Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 5/09; Case 11.400
Session:	Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause:	Josefina Ghiringhelli de Margaroli and Eolo Margaroli v. Argentina
Doc. Type:	Report
Decided by:	President: Luz Patricia Mejia Guerrero; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo Carozza. Commissioner Victor E. Abramovich, an Argentine citizen, did not take part in the deliberations or decision of this case, as provided in Article 17.2.a of the Commission's Rules of Procedure.
Dated:	16 March 2009
Citation:	Ghiringhelli de Margaroli v. Argentina, Case 11.400, Inter-Am. C.H.R., Report No. 5/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANTS: Silvia Hass and Alicia Olivera
Editor's Note:	The number of the last paragraph of this decision is out of sequence in the original.
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On October 31, 1994, the Inter-American Commission on Human Rights (hereafter "the Commission," the "Inter-American Commission," or the "IACHR") received a petition lodged by lawyers Silvia Hass and Alicia Olivera (hereafter "the petitioners"), against the Argentine Republic (hereafter "the State," the "Argentine State," or "Argentina"), for violation of the following rights protected in the American Convention on Human Rights (hereafter "the American Convention" or "the Convention"): the right to a fair trial (Article 8.1) and the right to property (Article 21) to the detriment of Josefina Ghiringhelli de Margaroli and Eolo Margaroli (hereafter "the victims"). In 1997 Josefina Margaroli, daughter of the victims, and Sergio Luís Maculan began representing them.

2. In its Report on Admissibility Nº 104/99, the Commission said that the petitioners' arguments describe facts that, if true, could possibly constitute violations of the right to a fair trial (Article 8.1) and the right to property (Article 21) set forth in the Convention.

3. The petitioners state that they are the owners of real property in Argentina's federal capital, on which they began construction of an eight-story building with plans approved by the municipal authorities in 1977. A municipal ordinance in 1979 affected the setback of the property and limited the size of the building, so in 1981 the owners filed an "inverse or irregular"

expropriation action against the Municipality of Buenos Aires. They obtained a final ruling in their favor in 1985, which ordered the municipality to pay compensation for the strip of land expropriated and to compensate Mr. and Mrs. Margaroli for the damages caused by the partial expropriation of the land. They say that in compliance with this judgment the petitioners were compensated for the expropriated land at the end of 1985, and later the municipality registered the title of the property, so it was unavailable and could not be encumbered. However, in 1989, when the 1985 ruling was still being executed because the direct damages had not yet been compensated, the Municipality of Buenos Aires issued a new municipal ordinance declaring the property unencumbered, because there was no longer of public utility. The petitioners say they challenged this measure in court, obtaining a favorable ruling on appeal, which was overturned by the Supreme Court on April 12, 1994.

4. The petitioners state that the Supreme Court decision of April 12, 1994, violated the principle of res judicata established in Article 8.1 of the Pact of San José by revoking the final judgment of April 22, 1985. As regards Article 21 of the Convention, the petitioners argue that in the instant case the right to property suffered a double assault: first against the expectation for the use and enjoyment of the property with the consequent loss of income, and second against the rights derived from the final judgment of April 22, 1985. The petitioners say that although they were deprived of the use and enjoyment of their property for more than 16 years they have not received fair compensation for this deprivation.

5. The State argues that none of the rights recognized in the American Convention have been violated to the detriment of the petitioners. The State says that the petitioners failed to give the Municipality of Buenos Aires possession of the expropriated property by not giving the appropriate impetus for execution of the 1985 ruling, knowing that until the expropriation was fully implemented it could be revoked based on Article 29 of the Expropriation Law. The State argues that res judicata in the area of expropriation is not equivalent to the general legal criteria on the matter. Furthermore, the State says that the National Civil Appeals Chamber, in its decision of June 11, 1991, validated termination of the expropriation, without objection from the petitioners. Moreover, the State says in its observations on the merits that it ratifies the validity of the reservation made with regard to Article 21 of the Convention at the time of ratification of the American Convention.

6. In this Report, the Commission concludes that the State of Argentina did not violate Articles 21.2 and 8.1 of the American Convention, in connection with the provisions of Article 1.1 of that treaty, to the detriment of Mr. and Mrs. Margaroli.

II. PROCESSING BY THE COMMISSION AFTER THE REPORT ON ADMISSIBILITY

7. The Commission approved its Report on Admissibility Nº 104/99 on September 27, 1999. The report was transmitted to the parties in a note of October 12, 1999.

8. In a communication received on November 18, 1999, the petitioners agreed to begin the friendly settlement procedure for which the Commission made itself available as noted in point four of the resolution of Report Nº 104/99. On January 27, 2000, the IACHR received updated information from the petitioners that was transmitted to the State on March 3, 2000. The

government, in a note received on March 14, 2000, declined the IACHR's offer to start the friendly settlement procedure. This note was forwarded to the petitioners on March 28, 2000.

9. The petitioners submitted observations on May 1, 2000, which were transmitted to the State on May 23, 2000. The IACHR received another note from the State on May 2, 2000, which was forwarded to the petitioners on May 15 of that year. The Commission received a communication from the petitioners on June 19, 2000. The State requested an extension in a note received on July 26, 2000. The IACHR granted an extension of 30 days on July 31 of that year. On September 7, 2000, the IACHR acknowledged receipt of the petitioners' note of August 21 of that year. The State requested another extension on September 5, 2000, which the Commission granted on September 7, 2000, for a period of 60 days. On November 8, 2000, the IACHR acknowledged receipt of the petitioners' note received on September 28, 2000. On December 8, 2000, the petitioners sent another note to the IACHR.

10. In a communication received on July 31, 2001, the State submitted its observations on the merits, which were transmitted to the petitioners on August 31, 2001, with a deadline of two months to present observations. The petitioners submitted their observations on the merits in a note received on November 21, 2001, which were forwarded to the State on April 26, 2002. The State submitted observations on July 1, 2002, which were transmitted to the petitioners on September 3, 2002. The petitioners sent notes to the IACHR on July 17 and September 25, 2002. The IACHR acknowledged receipt of the latter note on January 8, 2003. Subsequently, the petitioners sent notes to the IACHR on July 2 and 7, 2003. On June 4, 2004, additional information was received from the petitioners, for which the IACHR acknowledged receipt on June 22, 2004.

11. The IACHR received notes from the petitioners on May 4 and June 1, 2005, asking for movement in the case and a prompt decision. Later, on July 9, 2006, the IACHR received another note from the petitioners asking for expedited processing, receipt of which was acknowledged on June 28, 2006. On September 8, 2006, and February 9, 2007, the IACHR received additional communications from the petitioners in the same vein. Receipt of the latter communication was acknowledged on February 26, 2007. Later, on June 15 and August 27, 2007, the petitioners sent more notes that were acknowledged on July 23 and November 2, 2007. On December 18, 2007, the petitioners sent a note that was acknowledged on January 3, 2008.

12. Subsequently, the IACHR requested different information from both the petitioners and the State on September 15, 2008, including copies of the principal records from the respective legal actions. The Commission received a note from the petitioners on October 10, 2008, which was forwarded to the State for its information on January 13, 2009. The State requested a one-month extension in addition to the period initially granted in the note of October 15, 2008. The IACHR did not receive the court records from either the petitioners or the State.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

13. In their submissions, the petitioners state that Mr. and Mrs. Margaroli owned real property located at Calle Raulet Nº 113/115/117 in Buenos Aires, Argentina, upon which they decided to build an eight-story building, with 24 apartments and two stores. The Municipality of Buenos Aires approved plans for this building in 1977.

