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Title/Style of Cause:	Pedro Velazquez Ibarra v. Argentina
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; First Vice-President: Paulo Sergio Pinheiro; Second Vice-President: Florentin Melendez; Commissioners: Clare K. Roberts, Paolo G. Carozza. Commissioner Victor Abramovich, of Argentine nationality, did not participate in the discussion and decision related to this report, in observance of Art. 17.2.a of the Commission's Rules of Procedure.
Dated:	15 March 2006
Citation:	Velazquez Ibarra v. Argentina, Petition 11.214, Inter-Am. C.H.R., Report No. 40/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
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## I. SUMMARY

1. On September 9, 1993, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” the “Commission,” or the “IACHR”) received a complaint lodged by Pedro Velázquez Ibarra (hereinafter “the petitioner” or “the victim”) against the Argentine Republic (hereinafter “the State,” “the Government,” or “Argentina”). The petition refers to the alleged wrongful withholding of funds under a fixed-term deposit contract, by virtue of a resolution adopted by the Central Bank of the Argentine Republic (hereinafter “the Central Bank” or “BCRA”) on January 1, 1990, and confirmed on January 3, 1990 by decree of the Executive Branch of the National Government (hereinafter “the Executive Branch” or “the PEN”). As a result of the legal provisions cited, the petitioner was unable to recover his deposit in australes, but had to accept it in bonds.

2. The petitioner submits that the State is responsible for violation of the rights of the family, the right to property, the right to equal protection, and the right to judicial protection, considered in relation to the general obligation to respect and guarantee rights, established in Articles 17, 21, 24, 25, and 1.1, respectively, of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), to his detriment and the detriment of his family. He further alleges that the State arbitrarily applied the principles pertaining to suspension of guarantees, contained in Article 27.2 and 27.3 of that instrument.

3. The State requested the Commission to declare the petition inadmissible, on the following grounds: the reservation related to application of Article 21 formulated by Argentina at

the time of ratification of the Convention; the failure to establish the character of the alleged acts as violations to the rights of the family, equal protection, and judicial protection; and, the fact that Law No. 23696 of 1989, which declared a state of economic emergency, did not provide for suspension of guarantees according to the terms of Article 27 of the Convention, but rather for a limitation in the exercise of certain rights.

4. The Commission concludes in this report that the petition is inadmissible, pursuant to the terms of Article 47.b of the American Convention, because it does set forth acts that tend to characterize violations of rights protected by this international instrument. The Commission further decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

## II. PROCEEDINGS OF THE COMMISSION

5. The Commission informed the petitioner that it was initiating proceedings and sent the relevant parts of the petition to the State in a communication on November 9, 1993, granting the Government 90 days to provide the information it deemed appropriate in response to the alleged facts and the exhaustion of remedies under domestic law. On February 28, 1994, the State requested an extension of the term for submitting the relevant information. On March 1, 1994, the Commission replied, granting the State an extension until April 9, 1994 to respond to the complaint, and so informed the petitioners.

6. The State submitted its response to the complaint in a brief dated April 11, 1994, the relevant parts of which were forwarded to the petitioner on April 14, 1994, with the request that he submit any observations deemed appropriate in relation to the State's response within 30 days.

7. The petitioner sent his observations to the State's response on June 10, 1994, and they were forwarded to the State in a communication dated July 6, 1994, in which the State was granted 30 days to send additional information or to submit observations on the petitioner's brief.

8. The State sent observations in a communication dated August 10, 1994, and the relevant parts were forwarded to the petitioner on August 12, 1994. Petitioner was granted a period of 30 days to submit his response to it or provide additional information.

9. On November 14, 1994, the Commission received another communication from the petitioner, containing his observations on the State's latest submission, and the relevant parts of that document were forwarded to the State with a note dated November 18, 1994, which granted it 45 days to submit observations or present any additional information. The State submitted its third document containing observations on January 3, 1995, and it was forwarded to the petitioner with a note dated January 17, 1995.

10. On November 27, 1995 and on February 22, 1996, the petitioner sent to the Commission two documents in which he reiterated his position. On March 25, 1999, the petitioner again set forth his arguments in a brief, in which he also requested the Commission to convene the parties to a hearing for the purpose of reaching a friendly settlement.

11. In communications dated March 31, 1999, and in accordance with the provisions of Article 48.1.f of the Convention, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement.

