF 3. Chapter V.A. p. 2359. Annex 1 to the petitioner's communication dated November 11, 2019.
[77] Annex 2. Judgment of the TOF 3. Chapter XIV. Page 4593. Annex 1 to the petitioner's communication dated November 11, 2019.
[78] Annex 2. Judgment of the TOF 3. Chapter XIV. Page 4593. Annex 1 to the petitioner's communication dated November 11, 2019.
[79] Annex 2. Judgment of the TOF 3. Chapter VI, p. 2642. Annex 1 to the petitioner's communication dated November 11, 2019.
[80] Annex 2. Judgment of the TOF 3. Chapter VI, p. 2648. Annex 1 to the petitioner's communication dated November 11, 2019.
[81] Annex 2. Judgment of the TOF 3. Chapter V.A. p. 2360 and 2361. Annex 1 to the petitioner's communication dated November 11, 2019.
[82] Annex 1. Grossman Report. P. 3. Annex 5 to the petitioner's communication dated November 11, 2019.

Report, the initial investigators of the case assumed that the AMIA was targeted because it was the scene of demonstrations in favor of the State of Israel[83].

116. According to the petitioners, after the attack on the Israeli Embassy and prior to the AMIA attack, the SIDE was carrying out monitoring and intelligence tasks that targeted Moshen Rabanni, cultural attaché of the Iranian Embassy in Argentina, who would have been observed in 1993 while touring various car dealerships[84]. The petitioners also pointed out that the telephones of the Iranian Embassy would be tapped 45 days before the attack on the AMIA, but that the content of these wiretaps was lost[85].

2. Considerations of the Commission in relation to the rights to life and humane treatment in this case

117. The attack on the AMIA headquarters left 85 people dead and 151 injured. As has been indicated, there is no single definition of terrorist violence and it is not for the IACHR to determine the motives as it would be done in a criminal investigation. However, in order to determine the legal consequences it has on the obligations of the Argentine State in light of international law, based on the proven facts and the aforementioned international instruments, the Commission considers it necessary to affirm that the attack that is the subject of this case constitutes a terrorist act. The above, taking into account fundamentally the following factors: it is a violent action, which caused the death and injuries of dozens of people, led to a state of terror and panic in the population due to the method and violence used, created a threat to peace and security in Argentine society and the Argentine Jewish community, and it was also aimed at causing harm to an identity group such as the Argentine Jewish community.

118. In the specific case, the Commission observes that the participation of State agents in the actions that caused the damage to the right to life and humane treatment has not been proven. However, as has been indicated, a State may be responsible for the lack of due diligence in not adopting measures that prevent human rights violations committed between individuals within its jurisdiction.

119. To analyze compliance with the aforementioned obligation, the Commission recalls that, although the States are not responsible for every terrorist act in their jurisdiction, perpetrated by third parties, a State may be responsible when: i) it had or should have knowledge of a risk situation; ii) said risk situation was real and immediate; and iii) it did not adopt the measures that were reasonably expected to prevent said risk from occurring. Next, the Commission will analyze whether these assumptions are met in the specific case.

120. Regarding whether the State had or should have knowledge of a risk situation, the Commission observes that the attack on the AMIA headquarters was the second terrorist act directed against the Jewish community in Argentina. Its background is the attack on the Israeli Embassy in 1992, which took the lives of 22 people and injured 350. This attack was engraved in the memory of Argentine society, due to the type of violence used, the effects caused on the people who suffered the attack and the objective that clearly emerges from it to generate terror. The seriousness of the attack on the Israeli Embassy in 1992, taking into account its characterization as a terrorist act, reasonably generated a situation of risk for this community and for the people who had some relationship with it, which was and should be known by the State. In effect, the specificity and magnitude of the attack involved in a terrorist attack of these characteristics represents a situation of risk for the people or communities to whom it was directed or related to. This risk situation extended to the congregation places of the Jewish community, specifically one of them being the AMIA and DAIA building. In the present case, it is evidenced that the State specifically identified and learned of this risk situation because it effectively ordered the Federal Police to guard the building located on Pasteur Street permanently, 24 hours a day.

121. As to whether said risk was real and immediate, the Commission observes that, at the time of the AMIA attack, there was no judicial decision that would have determined the truth of what happened in the attack on the Israeli Embassy and punished those responsible. The Commission highlights that the occurrence of an

[83] Annex 1. Grossman Report. P. 3. Annex 5 to the petitioner's communication dated November 11, 2019.
[84] Petitioner's communication dated November 11, 2019. Page 105.
[85] Petitioner's communication dated November 11, 2019. Page 105.

attack such as the one that occurred against the Embassy, necessarily involved a series of actors or networks that participate in its planning and execution. In this sense, the absence of a dismantling and punishment of those responsible, kept a latent situation of insecurity conducive to a new attack. Furthermore, the Commission notes that two warning events occurred in the days prior to the attack, which demonstrate the immediacy of the risk, namely, the statements of the Brazilian citizen Wilson Dos Santos to the Argentine consul in Milan and the overflight of a helicopter to the building of the AMIA, both of which occurred days or moments prior to the 1994 attack.

122. In relation to the statements of the Brazilian citizen Wilson Dos Santos, the Commission observes that he came forward to provide information on the attack on the Israeli Embassy and called attention to the presence of a suspicious person. In addition, Dos Santos' statements reveal a real risk because they refer to a person who would not have legal documentation and who could be involved with extremely serious acts, who would be free and could continue in criminal activities similar to the attack on the Embassy.

123. Regarding the activity of the helicopter flying at a low altitude over the AMIA building on the night of July 17, 1994, the Commission finds that this fact denoted actuality and immediacy of particular situations that deserved special attention for a place on which a general risk situation hangs. If the State knew that the building had to be guarded, and had even arranged measures to do so and to control ground traffic, it had to monitor whether there was a helicopter flying over the place.

124. Regarding whether the State adopted the measures that were reasonably expected to prevent said risk from occurring, the Commission emphasizes that the State was aware of the general risk for the Jewish community in Argentina and its buildings, however, there is no record that measures were adopted aimed at deconstructing possible terrorist plans after the attack on the Israeli Embassy, adequate security measures to protect the AMIA building, nor did it have an adequate response to the information that suggested that an attack could take place.

125. In effect, with regard to the more general preventive measures that the State had, the Commission wishes to highlight that acts of terrorism generate human rights violations that must be addressed by the State, for their investigation, but also to avoid its repetition. In the words of the United Nations Special Rapporteur "the duty of the State to defend national security and its obligation to ensure the protection of the human rights of those under its jurisdiction constitute a series of complementary, simultaneous, and mutually reinforcing obligations" [86]. For this reason, States must undertake comprehensive strategies, not only to avoid the creation of terrorist groups, but also to deactivate their action plans when they have already been created. The Commission notes with concern that the State did not provide information on state strategies to combat terrorism after the attack on the Israeli Embassy, which included measures such as the deployment of international cooperation activities to obtain intelligence information, document and border control, or greater control and surveillance of explosive materials.

126. On the contrary, the information available to the IACHR indicates that such measures were not carried out. Indeed, the TOF 3 ruling indicates that the then Minister of the Interior Carlos Federico Ruckauf and Brigadier Andrés Arnoldo Antonietti, head of the Secretariat for Internal Security and Community Protection, denied knowing about prevention policies after the 1992 attack[87]. In addition, when collecting testimonies from other officials, the same Court found it proven that no preventive measures were adopted, nor were agencies created for it, thus: "although the country had the tragic background of the attack on the Israeli Embassy, on March 17, 1992, almost all of the security officials who deposed in the debate agreed that after said event, no measures were taken to prevent future terrorist attacks or to create organizations dully prepared to collaborate in acts of this nature, the objectives set forth in Law No. 24.059 having remained as a mere expression of wishes"[88].

[86] 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 ensuring the human rights of victims of terrorism*. June 4, 2012. A/HRC/20/14, para. 18.
[87] Annex 2. Judgment of the TOF 3. Chapter XV, p. 4599. Annex 1 to the petitioner's communication dated November 11, 2019.
[88] Annex 2. Judgment of the TOF 3. Chapter XV, p. 4598. Annex 1 to the petitioner's communication dated November 11, 2019.

127. Regarding the protection of the area and the AMIA building, the IACHR notes that the State did not have effective mechanisms to confront and repel risky situations that could arise. There is no record in the file before the IACHR that security deployments, control of traffic of people, or of transportation were properly coordinated, nor of security protocols on the outskirts and inside the building, in the event of a possible violent event, or, measures to strengthen the infrastructure and protect the life and integrity of the people who were in it.

128. The Commission observes that the only measure adopted consisting of police surveillance was seriously flawed. As confirmed by TOF 3, the AMIA building had 24-hour surveillance, in charge of the 5th and 7th Police Stations of the Argentine Federal Police. The custody planned for the building implied that two people had to be permanently monitoring the building, however, according to internal evidence, the police personnel did not have the equipment initially available to fulfill their function, so they used an internal custody manual communications apparatus. The Commission observes that the failure in the custody equipment had been occurring for some time and the absence of a battery for the communications equipment was not an exceptional issue that coincided on the day the attack occurred, as according to the TOF 3 "at least from Friday the 15th until the morning of the following Monday, the [communication equipment of the] patrol car stationed on Pasteur Street was not working because its battery had no charge."

129. On the other hand, with regard to control in the area, the Commission observes that the State has not proven that effective measures were adopted to control and requisition the entry of automobiles to Pasteur Street. According to TOF 3 "the inspection of the materials destined for the repair tasks and that of the dump trucks that were located in front of the mutual door was in charge of its security personnel and, according to the different statements of the police personnel , there was no coordination between the external security in charge of the Federal Police and the internal security of the building"[89].

130. Finally, in relation to the State's response to the alerts that were presented prior to the attack and that illustrate the immediacy of the risk, the Commission observes that the State did not inquire about the information that the Brazilian citizen Wilson Dos Santos gave to the Argentine consul in Milan. In this regard, the TOF 3 ruling concluded "although not enough elements of conviction have been gathered to authorize the claim that Wilson Roberto Dos Santos alerted what would happen on July 18, 1994, sent by a foreign intelligence agency, the circumstances and supposed motivations, surrounding the activity of said man in the different consular offices he attended, should be considered highly striking"[90].

131. The Commission also observes that the State did not report having adopted measures in relation to the helicopter that flew over the AMIA building the night before the attack. As TOF 3 pointed out, "[s]aid evidence deficit, which hampered the possibility of deepening the circumstances that would explain such a singular event -a hover over the mutual, for a few minutes, the night before the attack- and about which they wove numerous hypotheses, never confirmed, constituted an inadmissible disregard of the examining judge, since he failed to request, in a timely manner and in the adequate way, those data that would have shed light on the question; especially when the suspicious presence was announced to the intervening court on the same day of the attack, later corroborated by the first testimonies presented in the process"[91]. The Commission considers that, in effect, the State committed an omission by not adopting measures to clarify the facts about the flight of a helicopter, the reasons for it, and in any case, increasing the security measures and custody of the place, in order for them to be effective to avoid the risk that was latent on the site. There is not even record of this occurrence. Although there should have been annotations about extraordinary events in the street, it is striking that there was no alarm for an event such as the presence of an artifact in the air.

132. Although the Commission does not affirm that these facts were necessarily going to be decisive in preventing the attack on Pasteur Street, it emphasizes that the duty of prevention is of means and not of result,

[89] Annex 2. Judgment of the TOF 3. Chapter V, p. 2356. Annex 1 to the petitioner's communication dated November 11, 2019.
[90] Annex 2. Judgment of the TOF 3. Chapter XIV, p. 4596. Annex 1 to the petitioner's communication dated November 11, 2019.
[91] Annex 2. Judgment of the TOF 3. Chapter VI, p. 2650. Annex 1 to the petitioner's communication dated November 11, 2019.

therefore the State's failure to comply with the duty of prevention arises not because of the event of the attack, but because of the failure to take reasonable measures, tending to avoid violent actions, although it had unusual information about a place for which there was a general alert that had even led to reinforcing its security.

133. Finally, the Commission notes that a general prevention plan was not created to prevent a terrorist attack, taking into account the motive revealed by the first attack, the actors involved, and the forms of action. Although the attack on the Embassy was a crucial event in the history of Argentina, no comprehensive measures were adopted to prevent its repetition.

134. In view of all the foregoing, the Commission finds that the State was aware of a risk situation in general on sites identified with the Argentine Jewish community, that said risk was real and immediate and that it did not adopt reasonable measures to avoid said risk. Consequently, the Commission concludes that the requirements established in inter-American jurisprudence have been met in order to determine that the Argentine State violated the rights to life and humane treatment enshrined respectively in Articles 4 and 5 of the American Convention in relation to Article 1.1 of the same instrument, in the absence of measures to address a risk to the rights of the Convention.

3. Considerations of the Commission in relation to the right to equality and non-discrimination in this case

135. The Commission observes that the attack on the AMIA has particular characteristics because it was a terrorist attack directed at a site identified with the Argentine Jewish community. Indeed, the Commission notes that the corporate purpose of the AMIA is to "promote the well-being and individual, family, and institutional development of Jewish life in Argentina, to ensure continuity, uphold the values of our people, and strengthen the sense of Community"[92]. Likewise, public information indicates that DAIA "in compliance with the mandate given by all the Argentine Jewish institutions, has the mission of fighting against all expressions of anti-Semitism, discrimination, racism, and xenophobia, preserving human rights, promoting interreligious dialogue and harmonious coexistence among all citizens, within a framework of respect for differences; as well as denouncing international terrorism, ensuring the security of the institutions and members of the Argentine Jewish community"[93].

136. Since the American Convention does not have an explicit definition of discrimination, the Court has taken into account various instruments of international law to define it as "*any distinction, exclusion, restriction, or preference based on certain grounds, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other social condition, and whose object or result is to nullify or impair recognition, enjoyment, or exercise, under conditions of equality, of human rights and fundamental freedoms of all people*"[94]. Likewise, it should be noted that there is no exhaustive list of prohibited categories of discrimination, but rather that the expression "*any other social condition*" in Article 1.1 of the American Convention must be interpreted from the perspective of the option most favorable to the person and of the evolution of fundamental rights in contemporary international law[95].

137. In the opinion of the Commission, the aforementioned characteristic of Jewish identity that the victims of this case had in the country, defined that the terrorist violence was aimed at attacking those who referenced or belonged to the Argentine Jewish community. Consequently, the Commission considers that said terrorist

[92] AMIA Jewish Community. In this regard see: https://www.amia.org.ar/mision-vision-y-valores/
[93] Delegation of Israeli Argentine Associations. In this regard, see: http://www.daia.org.ar/la-daia/
[94] I/A Court H.R., *Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights).* Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 62.
[95] IACHR. Report No. 112/12. Case 12.828. Merit. *Marcel Granier and others*. Venezuela. November 9, 2012, para. 160; and IACHR. Report No. 75/15. Case 12.923. Merit. *Rocío San Miguel Sosa and others*. Venezuela. October 28, 2015, para. 171. IACHR. *Report on Poverty and Human Rights in the Americas*. OEA / Ser.L / V / II.164 Doc. 147. September 7, 2017, para. 153.

act also constituted a form of discrimination against the victims because of their belonging, identification, or any connection with the Argentine Jewish community.

138. In this sense, the Commission observes that, although all the people who were in the place did not have the intention of associating around the Jewish values that the AMIA advocates for or did not recognize themselves as such, because they were in a place that advocates for maintaining the identity values of the Jewish community which was the object of a discriminatory attack, they lost their lives or had their integrity affected. In this case, the discriminatory attack generated consequences to the life and integrity also against people who, although they were not Jews, were physically nearby or in a representative place for the Jewish community. Thus, due to the high level of violence of the attack, it is clear that it generated effects on those who perceived themselves to have some connection, even if it was only physical because they were in the same neighborhood of a Center of the Jewish community.

139. In view of the foregoing, the Commission observes that the State's omissions in matters of prevention which generated its international responsibility, although it has not been proven that they were deliberate against the Argentine Jewish community, do show that the State had refrained from taking reasonable measures to protect a group susceptible to a discriminatory attack. The Commission finds that the risk to the life and integrity of the persons associated with the places of the Jewish community had a special characteristic by virtue of their identity. In other words, the risk to life also implied a risk of configuring an act of discrimination. Given the type of risk in the present case, the Commission finds that the State's omissions to protect the rights recognized in Articles 4 and 5 of the Convention also implied an absence of prevention of an attack with a discriminatory motive by third parties. Therefore, the absence of reasonable measures to prevent said attack also constitutes a violation of Articles 1.1 and 24 of the American Convention.

140. The Commission emphasizes that the foregoing determination does not cloud the strong repercussions that this attack had on society, that it exceeded the Jewish community itself, and that it affected other people used who did not even have said identity traits, due to the degree of violence. In addition, it should be noted that because it occurred in Argentina, it is not only a relevant episode for the Jewish community, as was its origin and motive, but its effects were projected throughout the country and the Argentine society.

C. Rights to a fair trial and to judicial protection (articles 8.1. and 25 of the Convention) in relation to the obligation to respect rights (article 1.1 of the Convention)

141. Articles 8 and 25 of the American Convention establish the State's obligation to make effective judicial remedies available to victims of human rights violations, which must be substantiated in accordance with the rules of due process of law[96]. This obligation is of means and not of result and must be assumed by the State as its own legal obligation and not as a simple formality doomed in advance to be unsuccessful[97]. The Commission recalls that it is not part of its functions to make determinations on the criminal responsibility of individual persons that may arise from the facts of this case, so its analysis will focus on the actions and omissions attributable to the State during the investigation and criminal proceedings, in light of its international obligations regarding access to justice and to investigate human rights violations with due diligence[98].

142. The Court has emphasized that as part of the measures that States must adopt in order to comply with the general obligation contemplated in article 1.1. of the American Convention to guarantee the rights recognized throughout its text, are: the investigation of human rights violations in accordance with the rules of due process; their trial by competent judicial bodies; and the imposition of sanctions on those found

[96] I/A Court H.R., *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, para. 435

[97] I/A Court H.R., *Case of García Lucero et al. v. Chile*. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267, para. 161.

[98] I/A Court H.R., *Case of Cruz Sánchez et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 73; I/A Court H.R., *Case of the "Five Pensioners" v. Peru*. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, para. 163

responsible. This obligation is of particular relevance based on the seriousness of the crimes committed and the nature of the rights breached[99].

143. In the same sense, the Court has indicated that the victims and their next of kin have the right, and the States have the obligation, to have what happened to them be effectively investigated by the State authorities; to have the alleged responsible for these crimes be prosecuted; where appropriate, the pertinent sanctions be imposed on them, and the damages and losses that said family members have suffered be repaired[100]. According to the foregoing, the state authorities, once they become aware of a human rights violation, in particular the rights to life, humane treatment, and personal liberty[101], they have the duty to initiate *ex officio* and without delay, a serious, impartial, and effective investigation[102], which must be carried out within a reasonable time[103]. In the words of the Commission:

> The judicial investigation must be undertaken in good faith, diligently, exhaustively, and impartially, and must be oriented to exploring all possible lines of investigation that allow the identification of the perpetrators of the crime, for their subsequent prosecution and punishment[104].