14. The petitioners say that in early 1979 the Municipality of Buenos Aires enacted a municipal ordinance as a result of a general project for urban planning and traffic management. The petitioners state that this ordinance affected the setback of the building, reducing the size of the property. The petitioners say that the 1979 ordinance impacted Mr. and Mrs. Margaroli' property by removal of a six-meter strip of frontage all along Calle Raulet, and along 60 additional streets. According to the petitioners, this impact could be dealt with by three different procedures: 1) setting the expropriation amount by mutual agreement in an administrative procedure; 2) a legal proceeding of direct expropriation, which means that the expropriator files a petition, the court sets the amount, and the ruling is final; or 3) by "inverse or irregular" expropriation, which is when the party whose rights are affected starts the expropriation proceeding until obtaining a final judgment.

15. In the instant case, the petitioners say that since the structure was already built to the fourth floor, they filed suit for inverse or irregular expropriation, because at any time the State could start a direct expropriation proceeding. In addition, the petitioners say that the sales price of a building subject to expropriation is substantially reduced, especially in a country with slow and cumbersome judicial proceedings. The petitioners state that the cumulative effect of the setback ordinance and others establishing the square feet that could be built on the new land area reduced their buildable property from 1,380.00 m2 to 157.00 m2, so the property value was drastically reduced.

16. Therefore, the petitioners say that pursuant to Law 21.499 (the Expropriation Law), they filed suit for total "inverse or irregular" expropriation in 1981 against the Municipality of Buenos Aires in Civil Court Nº 27 of the federal capital.

17. The petitioners say that a first-instance ruling was handed down on June 11, 1984. It declared that given that there had been partial expropriation the petitioners should receive direct compensation, and set the amount of compensation. The ruling also ordered the Municipality of Buenos Aires to pay for demolition of what had been built on the land not expropriated within a 45-day period, or at its option to pay for the cost of said work, because the building had already been built to the fourth floor.

18. According to the petitioners, the ruling of June 11, 1984, was appealed by Mr. and Mrs. Margaroli as well as by the Municipality of Buenos Aires. Finally, on April 22, 1985, Court D of the National Civil Appeals Chamber in the capital upheld the first-instance court decision and increased the amounts to be paid as compensation. The petitioners say they received payment for initial settlement in July 1985 for the partial expropriation of the property. The petitioners add that the new title of the land expropriated was registered to guarantee that the expropriated land was unavailable and could not be encumbered, as provided in Article 24 of Law 21.499. The petitioners say that later they gave the Municipality the definitive invoice (as a result of delays in payment of the initial settlement), which was paid by deposit of the corresponding check. After

this payment, the municipality requested possession of the expropriated part of the land, which the petitioners refused to grant because the building constructed on the two parts had not yet been demolished.

19. The petitioners say that these procedures were prolonged because of problems with the fees of lawyers and other professionals involved, and because of the extremely slow written proceeding needed to resolve challenges, transfers, and incidents.

20. The petitioners say the finally the municipality exercised the option to pay the cost of clearing the land that had not been expropriated in order to take effective possession, and asked the petitioners to present the invoice. The petitioners say that the invoice[FN2] was finalized on March 14, 1989, given the problems posed by this task at that period, when the rampant inflation made it nearly impossible to establish the cost of materials (which often doubled in a single day) and wages that were constantly changing, and the costs of insurance (for liability and work accidents), for which contracts were needed. The petitioners argue that the Buenos Aires city government had and still has thousands of agents including architects, engineers, and others professionals, so the municipality could have prepared the invoice and presented it in the file, instead of requiring it to be done by the petitioners, who had to incur additional expense to do so.

[FN2] The petitioners reported in their note of June 22, 1995, that the invoice was for 1,700,000 pesos.

---

21. In the final analysis, the petitioners allege that ruling of the Civil Appeals Chamber on April 22, 1985, had the nature of res judicata, because the municipality did not appeal it and paid the amount for the expropriated strip, beginning execution of the sentence. Furthermore, when the municipality told the petitioners to submit the invoice for the costs of clearing the site it was clear that it was continuing to execute the decision. According to the petitioners, when the invoice was finalized on March 14, 1989,[FN3] the municipality had to deposit the amount set within 30 days, i.e., before April 28, 1989.

[FN3] Stated by the petitioners in their submission of November 21, 2001.

---

22. The petitioners say that the municipal ordinance of April 20, 1989, cancelled the expropriation on Calle Raulet – that is, a single street of all those covered by the ordinance of March 6, 1979 – so the municipality refused to pay the invoice on the grounds that the act of expropriation had not been completed, as required by Article 29 of Law 21.499, given that on April 20, 1989, the municipality had not been given possession of the expropriated property. At the same time, the municipality reserved the right to reclaim the amounts already paid. The petitioners say that since the municipal ordinance was published in the Municipal Bulletin on May 9, 1989, with no specific date for entry into force, based on Article 2 of the Civil Code it entered into force on May 17, 1989.

23. The petitioners say that they opposed the removal of the property from the expropriation because they had been deprived of any use of the strip for ten years. According to the petitioners, the paralyzed construction was evidence of the denial of the use and enjoyment of the property they owned.

24. The petitioners state that on August 2, 1989, the judge upheld that the expropriation had been rescinded based on Article 29 of Law 21.499 and the revocation of the declaration of public utility. The petitioners say they appealed that ruling. Finally, the Civil Chamber ruled in their favor on June 11, 1991, stating that since the plaintiffs were deprived of their property for a long period, with construction paralyzed, the right deriving from res judicata "was incorporated in their property under Article 17 of the Constitution…."

25. The petitioners say that the Municipality of Buenos Aires filed a remedy (recurso de hecho) before the Supreme Court, which ruled on it on April 12, 1994. In that ruling the Supreme Court found that although res judicata is not subject to review, it was in this case because it violated the principle of reasonableness since the revocation of the declaration of public utility affected the primary and secondary issue. It also states that the damages caused should be the subject of another trial. The petitioners insist that the courts have no authority to apply a rule before it becomes law. Under Argentine legislation, a law enters into force on the eighth day after its publication. In addition, the petitioners argue that when the Supreme Court handed down its ruling it knew: a) the existence of the final judgment, based on the authority of res judicata; b) that implementation of the final judgment had begun[FN4]; and c) that the expropriation was revoked because of the 1989 ordinance, which did not exist on that date and, thus could not be retroactive.

[FN4] The petitioners state that the second paragraph of whereas I of the Supreme Court decision says "Subsequently—after the actual value of the affected portion was paid and the cost of demolition was determined—the expropriation was declared rescinded as a result of enactment of Ordinance No. 43.529, which removed the property from the process."

---

26. The petitioners say that the ordinance did not rescind the expropriation, but withdrew Calle Raulet from the setbacks affected by Ordinance No. 34.778/79. It was the Supreme Court that actually rescinded the expropriation for the petitioners.

27. The petitioners argue that in this case there was a violation of their right to property, recognized in Article 21 of the American Convention, and in Articles 14 and 17 of the Constitution. The petitioners hold that in this case there were two attacks on the right to property: the first against the expectation for use and enjoyment of it, with the consequent loss of income; and the second against the rights arising from the administrative action. The petitioners say that the impact on their property was legally demonstrated in the ruling of June 11, 1984. Furthermore, they say that the municipality's attitude constitutes an application of the principle of estoppel,[FN5] because the municipality asked the petitioners to do acts to comply with the verdict, only to later attempt to reverse these actions with a contrary act (the 1989 ordinance).[FN6]

[FN5] The petitioners say that estoppel implies adopting the theory of proper acts according to which a proper act already done cannot be contradicted if it led third parties to act with good faith toward the author of said act.