12. On April 12, 2000, the petitioner submitted a brief in which he once more confirmed his position, and he attached to it certified copies of the file on the amparo action he brought in the domestic courts.

### III. POSITION OF THE PARTIES

#### A. Position of the petitioner

13. The petitioner submits that on December 22, 1989, he concluded fixed-deposit contract N° 7,227,746, for 11 days with the branch of the Bank of Galicia and Buenos Aires located in the city of Formosa (a private banking institution), for the amount of 25,000,000 australes. The terms of the contract would allow him to receive the amount of 30,447,324 australes.

14. The funds were affected by a decision of the Central Bank of the Argentine Republic (document N° A1603) dated January 1, 1990, confirmed on January 3, 1990 by Decree N° 36/90 of the National Executive Branch, which in turn availed itself of the authority conferred on it by Emergency Law 23696. As a result of these provisions, the funds were “frozen,” which means that the petitioner could only withdraw the amount of 1,082,981 australes in cash on January 12, 1990, and could only recover the remainder in the form of official bonds.

15. The petitioner reports that on January 23, 1990, he filed an amparo motion to challenge the decisions adopted, relying the fact that the savings in the fixed-term deposit were for family support. According to the legal provisions cited, funds for the purpose of support were excluded from the emergency measure. The motion, registered as “Velásquez Ibarra Pedro A. vs. Banco Central de la República Argentina and/or the National Executive Branch on the Amparo Action,” was filed with the Federal Court of Formosa, and was denied by the lower court, in a decision issued on March 8, 1990.

16. The petitioner states that he filed an appeal against the decision denying amparo with the Federal Appeals Court [Cámara Federal de Apelaciones] of the City of Resistencia, and in a judgment dated April 10, 1990, it revoked the decision of the lower court judge and, allowing the amparo action, it ordered the Bank of Galicia and Buenos Aires to proceed immediately to deliver the money deposited in December 1989 by the petitioner, together with the corresponding interest. The petitioner then filed a motion for clarification, which resulted in a decision issued on April 24, 1990, which defined various aspects of the payment.

17. The petitioner indicates that the BCRA filed an extraordinary appeal against the judgment of the appeals court that granted the amparo and that, as a result, on November 5, 1991, the Supreme Court of Justice of the Nation (hereinafter “the Supreme Court” or the “CSJN”) set aside that judgment and dismissed the action.

18. The petitioner argues that the decision handed down by the Supreme Court in his case was based on the decision adopted by that same Court in the “Peralta” case, in which the constitutionality of economic emergency decree N° 36/90 was also challenged, but which did not rely on the nature of the savings as family support in requesting restitution. The petitioner alleges that his case fits one of the exceptions contained in the decree, but that the CSJN decided his case by repeating the decision of another case in which the issue was whether the emergency decree under which the measure was established was constitutionally valid or not. He therefore considers that there was no correlation between the matters at issue in the two cases.

19. In this context, he alleges a violation of the right to property contained in Article 21 of the American Convention, since the bonds issued had a 10-year maturity, and that their value at the time of withdrawal represented a confiscatory reduction of the amount deposited. In addition to the violation of Article 21, he alleges violations of the following: Article 17 (rights of the family), in relation to the nature of the savings as support payments, the purpose of which was to provide for his family’s needs, including his five children; Article 24 (right to equal protection), since the provisions that affected him only applied to savings in australes, and not to deposits in dollars; Article 25, by reason of the alleged shortcomings in the courts’ handling of the case; Article 27 (requirements for suspension of rights in a state of emergency); and Article 1.1, the general obligation to respect and guarantee the rights established.

20. He submits that the purpose of the petition is not a review of the Government’s economic policy, as the State alleged in its response, but that it refers to wrongful withholding of funds intended for family support, which is harmful to the family and constitutes a violation of rights under domestic law.

21. Moreover, the petitioner submits that the reservation pertaining to Article 21 that was formulated by Argentina at the time of ratification of the Convention is inconsistent with the purpose and objective of the Convention.

#### B. Position of the State

22. The State has acknowledged that under the economic emergency declared by Law N° 23696 and approved by Congress on August 17, 1989, in a situation described as extremely critical, the Executive Branch established that financial institutions could honor their fixed-term obligations in australes by delivering public bonds, called “1989 external bonds or bonex,” instead of cash payment of the amounts on deposit. The State adds that in the Peralta case, the Supreme Court had confirmed that Congress had not opposed in any way the provisions of the PEN decree.

