Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 90/90; Case No. 9893
Session:	Seventy-Eigth Session (24 September – 5 October 1990)
Title/Style of Cause:	Movimiento Vanguardia Nacional de Jubilados y Pensionistas del Uruguay v. Uruguay
Doc. Type:	Report
Decided by:	Chairman: Leo Valladares Lanza; First Vice Chairman: Patrick Robinson; Second Vice Chairman: Oscar Lujan Fappiano; Members: Gilda M.C.M. de Russomano; Marco Tulio Bruni Celli; Oliver Jackman; Michael Reisman. Michael Reisman was elected to serve out the term of John R. Stevenson when the latter resigned.
Dated:	03 October 1990
Citation:	Movimiento Vanguardia Nacional de Jubilados y Pensionistas del Uruguay v. Uru., Case 9893, Inter-Am. C.H.R., Report No. 90/90, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)
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BACKGROUND:

1. On February 18, 1987, the petitioners, the "Movimiento Vanguardia Nacional de Jubilados y Pensionistas del Uruguay," filed a claim with this commission against the Government of Uruguay. In summary, the claim stated:

a. That Article 67 of the Uruguayan constitution establishes the duty of the state to provide "adequate retirement" to retired persons and pensioners, and Articles 7 and 8 of that constitution set out the rights to the fundamental guarantees of life, liberty, labor and property, and equality before the law.
b. That in that country, the system for transferring social security benefits is regulated by Article 73 of Institutional Act No. 9, as follows:"The Executive Branch is hereby empowered to establish different indexes as well as differentials and advances chargeable to the annual adjustment, in an equitable manner as the economic possibilities of the republic allow, in an effort to satisfy the real needs of the beneficiary."
c. That decree 193/86 setting the increases for the year 1986 did so with discriminatory scales that were contrary to the text of the aforementioned Article 73.For one segment of retirement payments, the increases were higher than the Average Wage Index (IMS) of the preceding year, that is, they were higher than the 107.7% which that index established, but for the vast majority of the payments, the increases enacted were much lower than 107.7% and in fact were as low as 38%.The allegation is that the aforementioned decree went too far in obvious excess of the regulatory powers conferred to the Executive Branch by setting discriminatory indexes and violated the aforementioned regulation by not adjusting all the retirement and pension payments by the IMS.
d. That as a result of that decree, thousands and thousands of pension recipients who did not receive

the adjustment as determined by the IMS filed an appeal of revocation with the Ministry of Labor and Social Security so that they could be paid the adjustments based on the aforementioned index.

e. That the topic came to be a priority issue with the legislature where a draft bill that interpreted Article 73 of Institutional Act No. 9 was submitted. That bill sought to clarify the scope of the discretionary authority that the Executive Branch had to set different rates and differentials.

This discretion, as understood in that draft law, could be exercised in terms of figures higher than the wage index (the IMS), but never lower. Both legislative houses passed the draft law by absolute majorities but the Executive Branch had comprehensive reservations to it and returned it to the General Assembly. Despite the clear majority in favor of the bill, the text of the Constitution requires a three-fifths vote by the General Assembly, that is, 78 votes, to override the observations made by the executive branch. With only three votes lacking to reach that number, the bill failed.

f. The Executive Branch agreed to modify decree No. 193/86 of April 7, 1986, by means of another decree in which the general increase would be set at 85%, and this was done. But this new decree --No. 358/86 of July 9, 1986-- failed completely to satisfy the majority in the Parliament. The Executive Branch then reported to the General Assembly that it would agree to issue another new decree that granted a minimum of 107.7% (IMS) to all those entitled to payments.

g. That the purpose of the modifications is to adjust the pension payments regularly so that they are not eroded by inflation, thereby enabling pension recipients to maintain their purchasing power to the extent possible. In 1986, there was no adjustment, except for those lower than N$13,501 who received an advance of N$2,000, and those in the bracket between N$13,501 and N$17,655, who were given N$1,500.This was with an annual inflation (for 1986) that came to a final figure of 70.6%.