[FN6] The petitioners cite paragraph 29 of the Neira-Alegría judgment (preliminary objections) of the Inter-American Court of Human Rights: "…International practice indicates that when a party in a case adopts a position that is either beneficial to it or detrimental to the other party, the principle of estoppel prevents it from subsequently assuming the contrary position. Here the rule of non concedit venire contra factum proprium applies."

---

28. The petitioners further argue that in the instant case there was a violation of Article 8.1 of the Pact of San José as a result of the violation of the principle of res judicata, a basic element of legal security and due process. They say that the rights emanating from res judicata in the material sense are incorporated in the property of the person enjoying them, as provided in Article 17 of the Constitution (right to property). The petitioners say that the Supreme Court's decision of April 12, 1994 expressly overturned the ruling of Court D of the Civil Appeals Chamber of April 22, 1985. The petitioners say that this decision is inconsistent with the uniform jurisprudence of the Supreme Court on res judicata.[FN7]

[FN7] In this regard, the petitioners cite the ruling in Roccatagliata v. Municipal Social Welfare Institute of March 1, 1994: "Respect for res judicata is a pillar of our constitutional system and therefore may not be altered even by the invocation of laws for public order, because stability of judgments as a sine qua non of judicial security is also a requirement for public order with higher ranking."

---

29. The petitioners say that the decision of April 12, 1994, required them to pay procedural costs as provided in Article 68 of the Civil and Commercial Procedure Code, which establishes a general principle[FN8] of Argentine law. The petitioners argue that in the instant case what should have been applied was Article 29 of the Expropriation Law, which says costs are the responsibility of the expropriator who has desisted, because that special provision supersedes the general one. The petitioners say that it is clear that the Court acted contrary to law in its ruling by assuming powers prohibited by the Constitution, to the great detriment of Mr. and Mrs. Margaroli.

[FN8] "- The party losing the suit shall pay all costs of the other party, even when it has not been requested. However, the judge may exempt the losing litigant totally or partially from this responsibility when the judge considers it appropriate, stating it in the ruling, under penalty of nullity."

---

30. In addition, the petitioners say the Supreme Court decision made Municipal Ordinance Nº 43.529/89 retroactive, violating Articles 2[FN9] and 3[FN10] of the Civil Code, constitutional guarantees, and Article 9 of the American Convention.

[FN9] The petitioners say Article 2 of the Civil Code stipulates: "Laws shall not be binding until they are published and from the date set. If a time is not set, they shall be binding eight days following their official publication."

[FN10] The petitioners say that according to Article 3 of the Civil Code: "From their entry into force…They shall not have retroactive effect whether of public order or not, unless specified otherwise. In no case shall retroactivity established by law affect rights supported by constitutional guarantees."

---

31. The petitioners say that the Supreme Court decision was based solely on the part of Article 29 of Law 21.499 that says: "Expropriation shall be understood to be completed when ownership has been transferred to the expropriator in a final judgment, and the expropriator has taken possession and paid the compensation." However, the petitioners maintain that it is the expropriator's responsibility to take actions for this purpose and its failure to do so cannot prejudice the party whose property was expropriated, because it would be contrary to law to benefit the party that failed to fulfill its obligations to the detriment of the party that did fulfill its obligations.

32. The petitioners say they do not seek to alter the verdict of the Supreme Court, which would be a fourth instance, but rather that the State assume the consequences of the illegal decision, making restitution to them for the serious impact of that decision, and pay them the sum ultimately awarded. The petitioners say that after they lodged the petition at the international level, they filed legal, administrative, and legislative (impeachment) charges against various officials at the domestic level, to no avail. The petitioners add that they also filed charges with the Ombudsman of the City of Buenos Aires and the National Ombudsman, which decided respectively on December 5, 1997 and January 27, 1998, not to consider them because they had been presented at the international level.

33. The petitioners seek full reparation based on the illicit action of the Supreme Court in the decision of April 12, 1994 and damages for that decision's effect on them. The petitioners say that based on the harm caused the State should compensate Mr. and Mrs. Margaroli with the sum of $32,376,663 plus compensatory interest at the rate of 3% per month as stipulated in Argentine law, from September 1, 1995, the date of the previous invoice.

34. Concerning the allegations of the State about the reservation to Article 21 of the American Convention, the petitioners say that their petition does not deal with matters "inherent to the government's economic policy," and that they do not question what "domestic courts determine to be causes of public utility and social interest, nor what they consider to be fair compensation." The petitioners say that their claim concerns a decision absolutely contrary to law, and that the settlement sought was for the damages caused by that illegal ruling. In addition, the petitioners say that the reservation to the Convention cited by the government in its note of

March 14, 2000, is extemporaneous, because the government never raised this exception in previous submissions nor in the hearing held by the Commission on September 7, 1995. The petitioners state that although they have been deprived of the use and enjoyment of their property for 16 years they have not received fair compensation for this deprivation, and currently have to continue paying for the lawyers' fees from the years of struggle to defend their rights.

35. Concerning the allegations of the State regarding a fair trial, the petitioners say the State appears to ignore the long proceeding that culminated with the violation of the right to property and the right to be heard within a reasonable time. The petitioners say it would be futile to file a suit for compensation as proposed in the Supreme Court ruling of 1994, especially taking into account the prolonged duration of trials in Argentina, the high cost of legal fees (in this case 3% of the amount sought to file damage suits), the honoraria for lawyers and experts, and the advanced ages of the clients.

36. In their arguments on the merits stage, the petitioners say the facts denounced constitute violations of Articles 8.1, 9, and 21 of the American Convention on Human Rights.

B. Position of the State

37. As regards the alleged violation of res judicata advanced by the petitioners, the State says they are incorrect in their interpretation that the Supreme Court decision of April 12, 1994 expressly overturns the one handed down by Court D of the Civil Appeals Chamber on April 11, 1985. For the State, the Supreme Court knew the case as a result of the compliant filed by the Municipality of Buenos Aires, given that the ruling of April 22, 1985 validated payment of a sum of money (needed for removal of masonry and pilings and for clearing the petitioners' property), although it upheld the municipal ordinance of 1989 that removed Calle Raulet from the streets determined to be of public utility and therefore negated the expropriation.

38. The State says that in view of the ruling of the Civil Appeals Chamber on June 11 1991, which upheld a lower court ruling that upheld rescission of the expropriation, but required the municipality to pay costs for cleaning the site, the municipality filed a special appeal (recurso extraordinario) that was rejected, and a complaint motion (recurso de queja) that was admitted by the Supreme Court.

39. The State maintains that since there was a judicial recognition of the rescission of the expropriation, which the petitioners accepted because they were only interested in obtaining the compensation, the petitioners permitted interruption of the process of execution of the Chamber's 1985 ruling, which they now allege was "expressly revoked" by the Supreme Court's decision.

40. The State says rescission of the expropriation was based on the Expropriation Law Nº 21.499, which authorizes rescission and valid interruption of execution of the judgment when the expropriation has not been completed, and when the expropriator removes the public utility categorization that gave rise to it, as in this case. The State says that since the petitioners did not challenge the constitutionality of the former law, they cannot accuse the State of violation of the right to a fair trial because the courts decided to accept an act terminating expropriation—in the

case of Calle Raulet—and consequently to interrupt execution of the Chamber's 1985 ruling, in accordance with the provisions of Article 29 of Law Nº 21.499, which expressly authorizes such interruption in these circumstances.

41. The State argues that res judicata on the subject of expropriation is not comparable to the general legal criteria on it, because the execution of a decision ordering expropriation can be validly interrupted for the legal reasons established. Since the petitioners never challenged this possibility, there is no ground for protesting that the courts have applied a law in the framework of their competence concerning due process.