23. It asserts that the limitation on the use and possession of the petitioner’s assets was temporary in nature and that it was imposed without violating the terms of Article 21 of the Convention, a provision in respect of which the State had formulated a reservation when it ratified that instrument. The reservation indicates, in its relevant part, that “matters related to the government’s economic policy would 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’ or ‘social interest,’ nor anything they may understand to be “fair compensation.”

24. The State argues that because the right to personal property is not one of the rights that Article 27.2 of the Convention considers as subject to suspension, it is perfectly acceptable to limit its exercise. In this regard, it also mentioned that the Supreme Court itself, in its judgment in the Peralta case, recognized that no suspension of constitutional guarantees was established in the case, but rather a temporary limitation on the exercise of rights.

25. The State indicates in this regard that, in its decision in the Peralta case, which was used as a basis to decide the petitioner's claims, the Supreme Court had upheld the constitutional validity of the challenged provision, taking into account that the restriction thus imposed "must be reasonable, limited in time, a remedy and not a change in the substance or the essence of the right acquired by judgment or contract, and that it is subject to the jurisdictional control of constitutionality, since the state of emergency, unlike a state of siege, does not suspend constitutional guarantees." In addition, in that judgment, the Supreme Court reiterated "that the state of emergency must be defined by Congress, a condition that in the case in point was fulfilled by laws 23696 and 23697."

26. With regard to the alleged violation of Article 17 of the Convention, the State pointed out that an extensive interpretation of the legal provision in question, such as the one given by the petitioner, is not appropriate, because in that case, any act that was allegedly a violation of rights protected by the Convention, when the holder of the right was a member of a family, would imply a violation of the right to protection of the family.

27. In the opinion of the State, Article 24 establishes the possibility that legislators may contemplate differently situations that they consider to be different, provided that such distinctions are not made on the basis of arbitrary criteria, and that consequently, the withholding of fixed-term deposits does not constitute a violation of the right to equal protection under the law.

28. Finally, the State contends that the petitioner had a simple and rapid remedy available to him for defense of his rights, an amparo action, which was processed in three courts to guarantee its legitimacy, and that consequently, the right to judicial protection established in Article 25 of the Convention was not violated.

#### IV. ANALYSIS ON ADMISSIBILITY

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

29. The Commission is competent to examine the petition in question. As far as procedural legitimacy is concerned, the petitioner is authorized to lodge complaints on violations of rights protected under the American Convention, in accordance with Article 44 of the Convention and Article 23 of the Commission's Rules of Procedure. The alleged victim, Pedro Velázquez Ibarra, is a person whose rights are protected under that Convention, whose provisions the State is obligated to respect. Argentina has been subject to the jurisdiction of the Commission, in

accordance with the provisions of that Convention, since September 5, 1984, the date on which it deposited the respective instrument of ratification.

30. Inasmuch as the petitioner has alleged violations of Articles 17, 21, 24, 25, 27, and 1.1 of the American Convention, the Commission has competence *ratione materiae* to examine the complaint. The Commission will analyze the scope of its competence in relation to the reservation by the State pertaining to Article 21 in the section dealing with the requirement that the acts characterize a violation of the Convention.

31. The Commission has competence *ratione temporis* to examine the complaint. The petition is based on acts that occurred beginning on January 23, 1990, the day on which the Central Bank issued resolution "A.1603", which established the special mechanism for restitution of funds during the state of economic emergency decreed by Law 23696. The alleged acts therefore occurred subsequent to the entry into force of the State's obligations as a party to the American Convention.

32. Finally, the Commission is competent *ratione loci*, since the petition indicates that the alleged victim was subject to the jurisdiction of the Argentine State at the time the acts occurred, and that they are alleged to have occurred within the territory of that State.

B. Requirements for admissibility

1. Exhaustion of domestic remedies

33. Article 46.1.a of the American Convention establishes that the admissibility of a given petition depends directly on the requirement "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." [FN2] Both the Inter-American Court of Human Rights (hereinafter "the Court") and the Commission have held on repeated occasions that "(...) according to the generally recognized principles of international law and international practice, the rule that requires prior exhaustion of domestic remedies is conceived in the interest of the State, since it purports to exempt the State from having to respond to an international organization for acts imputed to it before it has had an opportunity to remedy them with its own means." [FN3]

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[FN2] See I/A Court H.R., Exceptions to Exhaustion of Domestic Remedies (Article 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-1 1/90 of August 10, 1990, Ser. A N° 11, para. 17.