h. That it is against this inhuman treatment by the Executive Branch throughout 1986 that the pension holders have based their claim, which unfortunately they are unable to appeal to judges or the courts.

i. That in the opinion of the petitioners, the only residents of the Republic with rights acquired under domestic legal procedures, who are not covered by the same criterion, are those in this group of pension recipients who have been injured by the unfair treatment accorded to them by the Executive Branch. They charge that more than 600,000 persons have been so victimized, amounting to 20% of the population now in the declining years of their lives, with no hope of starting new efforts.

j. That they base this claim on the following legal instruments which are binding on the Government of Uruguay and go to make up a violation of the rights of equality before the law, social security and property, in addition to others:

A. Articles 7, 8, and 67 of the Constitution of the Republic;

B. Article 73, Institutional Act No. 9, as amended by Article 11 of Institutional Act No. 13 (with the standing of ordinary law), on a special basis, and in such acts in general;

C. Executive Branch Decrees Nos. 193/986 of April 7, 1986, 358/986 of July 9, 1986, and 383/986 of July 23, 1986;

D. Universal Declaration of Human Rights, United Nations, and in particular, Articles 7, 17, and 22;

E. The American Declaration of Rights and Duties of Man, OAS, and, in particular, Articles II, XVI, and XXIII;

F. The United Nations Pact on Economic, Social, and Cultural Rights and the United Nations Pact on Civil and Political Rights (Article 26);

G. The American Convention on Human Rights, Article 24 in particular; and

H. Agreement No. 128 of the ILO pertaining to benefits for disability, old age, and survivorship.

2. In a note dated April 20, 1987, this Commission asked the Government of Uruguay for additional information, pursuant to Article 37 of the Regulations of the Commission.

3. On July 21, 1987, the claimants remitted copies of two verdicts of the Contentious-Administrative Law Court that nullified, exclusively for these specific cases, Executive Branch decree 137/85 of December 5, 1985, which raised the amounts of pension payments by a percentage lower than

the wage index. The petitioners pointed out that the finding of the court "agrees fully with the petitioners of this claim in the sense of giving the wage index the characteristics of a ceiling that cannot be lowered."

4. In a letter dated August 21, 1987, the Commission sent a new request for information to the Government of Uruguay.

5. In a note dated January 15, 1988, the Commission once again requested the Government of Uruguay to provide information and informed it of the possible application of Article 42 of the Regulations.

6. On February 11, 1988, the Government of Uruguay requested a 60-day extension to provide the information requested. The Commission gave it this extension in a note dated February 18, 1988.

7. On April 14, 1988, the Government of Uruguay requested a new 60-day extension which the Commission once again granted in a letter dated April 25, 1988.

8. In a letter dated June 24, 1988, the Government of Uruguay remitted its response, which is summarized below:

a. That the substantive claim in the charge has now been resolved by legal means which have expressly provided for the position taken by the claimants in the sense that the adjustments for retirement, pension, and old-age pension, shall be made as of April 1 of each year on the basis of the Average Wage Index for the immediately preceding year, and the Executive Branch is empowered to grant increases in excess of any arising from the use of that index (Article 1, Law No. 15900, October 21, 1987).
b. That the claim is unfounded, considering that the Government's policies on labor and social security, beyond the normal discrepancies in any democratic regime, have called for and still call for real and effective promotion and protection of the rights of the less privileged, as the economic possibilities of the country allow. Accordingly, no international obligation has been violated.
c. That, without prejudice to the foregoing, it states that remedies under domestic jurisdiction have not been exhausted, as required for the petition or letter (American Convention, Article 46.a and b).In effect, domestic legal procedures set out the right of the governed to appeal any administrative acts contrary to the rule of law or issued by improper authority (Constitution, Articles 309, 317, and 319).Once the administrative remedies have been exhausted, the action of nullification goes before the Contentious-Administrative Law Court, a constitutional organ of a jurisdictional nature, independent of all other public powers, which regulates the juridical standing of administrative acts and reviews the act challenged itself, and may confirm or nullify it but not amend it (Constitution, Article 310).
d. That while the claimants stated in their letter, "Thousands of pension holders who did not receive the adjustment that was appropriate in their opinion filed an appeal of revocation with the Executive Branch (Ministry of Labor and Social Security)," they failed to say what happened with these other procedures, thus making it clear that this internal remedy which must necessarily be sought first was not exhausted.
e. That the ruling of the Contentious-Administrative Law Court (Judgment No. 132, June 15, 1987) accepted the line of argument of the petitioners and nullified the preceding decree, 137/85, which was identical in nature and content to the one questioned in this claim, with the understanding that the Executive Branch lacked the legal authority to depart from the Average Wage Index and adjust downward from that indicator the pension payments to be adjusted. As a result, this shows clearly that in this case not only were the remedies of domestic jurisdiction not exhausted, but that in this instance, the matter that gave rise to the claim was completely resolved.
f. That. for the reasons outlined, the Government of Uruguay requests that the claim be dismissed as out of order and that the case be closed.