42. The State believes that the petitioners are trying to use the Inter-American Commission as a fourth jurisdictional instance under the pretext of alleged violation of their right to a fair trail. The State argues that this right was not violated, because at no time in the proceedings were the petitioners denied access to any judicial instance, and in all of them they were able to state their claims and assert their rights.[FN11]

[FN11] The State's communication received by the IACHR on May 5, 1995.

---

43. The State holds that it is the petitioners' own conduct that made it impossible to duly execute the Appeals Chamber ruling of April 22, 1985, by not giving the appropriate impetus for concluding the expropriation by filing many motions and appeals and all sorts of incidents. The State says that Mr. and Mrs. Margaroli received administrative authorization for construction and demolition of what was there in 1977. Although the municipal ordinance that changed the frontage lines was enacted in 1979, the petitioners did not file suit against the municipality for inverse expropriation until September 8, 1981, i.e., nearly three years later. In addition to that suit, the State says the petitioners filed another one against the Municipality of Buenos Aires on June 1, 1983, which was five years after enactment of the restrictive ordinance, claiming damages, which were ruled completely unjustified. The State says that although the Chamber's ruling of April 22, 1985, upheld the expropriation and therefore the obligation of the municipality to clear the property or pay the costs for clearing, the petitioners submitted the respective invoice on April 8, 1988, i.e., three years after the Chamber's definitive ruling.[FN12]

[FN12] Communication presented by the State on July 31, 2001.

---

44. In the State's view, Mr. and Mrs. Margaroli filled the record with a systematic policy of challenges that included honoraria for their own lawyers, experts, etc., which expanded the case file to five volumes. The State says that in this case, although the substantive case lasted only from June 1, 1983, to September 13, 1985, by virtue of continuous challenges and problems related to the professional fees of those involved in the process, "the petitioners stretched the case out until September 27, 1995. That is, 10 years more than it took to settle the primary case."[FN13] The State says that the foregoing shows that there is no basis for the petitioners' assertion that the proceeding suffered great delay.

[FN13] Communication presented by the State on July 31, 2001.

---

45. In short, the State argues that the petitioners denied possession of the expropriated property to the Municipality of Buenos Aires by not taking any procedural action for execution of the ruling, knowing that until the expropriation was concluded it could be cancelled as provided in Article 29 of Law Nº 21.499.

46. With respect to the petitioners' allegations that the Supreme Court decision validated "a nonexistent law" and gave retroactive character to the ordinance contrary to law and in violation of their constitutional rights, the State says that such allegations are extemporaneous because the petitioners did not appeal the Chamber's ruling of June 11, 1991, that upheld rescission of the expropriation. The State asserts that since the petitioners consented to the ruling by not filing a special appeal (recurso extraordinario) against the Chamber's ruling, they did not exhaust domestic remedies and therefore the petition is not within the competence of the Inter-American Commission.[FN14]

[FN14] Communication presented by the State on July 31, 2001.

---

47. Concerning the petitioners' allegations that the Supreme Court decision altered Article 29 of the Expropriation Law, imposing the costs on the petitioners, the State says that the Supreme Court imposed the costs on the petitioners for the complaint motion, as the losing party, in accordance with the Civil and Commercial Procedure Code. According to the State, Article 29 of the Expropriation Law applies to costs arising from proceedings involving interruptions from rescission of the expropriation. The State says that in the instant case the costs imposed derive from an expropriation proceeding, but of a different nature, because there was no dispute about whether or not to proceed with the expropriation or its cancellation, but rather about the arbitrariness of the ruling, a separate issue, and therefore subject to provisions on costs that govern such proceedings.

48. The State further says that it is not acceptable to consider this aspect because it is matter of interpretation of a law on costs made by the Supreme Court in the sphere of its competence, which in no way infringed on due process.

49. The State says that the petitioners misled the Commission to declare the petition admissible by stating Court D of the National Civil Appeals Chamber upheld the principle of res judicata and overturned the lower court ruling. The State says that the National Appeals Chamber decision did not overturn the lower court ruling but upheld it, validating the 1989 municipal ordinance and hence the rescission of the expropriation. Based on the above interpretation, the Chamber's ruling stated that under 1989 municipal ordinance the expropriation was cancelled because it had not been completed. Moreover, it held that the Municipality of Buenos Aires had to assume the costs of removal of what had been built owing

to the "long time" during which the owner had been deprived of the property and the alleged damages resulting from halting the project. The State says that the Supreme Court, on the complaint motion filed by the Municipality of Buenos Aires, ruled in 1994 that "the court cannot validly base its decision on damages resulting from the long time in which the owner was deprived of the property, or on damages arising from suspension of construction, because those issues were not raised and discussed during the trial."[FN15]

[FN15] Communication presented by the State on July 31, 2001.

---

50. The State says that based on the foregoing, nothing stated in points 50 and 51 of Report on Admissibility Nº 104/99[FN16], approved by the IACHR on November 27, 1999, is correct.

[FN16] Paragraphs 49 and 50 of Report on Admissibility Nº 104/99:

49. The Commission will now analyze, first, whether the remedies exhausted by the petitioners before the domestic courts were appropriate; and, second, whether the extraordinary unconstitutionality appeal was appropriate for resolving the violations. First of all, from its analysis of the case file, the Commission believes that the domestic remedies were exhausted in this case, noting that after a municipal act affected a strip of land belonging to them, the petitioners filed a total "inverse or irregular" expropriation action. This claim was admitted in the petitioners' favor and partially implemented by means of payment for the expropriated strip of land, and they later requested implementation of the provisions regarding "payment for the demolition and removal of the piles" by submitting the corresponding invoice.

50. However, after this request for implementation of the sentence was made, the municipality filed a "false implementation" objection, arguing that there was no reason for it since the process had terminated with the "extinguishment" of the obligation through the ordinance unencumbering the strip of land. The first-instance court ruled in the municipality's favor and the National Civil Appeals Chamber overturned that decision, rejecting the municipality's objection and ruling in the petitioners' favor.

---

51. With respect to the petitioners' allegations that during the years of the case their right to property was violated, the State maintains that Mr. and Mrs. Margaroli were never deprived of the use and enjoyment of their property. The State says that on July 11, 1977, the petitioners received administrative authorization to construct a building on Calle Raulet. Later, the municipality decided in Ordinance No. 34.778, nearly two years after the building permit was issued, to adopt a new setback line for said street. However, the ordinance expressly said that the change in the frontage lines would apply to new construction, so the petitioners had no obstacle to proceed with the project as planned and as authorized by the municipality. The State adds that there was no restriction whatsoever on ownership of the property that would prevent Mr. and Mrs. Margaroli from its use, lease, conveyance, encumbrance, etc. The State says that the petitioners halted construction on their own accord and not due to any legal impediment to completion of the project. The State says that the petitioners recognized the foregoing in their action for the inverse expropriation of the property by admitting that the applicability of the

ordinance was for new construction, and therefore did not affect the project approved for Mr. and Mrs. Margaroli, but based their claim on the alleged "criminal liability for fraud" that they could have if they continued with the project, as they were authorized to do, and later sold the apartments built.

52. The State says that the foregoing argument was based on the premise that if the purchasers wanted to partially or totally modify the building in the future, this would imply its demolition, and therefore "…they would be indirectly defrauding the purchasers, because if they wanted to make improvements to the building in the future they would have to respect the new building line."[FN17] The State therefore agrees with the petitioners that the halted construction is evidence, but not of an impediment to use and enjoyment of the property but rather of their peevishness and intent to allege liability of the State in order to obtain compensation.

[FN17] Communication presented by the State on July 31, 2001.