144. Regarding the content of the duty to investigate "with due diligence," the Inter-American Court has indicated that it implies that the inquiries must be carried out by all available legal means and must be aimed at determining the truth[105]. Along the same lines, the Court has indicated that the State has the duty to ensure that everything necessary is carried out to find out the truth of what happened and to punish those possibly responsible[106], involving all State institutions[107]. The IACHR recalls that the obligation to investigate and punish any act that implies a violation of the rights protected by the Convention requires that not only the material authors of the acts that violate human rights be punished, but also the intellectual authors of such violations[108]. The Court has also said that the authorities must adopt reasonable measures to secure the necessary evidential material to carry out the investigation[109].

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[99] I/A Court H.R., *Case of Tenorio Roca et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2016. Series C No. 314, para. 167; I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 105; I/A Court H.R., *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 230 to 232.

[100] I/A Court H.R., *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. 103; I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; and I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 382.

[101] I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 100.

[102] I/A Court H.R., *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. 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para.146; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 130.

[103] I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 146; I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 382.

[104] IACHR, Report No. 37/00, Case 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, para. 80.

[105] I/A Court H.R., *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. 101.

[106] I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para 146; I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 382.

[107] I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 130; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 120; and I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, para. 66.

[108] IACHR, *Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L /V/ II.124. Doc. 5 rev. 1, March 7, 2006, para. 109.

[109] I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 122.

145. Moreover, the investigation must be conducted exhaustively and diligently. This means, on the one hand, that the State has the obligation to carry out all those inquiries that are necessary to ensure that the victims know the truth of all the events that occurred and that those who are involved in the crimes are punished, whether they have acted as material authors, participants, instigators, or accessories[110]. Likewise, the Inter-American Court has established that the judge, as the competent authority to direct the process, has the duty to prosecute it in such a way as to avoid "that undue delays and obstructions lead to impunity, thus frustrating the due judicial protection of human rights"[111]. Indeed, as the Inter-American Court has indicated:

> [I]n complex cases, such as the present one, the obligation to investigate entails the duty to direct the efforts of the state apparatus to unravel the structures that allowed these violations, their causes, their beneficiaries, and their consequences, for which an investigation can only be effective if carried out from a comprehensive point of view of the events, which takes into account the background and the context in which they occurred, and seeks to unveil the participation structures[112].

146. Adequate compliance with the principle of independence and impartiality, for its part, demands that the State guarantee that the bodies in charge of intervening in the judicial process - whether during the investigatory phase or in the trial itself - approach the matter with as much objectivity as possible. This implies, in essence, that the intervening judges must be free from personal prejudices and must offer sufficient guarantees so that the parties to the process do not harbor justified doubts regarding their impartiality[113].

147. Regarding the manner in which an investigation is conducted, the Inter-American Court has indicated that it is not appropriate to replace the domestic jurisdiction by establishing the specific investigation and prosecution modalities in a specific case in order to obtain a better or more effective result, but rather to verify whether or not the steps actually taken at the domestic level violated the State's international obligations[114]. In cases where the facts refer to the violent death of a person, the Court has indicated that the investigation initiated must be conducted in such a way that it could guarantee due analysis of the hypotheses on the author that arose as a result of the investigation[115]. Likewise, it is necessary that the investigation be conducted avoiding omissions in the collection of evidence and in following the logical lines of investigation[116].

148. In this regard, the State must demonstrate that it has carried out an immediate, exhaustive, serious, and impartial investigation[117], which must be aimed at exploring all possible lines of investigation that allow the identification of the perpetrators of the crime, for their subsequent prosecution and sanction[118]. The State may be responsible for not "ordering, practicing, or evaluating evidence" that may be essential for the proper clarification of the facts[119].

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[110] I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 217; I/A Court H.R., *Case of Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 83; I/A Court H.R., *Case of Coc Max et al. (Massacre of Xamán) v. Guatemala*. Merits, Reparations and Costs. Judgment of August 22, 2018. Series C No. 356, para. 81.

[111] I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, paras. 114 to 116; I/A Court H.R., *Case of García Ibarra et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306, para. 132.

[112] I/A Court H.R., *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, para. 500.

[113] I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, paras 169 to 171.

[114] I/A Court H.R., *Case of Nogueira de Carvalho et al. v. Brazil*. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 80.

[115] I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para.112.

[116] I/A Court H.R., *Case of Tiu Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 77.

[117] IACHR, Merits Report, No. 55/97, Juan Carlos Abella and Others (Argentina), November 18, 1997, para. 412.

[118] IACHR, Report No. 25/09 Merits. Sebastião Camargo Filho. Brazil, March 19, 2009, para. 109. See also, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA / Ser. L / V / II. doc.68, January 20, 2007, para. 41.

[119] I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 230. See also, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA / Ser. L / V / II. doc.68, January 20, 2007, para. 41.

149. In accordance with Articles 8 and 25 of the American Convention, the State has the duty to investigate human rights violations and punish those responsible, which also includes the prosecution and punishment of those who cover up the facts or facilitate the impunity of their perpetrators. In this sense, the Inter-American Court has assured that "public officials and individuals who unduly obstruct, divert, or delay investigations aimed at clarifying the truth of the facts, must be punished, applying in this regard, with the utmost rigor, the provisions of the internal legislation"[120].

150. The Commission highlights that the duty of due diligence in investigations of serious human rights violations implies that States have "the obligation to guarantee the right of the victims or their next of kin to participate in all stages of the proceedings, so that they can make proposals, receive information, provide evidence, formulate allegations and, in short, assert their rights" [121], with a view to ensuring the right of access to justice, clarifying the truth and awarding the reparation measures that the case merits. The Commission notes that the right of the victims to participate in the investigations is closely linked to the possibility for them and their representatives to be able to access the judicial file in a timely manner[122].

151. The Commission recalls that the State has the obligation to "effectively determine the facts under investigation and, where appropriate, the corresponding criminal responsibilities in a reasonable time, therefore, in view of the need to guarantee the rights of the affected persons, a prolonged delay may constitute, in itself, a violation of the right to a fair trial"[123]. In this regard, the Inter-American Court has indicated that "the right of access to justice does not end with the internal proceedings, but rather it must ensure, in a reasonable time, the right of the alleged victim or their next of kin to have everything necessary done to find out the truth of what happened and to punish those who may be responsible"[124].

152. Finally, the Commission emphasizes that the judicial process must be concluded within a reasonable period of time in order not to hinder the right of the victims to know the truth and to punish those responsible for the violations[125]. The organs of the inter-American system have taken into consideration three criteria to determine whether there is a violation of the guarantee of reasonable time, namely: a) the complexity of the matter; b) the conduct of the judicial authorities, and c) the procedural activity of the interested party[126]. Likewise, the Inter-American Court has established that the processing period of the process must be evaluated based on its total duration, that is, from the first procedural act until the definitive judgment is issued[127].

153. In addition to the three criteria mentioned, it is necessary to assess the rights at stake and the impact generated by the duration of the procedure on the individual situation of the person involved. On this point, the Inter-American Court has specified that "the impact generated by the duration of the procedure on the legal situation of the person involved in it must be taken into account, considering, among other elements, the subject

[120] I/A Court H.R., *Case of the Caracazo v. Venezuela*. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95, para. 119; I/A Court H.R., *Case of the Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 4, 2012. Series C No. 250, para. 257.

[121] I/A Court H.R., *Case of Gonzalez Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 251. See also: IACHR. *Right to Truth in the Americas*. OEA / Ser.L / V / II.152 Doc. 2. August 13, 2014 Original: Spanish. Para. 80.

[122] I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 252.

[123] I/A Court H.R., *Case of Contreras et al. v. El Salvador*. Merits, Reparations and costs. Judgment of August 31, 2011. Series C No. 232, para. 145.

[124] I/A Court H.R., *Case of Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 66.

[125] I/A Court H.R., *Case of Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para.65.

[126] IACHR. Merits Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11.506), December 27, 2002, para. 76. See also I/A Court H.R., *Case of López Álvarez v. Honduras*. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, para. 132; I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, para. 105.

[127] I/A Court H.R., *Case of Andrade Salmón v. Bolivia*. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330, para. 200.

matter of the dispute. If the passage of time has a relevant impact on the individual's legal situation, it will be necessary for the procedure to advance with more diligence so that the case is resolved in a short time"[128].

154. Regarding the argumentative and probative burden on the reasonableness of the term, the Commission has indicated that it is the responsibility of the State to indicate and prove the reason why more time than is reasonable has been required to render a definitive judgment in a particular case[129]. Along the same lines, the Court has indicated that it is up to the State to justify, based on the criteria indicated, the reason why the processing of the case has taken a long time and, in the event that it does not prove it, the Court has ample powers to make its own estimate in this regard[130].

- **The duty to investigate and punish those responsible for terrorist acts**

155. Specifically in the context of the fight against terrorism, according to the Inter-American Convention against Terrorism, the signatory States - among which is the Argentine State - assumed the commitment to "adopt the necessary measures and strengthen cooperation between them" in order to prevent, punish, and eliminate the criminal phenomenon of terrorism[131]. In the same vein, the Commission in its report on Terrorism and Human Rights highlighted that "the member states of the OAS are obligated to guarantee the security of their populations, which includes the necessary measures to investigate, prosecute, and punish terrorist acts"[132].

156. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, has referred to a series of minimum requirements that to investigate terrorist acts, which include:[133]

- They must act ex officio and not wait for a formal complaint lodged by the deceased's next of kin
- The investigation should always begin promptly. A timely investigation is more likely to secure reliable evidence.
- 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. The principle of accountability extends to situations in which it is alleged that public officials have caused death or life-threatening injury through the negligent use of lethal force, or have negligently failed to prevent a terrorist act
- In cases where State responsibility is at issue the investigative authorities must be wholly independent from those potentially implicated, which implies not only a lack of hierarchical or institutional connection but also a practical independence
- There must be a sufficient element of public scrutiny of the investigation and its results to secure public accountability.
- The authorities must have taken reasonable steps to secure and evaluate all potentially relevant evidence. Investigators should commission the necessary forensic and post-mortem reports, providing a complete and objective account of the scientific findings; record all potentially relevant evidential sources; conduct site visits; and identify, question and take comprehensive written statements from all relevant witnesses. Any conclusions must be based on a complete, objective and impartial analysis of the evidence, including an examination of the authorities' own actions.

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[128] I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155. See also, I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, paras. 112 and 115; I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 156

[129] IACHR. Report No. 3/16. Case 12.916. Merits. *Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, José Angel Alvarado Herrera and others*. Mexico. April 13, 2016. Para. 271

[130] I/A Court H.R., *Case of Tenorio Roca et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2016. Series C No. 314, para. 239.

[131] Inter-American Convention against Terrorism. Approved by the General Assembly of the Organization of American States in the first plenary session held on June 3, 2002. AG / RES. 1840 (XXXII-0/02) art 1.

[132] IACHR, Report on Terrorism and Human Rights. October 22, 2002. Chapter II A Para. 33. Chapter IA, para. 3.

[133] 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 ensuring the human rights of victims of terrorism*. June 4, 2012. A/HRC/20/14, para. 36.

- In all cases, investigators must be genuinely impartial and must not harbour preconceptions about the matter they are investigating or the identity of those responsible for any fatalities. Nor should they approach the investigation in a way that might promote or protect the interests of any public official who may be at fault. They should be demonstrably free of undue influence.
- If the investigation leads to criminal or other judicial proceedings, there must be a possibility for the effective participation of the next-of-kin

1. Regarding the due diligence in the investigations followed in this case

157. Next, the Commission will analyze whether the Argentine State complied with diligently investigating the facts related to the attack on the AMIA headquarters. Taking into account what is indicated in the global determinations of facts, the Commission will pronounce itself in the following order: a) on the investigation conducted by the Federal Criminal and Correctional Court No. 9; b) on the investigation delegated by the Federal Criminal and Correctional Court No. 6 in the Prosecution Unit for the Investigation of the Attack on the AMIA Headquarters; and c) on the investigation into the cover-up of the attack.

a. Investigation conducted by the Federal Criminal and Correctional Court No.9

158. The Commission will dedicate this section to presenting those events that occurred in the framework of the investigation headed by the Federal Criminal and Correctional Court No. 9 that are relevant for analyzing state responsibility.

i) Initial proceedings at the crime scene and raids carried out by the State Intelligence Secretary

159. The TOF 3 indicated in its judgment of October 29, 2004 that, during the first hours of the attack, the area of the disaster was "invaded by countless people not assigned to the security and rescue forces, mobilized, in in some cases, due to the eager search for their family or friends and, in others, due to the sole desire to provide solidarity or even out of mere curiosity"[134].

160. Chamber II of the Criminal Cassation Chamber in its judgment of May 19, 2006 also took up this point and assured that "the officials intervening immediately after the explosion failed to establish a security fence in order to control and order the safe entry, exit, and transfer of people and objects from the scene"[135]. Likewise, the court assured that the search, gathering, and preservation of evidence at the scene of the incident "was seriously affected by the lack of a coordinated plan aimed at […] ensuring both the integrity and the reliability of the elements […] that could be of interest for the investigation of the event"[136].

161. On the other hand, and in what has to do specifically with the discovery of remains of an engine of a Trafic vehicle among the rubble, the TOF 3 declared the nullity of the seizure act dated July 25, 1994 drawn up by members of the Firefighters Superintendency of the Argentine Federal Police, since "the versions offered by those who signed the act in question allow to conclude, without effort, that the circumstances recorded in it do not reflect, in any way, what really happened"[137].

162. In effect, TOF 3 indicated that the police officers who were at the scene of the incident on July 25, participated in the discovery of the remains of the engine and drew up the seizure report, incurred an "inadmissible omission [...] since nothing was done to establish how and where it occurred or to identify the

[134] Annex 2. Judgment of the TOF 3. Chapter V.B "Nullities", p. 2696. Annex 1 to the petitioner's communication dated November 11, 2019.
[135] Annex 3. Judgment of Chamber II of the National Chamber of Criminal Cassation dated May 19, 2006, p. 271. Annex 7 to the petitioner's communication dated November 11, 2019.
[136] Annex 3. Judgment of Chamber II of the National Chamber of Criminal Cassation dated May 19, 2006, p. 277. Annex 7 to the petitioner's communication dated November 11, 2019.
[137] Annex 2. Judgment of the TOF 3. Chapter V.B "Nullities", p. 2670. Annex 1 to the petitioner's communication dated November 11, 2019. For a the full statement of the various testimonies provided by those who signed the seizure act, see: Annex 2. Judgment of the TOF 3. Chapter V.B "Nullities", pp. 2650-2672. Annex 1 to the petitioner's communication dated November 11, 2019.

people who participated in it"[138]. In particular, the Court reproached the police officers "for not showing the slightest concern [...] either to receive testimonial statements from those who witnessed the actual discovery of the engine, or to carry out a reconstruction or observation of the place where it was found"[139].

163. On the other hand, according to the ruling issued by the Federal Oral Criminal Court No. 3, once the remains of the engine had been extracted from the area of the explosion and the serial number that was engraved on it had been verified, during the night of July 25, 1994, agents from the Operations Department of the SIDE Counterintelligence Directorate began a search operation for the owner of the vehicle that had been used as a car bomb[140]. With that objective, and after consulting with the motor vehicle ownership registries, the investigators went, firstly, to the headquarters of the company Messin S.R.L, the original owner of the vehicle, and then to the premises of a vehicle dealership called "Alejandro Automotores". The inquiries carried out at "Alejandro Automotores" led the officials to a building located on 107 República Street in the town of Villa Ballester, owned by Carlos Telleldín and his partner[141].

164. Based on the statement in the oral trial of several SIDE agents and police officers belonging to the Department for the Protection of the Constitutional Order of the Argentine Federal Police (DPOC), the Court reached the conclusion that, during the days of July 26 and July 27, personnel from both agencies carried out "a series of procedures ignored in the file, aimed at identifying Carlos Alberto Telleldín and obtaining, in a surreptitious way, information about his movements and surroundings, all within the framework of an anomalous negotiation between the investigative bodies -the Secretariat of State Intelligence and the Argentine Federal Police- with the relatives of the person who appeared as the main suspect in such a serious incident"[142].

165. Specifically, TOF 3 found that, in the afternoon of July 26, SIDE agents, together with DPOC officers, broke into the address on 107 República Street. Police and intelligence officers did not have a judicial search warrant and in the file "there is no record of the raid"[143]. At that time, only Telleldín's partner, Ana Maria Boragni and their three underaged children were present in the building[144].

166. During the night of July 26, Telleldín's partner was transferred to the DPOC headquarters to testify, while another group of SIDE and DPOC officials remained at the residence together with Boragni's children[145]. According to these agents, they stayed at Telleldín's residence from the afternoon of July 26 until the afternoon of July 27, and left when Telleldín was detained at the Jorge Newbery Airport, upon returning from a trip to the north of the country[146]. A formal raid on the 107 República Street property took place shortly after Telleldín's arrest[147].

167. Regarding the meaning and procedural value of the raid carried out after the activities of the SIDE and DPOC agents, the TOF 3 indicated that "the permanence, for almost two consecutive days in the domicile in question, even during some periods of time in the absence of its owners, denies the certainty of any possible evidence emanating from the elements later seized in the raid"[148]. In the same sense, the Court assured that "the informal raid carried out by intelligence officials into the home of the accused violated the integrity of the evidence there, thus depriving the validity of the proceeding subsequently carried out, making it a mere fiction"[149].

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[138] Annex 2. Judgment of the TOF 3. Chapter V.B "Nullities", pp. 2676-77. Annex 1 to the petitioner's communication dated November 11, 2019.
[139] Annex 2. Judgment of the TOF 3. Chapter V.B "Nullities", p. 2676. Annex 1 to the petitioner's communication dated November 11, 2019.
[140] For an account of the route that led the SIDE agents from Messin S.R.L to Telleldín's home, passing through "Automotores Alejandro", see: Annex 2. Judgment of the TOF 3. Chapter V.B "Nullities", pp. 3678 to 3679. Annex 1 to the petitioner's communication dated November 11, 2019.
[141] See *infra* para. 57
[142] Annex 2. Judgment of the TOF 3. Chapter IX, page 3730. Annex 1 to the petitioner's communication dated November 11, 2019.
[143] Annex 2. Judgment of the TOF 3. Chapter IX, page 3726. Annex 1 to the petitioner's communication dated November 11, 2019.
[144] Annex 2. Judgment of the TOF 3. Chapter IX, page 3706. Annex 1 to the petitioner's communication dated November 11, 2019.
[145] Annex 2. Judgment of the TOF 3. Chapter IX, page 3707. Annex 1 to the petitioner's communication dated November 11, 2019.
[146] Annex 2. Judgment of the TOF 3. Chapter IX, page 3699. Annex 1 to the petitioner's communication dated November 11, 2019.
[147] Annex 2. Judgment of the TOF 3. Chapter IX, page 3676. Annex 1 to the petitioner's communication dated November 11, 2019.
[148] Annex 2. Judgment of the TOF 3. Chapter IX, page 3731. Annex 1 to the petitioner's communication dated November 11, 2019.
[149] Annex 2. Judgment of the TOF 3. Chapter IX, page 3732. Annex 1 to the petitioner's communication dated November 11, 2019.

