

Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 67/01; Case 11.859  
Session: Hundred and Twelfth Regular Session (14 – 15 June 2001)  
Title/Style of Cause: Tomas Enrique Carvallo Quintana v. Argentina  
Doc. Type: Decision  
Decided by: President: Claudio Grossman;  
First Vice-Chairman: Juan Mendez;  
Second Vice-Chairman: Marta Altolaguirre;  
Commissioners: Robert Goldman, Julio Prado Vallejo, Peter Laurie, Helio Bicudo.  
Member Marta Altolaguirre abstained from the vote.  
Pursuant to the terms of Article 17(2) of the Rules of Procedure of the Commission, its First Vice-President, Juan E. Mendez, a national of Argentina, did not participate in the discussion or decision on the present case.

Dated: 14 June 2001  
Citation: Carvallo Quintana v. Argentina, Case 11.859, Inter-Am. C.H.R., Report No. 67/01, OEA/Ser.L/V/II.114, doc. 5, rev. (2001)  
Represented by: APPLICANTS: Eugenio Raul Zaffaroni, Diana B. Conti and Tomas Ojea Quintana

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## I. SUMMARY

1. The present report addresses the admissibility of Case 11.859, which was opened by the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission, “Commission” or “IACHR”) pursuant to the January 6, 1998 receipt of a petition filed by Tomás Enrique Carvallo Quintana with the assistance of attorneys Eugenio Raul Zaffaroni, Diana B. Conti and Tomás Ojea Quintana (hereinafter “the petitioners”) against the Republic of Argentina (hereinafter “Argentina” or “State”). The petitioners subsequently authorized attorney Orlando E. Vidal to represent them in the proceedings before the Commission.

2. The petitioners contend that the State bears responsibility for a series of illegal and arbitrary acts and omissions in prejudice of Mr. Carvallo Quintana’s interests as the majority shareholder of the Regional Bank of North Argentina, S.A. (hereinafter “BARNA”). They indicate that, prior to what they characterize as the effective confiscation of his property, Mr. Carvallo Quintana owned approximately 30% of the shares of the BARNA in his individual capacity, and 70% through Ganadera El Dorado S.A., another company owned by him.

3. In summary form, the petitioners indicate that, in 1981, 1985 and 1994, the Central Bank of Argentina issued resolutions, which they characterize as arbitrary and illegitimate, revoking the BARNA's authorization to function, ordering its liquidation, and directing the relevant authorities to seek the judicial declaration of the BARNA's bankruptcy. Shortly after the issuance of the first of those resolutions, the Central Bank took control of the BARNA and its assets. The BARNA invoked legal recourses with the objective of overturning each of the three resolutions. The petitioners indicate that the resolutions of 1981 and 1985 were revoked as a result of the respective legal proceedings, while litigation concerning the third resolution remains pending. The petitioners claim that, following certain of these legal proceedings, the Central Bank offered to return what was essentially an empty shell of the BARNA to the control of its directors, and, moreover, refused to provide the necessary accounting for the period of its control of the BARNA and its assets. As a result, they report that Mr. Carvallo Quintana filed a legal claim against the Central Bank, in his capacity as majority shareholder, seeking, inter alia, a rendering of accounts for the period the BARNA was controlled by the Central Bank, as well as the restitution of property and damages.

4. The petitioners sustain that, as a result of the acts and omissions of the Central Bank and the failure of the judiciary to provide effective and timely protection, the State of Argentina bears responsibility for having violated the rights of Mr. Carvallo Quintana under the American Convention on Human Rights to property (Article 21), and to effective judicial protection and guarantees (Articles 25 and 8), in violation of its duty to respect and ensure those rights (Article 1(1)).

5. The State maintains that the case sets forth no cognizable violation and fails to meet the other requirements of admissibility set forth in the American Convention. In its recounting of the relevant facts, the State points out that the Central Bank justified its actions with respect to the BARNA as necessary to safeguard the interests of account holders and the security of the banking system in the face of grave problems it identified with the capitalization and solvency of the BARNA. The State sustains that the claims denounced have their essential basis in the decisions of the Central Bank, taken in accordance with the procedures set forth in national law, to revoke the BARNA's authorization to function and order its liquidation. Accordingly, it maintains that the case is inadmissible because the claims raised concern the BARNA, a juridical entity, while the American Convention applies exclusively to the rights of individual human beings.

6. Additionally, Argentina invokes the reservation it entered upon ratification of the Convention to the effect that claims concerning State economic policy shall not be subject to review by international tribunals. Finally, the State indicates that Mr. Carvallo Quintana has failed to meet the requirement of having exhausted available domestic remedies, because he failed to invoke the appropriate remedies. Alternatively, the State notes that certain actions remain pending before the courts and have yet to be duly exhausted. The State controverts any claims that judicial action in connection with the claims before the Commission has been subject to undue delay. In summary, the State sustains that the Central Bank and judiciary have acted in conformity with national law, and the petitioners have disclosed no violation of the American Convention.

7. As set forth below, pursuant to its examination, the Commission concluded that it is competent to take cognizance of the petitioners' complaints concerning alleged violations of Articles 8, 25 and 1(1) with respect to the rights of Tomás Enrique Carvallo Quintana, and that the claims in this respect are admissible in accordance with the terms of Articles 46 and 47 of the American Convention. The claims which have their basis in the situation and rights of the BARNA as a juridical entity are inadmissible as falling outside the scope of application of the Commission's jurisdiction.

## II. PROCESSING BEFORE THE COMMISSION

8. The petition, complaining of violations of Articles 21 (right to property), 8 (right to due process) and 1(1) (obligation to respect rights), was received by the Secretariat on January 6, 1998. By note of January 29, 1998, the Commission informed the petitioners that the processing of case 11.859 had been initiated in accordance with the Regulations of the Commission, and the pertinent parts of the petition had been transmitted to the State in a note of that same date. The State was requested to submit the information it deemed relevant with respect to the facts alleged as well as the requirement of exhaustion of domestic remedies within 90 days.

9. In response to the request for a hearing submitted by the petitioners in their initial petition, by note of February 6, 1998, the Commission indicated that it was unable to grant it due to the large volume of hearings scheduled, but that a future request would be given due consideration.