---

53. As for the total restitution sought by the petitioners, the State says the petitioners simultaneously pursued actions for inverse expropriation of the affected property and for alleged damages caused by the new ordinance on their property, which was rejected by the National Civil Appeals Chamber in its ruling of September 29, 1987, as out of order because the petitioners had already received compensation as a result of the trial for inverse expropriation. With regard to the lost income alleged by the petitioners, the Chamber's ruling says that Law 21.499 expressly precludes compensation for hypothetical income. Furthermore, "the petitioners received timely and appropriate compensation in the ruling of the Appeals Chamber of April 22, 1985."[FN18]

[FN18] Communication presented by the State on July 31, 2001.

---

54. The State argues that none of the rights guaranteed in the American Convention has been violated to the detriment of the petitioners.

55. In addition, in its note of July 31, 2001, the State asserts, for the first time in the proceeding before the Commission, the validity of the reservation made with respect to Article 21 of the American Convention, which 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."

56. The State maintains that the legal validity of the reservation is tied to its timely incorporation in the instrument of ratification of the Convention. It says that since there was no

objection from any of the other signatory States, it is fully in force, and is a mandatory observation for the Commission, so the petitioners' position thereon is irrelevant.

57. The State further argues that the Commission lacks competence to consider the present case because it cannot assume the role of a higher court to review alleged errors of fact or law that may have been committed by domestic courts within their areas of competence.

IV. MERITS

A. Initial considerations of fact

58. The arguments and documentation submitted to the Commission indicate that Mr. and Mrs. Margaroli were owners of real property located at Calle Raulet Nº 113/115/117 in Buenos Aires, Argentina, upon which they decided to build an eight-story building, with 24 apartments and two stores. The Municipality of Buenos Aires approved plans for this building on July 11, 1977.

59. On February 22, 1979, the Municipality of Buenos Aires enacted Ordinance No. 34.778,[FN19] as a result of a general project for urban planning and traffic management. This ordinance annulled section 6.1.2 "Streets with Municipal Lines for Private Construction" in the City Planning Code and replaced it with another that included 47 streets in the city of Buenos Aires, among them Calle Raulet, between Caseros and Sáez avenues,[FN20] owned by Mr. and Mrs. Margaroli. The purpose of Ordinance No. 34.778 was to establish a setback in front of buildings on those streets for future construction, to widen the streets.

[FN19] The case file contains a copy of the ordinance published in the Municipal Bulletin of the City of Buenos Aires on March 6, 1979.
[FN20] Municipal Ordinance No. 34.778, Article 2.

---

60. As a result of this ordinance, the petitioners' property was affected by requiring that future buildings must have a setback of six meters all along Calle Raulet,[FN21] considerably reducing the buildable area of the property. Due to this impact on their property, in 1981 the petitioners filed action for "inverse or irregular" expropriation[FN22] against the Municipality of Buenos Aires before Civil Court Nº 27 of the federal capital.[FN23]

[FN21] Ordinance No. 34.778 amended Article 4 (4) (2) of the City Planning Code established in Article 3: "All new construction fronting on the streets contained in the list "Streets with Municipal Lines for Private Construction," in section 6 of this code, shall have the setbacks from the center of the street as indicated therein…."
[FN22] Under Article 51 of Law 21.499, the Expropriation Law published in the Official Bulletin on January 17, 1977: "Irregular expropriation is in order in the following cases: a) When although there is a law declaring a property to be of public utility, the State takes it without having paid the respective compensation; b) When declaration of a property to be of public

utility renders real property unavailable because of the clear difficulty or impediment for its use in normal conditions; c) When the State imposes an improper restriction or limitation on the right of the owner of property or a house that violates the right to property."
[FN23] "Margaroli Eolo and Another v. Municipality of the City of Buenos Aires on Irregular Expropriation."
---

61. The first-instance ruling was handed down on June 11, 1984, granting the irregular expropriation requested, based on Article 51.c of Law 21.499.[FN24] The ruling established the amount to be paid by the city as follows: 819,862 Argentine pesos for the expropriated strip and 2,482,506 Argentine pesos in mitigation of direct damages. The ruling ordered the Municipality of Buenos Aires to pay the petitioners a total of 3,302,368 Argentine pesos, plus costs, within 30 days.[FN25] This ruling was appealed by both the petitioners and the Municipality of Buenos Aires.

[FN24] Article 51.c of the Expropriation Law: "Irregular expropriation is in order in the following cases: c) When the State imposes an improper restriction or limitation on the right of the owner of property or a house that violates the right to property."[FN25] National Civil Appeals Chamber, Court D, ruling of April 22, 1985, court records of "Margaroli Eolo and Another v. Municipality of the City of Buenos Aires on Irregular Expropriation.".
---

62. On April 22, 1985, Court D of the National Civil Appeals Chamber upheld the first-instance declaration of partial expropriation and ordered the State to pay compensation for the expropriated strip and demolition expenses, as well as legal costs.[FN26] As for the amount to be paid to the petitioners for the expropriation, the National Appeals Chamber said:

…on March 3, 1983, the value of the expropriated strip was 67,037 Argentine pesos, and the direct damages sustained by the plaintiffs was 202,985 Argentine pesos. In all, 270,022.01 Argentine pesos. This amount, which has not been challenged in suit, shall be adjusted in accordance with the general wholesale price index as of today….The definitive adjusted amount is 15,200,000 Argentine pesos.[FN27]

[FN26] National Civil Appeals Chamber, Court D, ruling of April 22, 1985, court records of "Margaroli Eolo and Another v. Municipality of the City Buenos Aires on Irregular Expropriation".
[FN27] National Civil Appeals Chamber, Court D, ruling of April 22, 1985, Whereas IV.
---

63. Concerning compensation for damages caused by the partial expropriation of the land (direct damages), Court D of the Civil Appeals Chamber said that full reparation would require:

…demolition of the existing construction on the site and removal of the piles installed for security of the building under construction. The land remaining as the owners' property shall be fully available and free from any obstacle that could hinder its full use.

Therefore, the works mentioned in the previous paragraph shall be done by the Municipality of the City of Buenos Aires within 45 days, or failing that – at the city's option – the cost of these tasks shall be established with the appropriate evidentiary means in the stage of execution of the ruling, and the defendant shall pay the resulting sum of money within a period of 30 days from approval of the final invoice.[FN28]

[FN28] National Civil Appeals Chamber, Court D, ruling of April 22, 1985, Whereas V. Pursuant to Article 2511 of the Argentine Civil Code: "No person shall be deprived of property except for reasons of public utility, after dispossession and fair compensation. Fair compensation in this case includes not only the real value of the property, but direct damages deriving from the loss of it."

---

64. As for payment of costs, the ruling of April 22, 1985, assigned costs at both levels to the Municipality of Buenos Aires based on Article 68 of the Civil and Commercial Procedure Code.[FN29] Since the Municipality of Buenos Aires did not appeal said ruling, it became final.[FN30] In compliance with this ruling, in July 1985 the municipality paid Mr. and Mrs. Margaroli 15,200,000 Argentine pesos for the value of the expropriated strip.[FN31] In addition, and pursuant to Article 24 of the Expropriation Law,[FN32] the petitioners recorded the legal action in the Property Register.[FN33] Subsequently, the municipality sought possession of the expropriated property, which the petitioners refused to grant because the municipality had not demolished the building constructed.[FN34]

[FN29] Article 68 of the Civil and Commercial Procedure Code: "The party losing the suit shall pay all costs of the other party, even when it has not been requested. However, the judge may exempt the losing litigant totally or partially from this responsibility when the judge considers it appropriate, stating it in the ruling, under penalty of nullity."
[FN30] Note from the petitioners received on November 10, 1998, not contested by the State.
[FN31] Stated by the petitioners in their original petition received by the IACHR on October 31, 1994, reiterated by them in the note received on December 23, 1998, and confirmed by the State in its note of December 28, 1998.
[FN32] Article 24 of the Expropriation Law: "The legal action shall be noted in the Property Register, and from that moment the property is unavailable and may not be encumbered."
[FN33] Information presented by the petitioners in their original petition received by the IACHR on October 31, 1994, and not contradicted by the State throughout the proceedings.
[FN34] Information presented by the petitioners in their original petition received by the IACHR on October 31, 1994, and recognized by the State in its note of July 30, 2001.