168. Lastly, TOF 3 held that it was not credible that "experienced investigation officials, instead of requesting a search warrant in order to seize the elements that could shed light on the investigation or the measures of personal restraint, remained inactive [...] in a role of babysitters for the children of the main suspect" [150]. Consequently, TOF 3 declared the nullity of the raid carried out on the building on 107 República street.

- **The Commission's Considerations**

169. The Commission highlights - in line with what was warned by the Federal Oral Criminal Court No. 3 and by Chamber II of the National Chamber of Criminal Cassation in their judgments dated October 29, 2004 and May 19, 2006[151]- that certain judicial and police officials in charge of coordinating the investigation of the attack who were present at the scene of the attack did not adequately fulfill their duties to protect the scene of the incident, collect in an adequate and timely manner the evidence found there, and ensure their chain of custody.

170. The Commission recognizes that the magnitude of this criminal act, both in terms of the degree of destruction caused by the explosion as well as the number of fatalities and injuries, which determined that, during the first hours, the priority was concentrated on the tasks debris removal and search for survivors. In this regard, the Commission takes into consideration the difficulty of carrying out the tasks of gathering evidence in the context of events of this nature.

171. However, the Commission finds that, in light of the principle of due diligence, the actions of those officials who failed to accurately document the circumstances in which various elements of great relevance to the investigation were found, in particular the engine parts of the Renault Trafic van, are not justifiable. As indicated at the time by the TOF 3, the police did not show a "minimum concern" to receive the statement of those who witnessed the discovery of said pieces or to carry out a reconstruction or observation of the place where they were found. Consequently, the Commission finds no grounds in the drafting of the record of the seizure, based on the statements of persons on whom there is no effective evidence that they were present at the time of said discovery.

172. In connection to this point, the Commission recalls that, in the face of a violent death, the Inter-American Court has indicated that "the correct handling of the crime scene is a starting point for the investigation and, therefore, a determining factor to clarify the nature, circumstances, and characteristics of the crime, as well as the participants in the act"[152] and that, according to international standards on the matter, "investigators must, as a minimum, photograph said scene, any other physical evidence [...] and make a report detailing any observations of the scene, the actions of the investigators, and the disposition of all the collected evidence"[153].

173. On the other hand, the Commission understands that the procedure carried out by agents of the SIDE and the DPOC at Carlos Telleldín's home on July 26 and 27 also implied a lack of due diligence in the practice of

[150] Annex 2. Judgment of the TOF 3. Chapter IX, page 3736 and 3737. Annex 1 to the petitioner's communication dated November 11, 2019.
[151] Annex 2. Judgment of the TOF 3. Chapter IX, page 2696. Annex 1 to the petitioner's communication dated November 11, 2019; Annex 3. Judgment of Chamber II of the National Chamber of Criminal Cassation dated May 19, 2006, pp. 271 to 277. Annex 7 to the petitioner's communication dated November 11, 2019.
[152] I/A Court H.R., *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; I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, paras. 231 to 233.
[153] I/A Court H.R., *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. See also: UN. 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 crosscontamination with other evidence. Each piece of evidence recovered, including human remains, should be uniquely referenced and marked to ensure its identification from point of seizure to analysis and storage. To meet chain of evidence and integrity requirements, the transportation, tracking and storage of this evidence should include the investigator's details*".

this essential procedure. This is the case if it is noted -coinciding with the way TOF 3 did in its judgment of October 2004- that the informal stay of state agents at the home of the then only defendant for the attack for almost two days, without said agents immediately securing those elements that could be of interest to the investigation, generated reasonable doubts regarding the integrity of the evidence collected in the subsequent raid carried out in that property. Indeed, there is a lack of due diligence when documentary evidence of importance for the determination of the facts is not collected or effectively preserved, as this can directly affect the success of the investigations[154].

174. In light of the above, the Commission observes that the State did not comply with the due diligence required in the initial proceedings. As will be indicated later, the omissions made at this stage have had a severe impact on the development of the investigation.

ii) Regarding the so-called "Syrian / Kanoore Edul lead"

175. Among the lines of investigation opened during the first days of the attack is the one known as the "Syrian / Kanoore Edul lead". Its origin has to do with the verification, made from the analysis of the record of incoming and outgoing calls from the telephone line installed at Carlos Telleldín's home, that on July 10, 1994 he received a call from a line belonging to a company owned by a man named Alberto Jacinto Kanoore Edul. The judicial investigation also verified that, on July 9 and 10, 1994, that is 8 days before the attack, Carlos Telleldín had published a classified ad in a newspaper offering for sale a Renault Trafic van[155].

176. Likewise, and according to the judgement of the Federal Oral Criminal Court No. 2 (TOF 2) of May 2019, on the same day of the attack, the investigators had already verified that, a few minutes before the explosion, "An employee of the company Cascotera Santa Rita, whose owner was Nassib Haddad, deposited a tipper truck in front of the AMIA-DAIA headquarters and moved another tipper truck that was stationed there to the address located at 2657 Constitución Street"[156].The domicile of the Kanoore Edul company was located at 2695 Constitución Street, that is, in the same block where the Cascotera Santa Rita dump truck was deposited.

177. Taking both data into account, TOF 2 concluded that, towards the end of July 1994, it was "evident the seriousness and consequent need and importance of deepening the hypothesis regarding the intervention of Alberto Jacinto Kanoore Edul in the attack, since at that moment it constituted the most solid and concrete line of investigation that the process presented"[157] Consequently, Judge Galeano ordered the phone tapping with direct monitoring of a series of phonelines linked to Kanoore Edul and ordered the Federal Police to proceed to raid the address of 2695 Constitución Street and two others located at 2633 Constitución Street and 2745 Constitución Street[158].

178. With respect to the raids, TOF 2 found that "they were not carried out simultaneously, but successively"[159] and that this "conspired against the greater success of the measure since it could have allowed the occupants of the second property, being advised of the previous raid, to discard elements of interest to the investigation"[160]. Likewise, the Court also verified that the police officers failed to carry out the raid of the building at 2633 Constitución Street and did not give valid reasons to act in this way. Former judge Galeano, as

[154] See, among others: I/A Court H.R., *Case of Ximenes Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, para. 189; I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, paras. 112 and 113; I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, paras. 173 and 174.

[155] Annex 2. Judgment of the TOF 3. Chapter X.B, p. 3846. Annex 1 to the petitioner's communication dated November 11, 2019.

[156] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 345. Annex 2 to the petitioner's communication dated November 11, 2019.

[157] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 354. Annex 2 to the petitioner's communication dated November 11, 2019.

[158] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 335. Annex 2 to the petitioner's communication dated November 11, 2019.

[159] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 373. Annex 2 to the petitioner's communication dated November 11, 2019.

[160] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 374. Annex 2 to the petitioner's communication dated November 11, 2019.

established by TOF 2, "limited himself to adding the proceedings to the record [...] without making any kind of observation or requesting explanations, thus consenting to the illegal actions of the personnel in charge of the measure"[161].

179. Regarding the measures of interception of the telephone communications of the individuals linked to Mr. Kanoore Edul, the TOF 2 found that on July 26, 1994, former Judge Galeano ordered the intervention under the modality of direct listening of three lines requested by the SIDE. The interceptions were in place starting July 29[162]. In accordance with the legislation and practices in force at that time, SIDE agents were in charge of both managing the means to intercept communications, and of proceeding to directly listen to the conversations and record them on various devices[163].

180. However, TOF 2 verified that these three measures of interception of communications were annulled by Judge Galeano at the request of the Secretary and the Undersecretary of Intelligence of the Nation. These officials, in successive notes, informed the judge that the measures "lacked informational value"[164]. The Court also noted that, in the three cases, the former Judge Galeano "even without having the wiretaps and transcripts that would allow him to make a real evaluation about the importance or not of maintaining the intervention of the line, decreed without any analysis [...] the end of the phone tapping"[165]. In view of this situation, TOF 2 concluded that it was "inadmissible to conclude that the product of listening to the line lacked informative value without having carried out its corresponding analysis, this situation can be explained from the will to harm and deliberately hamper the line of investigation on Kanoore Edul by the auxiliary agents of justice with the deliberate complacency of the judge of the case"[166].

181. Also, the court also deemed as proven that the tapes, where the intercepted communications on the individuals connected to Kanoore Edul were recorded by SIDE, went missing when in custody of DPOC and of the Federal Operations Division of the Superintendence of Dangerous Drugs of the Federal Police, units that were in charge of the transcripts on paper of the recorded communications[167].

182. Likewise, the transcripts made by the aforementioned departments of the Federal Police were sent to the court of former Judge Galeano, where the TOF 2 verified that they also went missing. In effect, the Court pointed out that "then judge Galeano, upon the requirements formulated by the judge of the Federal Oral Criminal Court No. 3 of the wiretaps and their transcripts in question, argued he could not find them in his court and at he was never able to forward them to the court in charge of conducting the oral and public trial"[168].

183. In summary, the two major cores of irregularities accredited by the Federal Oral Criminal Court No. 2 that affected the deepening of the so-called "Syrian/Kanoore Edul lead" were: on the one hand, the deliberate breach of the raid ordered on the building at 2633 Constitución Street by the police without an explanation in this regard from the judge; and on the other hand, the interruption of the wiretapping measures initiated with respect to three individuals linked to Mr. Kanoore Edul and the subsequent loss of the tapes on which they were recorded and their paper transcriptions. In the opinion of TOF 2, former judge Galeano avoided "producing all

[161] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 376. Annex 2 to the petitioner's communication dated November 11, 2019.
[162] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, pp. 336 and 337. Annex 2 to the petitioner's communication dated November 11, 2019.
[163] Decree 1801/92 dated September 29, 1992. Available at: http://mepriv.mecon.gov.ar/Normas/1801-92.htm
[164] See, for example, writ from the State Intelligence Secretariat addressed to Judge Galeano dated August 8, 1994, transcript in: Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 381. Annex 2 to the petitioner's communication dated November 11, 2019.
[165] Regarding the line of individual 449-4706, see: Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 381. Annex 2 to the petitioner's communication dated November 11, 2019; Regarding the line of individual 942-9181, see: Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 388. Annex 2 to the petitioner's communication dated November 11, 2019.
[166] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 394. Annex 2 to the petitioner's communication dated November 11, 2019.
[167] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, pp. 402 to 411. Annex 2 to the petitioner's communication dated November 11, 2019.
[168] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 401. Annex 2 to the petitioner's communication dated November 11, 2019.

the evidence that was intended to clarify the responsibility of Kanoore Edul in the attack, a situation that meant the loss of evidence that needed to be immediately produced and difficult to carry out with the passing time, which made it difficult to find out the truth"[169].

- **Commission's Considerations**

184. The Commission observes that the judgment handed down by the Federal Oral Criminal Court No. 2 that convicted various judicial officials in charge of the investigation conducted by the Federal Criminal Investigation Court 9 for the crimes of concealment, embezzlement, and failure to comply with the duties of a public official, highlights the execution out of cover-up maneuvers aimed at deliberately interrupting any progress in the line of investigation known as the "Syrian / Kanoore Edul lead".

185. Pursuant to the judgment of the TOF 2 itself, the Commission notes that the State agents in charge of directing and promoting the investigation into the AMIA attack neglected to execute and sustain various procedural steps that, if carried out in a timely manner, could have been useful to clarify the fact or, at least, to learn more about the degree of plausibility of the so-called "Syrian lead". These omissions are even more problematic if the provisions of the TOF 2 are taken into account regarding the solidity of this line of investigation during the first days of the judicial investigation[170].

186. Among the main omissions incurred by the officials, it is worth mentioning the failed raid on the property on 2633 Constitución Street and, secondly, the interruption of the measures to intercept the telephone communications of persons of interest to the investigation, with no prior analysis of the content of those communications already captured.

187. Regarding the principle of exhaustiveness in investigations of human rights violations, the Commission considers it appropriate to recall that the jurisprudence of the Inter-American Court is abundant in what has to do with the international responsibility of the State for not ordering, practicing, or evaluating evidence that may be essential for the due clarification of the facts. The Inter-American Court pointed out, in this same sense, that the investigation must be aimed at exploring all possible lines of investigation that allow the identification of the perpetrators of the crime, their subsequent prosecution and punishment[171].

188. In view of the foregoing, and in the absence of compliance with the procedures identified by TOF 2, the Commission observes that state officials refrained from continuing to deepen and develop an essential logical line for the development of the investigation. In this regard, the Commission considers that the State did not comply with the serious and exhaustive investigation of the facts in order to obtain the truth about the facts.

iii) Actions taken by the Investigating Judge No. 9 in relation to the accused Carlos Telleldín

189. During the period of time that elapsed between July 1994 and mid-1996, Carlos Telleldín was the only person detained, brought before judicial authorities, and charged of having had some degree of participation in the attack[172]. During the investigation, it was revealed that said defendant had a series of informal meetings with various authorities and that he received a sum of money from the SIDE in exchange for issuing a statement that implicated some police officers in the events. The relevant facts in relation to these aspects are described below and the Commission will make its respective considerations.

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[169] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 412. Annex 2 to the petitioner's communication dated November 11, 2019.
[170] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 354. Annex 2 to the petitioner's communication dated November 11, 2019.
[171] I/A Court H.R., Case of the *"Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 230; I/A Court H.R., *Case of J. v. Peru*. Interpretation of the Judgment on Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 291, para. 344, quoting I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 128. See also IACHR. Report No. 33/16, Case of 12.797. Merits. *Linda Loaiza López Soto and family*. Venezuela. July 29, 2016.
[172] See *infra* paras. 61 and 62

- **Regarding the informal meetings between the authorities and the accused Carlos Telleldín**

190. TOF 3, in its judgment of October 2004, found that, at the beginning of 1995, a person named Héctor Pedro Vergéz, at that time an officer in retirement from the Argentine Army, appeared before the courts of the Federal Criminal and Correctional Court No. 9 and requested to hold a private interview with Mr. Telleldín. Judge Galeano granted the request and, consequently, two meetings took place at the court's offices on January 20 and February 2, 1995. Vergéz attended those meetings accompanied by a SIDE agent named Daniel Ricardo Romero, who was in charge of videotaping the conversations. Towards the end of February, Vergéz and Romero visited the detention facility where Telleldín was being held on two other occasions[173].

191. In his statement at the oral trial conducted by TOF 3, Vergéz assured that "Dr. Galeano was fully aware of the interviews he had with Telleldín and of the investigation he was carrying out together with Daniel Romero"[174]. Romero, for his part, maintained that he delivered a copy of the recordings to the court and another copy to SIDE agents assigned to an office called "Sala Patria"[175].

192. The interviews with Vergéz, Romero, and Telleldín meant, in the opinion of the Federal Oral Criminal Court No. 3 "the first maneuver to obtain information from the mouth of the detainee Telleldín outside the procedural regulations"[176]. Indeed, TOF 3 deemed proven that in the meetings between Vergéz, Romero, and Telleldín, the latter mentioned that, in the months prior to his arrest, he had been the victim of extortion by members of the Buenos Aires Province Police, who demanded money and cars to allow him to continue with his activity of buying and selling stolen vehicles[177].

193. As corroborated by oral courts 3 and 2 in their judgments of October 2004 and May 2019, respectively, Vergéz and Romero were not the only individuals who met personally with Telleldín in the months in which it was the only one arrested suspect in the case for the attack. Telleldín also received in prison the visit of the then president of the National Chamber of Federal Criminal and Correctional Appeals, Luisa Riva Aramayo. The results of the interviews between Riva Aramayo and Telleldín were recorded by Judge Galeano in records incorporated into the casefile[178].

194. Judge Riva Aramayo went to the prison where Telleldín was detained on various occasions between the months of August and October 1995[179]. On some of these occasions, Ms. Riva Aramayo went to jail in a car driven by the personal driver of the then National Intelligence Secretary, Hugo Anzorreguy [180]. As a result of these interviews, Ms. Riva Aramayo informed Galeano that Telleldín "mentioned to her that those who received the van were police officers from the Province of Buenos Aires that he knew, whose names he reserved"[181]. Likewise, Riva Aramayo informed Galeano that Telleldín "conditioned its cooperation on the prior fulfillment of certain requirements that were not specified"[182].

[173] Annex 2. Judgment of the TOF 3. Chapter VIII.C. Pages. 2995 to 3023. Annex 1 to the petitioner's communication dated November 11, 2019.
[174] Annex 2. Judgment of the TOF 3. Chapter VIII.C. Page 3004. Annex 1 to the petitioner's communication dated November 11, 2019.
[175] Annex 2. Judgment of the TOF 3. Chapter VIII.C. Page 3008. Annex 1 to the petitioner's communication dated November 11, 2019.
[176] Annex 2. Judgment of the TOF 3. Chapter VIII.C. Page 3002. Annex 1 to the petitioner's communication dated November 11, 2019.
[177] Annex 2. Judgment of the TOF 3. Chapter VIII.C. Page 3002. Annex 1 to the petitioner's communication dated November 11, 2019. Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 583. Annex 2 to the petitioner's communication dated November 11, 2019.
[178] Annex 2. Judgment of the TOF 3. Chapter VIII.E. Page 3036 to 3046. Annex 1 to the petitioner's communication dated November 11, 2019.
[179] Annex 2. Judgment of the TOF 3. Chapter VIII.E. Page 3036 to 3046. Annex 1 to the petitioner's communication dated November 11, 2019.
[180] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 590. Annex 2 to the petitioner's communication dated November 11, 2019.
[181] Annex 2. Judgment of the TOF 3. Chapter VIII.E. Pages. 3039 to 3040. Annex 1 to the petitioner's communication dated November 11, 2019.
[182] Annex 2. Judgment of the TOF 3. Chapter X.C. Page 4212. Annex 1 to the petitioner's communication dated November 11, 2019. Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 590. Annex 2 to the petitioner's communication dated November 11, 2019.

195. As was established by Federal Oral Courts Nos. 3 and 2, the actions of Vergéz, Romero, and Riva Aramayo represented an "informal and surreptitious activity of the State in order to obtain Carlos Telleldín's statement."[183] The new investigative statement was concluded on July 5, 1996, and it was on that occasion that Telleldín first involved police officers belonging to the Lanús and Vicente López brigades of the Buenos Aires Province Police in the attack[184]. In the words of TOF 3, Telleldín's statement "was preceded by an armed, consented, and guided architectural design by federal judge Galeano, to whom the chambermaid Riva Aramayo was no stranger, and who were precisely the ones who had to ensure that this type of illicit maneuvers never happened"[185] (see *supra* para. 61).