10. The State submitted its response to the petition on August 27, 1998, which was then transmitted to the petitioners in a note of August 31, 1998, with the submission of observations in response requested within 60 days. By a note of October 2, 1998, petitioners Conti and Zaffaroni authorized attorney Orlando E. Vidal to represent them in the proceedings before the Commission. Receipt of that information was acknowledged by note of October 21, 1998. On November 2, 1998, the Commission received the petitioners' observations to the State's response. In these observations, the petitioners amended their petition to include arguments and evidence concerning alleged violations of Article 25 of the American Convention (right to judicial protection) in connection with their previous submissions concerning Articles 21 (right to property), 8 (right to due process) and 1(1) (obligation to respect rights). These observations were transmitted to the State by note of November 13, 1998, with the presentation of observations thereon requested within 60 days.

11. On February 19, 1999, the petitioners wrote to the Commission to express concern that the State had yet to submit a response. On March 17, 1999, the Commission addressed the State to reiterate the terms of its previous communication of November 13, 1998. The State presented its response by note of March 30, 1999, which was transmitted to the petitioners that same date with the submission of observations requested within 60 days.

12. The petitioners' observations were received on June 2, 1999, and included a request for a hearing before the Commission. The observations were transmitted to the State on June 4, 1999, with any observations requested within 30 days. By note of July 7, 1999, the State submitted its

observations, which were duly transmitted to the petitioners on July 13, 1999, with any observations requested within 30 days.

13. On August 20, 1999, the petitioners submitted additional observations, which were transmitted to the State on August 26, with any observations requested within 60 days. With those observations, the petitioners requested that the Commission grant a hearing on the case during its next period of sessions.

14. By note of October 28, 1999, the State forwarded its observations, which were transmitted to the petitioners on November 3, 1999, with observations requested within 60 days. On November 4, 1999, the petitioners submitted additional observations, which were forwarded to the State on November 29, 1999, with any observations requested within 60 days. On December 28, 1999, the petitioners requested an extension to respond to the October 28, 1999 submission of the State. By notes of January 3, 2000, the Commission granted the extension requested until February 7, 2000, and informed the State that this had been done. On February 1, 2000, the State requested additional time to respond to the petitioners' recent filing. By notes of February 8, 2000, the Commission granted the State an additional 45 days, and informed the petitioners. The petitioners' observations were received on February 8, 2000, and transmitted to the State on February 29, 2000, with any response requested within 45 days.

15. On April 7, 2000, the petitioners submitted a communication expressing concern that the State had yet to present its response on the respective filings. On April 11, 2000, the State requested additional time to present its response. By notes of April 24, 2000, the Commission informed the State that an extension had been granted until April 15, 2000, and informed the petitioners. The State's observations were received on April 26, 2000, and transmitted to the petitioners on May 17, 2000, with any observations requested within 60 days.

16. On July 17 and August 4, 2000 the petitioners submitted additional information and observations, which were transmitted to the State on August 2 and 4, 2000, respectively, with any observations in response requested within 30 days of the first of these communications. On August 29, 2000, the petitioners submitted a request for a hearing before the Commission during its next period of sessions.

17. On September 5, 2000, the State requested additional time to submit observations in the present case. By notes of September 11, 2000, the Commission granted the State an additional 30 days, and informed the petitioners. On September 12, 2000, the Commission informed the parties that a hearing would be convened on October 12, 2000, during its next period of sessions to address the admissibility of the case. On September 15, 2000, the Commission addressed the parties to indicate that the hearing would be postponed to the following session, given that the State had filed a written request to that effect explaining that its authorities were examining petitions such as that under study with the objective of establishing the pertinent juridical criteria to provide an adequate response.

18. On October 13, 2000, the petitioners addressed the Commission to express concern that the State had yet to respond to their submissions of July 17 and August 4, 2000. On November 22, 2000, the Commission addressed the State to transmit additional information received from

the petitioners on November 17, with respect to which observations were requested within 30 days, and to indicate that the extension granted by note of September 11, 2000 had expired.

19. Pursuant to the request of the petitioners, the Commission convened a hearing on March 1, 2001, during its 110<sup>o</sup> regular period of sessions, to hear the positions of the parties concerning the admissibility of the case under study. Both parties were duly represented and participated. On March 2, 2001, the State presented additional observations, which were transmitted to the petitioners with any observations requested within 21 days. Observations in response were received on March 26, 2001, supporting points raised in previous submissions or in the March 1, 2001 hearing. By note of April 25, 2001, the State submitted information related to that offered on March 2, 2001. By notes of May 16, 2001 and May 22, 2001, the communications in question were transmitted to the respective parties for their information.

### III. POSITION OF THE PARTIES

#### A. The Petitioners

20. For the purposes of this report, which is limited to examining the admissibility of the claims raised by the petitioners, the allegations may be summarized as follows. In 1977, Mr. Carvallo Quintana became the majority owner of the shares of the BARNA, approximately 30% of which were held in his own name, and 70% of which were held in the name of Ganadera El Dorado S.A., a company owned by Mr. Carvallo Quintana. Less than 1% of the shares were held by small local investors. He indicates that this represented a very significant investment of his personal resources. The petitioners allege that at the close of 1980, the Central Bank initiated a campaign of persecution against him and his family, and note that other bankers were similarly affected by illegitimate actions of the Central Bank at that time. The result of these actions, they contend, was the loss of value of his shares and investment in the BARNA. While they maintain that he sought judicial protection against that loss of personal property, the mechanisms invoked have proven ineffective in remedying the harm denounced.

21. In late 1980, pursuant to an inspection by the Central Bank, the BARNA was required to present a reorganization plan to correct certain deficiencies in its capitalization and liquidity. The petitioners indicate that Mr. Carvallo Quintana presented a plan to that effect, and transferred shares from nine of his other companies to the BARNA to satisfy the requirements of the Central Bank. While the plan presented was rejected, they claim that the shares from those other companies were never returned to him.

22. Pursuant to the rejection of the plan, on January 30, 1981, the Central Bank issued resolution 46/81, revoking the BARNA's authorization to function as a financial institution, ordering the immediate cessation of its commercial activities, its liquidation, and the pursuit of a judicial declaration of bankruptcy. On February 2, 1981, the petitioners allege that the BARNA was effectively confiscated, a situation that persists to the present. In 1983, the Central Bank initiated legal proceedings to obtain a judicial declaration of the bankruptcy of the BARNA.