[FN3] See I/A Court H.R., decision in the matter of Viviana Gallardo et al. of November 13, 1981, Ser. A N° G 101/81, para. 26.

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34. The parties agree that in the instant case, the use and exhaustion of remedies under domestic law have been verified in accordance with the generally recognized principles of international law, on the terms established in Article 46.1 of the American Convention, and the Commission considers that this requirement has been met.

2. Deadline for presentation

35. Article 46.1.b of the Convention establishes that in order for a petition to be admissible, it must have been lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

36. The State argued in its response that it could not specify the precise date on which the judgment of the National Supreme Court of Justice, the final recourse under domestic law, was notified to the petitioner, for the purpose of verifying that the complaint was lodged before the deadline established under the Convention.

37. On page 212 of the case records of the amparo action, there is a notification stamp dated March 18, 1993, addressed to Pedro Velázquez, by which he was notified of the judgment issued by the Supreme Court of Justice. The Commission therefore considers that the complaint received on September 9, 1993 was lodged within the time stipulated by Article 46.1.b of the Convention.

3. Duplication of proceedings and res judicata

38. The case files do not show that the subject of the petition is pending in another international proceeding for settlement, or that it is identical to a petition already examined by this or another international organization. Consequently, the requirements established by Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the alleged facts

39. Article 47.b of the American Convention establishes that the Commission must determine as inadmissible any petition that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention.”

40. For the purposes of analyzing compliance with this requirement, the petitioner’s claims under the American Convention can be divided into categories. The main arguments he presents concern the right to property, and the manner in which the conversion of his fixed-term account into bonds affected his right to personal property. He makes related claims concerning the right to judicial protection, insofar as he considers that the judicial decision denying his claims and upholding the constitutionality of the measures violated his rights under the Constitution and the American Convention. He also raises a claim concerning the right to equal protection, insofar as he alleges that persons with accounts denominated in australes were prejudiced by the measures adopted, whereas the holders of accounts denominated in other currencies were not affected. Further, he indicates that, because his fixed-term account consisted of savings necessary to support his family, its forced conversion into bonds violated the State’s duty to protect the family.

41. With respect to the right to property, the State raises the reservation it filed concerning the scope of Article 21 when it ratified the Convention. It then goes on to argue that the measures

applied to the petitioner's account did not constitute a deprivation of property in the sense of Article 21.2, but rather a temporary limitation on his ability to utilize those funds, in consonance with the limitations that this Article permits.

42. The Commission observes that, insofar as the petitioner has questioned the legitimacy of the measures taken to convert his account into bonds under Article 21 of the Convention, it is called upon to consider the applicability of the reservation the State made to that Article when it ratified the Convention.[FN4] The reservation indicates, in pertinent part,

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."

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[FN4] The reservation was denominated as such, and, pursuant to the terms of the Vienna Convention on the Law of Treaties, was notified as such to the other Parties.

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43. The statement filed by Argentina, insofar as it has the objective of excluding or modifying the legal effect of certain terms under Article 21 as it applies to that state, is understood as a reservation. Article 75 of the American Convention provides that the treaty "shall be subject to reservations only in conformity with the Vienna Convention on the Law of Treaties." Article 19 of the Vienna Convention on the Law of Treaties stipulates in pertinent part that a State party may issue a reservation about certain provisions of a treaty, as long as it is not incompatible with the object and purpose of the treaty.[FN5]

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[FN5] See generally, I/A Court H.R., The effect of reservations on the entry into force of the American Convention on Human Rights Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2; United Nations Human Rights Committee, General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant: 04/11/94. CCPR/C/21/Rev.1/Add.6, confirming this as the basic standard even where the relevant treaty provides no express guidance. Eur. Court H.R., *Belilos v. Switzerland* (1988) Ser. A No. 132. As the Inter-American Court indicated in Advisory Opinion 2/82, the reference in Article 75 "makes sense only if it is understood as an express authorization designed to enable States to make whatever reservations they deem appropriate, provided the reservations are not incompatible with the object and purpose of the treaty." Advisory Opinion OC 2/82, *supra*, para. 35.