9. In a letters dated June 28, 1988, the Commission transmitted the response from the Government of Uruguay to the claimants.

10. On August 31, 1988, the claimants submitted observations to the response from the Government of Uruguay, the content of which is summarized below:

a. That the response from the Government of Uruguay recognizes that the Contentious-Administrative Law Court accepted the arguments of the petitioners and stated that the court nullified an earlier decree, 137/85, which was identical in nature and content to the one questioned in this claim, in the understanding that the Executive Branch lacked the legal authority to depart from the Average Wage Index to place a lower value of the retirement payments to be adjusted than that indicator (Judgment No. 132 of June 15, 1987).

b. That the decree, however, was not nullified on a general basis but the court ruled only on the individual and concrete cases, following appeal by the party. The decree continued and continues being in effect for almost 100,000 persons since the petitioners who advanced their cases until the ruling was passed totaled only 80.

c. That the multiplication effect that later adjustments have increases the inequality, since the litigants have had a different basis in effect since 1985, even for identical wages and identical years of service. By way of example, they submitted the following calculation to illustrate the point better to this Commission:

Those who received their credits slowly at that time on the basis of the increment from the lump sum payment of April 1985, which was N$1,000, have seen in succeeding adjustments that that original damage has grown in the manner that we have outlined below as an example:

April 1985 - original damage:N$1,000

April 1986 - N$1,000 + 107.7% as adjustment for that year =
N$1,000 + N$1,077 = N$2,077

April 1987 - N$2,077 + 77.72% of that adjustment =
N$2,077 + N$1,614.24 = N$3,691.24

April 1987 - N$3,691.24 + 66.94% of that year's adjustment=
N$3,691.24 + N$2,470.91 = N$6,162.15.

In other words, those initial N$1,000 which we took as an example of the cumulative effect of the later adjustments, meant that the retired person had seen his retirement sum decline by N$6,162.15 as of April 1988.This base figure that we produced in the example will grow larger every year and, in the case of the death of the beneficiary, that damage (brought on by an antijuridical and illegal decree) will continue being felt, thereby injuring the nuclear family that it is supposed to protect through the establishment of a pension that is granted to the widow and minor or disabled children in the event of death of the beneficiary.

d. Law 15900 is in effect only for the future and it partially amended the 1986 adjustment but it did not have and does not have any effect on the 1985 adjustment which remained in effect under decree 177/85 since the nullification by the Contentious-Administrative Law Court did not have general and absolute effect.

e. That the inequality remains between two groups of retired persons and pension holders:Those who filed claims and those who did not, for whom the effects of decree 137/85 still hold.

f. That the number of pension recipients (not counting old- age pensioners) is, as of June 1988, 192,292 persons who receive an average monthly allowance of N$11,564.It should be noted that the national minimum wage of N$29,000 nominal, which is not enough for the minimum needs of subsistence, is almost three times larger than the average allotment to the pensioners. Similar arguments can be advanced to show what the situation of retired persons in Uruguay is.

g. That they request intercession with the Uruguayan Government to restore the legal equality which that Government broke on two other occasions, taking a similar stance. These two latest incidents, the 1986 adjustment and the 1987 adjustment, have been rectified over the course of the interval between the

filing of the claim and now.