- **Regarding the payment of a sum of money to Carlos Telleldín from the reserved funds of the Secretary of State Intelligence**

196. In the judgment handed down by TOF 3 in October 2004, it was established that the then judge Galeano held two informal meetings with Carlos Telleldín at his official office on April 10 and July 1, 1996. Both meetings were recorded on video through a hidden camera placed by the judge inside his own office. The TOF 3 warned that in the video corresponding to the July 1 meeting, "Dr. Galeano can be seen talking with Telleldín in an entertaining and relaxed manner" [186] and that "various topics were addressed that were the subject of investigation in the case and about which the defendant, within his right to exercise his material defense, had not yet spoken about"[187].

197. As TOF 3 was able to reconstruct, during the exchange between Judge Galeano and Telleldín, the Judge "under the pretense of an alleged purchase of copyright in a book [...] tries to agree with the accused on a statement in exchange for a sum of money, as well as the form of payment"[188]. Additionally, it appears from the tape that Judge Galeano assured Telleldín that the person interested in acquiring the book needed to know whether he "could answer certain points, at least by saying yes or no", to which Telleldín replied that what he wanted was the money to be deposited to his wife in a bank account[189].

198. Based on the testimonial statements made by various SIDE authorities and agents in the oral proceedings held before TOF 3, it was established that Carlos Telleldín, through his partner, received the sum of 400,000 dollars from reserved funds entrusted to the administration of the State Intelligence Secretariat itself. Indeed, the then Secretary of State Intelligence, Hugo Anzorreguy, declared before the TOF 3 that "at the end of May 1996 Dr. Galeano came to his office, commenting that the case was stalled, that Telleldín's relatives were scared and that he needed a sum of money to unblock the proceedings"[190]. Mr. Anzorreguy also added "that he did not ask about what Telleldín would contribute, nor did the judge tell him, but he immediately responded affirmatively to his request as it was one more contribution from the agency under his charge 'to move ahead'[191].

199. The TOF 3 found that the disbursement of the money to Telleldín's partner was made in two installments of 200,000 dollars each. The first payment took place on July 5, 1996 in the safe deposit box sector of a banking institution located in the town of Ramos Mejía. The second payment took place in October of the same year in a bank in the Federal Capital. The logistics of the operation was under the charge of SIDE agents, who immediately reported its successful conclusion to Secretary Anzorreguy and Judge Galeano[192].

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[183] Annex 2. Judgment of the TOF 3. Chapter VIII.E. Page 3036. Annex 1 to the petitioner's communication dated November 11, 2019.
[184] See *infra* para. 138.
[185] Annex 2. Judgment of the TOF 3. Chapter VIII.E. pp. 3060 to 3061. Annex 1 to the petitioner's communication dated November 11, 2019.
[186] Annex 2. Judgment of the TOF 3. Chapter VIII.G. Page 3096. Annex 1 to the petitioner's communication dated November 11, 2019.
[187] Annex 2. Judgment of the TOF 3. VIII.G. Page 3096 and 3097. Annex 1 to the petitioner's communication dated November 11, 2019.
[188] Annex 2. Judgment of the TOF 3. Title II. Chapter II. Page 4746. Annex 1 to the petitioner's communication dated November 11, 2019.
[189] Annex 2. Judgment of the TOF 3. Chapter VIII.G. Page 3099. Annex 1 to the petitioner's communication dated November 11, 2019.
[190] Annex 2. Judgment of the TOF 3. Chapter VIII.G. Page 3132. Annex 1 to the petitioner's communication dated November 11, 2019.
[191] Annex 2. Judgment of the TOF 3. Chapter VIII.G. Page 3132. Annex 1 to the petitioner's communication dated November 11, 2019.
[192] Regarding the manner in which the payment to Telleldín's partner was made, see the statements of SIDE agents Isaac Eduardo García, Juan Carlos Legascue, Héctor Salvador Maiolo, Alejandro Alberto Brousson, Patricio Miguel Finnen, Rodrigo Toranzo, Daniel Alberto Fernandez, Carlos Aníbal Molina Quiroga and Luis Nelson Gonzalez, outlined in Annex 2. Judgment of the TOF 3. Chapter VIII.G. Annex 1 to the petitioners' communication dated November 11, 2019. p. 3110 to 3142.

200. As indicated by TOF-2's May 2019 judgment, on July 5, 1996 "Carlos Alberto Telleldín, after receiving a telephone call from his partner Ana Maria Boragni, who let him know of the success of the first payment, provided -as agreed with Juan Jose Galeano- a new statement in the proceedings [...] on the occasion, he offered a version of the events different from the previous ones, indicating that on July 10, 1994 he delivered the Trafic van -whose engine was found among the rubble of the AMIA headquarters- to personnel from the Police of the Province of Buenos Aires, more precisely from the Lanús and Vicente López Brigades"[193].

201. Telleldín's statement of July 5, 1996, together with those provided by some people from his inner circle in the following days, formed the basis of the accusation constructed by Galeano against the Buenos Aires police officers Juan Jose Ribelli, Raúl Edilio Ibarra, Anastasio Irineo Leal, and Mario Norberto Barreto. The aforementioned officers were detained, investigated, and finally, on July 31, 1996, prosecuted as essential participants in the attack[194]. In February 2000, Judge Galeano brought the case against Telleldín and the police officers to oral proceedings, accused of being part of the so-called "local connection" of the attack.

202. The Federal Oral Criminal Court 3, by virtue of the irregularities set forth throughout this chapter - summarized in the press release attached to the judgment dated October 29, 2004- declared the nullity of all the proceedings from the beginning of the investigation against the Buenos Aires police officers and ordered that testimonies be extracted in order to investigate the criminal responsibility of a series of people who participated in the investigatory phase, including Judge Galeano and various officials of the judiciary, police, the SIDE, and the Executive branch[195].

203. Finally, it should be noted that, in order to "give a complete response to the legitimate expectations of knowing the truth of what happened, brought into this debate by the victims and by society,"[196] the TOF 3 carried out a broad analysis of the existing evidence on file. Within the framework of this task, the court reached the conclusion that "it has not been proven that on July 10, 1994 [...] or on any other date, Carlos Alberto Telleldín handed over any Renault Trafic van to the accused former Buenos Aires policemen"[197] and reiterated that "the statement provided by Telleldín on July 5, 1996, in which he formally introduces the accusation against the former Buenos Aires policemen for the attack, was the result of the simultaneous payment made by State representatives with the undeniable intervention of the instructing judge, Dr. Juan José Galeano"[198].

-Commission's Considerations

204. The Commission observes that during the investigation conducted by Federal Criminal Court No. 9, at least two serious irregularities occurred.

205. First of all, the Commission notes - in line with the statements reviewed at the national level - that as of 1995 the officials in charge of conducting the investigation allowed and facilitated that third parties not directly linked to the judicial investigation met Carlos Telleldín , who up to that moment was the only detainee charged with having participated in the attack on the AMIA.

206. The State did not prove that these informal meetings were foreseen in any procedural norm in force at that time. Likewise, these meetings were carried out by state actors -as Judge Riva Aramayo was at that time- or by people who either identified themselves as agents of the intelligence services, as in the case of Daniel

[193] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 574. Annex 2 to the petitioner's communication dated November 11, 2019.
[194] Annex 12. Judgment of the Federal Oral Criminal Court No. 2 dated May 3, 2019, p. 644. Annex 2 to the petitioner's communication dated November 11, 2019.
[195] Annex 2. Judgment of the TOF 3. Chapter XVI. B Conclusion. Pages 4696 to 4705. Annex 1 to the petitioner's communication dated November 11, 2019.
[196] Annex 2. Judgment of the TOF 3. Chapter X.A. Right to the Truth. Page 3751. Annex 1 to the petitioner's communication dated November 11, 2019.
[197] Annex 2. Judgment of the TOF 3. Chapter X. C. Page 4546. Annex 1 to the petitioner's communication dated November 11, 2019.
[198] Annex 2. Judgment of the TOF 3. Chapter X. C. Page 4547. Annex 1 to the petitioner's communication dated November 11, 2019.

Ricardo Romero, or they invoked representing public interests, such as former Captain Vergéz[199]. The Commission emphasizes that the domestic courts have established that such meetings were intended to prepare the ground for Telleldín to provide a statement that would allow to include in the investigation the hypothesis to involve in the preparation of the attack certain agents of the Police of the Province of Buenos Aires[200].

207. The Commission verified - based on its role as an observer of the oral trial held before TOF 3 - that, indeed, it was only during the debate hearings that the judges of the oral court and the complainants were able to hear for the first time the circumstances that surrounded the decision to initiate and promote the line of investigation that falsely incriminated certain members of the Buenos Aires police of the authorship of the attack[201].

208. Secondly, the Commission notes that it was only after those SIDE agents who were relieved of their duty of secrecy appeared at the oral trial hearings that it was possible to reconstruct the events of July 5, 1996; namely: the disbursement of a sum of money to Telleldín's partner at the Bank Quilmes de Ramos Mejía; the simultaneous communication of the success of that operation to Judge Galeano and Telleldín himself and, finally, the additional testimony where Telleldín mentioned that he delivered the Trafic van that was supposedly used as a car bomb to the Buenos Aires police officers belonging to the Vicente López and Lanús police brigades.

209. In relation to this point, the Commission considers it appropriate to highlight that the judge in charge of the investigation summoned, at the beginning of the investigation, the Secretary of State Intelligence (SIDE) to act as a justice aide[202]. The Commission also verified that, in accordance with the legislation in force at that time, the SIDE mandate included "collaborating with military, police, and judicial tasks when the competent authorities so require"[203].

210. Based on the testimonial statements of the former agents and executives of the SIDE offered in court, the Commission found that, at the time of the events, the State had not proven that the functions of administration and disposition of the reserved funds in the power of the Intelligence Secretariat were subject to any kind of regulatory restriction. Similarly, there were no administrative mechanisms to guarantee an adequate record of the expenditures made and there were no agencies or bodies that could carry out external audits or public policies aimed at supervising the way in which the SIDE used its reserved funds[204].

211. Based on the existing information, the Commission understands that the additional testimony made by the defendant Telleldín on July 5, 1996, could have hardly taken place were it not for the disbursement of a sum of money by agents of the State Intelligence Secretariat to his relatives. Likewise, the Commission emphasizes that the payment in question was only possible give the discretionary powers in matters of administration and disposition of reserved funds by the head of the Secretary of State Intelligence[205].

212. The Commission highlights that - for years and despite repeated requests made by TOF 3 - the Intelligence Secretariat expressly denied the existence of the disbursement of money to those close to Telleldín. Indeed, it was not until the issuance of Decree 291/2003 in June 2003, which relieved the agents who participated in the payment operation of their obligation to keep secrecy, that said agents were able to testify

[199] See *supra* para 130 to 136.
[200] Annex 2. Judgment of the TOF 3. Chapter VIII.E. Pages. 3046 to 3048. Annex 1 to the petitioner's communication dated November 11, 2019.
[201] Annex 1. "Grossman Report", p. 76 to 78. Annex 5 to the petitioner's communication dated November 11, 2019
[202] Annex 1. "Grossman Report", p. 73. Annex 5 to the petitioner's communication dated November 11, 2019
[203] Law 20.195, art 8. Available at: http://servicios.infoleg.gob.ar/infolegInternet/annexs/115000-119999/119720/norma.htm
[204] See, for example, testimonial statement of the Director of Finance of the Secretary of State Intelligence during Hugo Anzorreguy's administration, identified as witness with reserved identity no. 5: "*there was an operation for 200 thousand dollars that was as a special operation of the secretary of intelligence, for that reason there was no documentation. The only thing there was is a secret act..., 'by virtue of decree 5315, the sum of 200 thousand dollars is considered disbursed"*. Annex 12. Judgment of the Federal Oral Criminal Court No. 2. Page 640. Annex 2 to the petitioner's communication dated November 11, 2019.
[205] Law 20.195 dated February 28, 1973. Available at: http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=119720

in court and report in detail the way in which the two events in which Telleldín's relatives were paid a considerable sum of cash took place[206]. Also, Judge Galeano, as stated in TOF 3 "systematically concealed the existence of a payment made to Carlos Alberto Telleldín so that he could expand, in previously agreed terms, his testimony"[207].

213. In this regard, the Commission emphasizes - in line with what was stated by the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms in the fight against terrorism, Martin Scheinin - that the main function of intelligence agencies is the identification of potential threats to national security from the gathering and analysis of information[208]. Although the main international human rights instruments do not expressly prohibit intelligence agencies from acting as auxiliaries to justice, there are convincing arguments that discourage the conjunction of state intelligence and criminal investigation functions. With regards to the assignment of arrest and detention powers to the intelligence agencies - comparable *inter alia* to the rest of the typical activities of the police in judicial function- Special Rapporteur Scheinin assured that "there is a danger that a parallel security system is created, where intelligence services would exercise arrest and detention functions to circumvent the legal safeguards and supervision systems to which the State security forces are subject"[209].

214. The Commission observes that the investigation led by former Judge Galeano, from 1994 to 2004, adopted as the only accusatory hypothesis, with regard to the so-called "local connection" of the attack, the one that indicated the participation of the Buenos Aires policemen indicated by Telleldín in his testimony of July 5, 1996. As has been established, this hypothesis was constructed and promoted through the use of a portion of the secret funds assigned to the SIDE, which were used with absolute discretion and absence of controls by the intelligence body where they came from. Indeed, from those funds came the sum of money that was paid to a defendant to incorporate into the file information that does not have other means of support in the file. This accusatory hypothesis fabricated as a result of said information was maintained by the state authorities for several years, to the point of raising the investigatory phase to oral proceedings.

215. All of the foregoing, in the Commission's opinion, points to the absence of rational content or support in the main line of investigation promoted by the State at that time, which is not only highly questionable and implies a lack of duty to investigate with due diligence, but also reveals a manifest partiality of the judge with an interest in generating a certain result that does not obey the evidentiary material legally incorporated into the investigation. These actions, which also made use of means that are also not supported by the guarantees of regular due process, do not in any way satisfy the right of the victims' next of kin to access justice. Furthermore, it carried severe consequences for the clarification of the serious human rights violations suffered by the victims in this case.

iv) Conclusion

216. Based on what is stated in this chapter, the Commission concludes that, both at the beginning of the investigation and during the investigatory phase conducted by the Federal Criminal Court No. 9, a series of irregularities occurred such as failures in the practice of essential procedures, as well as the deliberate abandonment of some lines of investigation where further inquiry was a logical course of action to follow.

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[206] For an account of the requests made by TOF 3 as of September 2001 and of the negative responses provided by the then SIDE authorities, see: Annex 2. Judgment of the TOF 3. Chapter VIII.V. P. 3588 to 3610. Annex 1 to the petitioner's communication dated November 11, 2019.
[207] Annex 2. Judgment of the TOF 3. Chapter VIII.B. Pages 2979 and 2980. Annex 1 to the petitioner's communication dated November 11, 2019.
[208] 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/10/3. February 4, 2009. Para. 26. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/106/25/PDF/G0910625.pdf?OpenElement
[209] 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. Para. 41. Available at https://fas.org/irp/eprint/unhrc.pdf

217. Added to this, and in a particularly serious manner, the Commission has verified that during the investigatory phase of the attack there was a deviation from the rational rules that should govern any criminal investigation. Indeed, the judges who acted during said stage -in coordination with other state actors- carried out activities outside the law with the purpose of constructing and deepening an accusatory hypothesis without factual support. These actions deliberately favored the cover-up of those truly responsible for the attack, decisively impaired the right of the victims and Argentine society to know the truth of what happened, and largely explain the state of impunity in which currently the case is found.

218. In this sense, the Commission finds that the aforementioned state action not only violated the principle of due diligence that should govern judicial investigations for serious human rights violations, but also constitutes a deliberate concealment of the historical truth and the denial of the state obligation to clarify and punish such facts[210].

219. Consequently, the Commission concludes that the Argentine State is responsible for the violation of the rights to a fair trial and judicial protection enshrined in Articles 8.1 and 25 of the American Convention, respectively, in relation to Article 1.1. of the same instrument to the detriment of the victims of the case.

b. Investigation delegated by the Federal Criminal and Correctional Court No. 6 to the Prosecution Unit for the Investigation of the Attack on the AMIA Headquarters

220. Considering that, in accordance with the provisions of the previous section, the investigation was hampered as a result of the State's own action, the Commission considers that there is a heightened obligation for the Argentine State to investigate these facts and from which a double responsibility derives. First, to seriously undertake a diligent investigation into the AMIA attack in order to clarify what happened and punish those responsible. Second, that of investigating with due diligence, correcting the effects generated and, where appropriate, punishing those responsible for all the shortcomings and irregularities produced in the investigation into the attack that, due to their effects, have become factors of impunity attributable to the actions of its own agents.

221. In this section, the Commission will analyze the State's compliance with due diligence standards with respect to the investigation conducted from February 2005 to the present day by the Prosecution Unit for the Investigation of the Attack on the AMIA Headquarters (UFI-AMIA). In a later section, the Commission will rule on the investigations and processes followed in relation to possible irregularities and shortcomings in the investigation itself.

222. On December 3, 2003, the Court of Appeals decided to remove the then Judge Juan José Galeano from hearing the section of the investigation for the attack that was still under his responsibility and from all those that were related to it[211].

223. Consequently, the judicial investigation was assigned to the Federal Court No. 6 under Judge Rodolfo Canicoba Corral. In February 2005, and after the TOF 3 ruling that declared the accusation that implicated the Buenos Aires police as part of the local connection to the attack null and void, Judge Canicoba Corral delegated the investigatory phase of the entire investigation of the AMIA case to the UFI AMIA, a dependency that had been created shortly before by the Attorney General of the Nation. The UFI AMIA was at first led by prosecutors Alberto Nisman and Marcelo Martinez Burgos and then was exclusively led by Nisman until the day of his death, on January 18, 2015. From then on and to date, the UFI AMIA is headed by a collegiate team of prosecutors[212].

[210] IACHR, Report No. 22/15, Case 12.792. Merits. María Luisa Acosta and others. Nicaragua. March 26, 2015. Para. 92.
[211] Annex 2. Judgment of the TOF 3. Chapter VIII.B. Pages 2974 and 2995. Annex 1 to the petitioner's communication dated November 11, 2019.
[212] See in this regard: Annex 11. UFI AMIA Management Report July 2016. Introduction. Annex 13 to the petitioner's communication dated November 11, 2019.

224. The investigative activity of the UFI AMIA during the period 2005 to 2015 related to the clarification of the attack was reflected, essentially, in two reports signed in the years 2006 and 2009. Regarding the first of them, dated October 25, 2006, prosecutors Nisman and Martinez Burgos presented various arguments that allowed them to reach the conclusion that "the attack perpetrated against the headquarters of the AMIA was carried out by the Lebanese terrorist organization Hezbollah, at the request of the highest authorities of the then government of the Islamic Republic of Iran and with the participation, at the local level, of Iranian diplomatic officials accredited in our country"[213].