---

65. Some time later the municipality decided that instead of demolishing the existing construction and removing the piles installed, it would ask the petitioners to present the invoice for the costs of demolition and clearing of the land, which was done.[FN35]

[FN35] The petitioners have not said in their notes nor submitted evidence that would prove precisely when the municipality told them to present this invoice and when they presented it, although the IACHR requested this information in a note of September 15, 2008. In their various communications the petitioners alleged that this invoice became final on March 14, 1989. The State, in its note of July 31, 2001, said that the petitioners presented this invoice on April 8, 1988.

---

66. Later, on April 20, 1989, the municipality approved Municipal Ordinance No. 43.529, which deleted Calle Raulet in the section between Caseros and Sáez avenues from List Nº 6 (1) (2) of the Urban Planning Code, canceling the expropriation, based on the fact that the property was no longer determined to be of public utility.

67. The petitioners submitted the invoice for the costs of demolition and clearing of the land before the municipal ordinance was enacted April 20, 1989[FN36], which was published on May 9 of 1989.

[FN36] Whereas I, second paragraph, of the Supreme Court ruling of April 12, 1994. The State, in its note of July 31, 2001, said that the petitioners presented this invoice on April 8, 1988.

---

68. On April 28, 1989, which was before that date, the Municipality of Buenos Aires alleged that the expropriation had been cancelled by the above municipal ordinance, to deny further execution of the ruling of April 22, 1985.[FN37]

[FN37] The file contains: Act of rescission submitted by Carlos G. Bollaert, for the defendant in the court records of “Margaroli Eolo and Another v. Municipality of the City of Buenos Aires on Irregular Expropriation ” received in Civil Court No. 27 on April 28, 1989.

---

69. On August 2, 1989, the first-instance court handed down a decision on the action filed by Mr. and Mrs. Margaroli to oppose the removal of the property from the expropriation list.[FN38] In that ruling the court cancelled the partial expropriation based on the removal of the public utility classification of the property in the ordinance of April 20, 1989, given that the expropriation had not been perfected as provided in Article 29 of the Expropriation Law,[FN39] and title had not been transferred as established in Article 577 of the Civil Code.[FN40]. In addition, it required the petitioners to pay costs based on Article 68 of the Civil and Commercial Procedure Code.[FN41] The petitioners appealed this ruling in the National Civil Appeals Chamber.

[FN38] Margaroli Eolo and Another v. Municipality of the City of Buenos Aires on Irregular Expropriation, Ruling of August 2, 1989.
[FN39] Article 29 of the Expropriation Law: "The expropriator may withdraw from the action while the expropriation has not yet been finalized. The costs shall be met by him. An expropriation shall be considered finalized when transfer of ownership to the expropriator has taken place by means of a final ruling, the taking of possession, and the payment of compensation."
[FN40] Article 577 of the Civil Code: "Until the property is transferred, the creditor has no legal rights to it."
[FN41] Ruling of August 2, 1989, Whereas III. Article 68 of the Civil and Commercial Procedure Code: "- The party losing the suit shall pay all costs of the other party, even when it has not been requested. However, the judge may exempt the losing litigant totally or partially from this responsibility when the judge considers it appropriate, stating it in the ruling, under penalty of nullity."

---

70. On June 11, 1991, the National Civil Appeals Chamber confirmed the rescission of the partial expropriation based on withdrawal of the classification of public utility for the property, and ordered the Municipality of Buenos Aires to pay damages caused by the partial expropriation of the property, as had been ordered by Court D of the Civil Appeals Chamber in it ruling of April 22, 1985, based on the principle of res judicata. Specifically, the Appeals Chamber said:

…, although the expropriation was cancelled by the act of rescission, this had no effect on the sentence in said case, which remains valid because of the res judicata principle. To accept the criteria of the defendant, the stability of legal decisions would depend on the will of one of the parties, which to suit its interests could produce an act of rescission that would absolve it of all responsibility and nullify its own acts. (…) The fact is that for a long period the plaintiff was deprived of the use of his property, and with the building construction paralyzed for many years, which had to be demolished, he would now be deprived of it because of an arbitrary attitude of the defendant, because the plaintiff's right emanating from the material res judicata was incorporated in his property, based on Article 17 of the Constitution (see C.D., 21-5-76, ED 67-411; 17-9-85, case of Hilanderías Olmos S.A., etc)…".[FN42] (Boldface removed from text)

[FN42] Margaroli Eolo and Another v. Municipality of the City of Buenos Aires on Irregular Expropriation, Decision of June 11, 1991.

---

71. The Municipality of Buenos Aires filed a special appeal (recurso extraordinario), which was denied, and then a complaint motion (recurso de queja) before the Supreme Court, which was decided on April 12, 1994, accepting the complaint as valid and canceling part of the appealed ruling.[FN43] For the Supreme Court, when the expropriation was cancelled its direct and indirect effects disappeared, as did the obligation to compensate the petitioners for the expropriated strip as well as for the damages occasioned thereby. In the Court's view, these

damages should be sought in another legal proceeding, but it did not say which one. Specifically, the Court said that:

4º) ...When the municipal authority revokes the designation of public utility, which removes the cause for expropriation, there is no basis for the expropriation sentence or the acts of reparation ordered as a consequence thereof.
5º) That, moreover, the court cannot validly base its ruling on damages arising from the long time in which the plaintiff was deprived of his property, or damages arising from paralysis of the construction, because those circumstances were not the subject of debate and evidence in the litigation. It should be added that if such reparation were in fact due to the contact of the defendant, the plaintiff could obtain it using the means provided in the legal structure.[FN44]

[FN43] The case file contains the decision of April 12, 1994, Supreme Court: "De-facto appeal deduced by the defendant in the case of Margaroli Eolo and Another v. Municipality of the City of Buenos Aires.
[FN44] Decision of April 12, 1994, Supreme Court, Whereases IV and V.

---

72. As of this date, the IACHR has no information that the municipality has reclaimed the compensation received by the owners for the strip initially expropriated.[FN45]

[FN45] Reported by the State in its note of December 28, 1998. Not contradicted by the petitioners to date.

B. Considerations of Law

1. Preliminary considerations

73. The Commission, based on the procedural principle of preclusion, which presumes that all stages of the proceeding are carried out successively with the definitive closing of each of them, precluding the return to stages and times in the proceeding that are completed, did not refer to the arguments on admissibility made by the State of Argentina in this stage of the proceeding. Similarly, based on that principle, the Commission shall not analyze the arguments of the petitioners concerning the alleged violation of Article 9 of the American Convention, presented for the first time in the merits stage. The Commission already established the scope of the case in its Report of Admissibility Nº 104/99 of September 27 1999.

2. Right to Property (Article 21) in connection with the obligation to respect human rights (Article 1.1)[FN46] of the American Convention on Human Rights

---

[FN46] Article 1.1 of the American Convention: "1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons

subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

---

74. Article 21 of the American Convention guarantees the right to property. It says:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. (…)

75. Articles 14 and 17 of Argentina's national Constitution state:

Art. 14.- All the inhabitants of the Nation are entitled to the following rights, in accordance with the laws that regulate their exercise, namely: to work and perform any lawful industry; to navigate and trade; to petition the authorities; to enter, remain in, travel through, and leave the Argentine territory; to publish their ideas through the press without previous censorship; to make use and dispose of their property; to associate for useful purposes; to profess freely their religion; to teach and to learn.
Art. 17.- Property may not be violated, and no inhabitant of the Nation can be deprived of it except by virtue of a sentence based on law. Expropriation for reasons of public interest must be authorized by law and previously compensated….