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44. Given the special nature of human rights treaties as instruments designed to set forth objective undertaking for the protection of the fundamental rights of individuals, and the characteristics of the system of collective supervision provided,[FN6] it corresponds to the Commission in this instance to determine the potential application and scope of the

reservation.[FN7] As indicated, the American Convention expressly provides for the possibility of filing reservations, as long as these are compatible with the object and purpose of the treaty. “Reservations that offend peremptory norms” or norms of customary international law would necessarily be incompatible with the object and purpose of a human rights treaty.[FN8] Further, a reservation must be linked to a specific provision and indicate in precise terms its relation thereto; insufficient precision with respect to the effects of a reservation may lead to it being severed.[FN9]

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[FN6] See I/A Court H.R., *Hilaire Case*. Preliminary Objections. Judgment of September 1, 2001. Series C No. 80, paras. 94-96, further citing I/A Court H.R., Advisory Opinion OC-2/82, *supra*, para 29.

[FN7] See UN Human Rights Committee, General Comment 24, *supra*, para. 18; Eur. Ct. H.R., *Belilos Case*, *supra*, para. 47.

[FN8] “It [] follow[s] therefore that a reservation which was designed to enable a State to suspend any of the nonderogable fundamental rights must be deemed to be incompatible with the object and purpose of the Convention and, consequently, not permitted by it. I/A Court H.R., *Restrictions to the death penalty* (Arts. 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 61. See generally, UN Human Rights Committee, General Comment 24, *supra*, para. 8.

[FN9] A reservation will, in principle, be interpreted according to the ordinary meaning of the terms used in the context of the treaty. I/A Court H.R., Advisory Opinion 3/83, para. 63. In this sense, the interpretation gives primacy to the text, as it is necessary that the reservation be objectively clear as from the time it is filed. *Id.*, paras. 63-64. See also UN Human Rights Committee, General Comment 24, *supra*, para. 19 (generally); Eur. Ct. H.R., *Belilos Case*, *supra* (concerning insufficient precision); and I/A Court H.R., OC-2/82, *supra* (concerning severability).

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45. The State has argued that any questions relating to its economic policy, per se, would be excluded from review by the terms of its reservation. The ordinary meaning of the terms of the State’s reservation indicates that it intended, at the time of ratification of the American Convention, that the Inter-American Commission and Court not review questions that are inherently related to the Government’s economic policy. In the present case, the petitioner’s claims concerning the legitimacy of the economic control measures taken by the State would constitute questions inherently related to the Government’s economic policy, and would fall within the scope of the reservation. Insofar as the formulation of economic policy corresponds in the first instance to the State, the Commission considers that the reservation filed, understood as applying in this sense, precludes an examination of the determinations that policymakers at the national level necessarily made when formulating the economic policy that gave rise to the claims in the present case.

46. At the same time, the Commission notes that a reservation may not be understood as depriving the Commission from reviewing the implementation of such policy if violations of peremptory norms such as the right to judicial protection or nondiscrimination were placed at

issue. Nor does this mean that all questions that relate to the implementation of economic policy would fall within the reservation. In prior cases in which the State has invoked its reservation, the Commission has declined to apply the reservation in matters concerning the remuneration of judges[FN10] and the right of retirees to collect their pension benefits.[FN11] In a case concerning the rights of an individual shareholder in a bank, the Commission found that, while the State had invoked this reservation, it did not bear a direct relation to the principal claims of undue delay in the administration of justice that had been presented.[FN12]

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[FN10] See IACHR, Report N° 39/98, Case 11.774, Héctor Hugo Boleso, Argentina, Admissibility, September 24, 1998.

[FN11] See IACHR, Report N° 03/01, Case 11.670, Amilcar Menéndez, Juan Manuel Caride, et al. (Social Security System), Argentina, Admissibility, January 19, 2001.

[FN12] See IACHR, Report N° 67/01, Case 11.859, Tomás Enrique Carvallo Quintana, Argentina, Admissibility, June 14, 2001.

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47. Taking into account the text and effects of the reservation, the Commission will not look to the causes and consequences of the economic crisis that gave rise to the measures that were applied to the petitioner's account insofar as these relate to Article 21 of the Convention. The Commission will examine whether the petitioner has presented claims concerning questions of implementation of economic policy and norms which would tend to characterize a violation of the right to judicial protection, equal protection and to protection of the family under the American Convention.