225. In the same report of October 2006, the prosecutors assured that the Renault Trafic van loaded with explosives that exploded in the AMIA building was driven by a Hezbollah militant suicide bomber of Lebanese nationality named Ibrahim Hussein Berro, who was allegedly recruited by Hezbollah,[214] and later transferred to the Triple Border region between Argentina, Paraguay, and Brazil, from where he would have secretly entered Argentine territory with the help of supporters of that organization who resided in that area[215].

226. Consequently, the prosecutors asked Judge Canicoba Corral to order the arrest of a group of officials and former public officials of the Islamic Republic of Iran and members of Hezbollah, for them to present a testimony for the investigation, in accordance with the Argentine criminal procedural rules. In November 2007, and in the absence of judicial cooperation from the states in whose territory the accused are presumed to be residing, INTERPOL issued a red notice with respect to 6 of 8 of them[216]. As of the date of approval of this report, the red notices remained in force, except for the one corresponding to an accused of Lebanese nationality whose death was verified in 2008[217].

227. The second report of the UFI AMIA, dated May 20, 2009, focused on formulating an accusation against an individual named Samuel Salman El Reda. This person, at the discretion of the prosecution, would have been the one who from his place of residence in the triple border area "coordinated the arrival and departure, the logistics operations, and the other activities carried out by the operational group in charge of executing the final phase of the attack"[218]. The intervening judge issued an international arrest warrant and INTERPOL issued a red alert that also remains in force to date[219].

228. As of January 2015, the team of prosecutors heading the UFI AMIA undertook various measures, disseminated to family members and the public through a series of semi-annual management reports. According to these reports, the UFI AMIA concentrated on the task of sustaining and consolidating the accusatory hypothesis embodied in the 2006 and 2009 rulings, without discarding "the processing of other lines not necessarily consistent with that thesis"[220].

229. The UFI AMIA reported in July 2016 that part of its efforts were focused on the genetic verification of the identity of Ibrahim Hussein Berro. Prosecutors indicated that for such purposes it was necessary to inspect the Judicial Morgue, carry out an inventory of the organic material that was stored there, and verify its maintenance and conservation conditions. Likewise, the prosecutors summoned the Argentine Forensic Anthropology Team so that, alongside the officials of the Judicial Morgue, they would conduct "a biological expert opinion in order to obtain the DNA profile of the samples of the human remains of the victims of the attack" [221] and determine if there is any sample in deposit that corresponds to unidentified persons, including Berro.

[213] Annex 5. UFI AMIA 2006 Report p. 781. Annex 12 to the petitioners' communication dated November 11, 2019.
[214] Annex 5. UFI AMIA 2006 Report p. 692. Annex 12 to the petitioners' communication dated November 11, 2019.
[215] Annex 5. UFI AMIA 2006 Report pp. 699 to 706. Annex 12 to the petitioners' communication dated November 11, 2019.
[216] Annex 11. UFI AMIA Management Report July 2016. Page 7. Annex 13 to the petitioner's communication dated November 11, 2019.
[217] Annex 8. UFI AMIA Management Report December 2016. Page 18. Annex 13 to the petitioner's communication dated November 11, 2019.
[218] Annex 9. UFI AMIA 2009 Report p. 4. Annex 16 to the petitioners' communication dated November 11, 2019.
[219] Annex 8. UFI AMIA Management Report December 2016. Page 15. Annex 17 to the petitioner's communication dated November 11, 2019.
[220] Annex 11. UFI AMIA Management Report July 2016. Page 6. Annex 13 to the petitioner's communication dated November 11, 2019.
[221] Annex 11. UFI AMIA Management Report July 2016. Page 9. Annex 13 to the petitioner's communication dated November 11, 2019.

230. On the other hand, the UFI AMIA reported the creation of the Special Documentary Survey and Analysis Group [*Grupo Especial de Relevamiento y Análisis Documental*] (GERAD) with the aim of identifying the documentation that is relevant for the investigation of the attack and, additionally, guaranteeing its analysis and its material accessibility to the parties in the proceedings[222]. Likewise, the UFI AMIA reported that various tasks were initiated to synthetize and systematize the evidence, manage the volumes of information that exist in the case, process and regularize the reserved files attached to the main cause, and explore channels of international cooperation, as well as maintain the international arrest warrant, among other issues[223].

The publication of the management reports by the UFI AMIA was discontinued in December 2017. The Argentine State did not present, within the framework of the processing of this case before the Commission, information that would allow it to know what activities were carried out from that date onwards. The petitioners informed the Commission that, in recent times, UFI AMIA has undergone various changes in the composition of its management team[224].

i) Regarding the conservation and handling of the organic material affected in the investigation and its use as evidence

231. In March 2016, Federal Court No. 6 ordered, at the request of UFI AMIA, that a scientific expert report be carried out in order to obtain the genetic profile of all the biological remains preserved in the Judicial Morgue and of those that were found in the PFA Chemical Laboratory Division. Likewise, the court ordered the cross-checking of all the genetic profiles that were extracted in order to "determine that all the samples in record correspond to some of the deceased persons." To make the work possible, the prosecutors summoned specialized personnel from the Forensic Medical Corps, the Argentine Forensic Anthropology Team, and the Genetic Footprints Laboratory of the Faculty of Pharmacy and Biochemistry of the University of Buenos Aires[225].

232. The UFI AMIA in its management report of July 2016 reported that the group of prosecutors who assumed the direction of the investigation in February 2015 proceeded, in the first place, to carry out an inspection of the Judicial Morgue "to personally check all the organic and other materials available to the investigation". As a result of this inspection, the prosecutors ordered the preparation of "a meticulous inventory of the organic material in the Morgue and the verification of the conditions of conservation and safekeeping" in order to "accurately determine the quantity and quality of the samples obtained at the time of the autopsies, in order to establish their suitability for an eventual analysis"[226].

233. Likewise, on September 8, 2016, the Chemical Laboratory Division of the Argentine Federal Police informed the UFI AMIA of the existence, in its offices, of elements related to the investigation, among which was a red bucket with organic remains of victims, which was preserved inside a freezer. The UFI AMIA stated in its management report that said remains were fragments of frozen tissue placed inside a glass bottle, which was located inside the red bucket[227]. These test items had not been previously inventoried and had been in the PFA laboratory since August 1994.

- Commission's Considerations

234. The IACHR considers that both the absence of a precise record of the organic material related to the investigation - a situation evidenced by the discovery made in the Chemical Laboratory Division in September 2016 - and the lack of exploration, until 2016, of the possibilities that the analysis of said material could offer

[222] Annex 11. UFI AMIA Management Report July 2016. Page 10. Annex 13 to the petitioner's communication dated November 11, 2019.
[223] See, in general terms: Annex 11. UFI AMIA Management Report July 2016. Pages 11 to 25. Annex 13 to the petitioner's communication dated November 11, 2019.
[224] Petitioner's communication dated November 11, 2019. Pages 35 and 36
[225] Annex 11. UFI AMIA Management Report July 2016. Page 9. Annex 13 to the petitioner's communication dated November 11, 2019.
[226] Annex 11. UFI AMIA Management Report July 2016. Pages 8 to 10. Annex 13 to the petitioner's communication dated November 11, 2019.
[227] Annex 8. UFI AMIA Management Report December 2016. Page 11. Annex 17 to the petitioner's communication dated November 11, 2019.

for the clarification of the facts, does not satisfy the duty of due diligence, according to the internationally recognized parameters[228]. The Commission emphasizes that in complex cases such as the AMIA attack, it is necessary for the officials in charge of the investigation to incorporate an interdisciplinary approach into their work routines that includes the contribution that specialists from different scientific fields may provide[229].

235. The Commission considers that the course of action followed by the UFI AMIA as of 2015 was positive with regard to the exploration of tools of forensic medicine as a way of helping to determine the historical truth of the event. The Commission is also aware that DNA amplification, purification, and extraction techniques have undergone considerable progress from the time of the attack to the present day. Notwithstanding this, the Commission observes that throughout this process the Argentine State did not provide any reason why the aforementioned scientific expert opinion was ordered and started only in March 2016, that is, almost 22 years after the events occurred. This situation constitutes, in the Commission's opinion, a breach of the State's duty to act with due diligence in the investigation of the facts. As will be pointed out in the following paragraphs, such delays become even more relevant considering the results yielded by the measure once concluded.

ii) Regarding the determination of the identity of the person who would have immolated themselves in the attack

236. The TOF 3 in its judgment of October 2004 concluded that the attack on the AMIA was caused by the detonation of an explosive charge placed in the back of a Renault Trafic van[230]. In the report dated October 25, 2006, the UFI AMIA identified a citizen of Lebanese origin named Ibrahim Hussein Berro as the driver of the Trafic van that would have crashed in front of the AMIA. According to prosecutors, the first information that linked Berro's name to the attack was provided by a source, whose identity was kept confidential throughout the report, during an interview held in the city of Montevideo in 2001 with agents of the SIDE and the FBI. This source, identified as "a Lebanese citizen, a former militant of the terrorist group Hezbollah," assured that a person who lived near his home named Abu Mohamed Yassin had told him that "the surname of the one who played the suicide bomber in the attack to the headquarters of the AMIA was Brru."[231]

237. In the subsequent pages of the report, the prosecutors mentioned a series of elements that would verify what was stated by the individual who was interviewed by SIDE agents in the Eastern Republic of Uruguay. In the first place, they recorded that the witness Abolghasem Mesbahi affirmed before the TOF 3 that the person who had immolated themselves was of Lebanese origin[232]. Secondly, the prosecutors cited in numerous sections "information provided in a timely manner by the Intelligence Secretariat"[233] and information provided by a "collateral service" of the Intelligence Secretariat[234], which would be incorporated into a dossier produced by the SIDE, titled "International Report" and that would greatly support the aforementioned hypothesis.

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[228] UN. Office of the United Nations High Commissioner for Human Rights. Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), *Revision of the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.* See in particular its Chapter IV.B "*The process of investigation*", paras. 50 to 66.

[229] United Nations. Office of the High Commissioner for Human Rights. *Model Protocol for Forensic Investigation of Deaths Suspicious of Having been caused by Human Rights Violations*. Of special importance for this report is: Part I Forensic Investigation on Fresh Bodies. Chapter C.6 Forensic Genetics Examination, page 33 and Part II Forensic Investigation of Decomposing or Skeletonized Bodies. Chapter B.9 Identification by means of genetic markers.

[230] Annex 2. Judgment of the TOF 3. Chapter V. Pag 2434. Annex 1 to the petitioner's communication dated November 11, 2019.

[231] Annex 5. UFI AMIA 2006 Report p. 694. Annex 12 to the petitioners' communication dated November 11, 2019.

[232] Annex 5. UFI AMIA 2006 Report p. 696. Annex 12 to the petitioners' communication dated November 11, 2019.

[233] Annex 5. UFI AMIA 2006 Report. Annex 12 to the petitioners' communication dated November 11, 2019. See, for example among many others: Pages. 698 and 699 on the identity of Abu Mohamad Yassin, "***The information timely provided by the Intelligence Secretariat*** *in which Abu Mohamad Yassin is referred to as 'an important member of Hezbollah…'*; page 702 on Berro's trip from Lebanon to the American continent: "***Another source of the Intelligence Secretariat*** *[…] affirms that 'two or three elements departed from Lebanon – via Europe – to the Triple Border, with European passports and identities of citizens of those countries yet not Lebanese. One of them would be Hijad Hussein Brru…'*; page 733; on the alleged affinity of the Berro family with terrorist groups, see page 733. (original not highlighted.)

[234] Annex 5. UFI AMIA 2006 Report. Annex 12 to the petitioners' communication dated November 11, 2019.See, for example: page 699, on the presence of Ibrahim Berro in the area of the Triple Border: ***"a report provided by a partner service' of the Secretary of Intelligence*** *that determined that the individual traveled from Lebanon to the area of the 'triple border a few days before the date chosen for the execution of the attack on the AMIA headquarters*" (original not highlighted); On Berro's supposed hosts in the triple border, see p. 704.

238. On the other hand, the prosecutors listed a series of telephone communications that would have been made between mosques located in the city of Foz do Iguaçu and an address in the city of Beirut that belonged to a person identified as Ahmad Ali Berro. The Commission underscores on this point that the prosecutors clarified that they had not been able to assure with "certainty about the possible degree of connection" of this person to Ibrahim Hussein Berro[235].

239. Additionally, the report documents the information obtained from a testimonial statement taken from two of Ibrahim Berro's brothers who resided in the United States. Berro's brothers affirmed, first, that Ibrahim used to be absent from the family home "for long periods, between two and three months, and that at the time his family received the news of his death, he had not been home for a considerable time" [236]. Secondly, they assured that the leader of Hezbollah attended the funeral ceremony for the death of Ibrahim, an organization that "had reported that Ibrahim died in combat with Israeli troops in southern Lebanon, without his body being recovered"[237]

240. Prosecutors assessed the results of a comparative expert opinion carried out between two photographs of Berro delivered by his brothers and the identikit built 72 hours after the attack based on the testimony of the witness Nicolasa Romero, who claimed to have seen the face of the driver of a Renault Trafic van driving down Pasteur street moments before the explosion. This expert opinion revealed "specific coincidences indicated in the eyes, nose, contour of the face, hairline, and eyebrows"[238]. Likewise, the prosecutors mention the photographic recognition carried out by the witness Romero, who "after her initial doubts and after being presented with the identikit" singled out from among a series of 4 photographs the one that corresponded to Berro and affirmed "that the person 'He was a big guy like this, of this build, with big brows, I see a similarity in his face, he has abundant eyebrows, the texture of his face is similar ..."[239].

241. It was not until a management report corresponding to the month of July 2017, that the UFI AMIA reported carrying out a genetic comparison test of all the samples on file which revealed the "verification of a genetic profile from of the material reserved in the PFA laboratory that does not correspond to any of the known victims"[240], a finding that would support, in principle, the hypothesis that the Trafic van that exploded in front of the AMIA was driven by a suicide bomber.

242. In the same management report, the UFI AMIA described the process through which - with the collaboration of the authorities of the United States of America - the genetic profile of the sample found in the Chemical Laboratory Division of the PFA was compared with the genetic profile of one of Berro's brothers. In November 2017, according to the aforementioned report, the FBI reported that "after typing the autosomal STR, Y-STR and mitochondrial DNA of the alleged attacker's brother and carrying out the comparison with the genetic profile obtained from the sample recovered from the PFA Chemical Laboratory, it was determined that the latter 'could not have originated from a paternal or maternal relative […] to include a brother or half-brother'"[241].

- **Commission's Considerations**

243. The Commission observes, first, that a large part of the investigation of the AMIA case and, in particular, that which refers to the determination of the identity of the person who would have immolated themselves is based on intelligence reports made by the Secretary of Intelligence of the State or other Argentine intelligence organisms. In this regard, the Commission considers it pertinent to make the following considerations.

[235] Annex 5. UFI AMIA 2006 Report p. 704. Annex 12 to the petitioners' communication dated November 11, 2019.
[236] Annex 5. UFI AMIA 2006 Report p. 714. Annex 12 to the petitioners' communication dated November 11, 2019.
[237] Annex 5. UFI AMIA 2006 Report p. 714. Annex 12 to the petitioners' communication dated November 11, 2019.
[238] Annex 5. UFI AMIA 2006 Report p. 768. Annex 12 to the petitioners' communication dated November 11, 2019.
[239] Annex 5. UFI AMIA 2006 Report p. 768. Annex 12 to the petitioners' communication dated November 11, 2019.
[240] Annex 13. UFI AMIA Management Report July 2017. Page 8. Annex 19 to the petitioner's communication dated November 11, 2019.
[241] Annex 11. UFI AMIA Management Report July 2016. Page 12. Annex 13 to the petitioner's communication dated November 11, 2019.

244. The Commission emphasizes that it is not the purpose of this case to delve into the possible effects that may generate on the rights of those indicted for the accusations that are fundamentally based on intelligence reports produced from classified sources, whose suitability or quality of the witnesses cannot be liable to be controlled by the parties to a criminal proceeding. The Commission understands that, on certain occasions, it may be essential for the success of the information gathering policies carried out by intelligence agencies that the identity of the source supplying the information or the methods used to obtain it be protected. Likewise, it is necessary to recognize that the rules relating to the secrecy of intelligence activities tend to pursue the legitimate aim of preserving the personal integrity of the public officials who are engaged in them. However, in any case it is necessary to adopt certain safeguards to respect due process guarantees[242].

245. In what is relevant to the present case, the Commission considers that the intelligence reports could serve as a guiding criterion for the investigating authority, even if they were built upon information obtained by sources whose identity is unknown even by the judicial officials in charge of the investigation and from which certain substantiated conclusions can be drawn based on assumptions or conjectures from such reports[243]. However, in circumstances in which it is intended to generate an investigative hypothesis based on such reports to substantiate a possible criminal accusation, trial, and conviction, it is necessary to balance the protection of the sources and methods of intelligence gathering with the rights of the parties to the process of controlling state evidentiary activity and cross-examining witnesses[244]. This implies that it is necessary for the State to exhaustively carry out all pertinent evidentiary measures to give sufficient strength to the version of the facts that are intended to be upheld.

246. The Commission observes that the State did not provide information indicating that the Argentine criminal procedure and intelligence legislation had normative mechanisms at the date of the events that would guarantee the above requirements regarding the use of intelligence reports in criminal investigations. As has been indicated, the incorporation of this type of reports generates, in turn, a duty to carry out additional procedures that allow confirming the hypotheses contained therein. In this regard, the Commission observes that, since a large part of the information contained in the case is found in intelligence reports, if proceedings aimed at obtaining evidence in accordance with the procedural norms that may be incorporated into the file are not carried out, the possibility of obtaining a judicial ruling that determines the correspondence with the truth of the accusatory hypotheses raised by the UFI AMIA would be seriously compromised, as would be the punishment for the individuals accused by said agency.

247. With regard to the identity of the alleged suicide bomber, the Commission notes that, although the prosecutors took into account a comparative expert opinion, based on an identikit constructed in time close to the attack, the UFI AMIA in its report of October 2006 attributed to Ibrahim Hussein Berro the material responsibility of the attack based on intelligence reports that were incorporated into the case by the SIDE. The Commission observes that it took more than 10 years for the UFI AMIA to identify the existence of stored biological material that did not correspond to any of the known victims. Likewise, it was not until 2017 that the UFI AMIA managed to conclude that this sample did not have any genetic correspondence with one of Berro's brothers.

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[242] I/A Court H.R., *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. 243.