76. The Constitution of the autonomous city of Buenos Aires states in paragraph 5 of Article 12:

5. The inviolability of property. No resident may be deprived of it except by a ruling based on law. Expropriation must be based on public utility, which shall be established by law and with compensation in advance for its fair value.

77. The Inter-American Commission notes that in its observations on the merits[FN47] the State invoked the reservation it made at the time of ratification of the Convention concerning Article 21.[FN48] Given that the Commission admitted the instant case as regards the alleged violation of the right to property established in Article 21 of the American Convention, it must first consider its applicability and scope.

[FN47] Note from the Government of Argentina received by the Inter-American Commission on July 31, 2001.
[FN48] The reservation was labeled as such, and as established in the Vienna Convention on the Law of Treaties, was so notified to the other States Parties.

---

78. According to Article 75 of the American Convention, a State may make reservations concerning certain provisions of that international treaty provided that they are not incompatible with its object and purpose.[FN49]

Any reservation intended to permit the State to suspend one of these fundamental rights, which can in no case be derogated, must be considered incompatible with the object and purpose of the Convention and therefore not authorized by it.[FN50]

[FN49] Article 19 of the Vienna Convention on the Law of Treaties; Report on Inadmissibility Nº 40/06, Pedro Velázquez Ibarra, of March 15, 2006, paragraph 43; I-A Court, 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, paragraph 35; European Court of Human Rights, Belilos v. Switzerland (1988) Ser. A No.132.
[FN50] Report on Inadmissibility Nº 40/06, Pedro Velázquez Ibarra, of March 15, 2006, paragraph 43; I-A Court, Restrictions on 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, paragraph 61.

---

79. The text of the reservation registered by Argentina is as follows:

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.”

80. The Commission understands that the ordinary meaning of the terms used of the reservation indicates the intent of the State of Argentina at the time of ratification of the American Convention, was that the Commission and the Inter-American Court not review questions inherently related to the government’s economic policy,[FN51] those concerning the grounds that the State may have to deprive an individual or group of persons of their property (cases of public utility and social interest), and the compensations that domestic courts award to Argentine residents when their right to property is restricted.

[FN51] See Report on Inadmissibility Nº 40/06, Pedro Velázquez Ibarra, of March 15, 2006, paragraph 45.

---

81. With respect to Article 21.2 of the Convention, the Commission notes that this article establishes three requirements for a State to deprive an individual of property: 1) that the deprivation be based on reasons of public utility or social interest; 2) that it be done in the cases and according to the forms established by law; and 3) that just compensation be paid. Since the reservation can only be applied in a manner compatible with the object and purpose of the Convention,[FN52] the Commission shall consider whether in the light of the facts proved and

the parties' allegations the property rights of Mr. and Mrs. Margaroli were affected by the State in accordance to the forms established by law or the principle of lawfulness,[FN53] respecting their rights to protection and a fair trial.

[FN52] Article 31.1 of the Vienna Convention on the Law of Treaties: "I. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."
[FN53] I/A Court H.R., Salvador-Chiriboga v. Ecuador Case. Preliminary Objections and Merits. Judgment of May 6, 2008 Series C No. 179, paragraph 64.

---

82. Concerning the principle of lawfulness, the Commission recalls that one of the basic principles of a democratic society is that any interference of a public authority in the property of an individual must be done in accordance with the forms established by law in the country in question.[FN54]

[FN54] ECHR, Case of Belvedere Alberghiera S.r.l v. Italy, Application no. 31524/96, paragraph 56.

---

83. In the instant case, the petitioners say that violation of their ownership was legally demonstrated in the judgment of June 11, 1984, which upheld the irregular expropriation. In addition, they say that the municipality violated the principle of estoppel, because it asked the petitioners to do a series of actions to carry out the verdict of April 22, 1985, so they incurred additional expenses, and later reversed the expropriation through a contrary act (enactment of the ordinance of 1989). The petitioners say that although they have been deprived of the use and enjoyment of their property for 16 years they have not received just compensation.

84. The State, for its part, maintains that Mr. and Mrs. Margaroli were never deprived of the use and enjoyment of their property. It adds that both the lower court ruling of August 2, 1989, and the one handed down at the appeal level on June 11, 1991, legally recognized the rescission of the expropriation, i.e., the validity of the ordinance of 1989, a point that was not challenged by the petitioners. The State says that the petitioners refused to grant possession of the expropriated land to the Municipality of Buenos Aires by failing to initiate any action for implementing the court decision, knowing that if the expropriation were not perfected it could be reversed pursuant to Article 29 of Law 21.499. The State says that res judicata on the subject of expropriation is not comparable to the general legal criteria on it, because the execution of a decision ordering expropriation can be validly interrupted for the legal reasons established.

85. The Commission notes that the Constitution of the Autonomous City of Buenos Aires, like the Argentine National Constitution and the American Convention, contemplates the possibility of depriving residents of their property upon prior payment of fair compensation, based on a court ruling grounded in law, for reasons of public utility. In this case, according to the facts proved and the parties' allegations, when Mr. and Mrs. Margaroli's right to property

was affected by the municipal ordinance of 1979, for reasons of public utility, the petitioners filed suit against the Municipality of Buenos Aires for inverse or irregular expropriation in 1981, which was awarded in the first-instance ruling on June 11, 1984, and upheld in the ruling of Court D of the National Civil Appeals Chamber on April 22, 1985. This decision was final, because it was not appealed by either Mr. and Mrs. Margaroli or the Municipality of Buenos Aires. The amount fixed for compensation in the judgment of April 22, 1985, was paid to Mr. and Mrs. Margaroli at the end of 1985.

86. When analyzing whether the expropriation was done in accordance with the forms and procedures established by law, the Commission notes that Article 29 of the Expropriation Law required three elements for an expropriation to be considered completed: 1) transfer of title to the expropriator in a final ruling; 2) taking possession, and 3) payment of compensation. The State and the petitioners agree that the Court decision was recorded in the Property Register, and as of that time the property was unavailable and could not be encumbered. Nor is there any disagreement between the parties that Mr. and Mrs. Margaroli refused to transfer the expropriated land to the municipality, after payment of the compensation, because the constructed part of the building had not been demolished and the land cleared. Therefore, when the April 20, 1989, municipal ordinance was enacted, as regards Mr. and Mrs. Margaroli' property, the expropriation was not completed under Argentine legislation, as interpreted by the judicial authorities in the lower court ruling of August 2, 1989, the ruling of the Appeals Chamber on June 11, 1991, and the decision of the Supreme Court on April 12, 1994. Mr. and Mrs. Margaroli did not appeal that decision, therefore consenting to the rescission of the expropriation.

87. The Commission notes that the actions in this case confirm that the petitioners' property was affected by an expropriation proceeding for 10 years, and that in connection with that proceeding Mr. and Mrs. Margaroli received compensation of 15,200,000 pesos in 1985. It also notes that in 1989 the State issued a decree removing the property from the expropriation. The Commission has no information to determine whether the amount paid should have been modified (increased or reduced) after the municipal ordinance of 1989, and in view of the terms of the reservation, has no competence in any case to comment on what domestic courts consider to be "just compensation."