23. The BARNA pursued legal action against resolution 46/81, and the eventual result of those proceedings was the May 7, 1985 decision of the Supreme Court of Justice of the Nation to

nullify it. The BARNA also contested the actions of the Central Bank to obtain a judicial declaration of bankruptcy, and while the inferior court declared the BARNA bankrupt, a decision upheld on appeal, in 1991 the Supreme Court of Justice of the Nation issued a decision nullifying that declaration.

24. The petitioners allege that, at this point, while the Central Bank should have rendered an accounting for the period of its administration and returned the BARNA to the control of the directors, instead, on August 15, 1985, it issued resolution 580/85, essentially reiterating the terms and bases of the previous resolution, revoking the BARNA's authorization to function and ordering its liquidation and the pursuit of proceedings to declare a judicial declaration of bankruptcy. The BARNA again sought judicial recourse against the resolution, and in 1990 the Supreme Court of Justice issued a decision nullifying it. The petitioners allege that the property with respect to which the BARNA was "dispossessed" was worth approximately US\$ 81,843,191 in 1990.

25. In the interim, in 1986, the petitioners report that Mr. Carvallo Quintana filed an action before the courts in his own name seeking a rendering of accounts for the period of control of the BARNA by the Central Bank, the restitution of goods, and damages. He also attempted unsuccessfully to pursue an out of court settlement through the presentation of a "a transactional proposal" to the Executive branch.

26. In November of 1992, the Central Bank issued resolution 499/92 requiring the authorities of the BARNA to retake control of the entity. The petitioners allege that the Central Bank refused to provide a prior rendering of accounts for the period of the Central Bank's administration of the BARNA and its property. The Central Bank also required that the BARNA's directors present a plan within 30 days to correct deficiencies and provide additional capital. The petitioners allege that the deficits identified by the central Bank had been caused by its own mismanagement. The petitioners note that, while the authorities of the BARNA wanted to retake control, they were unable to do so absent an accounting for the assets they contend had been sold or lost to mismanagement while the Central Bank was in control.

27. On April 14, 1994, the Central Bank issued resolution 258/94, revoking the authorization of the BARNA to function for the third time, and ordering its liquidation and the pursuit of a judicial declaration of bankruptcy. The bankruptcy of the BARNA was declared by the court of first instance in 1995, and confirmed on appeal. The BARNA then filed an appeal seeking review by the Supreme Court of the Nation, which remains under examination. Subsequently, Mr. Carvallo Quintana again attempted unsuccessfully to pursue an out of court settlement of the matter through the Executive branch.

28. The petitioners indicate that, since the original seizure of the BARNA in 1981, its principal shareholder, Mr. Carvallo Quintana, has been prevented from having any role in controlling its administration and assets, a role taken over by the Central Bank pursuant to Laws 21526 and 22529. They allege that the property of the BARNA was sold or lost due to deficiencies in the administration of the Central Bank, and that, in fact, at the time of the filing of the petition before this Commission, the Central Bank was continuing to publish advertisements for the sale of property of the BARNA that had disappeared years previously. As a result, they

maintain, Mr. Carvallo Quintana has been deprived of the possibility to pursue commercial activities through the BARNA, to exercise his rights as a shareholder and director, and has had his investment effectively confiscated. They further allege that his attempt to invoke available judicial recourse through the action he filed in 1986 to obtain a rendering of accounts and damages failed to provide effective judicial protection and guarantees, as it remains pending without resolution. At several points, the petitioners have alleged in subsidiary fashion that because Mr. Carvallo Quintana is Chilean by birth, and Argentine by naturalization, he has been subjected to discriminatory treatment at the hands of some authorities.

29. The petitioners sustain that the facts alleged constitute violations of Articles 21 (right to property), 8 (right to due process), 25 (right to judicial protection) and 1(1) (obligation to respect rights) of the American Convention. They note that the principles in question are further illustrated in Article 10 of the Universal Declaration of Human Rights and Article 14(1) of the International Covenant on Civil and Political Rights (both concerning the right to a fair hearing), read in relation to Article 29 of the American Convention (restrictions regarding interpretation).

30. In particular, the petitioners sustain that the right of a property owner to use and enjoy his or her property is a fundamental pillar in the “universal unity of human rights.” When that use and enjoyment is frustrated, the right of the individual concerned is necessarily affected. They argue that because Mr. Carvallo Quintana was the majority shareholder, it is clear that his rights were prejudiced by the actions in question, and note that this status also distinguishes the present case from the case of “Banco de Lima,” case 10.169, Report N° 10/91, cited by the State. The petitioners argue that the situation of Mr. Carvallo Quintana is much more comparable to that dealt with by the Commission in the case of Carlos García Saccone, case 11.671, Report N° 8/98, insofar as the latter concerned the deprivation of personal wealth. With respect to Articles 8 and 25, the petitioners contend that, despite the repeated decisions of the judiciary overturning the resolutions of the Central Bank, and despite Mr. Carvallo Quintana’s attempt to seek the judicial protection of his interests as majority shareholder in 1986, the recourses available have proven illusory in terms of providing effective protection, and have moreover been subject to undue delay.

31. With respect to the requirements to establish admissibility, the petitioners emphasize that the claims presented pursuant to Article 44 of the American Convention concern the personal rights of Mr. Carvallo Quintana. They contend that he has fully exhausted domestic remedies pursuant to the litigation brought by BARNA against the first two resolutions issued by the Central Bank, which were nullified through final decisions of the Supreme Court of the Nation. While the recourses invoked by the BARNA in connection with the third resolution and the action initiated by Mr. Carvallo Quintana in 1986 remain pending, the petitioners argue that these have been proven to be illusory in terms of producing the effect for which they were designed. They contend that, in the very face of the decisions of the Supreme Court of the Nation overturning the resolutions of the Central Bank, the State and its Central Bank persist in the repetition of the same illegitimate actions. Finally, they emphasize that there has been undue delay in the resolution of the actions pending before the courts of Argentina, with specific reference to the action initiated by Mr. Carvallo Quintana in 1986.