48. With respect to the right to judicial protection, the petitioner contends that the judicial authorities acted arbitrarily in their decisions handed down in the amparo proceeding. He argues that, regardless of the constitutionality of the measures, and even accepting the validity of the reservation, since his deposit was for family support, it comes under the exception for family support stipulated in the norm applied, and that this was precisely the issue he raised in his amparo motion. He alleges that the appeals court acknowledged the characterization of the deposit as family support, and that the Supreme Court could not have reviewed that established characterization, because it was not the subject of the complaint in the brief filed by the opposing party, the BCRA, in that proceeding. He further alleges that the Supreme Court decision invokes the legal grounds of the Peralta case, which is not related to his case. He explains that while his case was based on the characterization of the deposit as family support, in the Peralta case, the issue was whether the decree of necessity and urgency by which the measure was established was constitutionally valid or not. Consequently, it is his position that there is no correlation between the issues debated in the two cases, and that the Supreme Court decision is invalid because it lacks foundation.[FN13]

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[FN13] "The 'Peralta case' is substantially different from the petitioner's claim regarding funds that were alleged, proven, and accepted as intended for family support." Observations of the petitioner, June 10, 1994.

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49. Having reviewed all the information provided by the parties, including the judgments issued by the three courts of review, the Commission notes that in his amparo action, the petitioner stated that his purpose was to challenge Document A1603 of the BCRA and its legal framework, “since it unfairly affects the right to property” recognized in the National Constitution. The complaint indicates in this regard that “the seriousness of the sudden intervention of the BCRA to the detriment of the right to property, the inviolability of which is incontestably recognized as deeply rooted in the Constitution, amply supports the inference of the present amparo action ... since that action ... does not pursue the ‘mere review of a prejudicial act, but involves a true process of verification of constitutionality.’”[FN14] It is only in Section IV of his amparo motion, that is to say after 21 pages of arguments on the invalidity of the norm applied, that the petitioner invokes the nature of the deposit as family support, with a view to offering “some considerations that could be used to evaluate and decide on the amparo action brought.” In this regard, the Commission observes that the national courts understood that the principal complaint brought before them had to do with whether or not the norms applied were valid. The lower court rejected the amparo action on the grounds that it was without merit. The appeals court accepted it and issued an opinion on the invalidity of the BCRA document and the PEN Decree. Finally, the Supreme Court dismissed the complaint on the grounds that it considered the norms challenged to be constitutional.

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[FN14] Complaint of Mr. Velázquez Ibarra, court records, page 38.

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50. The Commission cannot in principle review decisions issued by national courts that were acting within their field of competence and with due judicial guarantees, unless it considers that there was a possible violation of the American Convention,[FN15] because “in the first instance, it is within the purview of the national authorities, and especially the courts, to interpret and apply domestic law.”[FN16]

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[FN15] See, for instance, IACHR Report N° 88/99, Case 12013, Lino Oviedo, Paraguay, September 27, 1999, paragraph 26; Report N° 87/98, Case 11216, Oscar Vila-Masot, Venezuela, October 12, 1998, para. 15; Report N° 48/98, Case 11403, Carlos Alberto Marín Ramírez, Colombia, September 29, 1998, para. 35; Report N° 4/97, Nelson Jiménez, Colombia, March 14, 1997, paragraph 25; Report N° 39/96, Case 11673, Santiago Marzioni, Argentina, October 15, 1996, para. 50.

[FN16] IACHR, Report N° 70/01, Case 12055, Galante, Argentina, August 3, 2001, para. 65.

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51. This is because in principle, the IACHR does not have the authority to superimpose its own interpretations on evaluations of facts by domestic organs, since if it were to do so, it would be taking on the character of a “fourth jurisdictional level.” The jurisprudence of the Commission has been consistent in this regard.