h. According to statements made in the parliament by the national representative, Congressman Dr. Carlos Cassina, only a few affiliates of the Banco de Prevision Social opportunely appealed decree 137/85 of April 1985, which dealt with adjustment of the pension payments. Only a few did so "because the majority lack the necessary technical assistance and are not able to appeal to the justice system. The poorest sector, the one at greatest disadvantage, the people with the least resources to subsist and to protect and defend themselves legally were those who were hurt. This sector is made up of the elderly and sick persons with limitations of all kinds who are scattered throughout different parts of the country, some of whom live far from central areas where they could receive adequate legal assistance."That is the population of the retired persons and pensioners injured by this adjustment, set by an illegal decree; also, they had only ten (10) consecutive days, Saturdays, Sundays, and holidays included, to defend themselves against the aggression that the newly elected democratic government inflicted on them.

i. Article 24 of the American Convention on Human Rights recognizes the equality of all persons before the law and consequently, such persons have the right, without discrimination, to equal protection under the law. Pursuant to Article 1, the states parties agree to respect the rights recognized in the Convention, and to guarantee their free and full exercise, of all persons subject to their jurisdiction. According to Article 2, the states agree to adopt, in accordance with their constitutional processes and the provisions of this convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms. They believe that the Government of Uruguay has the obligation to conduct itself in accordance with the provisions of Article 2 of the convention and to correct, thereby, the discrimination to which they have been subjected.

11. In a letter dated October 4, 1988, the Commission transmitted the observations of the claimants to the Uruguayan Government.

12. In a note dated October 28, 1988, the Uruguayan government requested a 30-day extension to respond to the observations of the complainants.

13. On December 2, 1988, the Uruguayan government presented its observations to those of the claimants. In summary, it stated:

a. That all internal remedies have not been interposed or exhausted, as shown by the observations set out in the second letter from the plaintiffs where they agreed that some persons appealed the decree of the Executive Branch of the Republic that was the grounds for the claim while others, the majority, did not do so, even though they were not prevented from doing so by any de facto or legal obstacle chargeable to the Government of Uruguay. The remedies of internal jurisdiction were open and available to all residents of the Republic, without exclusion.

b. That pursuant to the provisions of Articles 46.1.a and 47 of the American Convention on Human Rights, the petition in question is inadmissible since those who appealed to the Contentious-Administrative Law Court, the legal system unit that watches over the juridical regularity of all administrative acts, had their grievance redressed and the administration was to proceed to comply with those rulings to apply retroactively the adjustment of retirement payments and/or pension payments in question, as a function of a determined adjustment index (the Average Wage Index of the preceding year applicable to the adjustment).

c. That those who did not file a claim or exhaust their remedies under domestic jurisdiction may not now, either individually or collectively, appeal to an international body such as the Inter-American Commission on Human Rights, in contravention of the aforementioned provisions of the Convention which set out, furthermore, firmly established principles of international law.

d. That "the pretended reasons set out indirectly to obviate the failure to exhaust internal remedies are likewise absolutely not admissible" when the plaintiffs mentioned the intervention by Congressman Dr. Carlos Cassina, to the effect that "the majority of pension payment beneficiaries affected by an

adjustment measure that was lower than their payments did not appeal it because they lack the technical assistance and are not able to appeal to the justice system."The government alleges that "the mere mention of these circumstances, the only ones alleged regarding our observation on the failure to exhaust internal remedies, shows its total juridical irrelevance and means nothing other than a tacit acceptance of the failure to meet the aforementioned requirement."

e. That, regarding the basic issue of the question, "the foregoing statements regarding the formal inadmissibility of the complaint notwithstanding, what we understand relieves our government of further exploration of the basic issue of the matter," it reiterates that the complaint initially stated --differentiated adjustment of pension payments owed-- has been resolved by legal means, according to which the adjustments for retirement, pension and old-age pension shall be made effective April 1 of each year based on the Average Wage Index for the immediately preceding year, leaving the administration authorized to grant increases in excess of any that come from application of that index. The government alleges that this expressly provides for the claim set out in the first letter in this case and points out that the plaintiffs now wish to change their claim and focus it on the existence of a de facto inequality with respect to the amount of the remunerations for different pension payments owed, created under decree 137/85 and by application of the judgments of the Contentious-Administrative Law Court and the provisions of the aforementioned Law No. 15900.