32. The petitioners indicate that the matter has not been submitted before any other proceeding of international settlement, nor has it been previously by the Commission. Finally, they argue that the reservation to Article 21 of the American Convention invoked by the State does not correspond to any aspect of the claims presented. They note that the fact that the case concerns the right to property in no way implicates questions of State economic policy, nor does it challenge any decision of a national court as to determinations of “public utility,” “social interest” or “fair compensation,” which are the points covered in that reservation.

#### B. The State

33. The State maintains that the case under study is inadmissible *ratione personae* and *ratione materiae*. First, the State indicates that the claims raised disclose no violation of rights protected under the American Convention. The State contends that the essence of the questions raised by the petitioners concerns administrative decisions, subjected to judicial review, directed toward the revocation of the BARNA’s authorization to function, its liquidation and the declaration of its bankruptcy, pursuant to the provisions of national law. These actions were directed exclusively at the BARNA as a juridical entity; as such, they do not fall within the international ambit of human rights protection, which is restricted to the protection of the rights of human beings. The State emphasizes that this is the scope of protection accorded pursuant to both the inter-American and international human rights instruments, and that the amplification of the Commission’s competence to accept petitions filed by juridical persons, such as in the case under study, would modify the very nature of the system the State agreed to be bound by. The State cites Report 10/91 issued by the Commission in relation to case 10.169, Banco de Lima (Peru) as affirming this very principle.

34. The State notes that the fact that Mr. Carvallo Quintana has filed his claims before the Commission in his capacity as majority shareholder supports its position, and is similar to the situation dealt with in the case referred to in the preceding paragraph which was deemed inadmissible. Additionally, the State notes that its national law clearly distinguishes between physical persons and juridical persons such as corporate entities, and in the case of corporate entities, defines that corporate property pertains to the entity and not to its members (either individually or as a whole). In summary, the State argues that “there was no violation [of Article 21], and that even if there had been, the victim of the property loss was not a physical person, but the BARNA, a juridical person the protection of which is excluded from the Inter-American System for the protection of Human Rights.”

35. The State further cites the Barcelona Traction Case of the International Court of Justice for its treatment of the distinction between the rights of the corporation and the rights of its shareholders as individuals, and this Commission’s treatment of the matter of *Mevopal S.A.*, Report N° 39/99, for its treatment of the distinction between petitioner and victim. The State maintains that while Mr. Carvallo Quintana is clearly a petitioner in the case, he is not the victim. None of the challenged actions were taken against him; rather, all were directed against the BARNA as a juridical entity.

36. In terms of the characterization of the facts under study, the State indicates that, pursuant to the Central Bank’s inspection of the BARNA in 1980, the Central Bank identified a number

of irregularities including the lack of sufficient guarantees for loans or operations, the undercapitalization of the BARNA, and the extension of large loans implying undue risk. The State maintains that the BARNA was in debt for approximately US\$ 60 million. On January 9, 1981, the BARNA presented a plan to correct certain deficiencies, which was rejected in accordance with the report prepared by the technical offices of the Central Bank. It was pursuant to this rejection that the Central Bank, exercising its authority to control financial and exchange matters, issued resolution 46/81, revoking the BARNA's authorization to function. The State indicates that, on the basis of those actions, on December 2, 1982, the functionaries designated by the Central Bank to administer the BARNA requested the judicial determination of the latter's bankruptcy. The State indicates that the result of the litigation initiated by the BARNA's director against resolution 46/81 and its effects -- namely the revocation of the resolution and the nullification of the subsequent judicial declaration of bankruptcy by the Supreme Court (for reasons the State characterizes as technical rather than substantive)--demonstrate that the judicial mechanisms of the internal system function fully and effectively.

37. Pursuant to the decision to revoke resolution 46/81, in 1985 the authorities of the Central Bank attempted to deliver the BARNA to the control of its directors, who refused, citing the absence of a rendering of accounts for the period of the Central Bank's control. The State indicates that this request for an accounting, which should have been pursued through adequate channels, did not justify the refusal to retake control. It was that refusal which prompted the Central Bank to issue resolution 580/85, revoking the BARNA's authorization to function, and ordering its liquidation and the pursuit of a judicial declaration of bankruptcy. Given that this resolution was also revoked as a result of litigation initiated by the director of the BARNA, the State reiterates its contention that domestic remedies have proven adequate and effective.

38. In response to the petitioners' contention that the Central Bank thereafter illegally retained control of the BARNA, the State notes that during the pendency of the proceedings initiated by the Central Bank in 1983 to obtain a judicial declaration of the BARNA's bankruptcy (proceedings which terminated with the 1991 decision of the Supreme Court of the Nation to revoke the declaration of bankruptcy issued below) national law prohibited the Central Bank from returning the BARNA to its directors.

39. The State indicates that faced with its frustrated attempts to return the BARNA to the control of its directors following the decision to revoke the judicial declaration of bankruptcy, in 1994 the Central Bank was required to issue resolution 258/94 again revoking the BARNA's authorization to function, ordering its liquidation and the pursuit of a judicial declaration of bankruptcy. Accordingly, on April 28, 1994, the Central Bank initiated legal actions for the second time to seek a judicial declaration of the BARNA's bankruptcy. The director of the BARNA opposed both actions of the Central Bank. As of the State's March 2, 2001 presentation, the process seeking to revoke resolution 258/94 remained pending before the Chamber of Appeals of the Federal Administrative Contentious jurisdiction. The BARNA's bankruptcy was declared by the court of first instance on March 10, 1995, and pursuant to the challenges filed by the director of the BARNA, as of the State's March 2, 2001 submission, a final appeal remained under study before the Supreme Court of the Nation.

40. The State contends that the submissions of the petitioners demonstrate no violation of the rights of Tomás Enrique Carvallo Quintana. Most specifically in this regard, the State disputes the petitioners' characterization of the actions of the Central Bank as amounting to an effective confiscation of property, actions the State characterizes as pursuant to the applicable dispositions of internal law.

41. In the second place, the State argues that the reservation it formulated at the time of its ratification of the American Convention signifies that the Commission is not competent to review the claims raised. That reservation applies to Article 21 (right to property) and states:

The Argentine Government establishes that questions relating to the Government's economic policy shall not be subject to review by an international tribunal. Neither shall it consider reviewable anything the national courts may determine to be matters of "public utility" and "social interest," nor anything they may understand to be "fair compensation."