52. Hence, the IACHR has maintained, since its first pronouncement on this issue, that:

The Commission is competent to declare a petition admissible and to decide on its merits when it refers to a domestic judicial decision that has been handed down without due process, or that apparently violates any other right guaranteed by the Convention. If, however, the petition merely asserts that the judgment was wrongful or unjust per se, it must be rejected in accordance with the formula set forth above. The function of the Commission is to guarantee observance of the obligations assumed by the states parties to the Convention, but it cannot act as a higher court of appeal to examine alleged errors of law or of fact that may have been committed by the domestic courts that were acting within the scope of their competence.[FN17]

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[FN17] IACHR, Report No. 39/96, Case 11673 (Marzioni, Argentina), October 15, 1996

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53. The Commission does not find evidence to demonstrate arbitrary conduct in the judicial proceedings. According to the arguments and documents, Mr. Velásquez Ibarra had access to the remedies of the domestic legal system, which responded to his petitions within the framework of its competence and in apparent conformity with the rules of due process. The fact that the domestic courts based their decisions on the claims of the parties related to the validity of the measures applied is consistent with the arguments raised by the petitioner in his complaint, and does not imply manifest arbitrariness. The appeals court allowed the amparo action on the grounds that the decree was unconstitutional. Therefore, the extraordinary appeal was pertinent, and reference to the precedent of the Peralta case, which spoke precisely to the validity of that same decree, does not make this an issue that would fall within the scope of Articles 21 or 25 of the American Convention. According to the mandate of the Commission, it cannot reopen proceedings concluded in the domestic legal system to review again the allegations brought. If it were to do so, it would be interpreting domestic law, which is outside its field of competence. By virtue of the foregoing, the Commission is of the opinion that it is not competent to resolve the merits of the matter, hence to analyze it, since the alleged facts do not tend to demonstrate a violation of Articles 21 or 25 of the Convention.

54. In previous reports, the Commission has held that “judicial protection as recognized by the Convention includes the right to fair, impartial, and prompt proceedings, that offer the possibility, but never the guarantee, of a favorable result. A negative result emanating from a fair trial does not per se constitute a violation of the Convention.”[FN18] In this matter, the parties agreed that, in the circumstances of the present case, constitutional amparo was a suitable remedy to challenge the legitimacy of government acts that provided for the temporary withholding of fixed-term deposits, and that the petitioner had full access to that remedy, which led to a well-founded decision on the merits of his claim, without entailing a violation of the right to judicial protection. Although on various occasions the petitioner referred to an alleged lack of independence on the part of the members of the Supreme Court at the time of the acts in question, it never submitted allegations or specific information to support what were offered as mere assertions. Consequently, the Commission considers that a violation of Article 25 of the Convention has not been established.

[FN18] See for example IACHR, Report N° 6/98, Case 10382, Máximo Rodríguez, Argentina, February 21, 1998, para. 71.

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55. Moreover, the information submitted by the petitioner does not contain sufficient evidence to establish unequal treatment under the terms of Article 24 of the American Convention. The conditions of withholding and later repayment of the fixed term deposits, established by Central Bank Communication N°A1603 and PEN Decree 36/90, were applied identically to all persons subject to their prescriptions. The fact that these legal provisions differentiated between deposits denominated in australes and deposits denominated in dollars does not in and of itself constitute discriminatory treatment under the American Convention, and the petitioner did not offer other arguments or sufficient information to establish unequal treatment according to the terms of that Article. Consequently, that complaint is also inadmissible.

56. The Commission notes that the petitioner's allegation to the effect that the economic situation of his family group was affected by the decisions adopted by the Central Bank and the PEN in January 1990 lacks its own foundation, since it is raised as a consequence of the alleged violation of the right to personal property. Moreover, the petitioner did not make a complaint or provide separate arguments or grounds on the issue of protection of the family in the motions and appeals he filed with in the domestic courts. Instead, he offered a series of arguments on the nature of the deposits as family support, as a legal basis for the amparo action and to bring his case within the scope of the exceptions stipulated in the relevant norms applicable to deposits in australes. Thus the information submitted to the Commission does not tend to establish a violation of Article 17 of the American Convention.

## V. CONCLUSION

57. The Commission concludes that the facts set forth in the petition do not tend to establish violations of rights protected by the American Convention.

On the basis of the aforesaid factual and legal arguments,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case inadmissible by virtue of the provisions of Article 47.b and c of the American Convention on Human Rights.
2. To notify the State and the petitioner of this decision.
3. To publish this decision and include it in the Annual Report of the IACHR to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 15th day of the month of March, 2006.  
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio, Pinheiro, First Vice-President;

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Florentín Meléndez, Second Vice-President, Clare K. Roberts, Paolo G. Carozza and Víctor E Abramovich, Commissioners.