[243] The Commission observes that, for example, the Colombian Constitutional Court has stated that "intelligence reports are based on the preventive processing of a set of objective operations - they reflect methods and actions carried out - that work on a margin of conjecture or hypotheses about numerous information which results in some conclusions of the intelligence work ". In this sense, it has established that "due to the existence of a broad margin of doubt about the information because it is not sufficiently verified, it is completely valid in light of the Constitution that the legislator did not grant it the legal effect of evidence within the disciplinary and judicial processes. But this does not mean that they go unnoticed altogether, because the content of such reports may constitute a guiding criterion during the investigation, which meets the duty of the State, by virtue of criminal policy, to investigate based on the *notitia criminis*". See, Constitutional Court of Colombia, C-540/12.

[244] Regarding the indiciary value granted by the jurisprudence and national legislation of various countries of the European continent of the so-called "expert intelligence evidence", see: Supreme Court of Spain, Second Criminal Chamber STS 2084/2001 dated December 13, 2001; German Criminal Procedure Act (StPO) § 161.

248. The IACHR understands that, in light of the results of this biological expert opinion, it is reasonable that to date there continue to be serious doubts regarding the veracity of the prosecutors' hypothesis set out in the October 2006 report. This state of uncertainty is heightened if it is taken into account that in the aforementioned report Berro's identification was based, the Commission reiterates, on information gathered by Argentine and foreign intelligence agencies and on statements from protected witnesses, whose veracity could not be controlled or corroborated nor by the judicial authorities nor by the petitioners acting as plaintiffs in the case, since their introduction to the judicial file was not governed by the rules of testimonial evidence. (see *supra* para. 243).

249. The Commission considers that, in addition to the timely performance of the DNA studies outlined above, the authorities in charge of the investigation should have diligently and exhaustively adopted a series of measures in order to collect as much evidence as possible to support the version of the events recorded in the intelligence reports. This included having required to keep a documentary record of the intelligence services' activity in order to be able to guarantee that such information could constitute evidence in the legal proceedings, or, alternatively, facilitate carrying out additional judicial proceedings[245].

250. In addition to this, the Commission emphasizes that the transnational nature of terrorist crimes implies that the States have a specific duty to do everything that is reasonably within their power to encourage and ensure the international judicial cooperation of third states harboring persons or documents of interest in clarifying the facts. In the specific case, the adequate fulfillment of the duty to investigate with due diligence demands that the Argentine State to use the means within its reach to ensure that all information that is in the hands of a foreign nationals or an agency belonging to a foreign state can be incorporated into the judicial investigation currently underway[246]. This includes the information that said persons or organizations may have transmitted to intelligence agents belonging to the Argentine State.

251. The Commission does not have detailed information to date that allows it to establish in a concrete manner what efforts the Argentine State would be carrying out in that direction. This is despite the fact that it understands that it has made contacts with other state agencies in the framework of the investigation of the case and that expert proceedings have also been carried out with the cooperation of other states and that some extradition requests have been made regarding accused persons. In this regard, the Commission does not have up-to-date information, for example, on the initiatives and strategies promoted by the State with the aim of materializing the investigative statements of the accused Iranian nationals[247].

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[245] On this matter, Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, has affirmed that: "While 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. Para. 38. Available at https://fas.org/irp/eprint/unhrc.pdf

[246] United Nations. Security Council. Resolution 1373 (2001), art. 2.f; General Assembly of the Organization of American States. Inter-American Convention against Terrorism. AG / RES. 1840 (XXXII-O / 02), art 4.c. The Inter-American Court has indicated that "the definition of conducts that are considered to affect transcendental values or goods of the international community, […] make it necessary to activate national and international means, instruments, and mechanisms for the effective prosecution of such conducts and the sanction of their authors, in order to prevent them and prevent them from remaining in impunity. I/A Court H.R., *Case of Goiburú et al. v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 130.

[247] The Commission has been informed of the signing of a "Memorandum of Understanding between the Government of the Argentine Republic and the Government of the Islamic Republic of Iran on the issues related to the terrorist attack on the AMIA headquarters in Buenos Aires on 18 July 1994 ", signed on January 27, 2013 in the city of Addis Ababa, Ethiopia. Said memorandum was approved by the Argentine Congress through Law 26.843 dated February 27, 2013. The Commission does not have information regarding the process of ratification of the memorandum by the Islamic Republic of Iran. According to the information provided by the petitioners and by the representatives of the Argentine State, Law 26.843 was declared unconstitutional by the Federal Criminal Cassation Chamber in December 2015 and its clauses never had legal effect. Consequently, the Commission will refrain from evaluating it in this report.

252. The Commission emphasizes that the determination of the identity of the person who would have immolated themselves in the attack on the AMIA is especially important, since based on this information, the accusatory hypotheses currently maintained by the prosecution could be confirmed or, alternatively, point to other lines of investigation. Moreover, identifying the material author of the attack and their possible social connections or political affiliations would represent a great step towards determining the totality of material and intellectual responsibilities, and guaranteeing the right to the truth of the victims, their families, and society in general.

253. The Commission recalls that the fact that the State failed, until 2016, to inventory the organic remains collected at the scene of the incident reflects in itself the lack of due diligence by the State. This omission also explains why the genetic comparison that ruled out that the unidentified sample found in the PFA Chemical Laboratory belonged to Ibrahim Hussein Berro could only have been completed in November 2017.

254. The duty to act with due diligence demanded, in this case, that the State used all the necessary means to investigate exhaustively and without delay the aforementioned hypothesis, by practicing all the pertinent tests, including the genetic analysis of the organic sample that was in storage without identification. This was even more crucial considering that, at least since October 2006, a central part of the public accusatory hypothesis revolved around the identification of Berro as the individual who would have acted as a suicide driver of the Trafic van that would have been used as a car bomb. The Commission concludes that the failure to carry out this evidentiary procedure in a timely manner, as well as others that would make it possible to strengthen the line of investigation that links Hezbollah and officials and nationals of the Islamic Republic of Iran with the incident, also prevented other complementary lines of investigation from being explored, which did not necessarily include the participation of Berro or his alleged associates in the attack, negatively impacting the progress of the investigations.

iii) Regarding the death of the prosecutor in charge of the investigation

255. As mentioned in the facts section, on January 18, 2015, the body of Prosecutor Nisman, then head of the UFI AMIA, was found lifeless at his home in the city of Buenos Aires. The event occurred days after the UFI AMIA filed a criminal complaint against several state officials in connection to a possible cover-up related to the signing of the Memorandum of Understanding between the Argentine Republic and the Islamic Republic of Iran. (see *supra* para. 84).

256. In relation to this fact, the Commission observes that it is not the subject of this case to rule on the death of Mr. Nisman and the circumstances in which it took place, since this fact is being investigated by the Argentine judicial authorities and since they could eventually be the subject of a new petition before the inter-American system. In what is relevant to this case, the Commission considers only stating that the lack of clarification of such circumstances has not allowed in the present case to identify whether there would be a causal link between such death and the role of Mr. Nisman as a justice operator and , in particular the duty of the State to have adopted the required measures in the face of all kinds of risks that may arise in relation to persons investigating human rights violations[248]. In this regard, the Commission observes the importance of the State continuing to investigate said event and clarify the circumstances in which it took place.

iv) Regarding the failure to adopt appropriate measures to determine the identity of the so-called "victim 85"

[248]The Court has established in its jurisprudence that in order to comply with the obligation to investigate "in accordance with the provisions of Article 1.1 of the Convention, the State must adopt, *ex officio* and immediately, sufficient measures of comprehensive protection and investigation against any act of coercion, intimidation, and threats to witnesses and investigators". On this topic, see, among others: I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para.107.

257. During operations to rescue victims and removal of debris, the authorities found the lifeless body of a person who could not be identified[249]. The UFI AMIA reported in its December 2016 management report that it found that, at the time of the autopsy, 3 phalanges were sectioned from the body, with no record of the destination of this sample. Years later, the UFI AMIA added, the body was placed in the common ossuary of the Chacarita Cemetery[250].

258. In August 2016 and thanks to the genetic comparison expertise of the organic samples of the victims' bodies in the possession of the UFI AMIA, it was established that "there was a probability equivalent to 99.9999% that the genetic profiles extracted of the samples corresponding to the person who, until then, had not been identified belonged to a biological child of the person whose sample corresponds to Maria Lourdes Jesús". Based on this information, it was established that the body belonged to 20-year-old Augusto Daniel Jesús. Augusto had gone on the morning of the attack to the job bank that operated at the AMIA in the company of his mother, Maria Lourdes, who is also among the fatal victims of the attack[251].

- **Commission's Considerations**

259. The Commission values the efforts made by the Argentine State since 2015 aimed at clarifying the fate of Augusto Daniel Jesús, establishing his identity and recognizing his status as a victim of the attack. Nevertheless, the Commission regrets that a measure as elementary as the genetic comparison of the organic samples from the body of Augusto Daniel Jesús with those belonging to the rest of the victims was only carried out a few months after the 20th anniversary of the attack.

260. The Commission notes that the lack of diligence with which the State conducted the investigation in relation to the organic samples belonging to the people who lost their lives in the attack not only hampered the possibility of verifying the identity of the alleged suicide bomber, but also meant that for years the fate or identity of the so-called "victim 85" remained unknown.

v) Conclusion

261. The Commission finds that, in recent years, the State has adopted some relevant measures to further the investigation and rectify the numerous shortcomings that occurred during the time the investigation was headed by Federal Criminal Court No. 9. In this sense, the UFI AMIA since 2015 has carried out an evidentiary activity that made it possible to reveal even greater shortcomings that occurred during the collection and identification of essential evidentiary material in the initial proceedings.

262. The Commission observes, however, that such proceedings were preceded by long periods of delay, without any justification being offered in this regard. Furthermore, the State has not demonstrated that, in accordance with the principle of due diligence, all the required procedures had been thoroughly investigated and carried out, and to date the main investigative hypothesis regarding the person who had participated as an alleged suicide bomber, continues without being sufficiently clarified. Likewise, the investigation has not been effective either to determine the responsibility in the attack of actors of international origin and, in general, of all those responsible involved in the attack, with the facts still remaining in impunity.

263. In the same vein, both the IACHR and the Inter-American Court have repeatedly stated that the right to the truth derived from Articles 8 and 25 of the Convention comprises a double dimension. From the individual point of view, it includes the right of the victims and their next of kin to know both the truth of the events that gave rise to the violations of their human rights and the identity of the perpetrators. Likewise, and from a collective point of view, society as a whole also holds the right to know the truth of what happened, as well as

[249] Annex 2. Judgment of the TOF 3. Chapter V.A, pages 2371 and 2372. Annex 1 to the petitioner's communication dated November 11, 2019.
[250] Annex 8. UFI AMIA Management Report December 2016. Page 9. Annex 12 to the petitioner's communication dated November 11, 2019.
[251] Annex 8. UFI AMIA Management Report December 2016. Pages 9 and 10. Annex 12 to the petitioner's communication dated November 11, 2019.

the reasons and circumstances in which these aberrant acts were committed, in order to design and implement measures of non-repetition[252].

264. Taking into account all of the foregoing, more than 25 years after the events occurred the Commission has verified that the results of the investigation are very meager and both the victims and Argentine society know little about what happened in the attack on the AMIA and even less with regard to those responsible for such a serious act. Even more serious, the Commission has already pointed out that it has been the state's own action that has contributed to the generation of multiple factors of impunity, among which are a number of shortcomings, irregularities, delays, irrational abandonment of certain logical lines of investigation, creation of lines of investigation outside the law and without supporting evidence that have diverted the investigation for years and, finally, the establishment of investigative hypotheses of great factual fragility since they are not the result of a diligent and exhaustive investigation.

265. Consequently, the Commission will conclude that the State of Argentina is responsible for the violation of the rights to a fair trial and judicial protection enshrined in Articles 8 and 25 of the American Convention in relation to Article 1.1 thereof.

c. Investigations initiated into the cover-up of the attack

i) Investigation of the irregularities committed during the investigation conducted by the Federal Criminal Court No. 9

266. As of August 2000, a series of judicial proceedings were initiated to determine possible criminal responsibilities for the irregularities that would have been committed during the investigatory phase led by the Federal Criminal Investigation Court No. 9[253].

267. Likewise, the Federal Oral Court No. 3, in its judgment dated October 29, 2004, considered the events related to the payment to Telleldín to be proven and, consequently, annulled all the actions taken by Judge Galeano during the investigatory phase and acquitted the Buenos Aires police officers under trial. The Court ordered that copies of the proceedings be extracted in order to investigate the possible criminal responsibility of Judge Galeano, of the prosecutors involved in the investigatory phase, of various officials of the National Executive Power, of the SIDE, of the Federal Police, judicial employees, of some of the national legislators who made up the Bicameral Monitoring Commission, and of certain defense attorneys who had acted in the casefile[254].

268. The processes for the cover-up were divided into two sections: on the one hand, the one whose procedural object was to pay Telleldín with reserved funds from the SIDE to build an accusatory hypothesis that did not reflect the truth of what happened and, second, an investigation into whether public officials had blocked the continuation of the so-called "Syrian / Kanoore Edul lead".

269. Regarding the line of investigation for the payment to Telleldín, the Federal Criminal and Correctional Court No. 4 issued on September 19, 2006 an indictment against former judge Galeano for the crimes of embezzlement, coercion, ideological falsehood, illegitimate deprivation of liberty, and prevarication. Likewise, other people, including former SIDE agents, were prosecuted for the crime of embezzlement[255]. On June 29, 2007, the Federal Criminal and Correctional Appeals Chamber confirmed the decision.

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[252] IACHR. Right to the Truth in the Americas. OEA / Ser.L / V / II.152 Doc. 2 August 13, 2014 Original: Spanish. Para. 13 to 16; I/A Court H.R., *Case of Peasant Community of Santa Barbara v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 299, para. 262 to 265; United Nations. Human rights Commission. 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. Principles 2 to 5.
[253] Annex 1 Grossman Report, pas 94 and 95. Annex 5 to the petitioner's communication dated November 11, 2019.
[254] Annex 2. Judgment of the TOF 3. Chapter V, pages 4810 to 4819. Annex 1 to the petitioner's communication dated November 11, 2019.
[255] Annex 14. Indictment issued by the Federal Criminal Investigation Court No. 4 dated September 19, 2006. Annex 5 to the petitioner's communication dated October 31, 2014.

270. The defense of the former judge Galeano appealed the procedure before the Federal Criminal Cassation Chamber. On October 31, 2007, the appeal for cassation was upheld and the parties were notified of the filing of the case. After a series of recusations by the magistrates of that court, on March 21, 2013 the intervening chamber was integrated. On August 14, 2013, Chamber II of the Federal Criminal Cassation Chamber rejected the cassation appeal.[256]

271. On the other hand, and with respect to the section of the investigation related to the cover-up of the so-called "Syrian/Kanoore Edul lead", on March 30, 2012, the Federal Criminal and Correctional Court No. 4 concluded the investigatory phase and raised the case to oral trial, linking former judge Galeano, former president Carlos Menem, and various officials of the SIDE and the Federal Police to the proceedings[257].

272. Both segments were unified in the oral trial stage, which was held before the Federal Oral Court No. 2. The trial hearings began on August 6, 2015. On February 28, 2019 the Court rendered its verdict, imposing various prison sentences on eight of the accused and acquitting five others. On May 3, 2019, the grounds of the conviction were released. The TOF 2 decision was appealed by all parties and, at the time of the approval of this report, the case is before the Federal Criminal Cassation Chamber.

273. There is also another segment of the case due to acts of concealment that were committed in the framework of the Galeano investigation that has not yet been the subject of a merits decision. In this regard, the Commission has been informed of the fact that the national courts have not yet ruled on the criminal responsibility of a series of judicial officials, lawyers involved in the investigation into the attack, and ministers of the Executive Power during the 1990s[258].

ii) Investigation initiated by the complaint of the Prosecution Unit for the Investigation of the Attack at the AMIA dated January 13, 2015

274. On January 13, 2015, the then head of the UFI AMIA, Alberto Nisman, filed a criminal complaint with the Federal Criminal and Correctional Court No. 4 of the Federal Capital. In said document, Mr. Nisman assured that he was aware of the "existence of a criminal plan designed to provide impunity to the Iranian national defendants" accused in the AMIA case. These actions would have been carried out "by high authorities of the Argentine national government, with the collaboration of third parties."

275. According to the public information available to the Commission, at the date of approval of this report, the process initiated by Mr. Nisman's complaint is in the oral trial stage before the Federal Oral Criminal Court No. 8[259].

- Commission's Considerations

276. As indicated above, seeing that the investigation was hampered as a result of the State's own actions, there is an accentuated obligation for the Argentine State to investigate and, where appropriate, punish all the delays, deviations, and irregularities that were committed by state agents who participated in the investigation and which have become factors of impunity in the case at hand. Said investigation must be undertaken in a serious and diligent manner, in such a way that it is possible to clarify what happened and determine the guilt or innocence of the people who are linked to such processes, within a reasonable period of time.

277. Next, the Commission will refer to the ongoing proceedings. When conducting said analysis, the Commission will take into account that, as the Court has stated, "in the face of acts that account for the

[256] Annex 15. Resolution of Chamber II of the Federal Criminal Cassation Chamber dated August 14, 2013. Annex 20 to the petitioner's communication dated November 11, 2019.
[257] Annex 16. Order of elevation to oral trial issued by the Federal Criminal Investigative Court No. 4 dated March 30, 2012. Annex 19b to the petitioner's communication dated October 31, 2014.
[258] Petitioner's communication dated November 11, 2019, pages 63 a 66.
[259] See: https://www.cij.gov.ar/nota-30647-Se-realiz--una-audiencia-oral-y-p-blica-ante-la-C-mara-Federal-de-Casaci-n-Penal-en-la-causa-por-la-denuncia-de-Nisman-por-el-memor-ndum-con-Ir-n.html.

obstruction of the administration of justice, such as the alteration and suppression of evidence, the diligence with which the State must act in the investigation increases"[260].

278. The Commission observes that both the facts related to the section that had as procedural object the payment to Telleldín with SIDE reserved funds and the one related to the failure to adequately explore the so-called "Syrian-Kanoore Edul lead", are fundamentally supported in evidence that was present from the very onset of the investigations, in such a way that they were not particularly complex.

279. Regarding the payment to Telleldín, the related facts had been subject to judicial verification based on the evidence produced during the oral trial held before TOF 3, whose judgment was delivered in October 2004. Likewise, TOF 3 had accredited the same sequence of events that culminated with Telleldín's additional statement of July 5, 1996, upon which the only consolidated line of investigation was the hypothesis that upheld the responsibility of certain police officers of Buenos Aires in exchange of the payment made by SIDE officials. The Commission notes that the indictment dated September 19, 2006 issued against the former judge Galeano and the former prosecutors in the case, among other defendants, was based, to a large extent, on the assessment of pre-constituted evidence both during the instruction stage for the attack on the AMIA and during the oral debate held before the TOF 3[261].