42. The State contends that the subject at issue in the present case falls clearly within the scope of its economic policy, and as such is inadmissible. More specifically, it indicates that the State and its Central Bank are charged with protecting the collective good in relation to monetary and economic policy, and that the Central Bank is required to determine when juridical entities should be authorized to function, and when such authorization must be revoked. It notes that the legitimacy of State action in this sphere is in any case subject to the oversight of judicial review. The State argues that the decisions challenged by the directors of the BARNA, which gave rise to a series of administrative and judicial actions, have their essential basis in the competence of the State to regulate the financial market so as to preserve the social interest, and, given the reservation entered by Argentina with respect to Article 21 of the Convention, are not subject to review by the Commission.

43. In the third place, assuming the Commission were to proceed to review the claims, the State indicates that the petitioners have failed to invoke and exhaust the appropriate, available domestic remedies as required by Article 46(1) of the American Convention. During the March 1, 2001 hearing and in its March 2, 2001 presentation before the Commission, the State indicated that the appropriate legal channel under domestic law for individual shareholders to seek the judicial protection of their rights and interests as such is the filing of an action against the party responsible for the direction of the corporation. In its March 2, 2001 presentation, the State set forth that the "only" legal channel shareholders have under Argentine law to protect their interests as such is through judicial intervention in the management of the corporation, or the filing of an action seeking a rendering of accounts by the legal representatives.[FN1]

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[FN1] The State notes that in this case the director of the BARNA had been Diego Carvallo Quintana, the brother of Tomás Enrique Carvallo Quintana. In this regard, the Commission notes that both parties have referred in their submissions to certain judicial actions concerning Diego Carvallo Quintana. To the extent these have a bearing on the claims raised in relation to Tomás Enrique Carvallo Quintana, they are indicated in the present report. To the extent those actions concern the rights or obligations of Diego Carvallo Quintana per se, the petitioners have

indicated that these are not comprehended within the scope of the case presented, and as such the Commission notes that they are not relevant for the purposes of this examination.

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44. In its previous submissions, while noting that the recourses invoked in relation to the case concern the rights of a juridical entity as opposed to those of any physical person, the State indicated that the following judicial actions remained pending in relation to the situation denounced before the Commission:

(A) “Banco Regional del Norte Argentino S.A. c/ Banco Central de la República de Argentina s/ juicio de conocimiento” before the National Court of First Instance in Federal Administrative Contentious Matters No. 12, in the stage of submission of proof. The matter had been remitted “ad effectum videndi et probandi” to the Fifth Court of the National Chamber of Appeals in Federal Administrative Contentious Matters, under the title “Banco Regional del Norte Argentino S.A. c/ Banco Central de la República de Argentina s/ resolución Nro 258/94.

(B) Carvallo Quintana, Tomás y otros c/ Banco Central de la República Argentina s/ ordinario, before the National Court of First Instance in Commercial Matters No. 22. The stage of production of proof had been opened on February 20, 1989, without having produced any measures of proof, which the State asserted was due to “distinct alternatives submitted in the file” and the inaction of the plaintiff. The matter had been remitted “ad effectum videndi et probandi” to the Fifth Court of the National Chamber of Appeals in Federal Administrative Contentious Matters, under the title “Banco Regional del Norte Argentino S.A. c/ Banco Central de la República de Argentina s/ resolución Nro 258/94.

(C) On March 10, 1995, the Court of First Instance in Civil Matters of the Third Nomination of the City of Salta declared the bankruptcy of the BARNA. The BARNA then filed an action of reposición against that decision that was rejected. A further appeal in this matter remains pending.

45. With regard to the foregoing actions, the State emphasizes that only one, that filed on September 12, 1986, was even putatively brought in the name of Mr. Carvallo Quintana. The State indicates that this action was expressly filed by Mr. Carvallo Quintana in his capacity as majority shareholder of the BARNA, and argues that this signifies his recognition that the investment of resources he had made in the BARNA pertained to that juridical entity and had been submitted to the management of its duly appointed legal representatives.

46. In the event that the Commission would nonetheless examine those proceedings in relation to the claims denounced, in its March 2, 2001 submission, the State provided a synthesis of developments in that process from 1986 through 1996, demonstrating in its view that there had been no unjustified delay in the processing of the matter by the judiciary. In the March 1, 2001 hearing, the State indicated that the plaintiff had failed to pursue timely actions in the process, and had in fact requested its suspension on several occasions for the purpose of attempting to reach an out of court settlement. Moreover, the State indicated in its March 2, 2001 submission that its summary demonstrated that the process concerns complex facts which have given rise to the opening of various administrative and judicial files, all interrelated with each other. Additionally, the State claimed that the judicial authorities charged with processing this particular action had never exceeded the periods provided for by law.

#### IV. ANALYSIS OF ADMISSIBILITY

##### A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

###### 1. *Ratione loci*

47. The Commission has competence *ratione loci*, given that the petition under study indicates that the alleged victim was subject to the jurisdiction of the Argentine State at the time of the alleged facts. Argentina has been a member State of the Organization of American States since its ratification of the OAS Charter in 1948, and as such subject to the jurisdiction of the Commission in respect of individual complaints since that competence was established by statute in 1965 with reference to the terms of the American Declaration. Argentina has been subject to the Commission's jurisdiction under the terms of the American Convention since it deposited its instrument of ratification on September 5, 1984.

###### 2. *Ratione temporis*

48. The foregoing information is also relevant with respect to the affirmation of the Commission's competence *ratione temporis*, given that certain facts raised by the petitioners predate the entry into force of the American Convention for Argentina. Neither party has questioned the Commission's jurisdiction in this respect, and the issue is in fact susceptible to ready resolution.

49. For any member State that has yet to ratify the American Convention, the fundamental rights it undertakes to uphold as a Party to the OAS Charter are those set forth in the American Declaration, which constitutes a source of international obligation.[FN2] The Commission's Statute and Rules of Procedure provide additional norms concerning the exercise of its jurisdiction in this regard. That jurisdiction was in effect at the time of the first facts alleged by the petitioners, and the Declaration, like the Convention, protects the right to property (Article XXIII), and to judicial protection and due process guarantees (Articles XVII and XVIII) invoked in the case. Once Argentina's ratification became effective, the American Convention became the principal source of legal obligation,[FN3] and the rights and obligations cited by the petitioners became applicable. Accordingly, the Commission is competent *ratione temporis* to address the claims presented by the petitioners. In any case, as indicated in the analysis that follows, the principal claims that meet the other requirements of admissibility fall within the temporal scope of application of the American Convention.