f. That, theoretically leaving out the matter of its formal inadmissibility, a social security policy cannot be called a violation of human rights because, beyond logical questions and whether they are right or wrong, the policy seeks the real and effective promotion and protection of the rights of pension groups and, to do this, it must look squarely at the economic and financial possibilities of the Republic. Thus, what was done by the decrees issued in 1985, 1986, and 1987 was to use different indexes to raise, by a larger proportion, the smaller amounts of retirement payments and to give smaller increases to the larger ones. The Executive Branch, proceeding in that fashion, not only thought that it was acting with legal authorization but also did so for reasons of fairness, in an effort to give better differential treatment to smaller retirement payments, and thereby not affect equality of treatment because this principle is not violated to the extent that regulation is done rationally and fairly for dissimilar situations.

g. That, likewise, the Uruguayan government denies that Articles II (right of equality before the law), XVI (right to social security), and XXIII (right of property) of the American Declaration of Rights and Duties of Man, and Article 24 of the American Convention (equality before the law) have been violated. The principle of equality before the law has also not been affected nor has there been any disrespect for the right of social security and no violation of the right of property of pension holders affected by the measure in question.

h. That it informs the Commission that the financing of this system is especially burdensome and difficult for the public treasury owing to the circumstance that, because of the special social and demographic composition of the country, the ratio of assets to liabilities is not even two to one, a fact that underscores the difficult problem in this area which greatly limits adequate solution of this matter.

i. That the number of persons affected by application of a lower differential index for 1985, according to the plaintiffs, is incorrect. According to the Banco de Previsiyn Social, it would affect approximately 50,000 pension beneficiaries out of a total of 457,000, approximately.

j. That the solution to this question is being dealt with by the Legislative and Executive Branches of government, and remains an open question and one still pending solution. In any event, the solution will depend on the amount of resources available and in the final analysis, steady economic growth, and substantial improvement of the economy will bring the issue in question to a satisfactory close.

CONSIDERATIONS:

14. In their first letter, the plaintiffs charged the Government of Uruguay basically with violating the principle of equality before the law by promulgating decree No. 193/86 which adjusted, for 1986, the amounts of pension payments to retired persons and pension beneficiaries on the basis of indexes that were lower than the Average Wage Index (IMS), thereby creating unjustified discriminations against their

beneficiaries. For one sector, the increases were greater than the IMS of the preceding year (107.7%) but for the majority they were lower than that index.

15. In a second letter, the plaintiffs, in an effort to contribute background information to the grounds of their claim, attached copies of the rulings by the Contentious-Administrative Law Court which nullified the increases decreed by Executive Branch decree 137/85 which were lower than the wage index for the year in question. The Commission observes that this action was not initiated by the plaintiffs before the Commission and since the decision has particular effects on the concrete case, does not favor the plaintiffs in this claim. Furthermore, it should be stated that the court ruling refers to decree 137/85 while the plaintiffs challenged decree 193/86.

16. On June 24, 1988, the Government of Uruguay informed the Commission, almost one and one-half years after the original complaint, that as of that date, the purpose of the claim had been satisfied under the terms of the new Law No. 15900 of October 21, 1987, which provided that adjustments for retirement, pension, and old-age pension would be made on the basis of the IMS indicator for the immediately preceding year, leaving the Executive Branch with the authority to grant increases in excess of those yielded by application of that indicator. At the same time, the Government of Uruguay stated that inadmissibility of the petition because the plaintiffs had not satisfied the requirement of exhaustion of domestic remedies required by Article 46.1 a and b of the Convention.