280. Regarding the investigation into the failure to explore the Syrian-Kannore Edul lead, similarly, a large part of the evidence evaluated by TOF 2 in its judgment of May 2019 was available to the judicial bodies since the very beginnings of the investigatory phase. Both from the reading of the order initiating oral proceedings dated March 30, 2012 and the TOF judgment of May 2, 2019, it is clear that the verification of the facts related to the deliberate abandonment of the so-called Syrian lead did not require the carrying out a profuse judicial activity, since the main elements of evidence were already present since the investigation into the attack and the only thing left to do was to carry out a legal analysis of the facts. For example, at least since 2001, it was already known that the tapes with the recordings of the wiretapping of individuals linked to persons of interest to the investigation were lost.

281. In effect, this circumstance came to light when these elements were requested from Galeano's court by TOF 3 for the oral debate that was held before said court[262]. Additionally, and as stated in TOF 2, the breach of the judicial order to search the homes on Constitución Street linked to Mr. Kanoore Edul, was a fact that had already been known since August 1994, when the commissioner in charge of the operation returned without completing the search warrant at 2633 Constitución Street[263].

282. Despite the foregoing, the Commission observes that the behavior of the authorities has been characterized by incurring in a series of delays that have prolonged the course of this investigation.

283. In the investigation carried out with respect to the segment related to the payment to Telleldín, the procedure that the judicial appellate bodies applied to the appeals presented by the defendants' defenses caused a considerable delay in the process. The most tangible consequence of this delay is that it was not until 2015 that the oral debate hearings began, that is, more than 15 years after the filing of the complaint that gave rise to the investigation into the cover-up[264]. The Commission also observes as particularly problematic the circumstances surrounding the proceedings of the cassation appeal presented by the defense of former judge Galeano against the decision of the "*ad hoc*" Chamber I of the National Chamber of Federal Criminal and Correctional Appeals, which confirmed the indictment issued by the investigating judge dated September 19, 2006. Although the appeal was filed before the courts of the Chamber of Cassation on October 31, 2007, the

[260] I/A Court H.R., *Case of Rodríguez Vera et al. (The 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.
[261] Annex 14. Indictment issued by the Federal Criminal Investigation Court No. 4 dated September 19, 2006. Annex 5 to the petitioner's communication dated October 31, 2014.
[262] Annex 12. Judgment of the Federal Oral Criminal Court No. 2. Pages 533 to 534. Annex 2 to the petitioner's communication dated November 11, 2019.
[263] Annex 12. Judgment of the Federal Oral Criminal Court No. 2. Page 375. Annex 2 to the petitioner's communication dated November 11, 2019.
[264] Petitioner's communication dated November 11, 2019, pages 46 to 50.

court's composition was only confirmed on April 8, 2013. The delay in the composition of the court was due to the fact that seven magistrates refused or excused themselves from intervening at different times during the process. The Court of Cassation finally rejected the appeal through a resolution issued on August 14, 2013[265].

284. Regarding the investigation into the failure to pursue the Syrian-Kannore Edul lead, the Commission notes that the Federal Criminal and Correctional Court No. 4 decided on March 30, 2012 to close the investigatory phase and take the case to oral trial[266]. Considering that the process began in 2000, this means that the investigatory phase lasted twelve years. The petitioners stated that the first judge who intervened in the case had to be removed from it due to his procedural inactivity[267]. During the processing of this petition, the Argentine State did not provide any reason to explain the reason for the long delay at the investigatory phase.

285. The Commission observes in relation to both investigations that, from the issuance of the respective orders to raise to trial until the beginning of the first debate hearing, more than three years elapsed in which the proceedings of the case did not experience substantial progress. In effect, the order to raise to oral proceedings for the facts related to the payment to Telleldín is dated May 12, 2011 and the order issued for the interruption of the Syrian lead is dated March 30, 2012. However, the first oral trial hearing took place only in August 2015[268].

286. The Commission also highlights that the discussion hearings before TOF 2 lasted more than three years and six months. Indeed, the first hearing for the oral trial was held on August 6, 2015 and the verdict was delivered on February 28, 2019. The Commission emphasizes that, as stated in the TOF 2 judgment, between August of 2015 and February 2019, 172 hearings were held and that the parties' arguments stage began on October 26, 2017 and ended on November 22, 2018. The Commission notes that the hearings were held sporadically, at a rhythm of three or four per month and that were interrupted repeatedly, especially during the months of December and January.

287. In summary, the Commission emphasizes that the trial stage for covering up the attack lasted more than seven years and the investigation stage for more than twelve. The Commission notes that a final judgment has not yet been issued in the case, since various appeals for cassation filed against the TOF decision of May 2, 2019 are still pending. Throughout the processing of this petition, the Argentine State has not outlined any argument regarding the reasonableness of the term and did not elaborate what factors could have influenced the overall proceedings to be, as of the date of approval of this report, entering its twentieth year[269].

288. Lastly, the Commission emphasizes that there are other cases where other possible cover-up acts during the Galeano investigation, that are still ongoing and that have not been the subject of a first instance decision on their merits. Among these residual cases pending decision are the situation of the secretaries who assisted Galeano in court[270] and the criminal responsibility of some lawyers who intervened in the investigation for threats against certain defendants[271].

289. The Commission verified that the petitioners, in their capacity as plaintiffs in the proceedings for the cover-up of the attack, urged the judicial authorities on numerous occasions to move forward with the

[265] Annex 15. Resolution of Chamber II of the Federal Criminal Cassation Chamber dated August 14, 2013, pages 2 to 4. Annex 20 to the petitioner's communication dated November 11, 2019.
[266] Annex 16. Order of elevation to oral trial issued by the Federal Criminal Investigative Court No. 4 dated March 30, 2012. Annex 19b to the petitioner's communication dated October 31, 2014.
[267] Petitioner's communication dated November 11, 2019, page 47.
[268] Annex 12. Judgment of the Federal Oral Criminal Court No. 2. Page 1. Annex 2 to the petitioner's communication dated November 11, 2019.
[269] Annex 12. Judgment of the Federal Oral Criminal Court No. 2. Pages 54 to 57. Annex 2 to the petitioner's communication dated November 11, 2019.
[270] Annex 17. Resolution of Chamber I of the Federal Criminal and Correctional Chamber dated May 17, 2016 in the framework of file CFR 3446/2012. Annex 26 to the petitioner's communication dated November 11, 2019.
[271] Annex 18. Order of elevation to oral trial dated March 23, 2017 issued by the Federal Criminal and Correctional Court No. 2 in the framework of case No. 2925/1998. Annex 23 to the petitioner's communication dated November 11, 2019.

investigations and to hold the respective oral trials. In addition, the petitioners and their legal representatives have also appealed to the highest authorities of the Attorney General's Office in order to request that the prosecutors involved in the cover-up processes play a more proactive role when prosecuting criminal public actions[272].

290. Along the same lines, the Commission emphasizes that the procedural object of the investigations outlined in this section is the prosecution and possible imposition of criminal penalties for acts of concealment and cover-up of the truth by public officials. The importance of investigating and prosecuting these types of acts within a reasonable time is particularly high given that the cover-up maneuvers took place within the framework of the investigation into the terrorist attack on the AMIA headquarters, which resulted in dozens of fatalities and hundreds of wounded and was classified by the national judicial authorities themselves as a case of serious human rights violations.

291. Finally, in relation to the investigation of the complaint filed in January 2015 by prosecutor Nisman for the possible crime of cover-up in the context of the signing of the Memorandum of Understanding between Argentina and Iran, the Commission has verified that, 5 years after the initiation of the judicial investigation, the Argentine judicial authorities have not yet issued a judgment that establishes the existence or not of criminal conduct on the part of the people subjected to the process, neither there is a judicial pronouncement that determines that the facts denounced actually occurred.

iii) Conclusion

292. In light of the above considerations, the Commission concludes that the period of more than 20 years that the various criminal proceedings in which the facts covering up the attack on the AMIA have been investigated have not resulted in an effective determination of the corresponding responsibilities. In this sense, the processes for the cover-up have not contributed to clearly identify the actions or omissions in which the authorities incurred, which is especially serious in the present case where, as has been established, there are multiple irregularities and deviations that have become factors of impunity.

293. Consequently, these processes have been extended in an unreasonable manner, they have not contributed to the knowledge of the truth about the cover-up maneuvers and, therefore, they have not corrected the multiple irregularities that have been committed throughout the investigation. In particular, the Commission observes that such investigations have not revealed what were the real motivations that could be found behind the facts under investigation, including the generation of evidence to produce a conviction on the involvement of certain Buenos Aires police officers in the events and in the abandonment of the so-called "Syrian / Kannore Edul lead".

294. In view of the foregoing, the Commission concludes that the various processes into the cover-up the attack on the AMIA have not been conducted diligently and within a reasonable time. Consequently, the Commission understands that there has not been an effective remedy that meets the requirements set forth by Articles 8 and 25 of the American Convention.

1. Regarding the reasonable time and the right to the truth

295. Considering the elements for the analysis of the reasonable time set out above, the Commission acknowledges that the investigation followed by the facts of this case is somewhat complex, taking into account the nature of the facts and that the criminal structure or network that could be behind the attack could even go beyond the borders of the Argentine State.

296. Notwithstanding this, as has been stated throughout this report, the conduct of the authorities in charge of the investigation -especially in the initial proceedings and those in charge of the Federal Criminal and

[272] Annex 19. Note addressed to the Attorney General of the Nation dated May 30, 2013. Annex 15 to the petitioner's communication dated October 31, 2014.

Correctional Court No. 9- instead of seriously promoting the investigation and punishing those responsible, ended up incurring serious shortcomings, irregularities, and deliberate deviation of the investigation for more than 8 years. The pursuance of an accusatory hypothesis fabricated by state officials was only possible based on a lack of impartiality on the part of the judge in charge of the investigation, which became a factor that resulted in the true causes of the attack and all the responsibilities involved not being investigated.

297. As indicated, the investigation carried out by the UFI AMIA, particularly since 2015, has contributed to correcting some shortcomings in the investigation, such as the one referring to the identification of the so-called victim 85 and the analysis of biological material relevant to the investigation. However, the main line of investigation promoted by the prosecutors has been based especially on intelligence reports, and they have not been the result of a diligent and exhaustive investigation. In this sense, it is necessary to carry out additional proceedings aimed at both strengthening said investigative hypothesis or any other additional or complementary hypothesis that are useful for clarifying the truth.

298. Finally, and despite the fact that there is a heightened duty of the State to identify the actions or omissions that constitute irregularities in the investigation and determine the corresponding responsibilities, the processes that have been followed in this regard have not constituted an effective remedy and have been extended for an unreasonable period. The Commission also observes that in all these years the next of kin of the victims have actively participated in the search for justice, without in any way obstructing the investigations.

299. The Commission emphasizes that the investigation that is the subject of this case has lasted for an unreasonable period, and its very meager progress is the result not only of state negligence but also of maneuvers aimed at concealing the truth. In these circumstances, and taking into account that the right to the truth is subsumed in the right of the victim or of their next of kin to obtain clarification on the fact that violated their rights and the corresponding responsibilities from the competent State bodies, [273] the Commission concludes that it has been the State's own action that has prevented the victims and their next of kin from seeing their right to know the truth satisfied through the investigation and criminal proceedings. Consequently, the Argentine State has violated its obligations established in Articles 8 and 25 of the American Convention.

D. Rights to Access Information (articles 13, 1.1 and 2 of the Convention) and Judicial Protection (article 25 of the American Convention)

300. The right of access to information is a fundamental right expressly contemplated in Article 13 of the American Convention[274] and its exercise is particularly important not only for the full functioning of the democratic system but is also a precondition for the enjoyment of other human rights[275].

301. In this regard, the Inter-American Court has determined that in a democratic society it is essential that state authorities abide by the principle of maximum disclosure, which establishes the presumption that all information is accessible, and that access to said information can only be denied under a restricted system of exceptions[276].

302. For its part, the IACHR has indicated that the right of access to information comprises the interest of the victims and their next of kin, as well as society as a whole, to seek and obtain information on serious human

[273] I/A Court H.R., *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, para. 509.
[274] I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5.
[275] I/A Court H.R., *Case of San Miguel Sosa et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of February 8, 2018. Series C No. 348, paras. 154 to 157.
[276] I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 92.

rights violations that may be found stored in the archives of the State, even in the cases in which said archives are in the custody of security agencies, military, or police units[277].

303. Guaranteeing the right of access to information related to acts of serious human rights violations requires the State to comply with a series of positive obligations. In what is relevant to this case, the Commission highlights, among other measures, the declassification and opening of the files so that the institutions investigating the facts can make direct inspections; conducting inventories and tracing at official facilities; the promotion of search operations that include searches of the places where the information might be found; conducting hearings and questioning those who can find out where relevant documents are or those who can reconstruct what happened to them, among other things. It is also necessary that the next of kin of the victims and their legal representatives can participate in these actions and have direct access to the existing documentation[278].

304. Second, the Commission emphasizes that States have the duty to preserve and facilitate access to State archives, when they exist, and to create and manage them when they are not compiled or organized as such. In fact, when it comes to serious human rights violations, the information that these archives can gather has undeniable value and is essential not only to promote investigations, but also to study the past in order to prevent their repetition[279].

305. At the international level, various statements have been made on the matter that are of special interest to this case by various specialized conferences. For example, the so-called "Tshwane Principles" enshrine, among others, the obligation of States to ensure that "All oversight bodies [...] including courts and tribunals, should have access to all information, including national security information, regardless of classification level, relevant to their ability to discharge their responsibilities"(principle 6). Likewise, it is recognized that "There is an overriding public interest in disclosure of information regarding gross violations of human rights [...] Such information may not be withheld on national security grounds in any circumstances." (principle 10.a) [280].

306. In conclusion, the Commission confirms that the obligation to guarantee and respect the right of access to information entails the duty to make, in good faith, significant efforts to guarantee that the victims of serious human rights violations and their next of kin, those in charge of investigating these crimes, and society as a whole can have access to all the information in the hands of the State necessary to know the truth of what happened.

- **Commission's Considerations**

307. The IACHR observes that, from the beginning of the investigation into the attack on the AMIA, the judicial authorities requested the collaboration of the then Secretary of State Intelligence (SIDE) in order for its agents to act as judicial assistants. Over the years, and as a result of the various information gathering and analysis activities, the SIDE was producing numerous documentary pieces, which were incorporated both in the section of the investigation that tried to elucidate the so-called local connection of the attack as well as the investigation for the possible responsibilities of international actors[281].

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[277] IACHR, Right to the Truth in the Americas, OAS/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 107 and following.; IACHR, Special Rapporteur for Freedom of Expression, The Right to Access Information in the Inter American Juridical Context (second edition). Para.77; IACHR, Special Rapporteur for Freedom of Expression, Annual Report (2010), Chapter III, Access to information on human rights violations.
[278] IACHR, Report No. 60/18, Case 12.709. Merits. *Juan Carlos Flores Bedregal and family*. Bolivia. May 8, 2018. Para. 102.
[279] IACHR, Right to the Truth in the Americas, OAS/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 118.
[280] The Global Principles on National Security and the Right to Information (Tshwane Principles). July 12, 2013. Available at: https://www.justiceinitiative.org/uploads/bd50b729-d427-4fbb-8da2-1943ef2a3423/global-principles-national-security-10232013.pdf. Also see, among other statements: United Nations. Commission on Human Rights. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, submitted in accordance with Commission resolution 1999/36. E/CN.4/2000/63. 18 January 2000. Paras 42-45.
[281] Annex 20. UFI AMIA Report. "The process of declassification of reserved or secret information about the attack and its concealment" Pages. 14 and 15. Annex 27 to the petitioner's communication dated November 11, 2019. The UFI AMIA reported that "the approximate amount of documentation held by the AFI and subject to this process is 1,893 linear meters."

308. The Commission has taken note that both the petitioners in their various communications and the UFI AMIA in its public access reports have coincidentally indicated that the documentary collections gathered or produced by the SIDE are made up of files of various formats, all of which were opportunely classified as secret, in accordance with the legal regime that regulates the functions and activities of the bodies that make up the Argentine national intelligence system[282].

309. Likewise, the Commission has been informed of the existence of a series of decrees and official initiatives aimed at organizing, systematizing, transferring custody, and declassifying relevant information produced or stored by various State agencies and, in particular, documentation that was originated by the SIDE, or it remained or continues to remain in its power.

310. In this regard, the Commission reaffirms that it does not consider it necessary in the present case to refer to the decision of the States to involve the intelligence agencies and their officials as collaborators of the justice system in criminal investigations; however, as has been indicated, there are certain safeguards to consider by virtue of the evidence or conjectures that are intended to support. The Commission is also mindful of the need for a regime to classify the information in the possession of said bodies, in order to safeguard the personal integrity of the agents who participate in the information gathering operations and the protection of national security.

311. Notwithstanding the foregoing, the Commission once again emphasizes that the States have the obligation to ensure that the normative regulation and day-to-day management of intelligence services is compatible with the fundamental principles of the rule of law and international human rights standards[283]. In particular, the Commission understands that the legitimate aim that the States may pursue by putting into operation a regime for the classification of intelligence activities does not imply a *carte blanche* for intelligence agencies to operate in total secrecy.

312. In this regard, the Commission considers that the need to resolve the conflict that arises between the need to maintain the secrecy of certain intelligence activities and the right of access to information is of utmost importance in those cases in which the Intelligence agencies are called to act as judicial auxiliaries in a criminal investigation related to serious human rights violations. The Commission considers that there are numerous reasons why the restriction on the right of access to information may be argued, even more when it is required by the parties who are constituted as plaintiffs in the judicial proceedings.

313. In this regard, the Inter-American Court has indicated that everyone, including the next of kin of victims of serious human rights violations, has the right to know the truth and to be informed of everything that happened in relation to said violations. Likewise, and from the point of view of the guarantees of due process generally enshrined in Article 8.1 of the Convention, in relation to Article 1.1, States have the obligation to guarantee the right of victims and their next of kin to participate in all stages of the judicial processes in order to enforce their rights. The Commission understands, in a general way, that the aforementioned rights are severely threatened when the judicial investigation consists, essentially, of documentary pieces that are classified as secret by reason of having been produced or collected by intelligence agencies.

314. It is therefore the responsibility of the IACHR to define whether in the present case the Argentine State complied with its international obligations derived from the petitioners' right of access to information, as a component of the right to know the truth about what happened. In particular, it is necessary for the IACHR to

[282] See in particular the account of the classification process as a secret of the document titled "AMIA Thematic. The International Connection. The Clarification of the Terrorist Attack and the identification of its Authors" presented by the SIDE to the UFI AMIA in January 2003 which appears in: Annex 20. UFI AMIA. The Process for declassifying confidential or secret information on the 1994 attack and its cover-up, p. 16 and 17. Annex 27 to the petitioners' communication dated November 11, 2019.

[283] 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 for intelligence services and their oversight. A/HRC/14/46. May 17, 2010. Para. 12. Available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/134/10/PDF/G1013410.pdf?OpenElement

determine whether the State has complied with its positive obligations to guarantee the right to access information related to the attack on the AMIA contained in official files.