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[FN2] IACtHR, Advisory Opinion OC-10/89, July 14, 1989, "Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights," Ser. A N° 10, paras. 43 - 46.

[FN3] *Id.*, para. 46.

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3. Ratione personae

50. In relation to the question of standing, the petitioners are individuals competent under the terms of Article 44 of the Convention to complain of the violation of a protected right under the American Convention, and under Article 23 of the Commission's Rules of Procedure with respect to an alleged violation of the American Convention or Declaration.

51. In terms of competence *ratione personae*, the Commission must also evaluate the status of the victim whose rights have allegedly been violated. The petitioners have presented Tomás Enrique Carvallo Quintana as the individual victim of the actions denounced, and have alleged that as a result of the acts and omissions of the Central Bank and judiciary, he has been denied his right to property, and denied the judicial protection and guarantees necessary to have guaranteed his rights at the national level. The State maintains that the complaints have their essential and indispensable basis in actions of the Central Bank directed exclusively against the BARNA as a juridical institution.

52. What the proceedings in the case demonstrate on this issue may readily be explained with reference to the manner in which remedies at the domestic level were invoked and pursued. In this regard, the petitioners have characterized both the series of actions interposed on behalf of the BARNA and the action interposed by Mr. Carvallo Quintana on his own behalf in 1986 as demonstrating the latter's attempts to seek the protection of his rights before the Argentine judiciary. The State maintains that all of the legal actions in question, including the one filed by Mr. Carvallo Quintana in 1986, relate to the situation and interests of the BARNA as a juridical entity.

53. The information and copies of decisions in the record before the Commission demonstrate that all of the pertinent judicial actions aimed at invoking and exhausting domestic remedies -- save that interposed by Mr. Carvallo Quintana in 1986--were filed on behalf of the BARNA as a juridical entity. It was the BARNA, through its appointed representatives, that sought and obtained the revocation of resolutions 46/81 and 580/85 before the domestic courts, and the BARNA that sought and obtained the decision nullifying the first declaration of bankruptcy. Further, the BARNA invoked the remedies to seek the revocation of resolution 258/94, and the nullification of the second declaration of bankruptcy, both of which remain pending. Those judicial actions were directed at defending the interests of the bank and not at protecting the interests of Mr. Carvallo Quintana as an individual shareholder.

54. The Commission is of the view that, in principle, shareholders cannot claim to be victims of interference with the rights of a company absent a showing of direct effect on their rights. That effect was simply not at issue in the judicial actions interposed to defend the interests of the BARNA. (Equally important, and as will be referred to below, there must also be an identity of claims between those placed before the national judiciary and those placed before the Commission in order to demonstrate that domestic remedies have been invoked and exhausted as required.)

55. The jurisprudence of the Commission is consistent in indicating that claims raised before it that were litigated before the national courts in the name of juridical persons as opposed to

individual victims are not admissible,[FN4] because the Commission lacks the competence *ratione personae* to examine claims which concern the rights of juridical persons. This is indicated quite directly in the preamble of the American Convention, which indicates that “the essential rights” protected are “based on attributes of the human personality,” Article 1(1), which speaks to the obligation of the State to respect and ensure the rights of “all persons” subject to its jurisdiction, and Article 1(2) which defines “person” as “every human being.” The present case discloses no elements to justify a change in the Commission’s practice in this regard.

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[FN4] See Report N° 103/99, Bernard Merens and Family, Argentina, Sept. 27, 1999, Annual Report 1999, citing Report N° 10/91, Banco de Lima, case 10.169, Peru, Annual Report 1990-91; Report N° 47/97, Tabacalera Boqueron, Paraguay, Annual Report 1997, Report N° 39/99; Mevopal S.A., Argentina, pending publication; see also, Report N° 106/99, Bendeck-Cohdinsa, Honduras, Sept. 27, 1999, Annual Report 1999.

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56. This does not mean that the rights of individuals with respect to their private property as shareholders in a corporation are excluded from the protection of the Convention. Rather, the foregoing criteria provide a means to distinguish when the rights of a corporation are at issue, and when the rights of an individual are at issue. The investment of a shareholder in the capital assets of a corporation is part of that individual’s property, and susceptible to valuation and protection in principle under the American Convention.[FN5] As the State noted in one of its submissions, the International Court of Justice (hereinafter “I.C.J.”) provided a useful distinction between the rights of a shareholder and those of a company in the Barcelona Traction Case. As the Inter-American Court of Human Rights recalled in its recent judgment on the Ivcher case, the distinction drawn by the I.C.J. notes that internal law grants shareholders certain direct rights, for example, to receive dividends allocated, to be present and vote in board meetings and to receive a portion of remaining assets in the event of liquidation.[FN6]

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[FN5] IACtHR, Ivcher Bronstein Case, Judgment of February 6, 2001, para. 123.

[FN6] See *id.*, para. 127, citing I.C.J., Barcelona Traction, Light and Power Company Limited, Judgment, I.C.J. Reports 1970, p. 36, para. 47.

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57. In this sense, while the parties dispute the proper characterization of this action, they are in agreement that Tomás Carvallo Quintana presented a recourse before the judiciary in 1986 in his capacity as an individual shareholder of the BARNA. The parties are also in agreement that this action remains pending. While the petitioners characterize this action as part of Mr. Carvallo Quintana’s effort to protect his rights as a shareholder, the State maintains that what is essentially sought is the disposition of the rights of the BARNA.

58. The complaint filed by Mr. Carvallo Quintana against the Central Bank indicates that he seeks a rendering of accounts, the restitution of the property of the BARNA (movable and immovable property, certificates, shares, etc.), and subsidiarily, the declaration of extracontractual responsibility and payment of damages he has sustained and will sustain as a

result of the actions perpetrated against the BARNA by the Central Bank.[FN7] The president of the BARNA adhered to the complaint in representation of that entity, and Mr. Carvallo Quintana himself adhered to the complaint in representation of his company Ganadera el Dorado S.A., also a shareholder of the BARNA.

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[FN7] Application, section II, “purpose.”