It pointed out that neither the domestic administrative remedies (under Articles 309, 317, and 319 of the Uruguayan Constitution), nor the Contentious-Administrative law system provided by Article 310 of the Constitution had been exhausted. In this connection, the government offers as its evidence the ruling of the Contentious-Administrative Law Court which accepted the argument of the plaintiffs and nullified a preceding decree, 137/85, which was identical in nature and content to that questioned in the present claim, No. 193/86.

17. It is necessary now to state whether the subject matter or basic issue of the claim subsists. In its observations to the Government's response, the plaintiffs concede that with Law No. 15900 of October 21, 1987, the reason for its complaint has been rectified with respect to the adjustments for 1986 and later. Accordingly, the petitioners no longer feel injured by decree 193/86, the original target of the complaint, but they maintain the complaint --on the same grounds-- against decree 137/85, which affected the adjustment for 1985.The Commission observes that there has been a displacement from the original allegation, from decree 193/86 to decree 137/85.Nevertheless, in view of the identical purpose and effect of both decrees, with the exception of different years affected, the subject of the complaint subsists:the establishment of adjustments below the IMS wage index that would violate the principle of equality before the law.

18. The Commission must decide on the admissibility of the claim. The claim meets the following formal requirements:

a. Pursuant to Article 34 of the Convention, it deals with a petition from a group of persons who charge the Convention has been violated by a state party;
b. According to Article 46.1.c and d of the Convention, the petitioners have provided the required information and the subject matter of the petition is not pending any other procedure under international arrangement.

19. Article 46.1.a and b of the Convention and Articles 37.1 and 38 of the Regulations of the Commission require exhaustion of domestic remedies and filing of the complaint no later than six months after the date on which the presumed injured party has been notified of the final decision. In the original letter of complaint, the plaintiffs alleged that "thousands and thousands of pension beneficiaries who did

not receive the adjustment in accordance with the Average Wage Index filed an appeal of revocation with the Executive Branch (Ministry of Labor and Social Security)."However, the Commission observes that they never filed a copy of the final decision on that recourse. Nevertheless, in another part of the same written document, the plaintiffs contradict themselves by stating, "That it is against this inhuman treatment by the Executive Branch of pension beneficiary groups throughout 1986 that the pension holders have filed their claim, which unfortunately they are unable to appeal to judges or the courts."Furthermore, the Commission finds that said statement has been rendered groundless by the presentation --by the plaintiffs themselves-- of the ruling of the Contentious-Administrative Law Court which nullified the effects of decree 137/85 for the 80 retired persons and pensioners who filed their recourses under internal jurisdiction.

20. The Convention and the Regulations of the Commission condition the admissibility of the petition on the points:"That the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."(Articles 46.1.a and 37.1, respectively).The petitioners have not given proof of this and the rulings of the Contentious-Administrative Law Court, which permitted under domestic jurisdiction a claim similar to that of the petitioners, show that suitable internal remedies existed to rectify the situation denounced.

21. Nevertheless, both the Convention and the Regulations of the Commission provide for exceptions to the aforementioned rule. Article 46.2 of the Convention provides that the requirement of exhaustion of domestic remedies will not be applicable when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Article 37 of the Regulations of the Commission, for their part, in addition to repeating this rule, add in paragraph 3 that:

When the petitioner contends that he is unable to prove exhaustion as indicated in this article, it shall be up to the government against which the petition has been lodged to demonstrate to the Commission that the remedies under domestic law have not previously been exhausted, unless it is clearly evident from the background information contained in the petition.

22. In the case under consideration, the petitioners have not shown or invoked any of the exceptions mentioned. The Commission believes that the vague reference made by the petitioners to the lack of assistance and resources by the majority of the petitioners, per se, without articulating and showing it as a specific exception, while worthy of moral consideration, would not have the juridical merit of abrogating clear provisions of a Convention. It could not be concluded that an effective remedy "does not exist in Uruguayan law;" that the injured parties "have not been permitted access to the remedies" or "have been prevented from exhausting them"; nor that there has been "unwarranted delay in rendering a final judgment under the aforementioned remedies."In short, it is not the responsibility of the state against which the claim is made, either by action or omission, to challenge at the appropriate moment the act at which the petitioners take offense.