1. On the issue of classified information held by the State Intelligence Secretariat, its successor agencies, and the UFI-AMIA

315. First, the Commission recalls that the Inter-American Court indicated in the case of Myrna Mack Chang v. Guatemala that, in the case of human rights violations, "the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding"[284].

316. Likewise, the Commission highlights that according to the jurisprudence of the Inter-American Court, restrictions on the right to access information must be previously established by law and must respond to one of the objectives allowed by Article 13.2 of the American Convention. Additionally, the limitations imposed must be "necessary in a democratic society and aim to satisfy an imperative public interest"[285].

317. In the instant case, the Commission emphasizes that, at the time of the attack on the AMIA and until 2001, the actions of the SIDE were regulated by Law 20.195, whose Article 10 provided that "all activities developed by the Secretary of State Information, as well as its organization, functions and documentation are classified in the interest of National Security, as 'Strictly Secret and Confidential ...'[286]. As of 2001, this law was replaced by Law 25.520, which provided, among other things, that information classified as secret could only be consulted by the judicial authorities, and they must maintain the strictest secrecy and confidentiality[287].

318. . Coincidentally, the IACHR has verified that the SIDE led -during the investigative phase led by Federal Court 9- numerous operations and secret proceedings that were not promptly known by the petitioners or by the judges who made up the appeal courts. SIDE went further and even strictly denied the existence of some of these activities, thus hiding them from the scrutiny of the judges, the parties to the process, and society as a whole.

319. By way of example, the Commission states that in September 2001 and at the request of TOF 3, intervening in the oral proceedings against the Buenos Aires policemen, the operation to disburse a sum of money to Carlos Telleldín was expressly denied by the authorities from the Secretary of Intelligence[288]. Only two years later and after the issuance of various decrees that relieved the SIDE agents of their respective obligations to keep operational secrecy, were TOF 3 and all the complainants fully aware of this fact and able to elucidate what had been the origin of the accusation against the policemen indicated as part of the local connection[289]. (see *supra* para 196 to 203)

320. Consequently, the Commission understands that, although the restrictions on access to information produced by the State Intelligence Secretariat (SIDE) were established in a legal norm, the Argentine State did not prove how they were necessary, in this case, for the protection of public order or national security. On the contrary, the Commission considers that the existence of a legal regime that establishes the classified nature of

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[284] I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 180; I/A Court H.R., *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.

[285] I/A Court H.R., *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.; I/A Court H.R., *Case of Claude Reyes et al. v. Chile.* Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 92.

[286] Law 20.195 dated February 28, 1973. Available at: http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=119720

[287] Law 25.520 dated December 3, 2001, arts. 16 to 18. Available at: http://servicios.infoleg.gob.ar/infolegInternet/annexs/70000-74999/70496/norma.htm

[288] Annex 2. Judgment of the TOF 3. Title II. Chapter VIII. P. 3585 to 3611. Annex 1 to the petitioner's communication dated November 11, 2019

[289] Decree 249/03 dated June 26, 2003. Available at: http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=86364; Decree 291/03 dated July 1, 2003. Available at: http://servicios.infoleg.gob.ar/infolegInternet/annexs/85000-89999/86451/texact.htm and Decree 785/03 dated September 18, 2003. Available at: http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=88545

all the information generated or stored by a state entity, without establishing safeguards that allow balancing possible values or objectives in conflict, is not compatible with the right to seek and receive information recognized in Article 13.1 of the American Convention[290].

321. Likewise, the IACHR notes that the petitioners did not have any judicial or administrative remedy intended to dispute the decision to classify as secret the documentation that the SIDE and other state intelligence agencies incorporated into the investigation into the AMIA attack. The foregoing was not disputed by the State. In this sense, the IACHR considers it appropriate to point out that according to the jurisprudence of the Inter-American Court, "what is incompatible with a rule of law and effective judicial protection is not that there are secrets, but rather that these secrets escape the law, that is, that the authority has areas in which it is not responsible because they are not legally regulated and therefore are outside any control system"[291].

322. The Commission values the measures adopted since 2003 by the Executive Branch, the Ministry of Justice, and the Intelligence Secretariat that relieved a considerable number of officials and intelligence agents from the obligation to keep secrecy in order to enable their respective appearances in the framework of the oral trial held before the TOF 3. Likewise, the IACHR considers that the enactment of decrees 786/03 and 787/03 which created within the Ministry of Intelligence and in each of the security forces security an Information Collection Unit (URI) destined to search, verify and analyze the existing information and communicate its findings to the competent judges, constituted a necessary measure in order to guarantee the right of the petitioners to access the information, and of society in general to know the truth[292].

323. However, the IACHR notes that the decision to initiate a survey of the information held by the SIDE and the federal security forces and to hand over custody of the documentary funds to the UFI AMIA did not fully guarantee the petitioner's right to access to information. In this regard, the Commission notes that decrees 786/03 and 787/03 only had the effect of enabling intelligence information to be shared with the state authorities in charge of investigating the attack, but they did not provide for the elimination of the security classification placed on those documents. Consequently, the information gathered in these tasks continued to be out of the reach for the petitioners, despite being constituted as parties in the proceedings.

324. The Commission understands that the situation described in the preceding paragraphs went on from 2004 until the enactment of Decree 395/15 in March 2015. Said regulation ordered the declassification of all the documentation that was sent into custody by the Secretary of Intelligence to the UFI-AMIA (art 1), of the additional documentation in the files of the former SIDE (art 2) and of all other documentation that had not been provided in a timely manner to the case that, on the date of issuance of the decree, is in the power of the Federal Intelligence Agency (art 3). In this way, as specified by the UFI-AMIA, all the information generated by the former SIDE "ceased to be reserved to the parties and was strictly categorized as documentary evidence under the terms of the National Criminal Procedure Code"[293].

325. Based on the foregoing, the Commission concludes that the Argentine State, from July 18, 1994, to March 2015, did violate the petitioners' right of access to information related to the attack, in that it upheld the confidentiality of those documents classified as secret by the intelligence agencies participating in the investigations[294].

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[290] I/A Court H.R., *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.

[291]. I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 181.

[292] Decree 786/03 dated September 18, 2003. Available at: http://servicios.infoleg.gob.ar/infolegInternet/annexs/85000-89999/88546/norma.htm; Decree 787/03 dated September 18, 2003. Available at: http://servicios.infoleg.gob.ar/infolegInternet/annexs/85000-89999/88547/norma.htm

[293] Annex 20. UFI AMIA. *"The process of declassification of reserved or secret information on the attack and its cover-up*" Page 11. Annex 27 to the petitioner's communication dated November 11, 2019.

[294] I/A Court H.R., *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 450; I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 180.

2. On the question of the preservation conditions of the documentary collections and the accessibility of the declassified information

326. Before beginning its examination of this matter, the Commission points out that the concepts of declassification and accessibility should not be confused. Declassification involves an administrative order to suspend or to lift the confidential classification of a document or series of documents; accessibility, in contrast, involves the material conditions that enable third parties to efficiently consult documents or document archives that have previously been declassified[295].

327. In order to guarantee the accessibility of the documentation and, in general, the exercise of the right of access to information, the declassification decision must be accompanied by the implementation of proactive policies for the classification, organization, and systematization of files. These actions are of special importance when in the presence of documentary collections of considerable volume such as those related to the AMIA case[296].

328. In this regard, the Commission highlights that one of the items on the work agenda proposed by the Argentine State to the petitioners in the framework of the signing of the Agreement on March 4, 2005 contemplated the "furthering the process of survey of the files on the AMIA Case held by the State Intelligence Secretariat and security forces"[297].

329. The IACHR notes that an important part of the files with information related to the AMIA case were - until the enactment in March 2015 of Decree 395/15 - in the custody of the State Intelligence Secretariat and its successor agencies, the Secretary of Intelligence and the Federal Intelligence Agency. The Commission emphasizes that, during the month of March 2015 and on the occasion of the process of transferring custody of said files to the UFI AMIA, the prosecutors inspected the headquarters of the AFI's Terrorism Directorate where they found in a basement documentation of the AMIA case together with another case that was not related to it[298].

330. The Commission considers the various actions taken since the creation in July 2015 of the Special Group for Documentary Survey and Analysis (GERAD) within the scope of the UFI AMIA constitute progress towards guaranteeing both the State's duty to preserve all kinds of documentation that is related to the attack, as well as the right of the parties to access said information.

331. However, the Commission sees the need to recall that in the first UFI AMIA Management Report published in July 2016, the prosecutors described that the documentation held by the AFI "in many cases [...]was duplicated and poorly summarized, and in a terrible state of conservation and care. In some cases, however, hitherto unknown material was found". Likewise, they assured that the documentary collections were not digitized and that in the AFI warehouses there were "deficient conditions of space, hygiene, and temperature and humidity conditions that impair the conservation of the documentation and contribute to its deterioration"[299].

332. Likewise, in its second management report of December 2016, the UFI AMIA warned about "the difficulties resulting from the deficient initial record of the evidence, the disappearance of tapes and the poor state of preservation of the evidence" and also stated that "Considering the absence of inventories and

[295]. UNESCO. Universal Declaration on archives. Declaration adopted by the 36th session of the General Conference of UNESCO. Paris. November 2011. Available at: https://www.ica.org/en/universal-declaration-archives; UNESCO. Guide to the archives of intergovernmental organizations. CII-99 / WS / 2. Paris, April 1999.
[296] Annex 20. UFI AMIA. *"The process of declassification of reserved or secret information on the attack and its cover-up*" Pages 14 and 15. Annex 27 to the petitioner's communication dated November 11, 2019.
[297] See: Decree 812/2005. Available at: http://servicios.infoleg.gob.ar/infolegInternet/annexs/105000-109999/107751/norma.htm
[298] Annex 21. Minutes signed by Vanina L. Capurro, Notary Public of the General Government Notary, dated March 16, 2015. Annex 2 to the petitioner's communication dated November 17, 2017.
[299] Annex 11. UFI AMIA Management Report July 2016, p. 13. Annex 13 to the petitioner's communication dated November 11, 2019.

roadmaps and the security problems detected, none of the records found suggest quality and seriousness in the research carried out"[300].

333. In view of the foregoing, the Commission emphasizes that a deficient or null preservation of the documentary collections related to a case of serious human rights violations for long periods of time seriously compromises the international responsibility of the State. This is the case since it prevents victims and their next of kin from efficiently accessing the information held by the State, as well as analyzing and evaluating the documentation, proposing new evidence measures and, in general, evaluating and controlling the action of the authorities in charge of directing the investigation[301]. Consequently, the Commission concludes that the Argentine State has not complied to date with its obligation to guarantee the petitioners access to the state archives where information related to the attack on the AMIA is stored.

334. Based on what is stated throughout this section, the Commission considers that the Argentine State violated to the detriment of the petitioners the right of access to information enshrined in Article 13 of the American Convention, in relation to Articles 1.1 and 2 of the same instrument.

E. Right to humane treatment of the next of kin (Article 5 of the American Convention)

335. The right to humane treatment, enshrined in Article 5 (1) of the American Convention, establishes that "every person has the right to have their physical, mental, and moral integrity respected." The organs of the inter-American system have repeatedly indicated that the next of kin of the victims of certain serious human rights violations may, in turn, be victims of violations of their personal integrity[302]. In this sense, the Court has determined on multiple occasions that the right to mental and moral integrity of the next of kin of the victims should be considered violated due to the additional suffering and anguish that they have suffered as a result of subsequent actions or omissions of the state authorities with respect to those facts and due to the absence of effective remedies"[303]. Indeed, "the absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for the victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires the procedural determination of the most complete possible historical truth"[304].

336. For its part, the Commission notes that the 2012 Report of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms in the fight against terrorism highlights the importance of fully recognizing and repairing to victims of terrorism. It also recognizes that they have the right to establish representative organizations and that "[t]he states must also ensure the rights of organizations that represent victims of terrorism not to be the object of unlawful interference by non-state entities"[305]. In addition, it indicates that full and effective reparation must include, in an appropriate manner, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

337. The Commission finds that, as a consequence of the attack on the AMIA building, 85 people lost their lives and 151 were injured as a result of the attack. The TOF 3 ruling contains a list of 84 deceased persons. The Commission highlights that, in their brief of December 30, 2016, the petitioners stated that one of the victims, who was initially presented as NN, was recently identified by the judicial authorities and is part of the group of

[300] Annex 8. UFI AMIA, Management Report December 2016, p. 23. Annex 19 to the petitioner's communication dated November 11, 2019.
[301] IACHR, Right to Truth in the Americas, OAS/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 118.
[302] I/A Court H.R., *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. 206.
[303] I/A Court H.R., *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. 206.
[304] I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 102. See alsoI/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 261; I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 145.
[305] 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 ensuring the human rights of victims of terrorism*. June 4, 2012. A/HRC/20/14. Chapter C, para. 48.

people who were murdered. Consequently, the total list available to the Commission includes 85 deceased persons and 151 injured persons[306].

338. Regarding the determination of the next of kin of the victims of the attack, the Commission finds that the members of the Active Memory Civil Association listed below are relatives of people who lost their lives or were injured in the attack; namely: Adriana Reisfeld, sister of Noemí Reisfeld who died in the attack; Diana Wassner, who lost her husband Andrés Malamud, and Jorge Lew[307], father of Agustín Lew and husband of Raquel Lew, who lost their lives and were wounded in the attack, respectively[308]. Likewise, the following family members identified by the petitioners are considered as victims: Lucía and Ana Clara Oroño Reisfeld, nieces of Adriana Reisfeld and daughters of Noemí Reisfeld; Débora and Astrid Malamud, daughters of Diana Wassner and Andrés Malamud and Nicolás Lew -son of Jorge Lew and Raquel Lew. The Commission does not have information that allows it to make an exhaustive list of the next of kin of the rest of the 82 people who died in the attack and the 151 wounded.

339. Regarding the effects suffered by the next of kin of the victims of the attack, the Commission observes that Diana Wassner, who lost her husband Andrés Malamud in the attack, declared in the public hearing convened in the 174° Period of Sessions that "this has split my family in a way that is difficult to explain, we were very young and we thought we had a life ahead of us and we had a beautiful family ahead of us […] the truth is that the attack came to cut off all these things and destroy us or try to destroy us […] ". She also indicated that in relation to action of the state "what I feel and think of the Argentine State is very painful, fundamentally because it hurts me that my daughters have chosen to go live in other countries because they do not want to be in a place that did not offer them an answer for their dad's death. It is very difficult because we have had to carry all this struggle on the backs of family members, and it is not their place". For her part, Adriana Reisfeld, sister of Noemí Reisfeld who worked in the AMIA building and died in the attack, declared that for more than 20 years she has been in the process of obtaining justice, being that the relatives were united "by the horror". She also recounted the efforts made by the next of kin to denounce the irregularities in the investigation. She added that "we always had to give reasons as to why we demanded justice [...]".

340. The Commission considers 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 circumstance of being a relative of a victim of a terrorist act of the magnitude of the AMIA attack generates severe suffering in itself. In the specific case, this suffering is exacerbated by the situation of impunity in which the case is, which is directly attributable to the State for the actions of its agents, who even in some periods deliberately diverted the investigation, favoring the concealment of the truth and the possibility of identifying and punishing those responsible. The Commission wishes to emphasize that it has been mainly thanks to the activism and procedural participation of the petitioners that the irregularities and the multiple factors of impunity present in the case have become known. Thus, the Commission observes that the continuing lack of clarification and the situation of impunity of the attack has caused the petitioners to feel anguish, sadness, frustration, and even deception.

341. Based on the foregoing considerations, the Commission concludes that the State violated the right to mental and moral integrity enshrined in Article 5.1 of the American Convention in relation to the duty to respect established in Article 1.1. of the same to the detriment of the next of kin of the victims.

VII. CONCLUSIONS AND RECOMMENDATIONS

342. Based on the factual and legal considerations set forth throughout this report, the Commission concludes that the Argentine State is responsible for the violation of the rights to life, humane treatment, access to information, to a fair trial, equal protection, and judicial protection. All of the above, in accordance with the provisions of Articles 4.1, 5.1, 8.1, 13, 24, and 25.1 of the American Convention in relation to Article 1.1 of the same instrument. Likewise, the Commission concludes that the State violated Article 13 of the American Convention in relation to Article 2 of the same instrument.

[306] Communication of the representatives of December 30, 2016. See footnotes Nos. 7 and 8.
[307] In their communication of November 11, 2019, the petitioners indicated that Jorge Lew died on July 24, 2019.
[308] In their communication of November 11, 2019, the petitioners indicated that Raquel Lew died in February 2000.

343. Based on the analysis and conclusions of this report:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE ARGENTINE STATE:

1. To conduct and carry out, effectively and within a reasonable time, the investigation of the facts of the case, in order to prosecute and punish all the material and intellectual authors responsible for the serious human rights violations declared in the present report. In particular, the State must continue the judicial investigations to clarify the attack on the AMIA headquarters and punish all its material and intellectual authors, as well as those who have obstructed or covered up the investigations. In order to verify the progress, the State must resume the practice of periodically publishing the UFI-AMIA management reports. Likewise, they must hold regular meetings with the family members in order to provide them with information on the progress of the investigations.

2. To make adequate reparation for all the human rights violations identified to the detriment of the victims in this report, both materially and immaterially. This reparation must include measures of pecuniary compensation and satisfaction to repair both material and moral damage. Among the measures of satisfaction that must be carried out with the participation of the petitioners, the victims and the next of kin are: i) an act of public apology for all the victims of the attack; ii) the holding of commemorative events that contribute to preserving the truth and memory in relation to the AMIA attack as a fundamental step towards the dignity of the mortal victims and their families; iii) the production of an audiovisual documentary on the facts of this case, its victims, and the search for justice for their next of kin.

3. To adopt and implement the policies and measures necessary to establish a mechanism for the management and accountability of the secret budget items assigned to the intelligence agencies of the Argentine State. Said actions must pursue the objective of guaranteeing the adequate registration of such funds, the legality of their exercise, and their timely and external control.

4. Design and implement education and training programs aimed at all members of the federal security and intelligence bodies, as well as the members of the Judicial Branch of the Nation, which aim to strengthen their capacities to prevent and investigate complex crimes related to the fight against terrorism. Likewise, disseminate the basic principles and norms for the protection of human rights, with special emphasis on the protection of fundamental freedoms and guarantees of due process in the context of the fight against terrorism.

5. Adopt measures so that the judges and prosecutors in charge of the investigations related to the attack on the AMIA can have all the relevant information to know the truth and prosecute and punish those responsible, even if the information is subject to any type of reservation or state secret. Likewise, ensure that the petitioners and the victims of the attack can access the information that is linked to the case. In both cases, the appropriate measures must be implemented so that all the information in the possession of the State regarding the attack on the AMIA is duly protected and preserved.

6. Adopt and implement measures to strengthen the capacities of the State in the prevention of discriminatory acts that could configure terrorist attacks. Likewise, ensure that public apologies and training programs for State authorities, referred to in previous recommendations, include the component regarding violations of the right to equality and non-discrimination in this report.