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59. The complaint recounts what it characterizes as the irregular actions of the Central Bank in liquidating the BARNA, and alleges the violation of a series of rights under the Argentine Constitution, including due process guarantees (Article 18), the right to property (Articles 14 and 17), and to freedom of association (Article 14 ), as well as the violation of other internal laws.[FN8] It indicates that the illicit acts cited damaged the property of the BARNA and that of its shareholders, principally Mr. Carvallo Quintana. He requests direct and consequential damages, including for the moral harm sustained.[FN9]

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[FN8] These violations are set forth in id, section VII, “restitution.”

[FN9] Id., section VIII “compensation.”

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60. The foregoing review of the complaint demonstrates that, while it continues to disclose some overlap between the rights of the complainant and the rights of the BARNA, Mr. Carvallo Quintana was attempting to seek judicial protection for certain individual rights. To the extent that the claims presented before the Commission concern the protection of Mr. Carvallo Quintana’s rights as an individual, and these were placed at issue before the Argentine judiciary, they are not barred *ratione personae*. [FN10]

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[FN10] Contrast, for example, to *Tabacalera Boqueron*, supra, at para. 27, which was deemed inadmissible *ratione personae* precisely because “[d]uring the domestic judicial proceedings, the shareholders were never mentioned as victims of any violation [and] there were never any initiatives to protect their rights,” and to *Mevopal S.A.*, supra, paras. 18, 19, where litigation was brought at the domestic level exclusively in the name of the company, and the petitioner neither alleged nor proved that its shareholders or other individuals had been the victims of a human rights violation.

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61. In this sense, the claims that may be examined concern Mr. Carvallo Quintana’s right to seek effective judicial protection and guarantees vis-à-vis his rights as a shareholder. What may not be admitted are claims that have their basis in the juridical situation or rights of the BARNA itself, including those addressed in the series of legal actions instituted on behalf of the BARNA before the Argentine judiciary.

4. *Ratione materiae*

62. The Commission is competent *ratione materiae* to examine the substance of the complaints that are not barred *ratione personae* because the claims submitted in relation to Mr. Carvallo Quintana's attempt to seek the judicial protection of his rights as a shareholder could, if shown to be true, constitute violations of rights protected under the American Convention. Those claims principally refer to the question of undue delay in those proceedings which were initiated in 1986 and remain pending.

63. In relation to the scope of the subject matter the Commission may examine, it must also analyze whether, as the State asserts, the reservation Argentina entered to Article 21 (right to property) upon ratification of the Convention operates to deprive the Commission of jurisdiction to examine claims otherwise deemed admissible. That reservation provides:

The Argentine Government establishes that questions relating to the Government's economic policy shall not be subject to review by an international tribunal. Neither shall it consider reviewable anything the national courts may determine to be matters of "public utility" and "social interest," nor anything they may understand to be "fair compensation."

64. The State contends that the subject matter of the present case falls clearly within the scope of its economic policy, and as such is inadmissible pursuant to the terms of that reservation. More specifically, the State sustains that the actions of the Central Bank upon which the petition is based were taken pursuant to its duty under domestic law to execute monetary, exchange and economic policy. The petitioners maintain that the subject matter of the claims raised in no way implicates the terms of the reservation.

65. The Commission finds that it is not necessary to pronounce upon the scope or potential effect of the application of this reservation because the State has not demonstrated its direct relevance to the claims now under study. On the one hand, internal law indicates that the Central Bank exercises delegated "police power" with respect to monetary and credit policy.[FN11] In this regard, the State has not shown how the actions complained of implicate the broader issue of national economic policy referred to in the reservation.

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[FN11] See e.g., Supreme Court of Justice of the Nation, Banco Regional del Norte Argentino S.A. s/ recurso de reposición y nulidad, Judgment of 19 December 1991, considerandum 6 (indicating that the regulation of financial and banking activity assumed by the State is delegated to the Central Bank, which exercises a police power in banking matters, and that the activities affect the full range of monetary and credit policy).

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66. On the other hand, the claims in this case that are not barred *ratione personae* derive from Mr. Carvallo Quintana's attempt to seek protection for his rights as a shareholder through the legal action he filed in 1986. The petitioners contend that the judiciary has denied him effective judicial protection and guarantees because the proceedings have been subjected to undue delay before the judiciary and remain pending some 15 years after their initiation. The State has made

no showing as to how this question concerning due process would implicate the application of governmental economic policy under the terms of the reservation.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

67. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement exists to ensure the state concerned the opportunity to resolve disputes within its own legal framework. To the extent that claims raised before this Commission were raised before the domestic courts exclusively on behalf of the BARNA, the State cannot be said to have been placed on notice or to have had the opportunity to resolve disputes concerning Mr. Carvallo Quintana's individual rights. Both for this reason, and those set forth above concerning competence *ratione personae*, that the claims litigated before the domestic courts in the name of the BARNA are not admissible before this Commission.

68. As set forth above, Mr. Carvallo Quintana did invoke domestic remedies in relation to his rights as an individual shareholder in the litigation he initiated against the Central Bank in 1986. The petitioners allege that this recourse has proven ineffective due to undue delay in processing by the judiciary.

69. The Convention provides that when domestic remedies are unavailable as a matter of fact or law, the requirement that they be exhausted is excused.[FN12] More specifically, Article 46(2) specifies that this exception applies: if the legislation of the state concerned fails to afford due process for the protection of the right allegedly violated; if the party alleging violation has been hindered in his or her access to domestic remedies; or if there has been unwarranted delay in the issuance of a final judgment. Consequently, when a petitioner alleges that he or she is unable to prove exhaustion, Article 31 of the Commission's Rules of Procedure establishes that the burden then shifts to the Government to demonstrate which specific domestic remedies remain to be exhausted and offer effective relief for the harm alleged.

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[FN12] See IACtHR, *Exceptions to the Exhaustion of Domestic Remedies* (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Ser. A No. 11, para. 17.

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70. In the instant case, the State contends that Mr. Carvallo Quintana has failed to invoke the remedy which would be appropriate to redress the harms he alleges--namely, bringing suit against the authorities of the BARNA accountable to the shareholders for its management. The State maintains that the proceedings initiated by Mr. Carvallo Quintana in 1986 are a misplaced effort to litigate the rights of the BARNA as a juridical entity. In relation to the petitioners' allegations of delay, the State indicates that the judiciary has processed the matter in accordance

with all applicable time periods, and that any delay is due to the failure of Mr. Carvallo Quintana to exercise his rights as a party.