23. Nevertheless, the Commission cannot fail to consider the moral dimensions of the problem in view of the special circumstances of the case, namely, the equality, social, and economic condition and number of those affected by a real situation of inequality. This matter deals with a sizable social, group

that is particularly sensitive and economically weak to which the society should extend special protection. Furthermore, attention should be paid to the practical implications entailed for the petitioners and for the courts of presenting the claims of 100,000 or 54,000 retired persons and pension beneficiaries, depending on whether you use the figures of the petitioners or the Government, respectively. Therefore, the Commission cannot fail to weigh these special circumstances in this report.

24. Furthermore, it should be pointed out that while it is true the original letter of complaint challenged the adjustments of 1986and after, it is no less true that in their second letter (observations) the petitioners stated that Law 15900 --passed after the claim was filed-- did not encompass the adjustments for 1985 which would continue being governed by decree 137/85 and that because of the multiplication effect of later adjustments, the inequality would increase since a different base would be used from 1985 on even though it dealt with identical wages for the same number of years of service. Such difference would grow larger every year and in the case of the death of the beneficiary, it would be transferred to the heirs. Consequently, it is not true to conclude that the situation covered in the complaint, that is, the basic issue of the matter, has been satisfied since a partial situation of inequality relating to the adjustment for 1985 continues in existence.

25. Leaving out the matter of formal admissibility, the position of the Government that the claim has been satisfied implies an admission of the justice of the complaint. The Commission shares the criterion -- which the petitioners outline, as does the government in Law 15900-- that it is not possible to establish adjustments of pension payments owed that are lower than a common index, in this case, the Average Wage Index, without creating discriminations that would violate the principle of equality before the law as embodied in Article 24 of the Convention.

26. At the same time, this Commission takes note with satisfaction of the measures adopted by the Uruguayan state, through its different powers, to remedy gradually the situation noted in the original complaint, either by the ruling of the Contentious-Administrative Law Court and later by the passage of Law 15900 which covers even the adjustments of 1986, but not those of 1985.The Commission is aware that the question involves complex matters of economic and financial policy, respect for the specific competence of the powers of the state as well as political decision processes which have their own dynamics. The Commission takes special note of the allegations made by the Government because of the "very special social and demographic composition of the country, the ratio of assets to liabilities does not come to two to one" which "limits greatly an adequate solution to this question" in terms of financing it out of public revenue.

27. The Commission understands that the Uruguayan government admits that it can still reach a complete satisfaction of the claim when it affirms:"The solution to this question is being dealt with by the Legislative and Executive Branches of Government, and remains an open question and one still pending solution. In any event, the solution will depend on the amount of resources available and in the final analysis, steady economic growth, and substantial improvement of the economy will bring the issue in question to a satisfactory close."

Mindful of the preceding considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

1. Declares that the petition relating to Case 9893, from the "Movimiento Vanguardia Nacional de Jubilados y Pensionistas del Uruguay," is formally inadmissible because available remedies under domestic law were not exhausted, as required by the provisions of Article 46.1.a of the Convention and Article 37 of the Regulations of the Commission.

2. States the satisfaction of the Commission for the passage of Law 15900 of October 21, 1987, while this claim was in process, which called for the setting of adjustments for retired persons and pensioners for the years 1986 and later as a function of the Average Wage Index (IMS).

3. Recommends to the Government of Uruguay that, for reasons of moral order and social justice and its statements that this is "an open question and one still pending solution," to the extent that the economic-financial resources of the state allow, it consider the adoption of legislative or other measures that revoke decree 137/85 and its effects and make it possible to set the adjustments of pension payments owed for 1985 as a function of the Average Wage Index to all retired and pensioned persons and that they be adjusted to the amounts received at present; and consequently, to incorporate a chapter with regard to the subject matter in the Annual Report that Article 42 of the Convention alludes to, in order to make possible a follow up on the part of the Commission.

4. Communicates this report to the Government of Uruguay and to the petitioners, and dispose its publication in the Annual Report of the Commission to the General Assembly of the Organization.