88. Based on the foregoing, the Commission concludes that in the instant case the State of Argentina did not violate Article 21.2 of the Convention in connection with Article 1.1 of the same instrument.

3. Right to a fair trial (Article 8.1 of the Convention) in connection with the obligation to respect human rights (Article 1.1 of the American Convention)[FN55]

[FN55] Article 1.1 of the American Convention: "1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

---

89. Article 8.1 of the American Convention states:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

90. With respect to the reasonableness of the time, the Commission recalls the jurisprudence of the Inter-American Court, which says:

…, Article 8.1 of the Convention establishes the guidelines of the so-called "due process of law", which consists in the right of every person to be heard with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, for the determination of his rights.[FN56]. The reasonable time referred to in Article 8.1 of the Convention must be analyzed in relation to the total duration of the proceeding until a final judgment is rendered .[FN57]

[FN56] I/A Court H.R., Salvador-Chiriboga v. Ecuador Case. Preliminary Objections and Merits. Judgment of May 6, 2008. Series C No. 179, paragraph 56; I/A Court H.R., Genie Lacayo v. Nicaragua Case. Judgment of January 29, 1997. Series C No. 30, paragraph 74.
[FN57] I/A Court H.R., Salvador-Chiriboga v. Ecuador Case. Preliminary Objections and Merits. Judgment of May 6, 2008. Series C No. 179, paragraph 56; I/A Court H.R., Suárez Rosero v. Ecuador Case. Judgment of November 12, 1997. Series C No. 35, paragraph 70; I/A Court H. R., López Álvarez v. Honduras Case. Judgment of February 1, 2006. Series C No. 141, paragraph 129; and I/A Court H. R., Acosta Calderón v. Ecuador Case. Judgment of June 24, 2005. Series C No. 129, paragraph 104.

---

91. The petitioners say that although they were deprived of the use and enjoyment of their property for more than 16 years they have not received fair compensation for this deprivation and currently have to continue paying for the lawyers' fees from the years of struggle to defend their rights. The petitioners argue that the Buenos Aires city government had and still has sufficient agents including architects, engineers, and other professionals, so the municipality could have prepared the invoice ordered in the ruling of April 22, 1985, instead of requiring it to be done by the petitioners, who had to incur additional expense to do so.

92. The State, for its part, holds that it is the petitioners' own conduct that made it impossible to duly execute the Appeals Chamber ruling of April 22, 1985, by not giving the appropriate impetus for completing the expropriation by filing many motions and appeals and all sorts of incidents. The State says that although the Chamber's ruling of April 22, 1985, upheld the expropriation and therefore the obligation of the municipality to clear the property or pay the costs for clearing, the petitioners submitted the respective invoice on April 8, 1988, i.e., three years after the Chamber's final judgment. In the State's view, Mr. and Mrs. Margaroli filled the

record with a systematic policy of challenges that included honoraria for their own lawyers, experts, etc., which expanded the case file to five volumes. The State says that in this case, although the substantive case lasted only from June 1, 1983, to September 13, 1985, by virtue of continuous challenges and problems related to the professional fees of those involved in the process, "the petitioners stretched the case out until September 27, 1995. That is, 10 years more than it took to settle the primary case." The State says that the foregoing shows that there is no basis for the petitioners' assertion that the proceeding suffered great delay.

93. Following the Inter-American Court's jurisprudence, the Commission will proceed to analyze three elements in the light of the specific circumstances of this case in order to determine the reasonableness of the time: a) the complexity of the case; b) the legal actions initiated by the interested party; and the conduct of the legal authorities.[FN58]

[FN58] I/A Court H.R., Valle-Jaramillo and et al. v. Colombia Case. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 155; Genie Lacayo v. Nicaragua Case. Merits, Reparations, and Costs. Judgment of January 29, 1997. Series C No. 30, paragraph. 77; I/A Court H.R., Bayarri v. Argentina Case. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, paragraph 107, and I/A Court H.R., Heliodoro-Portugal v. Panama Case. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, paragraph 149.

---

94. The Commission notes, taking into account domestic legislation as well the proved facts, that the proceeding established for an irregular expropriation suit in Argentina was not complex but actually expeditious,[FN59] in which the domestic judge determines the amount of the compensation if he or she considers there has been a violation of the owner's property rights.[FN60] Concerning the conduct of the legal authorities, the Commission notes that in the instant case they settled the direct and irregular expropriation claim submitted by the petitioners between 1981, the date in which the suit was filed, and April 22, 1985, which was four years later. Subsequently, in connection with the effects of the municipal ordinance of April 20, 1989, the petitioners filed an action in 1989 (they did not specify the date), which resulted in the Supreme Court's decision on April 12, 1994, which was five years later.

[FN59] See Article 51 of Law 21.499.

[FN60] Article 10 of Law 21.499 provides that: "Compensation shall only include the objective value of the property and damages that are the direct and immediate result of the expropriation…."

---

95. In terms of the legal actions started by the interested party, the Commission notes that the petitioners did not file any appeal against the second-instance ruling of April 22, 1985, so they did not demonstrate dissatisfaction with it. In carrying out this ruling, the municipality paid the amount established for compensation for the expropriated strip, the petitioners recorded the Court decision in the Property Register, and the municipality sought possession of the

expropriated property, which the petitioners refused to convey because the Municipality of Buenos Aires had failed to comply with the provisions concerning direct damages or damages arising from the expropriation.

96. The Commission notes that according to the proved facts, the decision of April 22, 1985, gave the municipality the option of demolishing the existing construction on the site and leaving the land fully available within 45 days, or requesting the petitioners to determine the cost of said tasks and paying them the resulting sum of money within 30 days of approval of the final invoice. The Municipality of Buenos Aires elected the second option, and asked the petitioners to submit the invoice for the cost of clearing the land that was not expropriated. However, the Commission does not have information on the date this request was made, although it requested this information from the petitioners.[FN61] As for the date on which the petitioners submitted this invoice, throughout the processing of this case by the IACHR they said that it became final on March 14, 1989, not specifying the date on which the presented it, nor submitting documentation to prove the previous assertion, although it was expressly requested by the IACHR.[FN62] The State says that the petitioners presented their invoice on April 8, 1988, i.e., three years after receiving a favorable decision. Concerning the action filed after the adoption of the municipal ordinance of April 20, 1989, which excluded Mr. and Mrs. Margaroli' property from the expropriation, the petitioners did not challenge the court ruling upholding the rescission of the expropriation, i.e., the validity of the municipal ordinance of 1989.

[FN61] Request for information made by the IACHR to the petitioners in a note of September 15, 2008.

[FN62] Request for information made by the IACHR to the petitioners in a note of September 15, 2008.

---

97. The Commission therefore finds that the petitioners failed to respond in a timely manner in compliance with the ruling of April 22, 1985, by refusing to grant possession of the expropriated property to the Municipality of Buenos Aires, and by presenting the invoice for the land clearing expenses nearly three years after the ruling, in a proceeding that took some four years. Subsequently, when their property was excluded from the expropriation, Mr. and Mrs. Margaroli failed to contest this as well.

98. Based on the foregoing, the Commission concludes that since the inactivity in the proceeding in the instant case was due to the attitude assumed by the petitioners, there was no violation of the reasonableness of the time recognized in Article 8.1 of the Convention in connection with Article 1.1 of that instrument.

V. CONCLUSIONS

156. The Commission, based on the considerations of fact and law presented above, concludes that in the instant case there was no violation of Articles 21.2 and 8.1 of the American Convention, in connection with the terms of Article 1.1, to the detriment of Mr. and Mrs. Margaroli.

Done and signed in the city of Washington, D.C., on the 16th day of the month of March, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Felipe González, Second Vice-Presidente; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo Carozza, members of the Commission.