71. With respect to the State's claim that Mr. Carvallo Quintana has not invoked the appropriate remedy of a shareholder action against the authorities of the BARNA, the Commission observes that the claims presented concern actions of the State alleged to violate the American Convention. A shareholder action of the nature suggested would in no way address such claims against the State.

72. With respect to the State's contention that the action filed by Mr. Carvallo Quintana is nothing more than a misplaced effort to litigate the claims of the BARNA, the Commission again recalls that the complaint was expressly filed on his behalf as an individual shareholder. Among the claims at issue before the Argentine judiciary are allegations which concern individual rights protected under the Constitution and American Convention. Were the case manifestly ill-founded as a matter of internal law, as the State appears to argue before the Commission, it would presumably have been disposed of by the court of first instance by this point in time.

73. With respect to whether there has been unwarranted delay in the issuance of a final judgment, the Commission notes that the complaint was filed on September 12, 1986, and remains pending at first instance. According to the copy of the judicial file before the Commission, the first order for the submission of proof was issued on February 20, 1989, and the proceedings indicate that following a series of interim developments, the case continues in essentially the same stage of accepting evidence. It is not possible at present to predict when this litigation might reach a conclusion, or even a decision at first instance.

74. While civil litigation necessarily has its own requirements: "The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless [alleged] victim ineffective." [FN13] In this sense, the proceedings must be considered as a whole, with reference to the complexity of the case and the conduct of the complainant and the competent authorities.

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[FN13] IACtHR, Case of Velázquez Rodríguez, Preliminary Objections, *supra*, para. 93; Case of Fairén Garbí and Solís Corrales, Preliminary Objections, *supra*, para. 92; Case of Godínez Cruz, Preliminary Objections, *supra*, para. 95.  
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75. The State has alleged that this is a particularly complex case, but has not provided specific arguments or evidence to illustrate specific challenges faced by the judiciary in this regard. It has further alleged that the delay in the case is due to the failure of Mr. Carvallo Quintana to exercise his rights as a party, indicating, for example that he had himself requested the suspension of the proceedings for the purpose of attempting to pursue an out of court settlement. A brief review of the judicial file indicates that on a number of occasions, either or both parties sought suspensions, which were rejected in some instances and granted in others. On one occasion in 1992, for example, the parties were granted 20 days to pursue a settlement, and on another in 1993 they were granted approximately two months. These suspensions do not,

however, explain the duration of the initial stage of the process for 15 years. While the State has argued that the case file is replete with documents showing action in the case, it is not the quantity but the efficacy of that action which is at issue.

76. Under the foregoing circumstances, the duration of the initial stage of the proceedings for 15 years gives rise to a finding that the exception provided in Article 46(2) of the American Convention concerning undue delay is applicable, and that the requirements set forth with respect to exhaustion of domestic remedies are thus excused. It is important to note that, while the invocation of an exception to the requirement of prior exhaustion gives rise to an examination that is closely linked to that of the merits of the allegations raised with respect to judicial protection and guarantees, the standards that apply to admissibility and merits determinations are quite distinct. In particular, while Article 46(2) requires some review of the claims raised for the purpose of deciding whether exhaustion may be excused, given its nature and purpose, Article 46(2) is autonomous vis á vis the substantive norms of the Convention. Any decision as to admissibility is accordingly taken without prejudice to the future review of the merits. In this regard, the causes that have impeded the exhaustion of domestic remedies and any resulting consequences shall be analyzed to the full extent appropriate when the Commission examines the merits of this case to determine whether the claims presented constitute violations of the American Convention.

## 2. Time period for submission of the petition

77. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The six months rule ensures legal certainty and stability once a decision has been taken. The rule does not apply when it has been impossible to exhaust internal remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision. In such a case, Article 32 of the Commission's Rules of Procedure establishes that the deadline for presentation shall be "within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case." Nor does this rule apply where the allegations concern a continuing situation--where the rights of the victim are allegedly affected on an ongoing basis.

78. Given the absence of a final judgment in the present case, the findings set forth in the preceding section concerning domestic remedies and the petitioners' allegations that the case involves an ongoing denial of justice, the Commission considers that this requirement has been met.

## 3. Duplication of proceedings and res judicata

79. Article 46(1)(c) sets forth that the admission of a petition is subject to the requirement that the subject "is not pending in another international proceeding for settlement," and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition which "is substantially the same as one previously studied by" it "or by another international organization."

In the present case, the parties have not claimed and the proceedings do not suggest the existence of either of these circumstances of inadmissibility.

4. Characterization of the facts alleged

80. Article 47(b) of the American Convention sets forth that allegations which do not state facts tending to establish a violation shall not be admitted. In this regard, the Commission finds in the present case that the petitioners have stated claims with respect to the legal proceedings initiated by Mr. Carvallo Quintana to protect his interests as a shareholder which, if shown to be true, could tend to establish the violation of rights protected under the American Convention. As indicated above, claims concerning the BARNA as a juridical entity or related to litigation pursued on behalf of the BARNA before the Argentine courts fall outside the scope of protection of the American Convention.

V. CONCLUSIONS

81. The Commission concludes that it is competent to take cognizance of the instant case and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention, exclusively insofar as Mr. Carvallo Quintana's attempt to seek judicial protection and guarantees for his rights and the alleged judicial delay in the processing of the action he presented before the domestic courts in 1986 are concerned.

82. All claims pertaining to the BARNA as a juridical entity, including concerning its property, and which were litigated or continue to be litigated before the Argentine courts in the name of the BARNA are inadmissible.

83. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case admissible with respect to the alleged violation of the rights of Tomás Enrique Carvallo Quintana recognized in Articles 8, 25 and 1(1) of the American Convention. All claims that have their basis in the rights of the BARNA as a juridical entity, including those concerning its property, are inadmissible before this Commission.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the case.
4. To make this report public, and publish it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, Washington, D.C., on the 14th day of June, 2001. (Signed): Claudio Grossman, President; and Commissioners Robert Goldman, Julio Prado Vallejo, Peter Laurie and Hélio Bicudo. Member Marta Altolaguirre abstained from the vote.