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Title/Style of Cause:	Tomas Eduardo Jimenez Villada v. Argentina
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Decided by:	President: Luz Patricia Mejia Guerrero; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Florentin Melendez, Paolo Carozza. In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Victor E. Abramovich, an Argentine national , did not participate in the discussion, investigation, deliberation or decision of this case.
Dated:	19 March 2009
Citation:	Jimenez Villada v. Argentina, Petition 717-00, Inter-Am. C.H.R., Report No. 39/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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I. SUMMARY

1. This report concerns petition 717-00, which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") began processing on October 13, 2000. Lodged by Tomás Eduardo Jiménez Villada (hereinafter "the petitioner") against the Argentine Republic (hereinafter "Argentina" or "the State"), the petition alleges the State's failure to comply with a writ of habeas data issued on September 10, 1997, in which a banking institution was ordered to "take measures to remove from the Credit Information Database, via the appropriate legal means, the information on the grade 5 (irrecoverable) debt that the plaintiff has with that banking institution in the amount of $2,200."

2. The petitioner is alleging that the failure to comply with this court ruling is attributable to the State by virtue of the actions and omissions of its agents, which include the Central Bank of the Argentine Republic and the Judicial Branch. The petitioner asserts further that he has sustained serious economic, work-related and social damages by virtue of the alleged failure to comply with the writ of habeas data and that his rights under articles 3, 5, 8, 11 and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") were thus violated.

3. The State, for its part, alleges a failure to exhaust domestic remedies and argues that the writ of habeas data has been fully enforced and carried out inasmuch as the writ was against Citibank N.A. and the latter has taken every possible measure to ask the Central Bank to expunge the petitioner's records from the Credit Information Database. According to the State, the Central

Bank does not have on file the records that the petitioner is referencing and has not published any report rating the petitioner as a bad or insolvent debtor since October 1999.

4. After examining the information supplied by both parties, the Commission concludes that it is competent to take up the petition sub examine, which is inadmissible because the petitioner failed to satisfy the rule contained in Article 46 of the American Convention, which stipulates that for a petition to be admissible, the remedies under domestic law must have been pursued and exhausted. The Commission also decides to notify the parties of its decision, to make it public and to include it in its Annual Report to the General Assembly of the Organization of American States (OAS).

II. PROCESSING WITH THE COMMISSION

5. The Commission received the petition on October 13, 2000. Then, on December 4, 2001, the petitioner sent additional information elaborating upon his complaint. The pertinent parts of the petition were forwarded to the State on October 16, 2001. The State sent its response to the petition on December 20, 2001 and sent related attachments on January 28, 2002. The pertinent parts of the State's response were sent to the petitioner on January 31, 2002.

6. The petitioner submitted additional observations on March 12, 2002, November 8, 2002, February 11, 2003, July 21, 2003, September 22, 2003, November 10, 2004 and January 10, 2006. Those observations were duly forwarded to the State on April 26, 2002, May 14, 2003, April 29, 2003, January 22, 2004, July 12, 2004, January 27, 2005, and February 16, 2006, respectively.

7. The State availed itself of an extension the Commission granted and presented additional observations on July 24, 2002; the annexes were received on August 8, 2002. Using another extension granted by the Commission, on July 9, 2003 the State presented additional observations, whose attachments were received on July 23, 2003. It also submitted observations on September 20, 2004 and December 15, 2006. The annexes were received on December 28, 2006. The State's observations were forwarded to the petitioner on September 20, 2002, August 18, 2003, October 15, 2004 and January 8, 2007, respectively.

8. While the petition was in process, the petitioner sent communications to the Commission inquiring about the processing of the case by the Commission itself and its Executive Secretariat. Those communications are dated January 30, 2001, April 2, 2001, June 6, 2001, August 22, 2001, September 28, 2001, October 3, 2001, January 14, 2002, June 3, 2002, June 25, 2002, July 5, 2002, July 5, 2002, July 21, 2002, July 22, 2002, February 25, 2003, and January 19, 2007.

III. THE PARTIES' POSITIONS

A. The petitioner

9. The petitioner "is denouncing the Argentine State for the actions and omissions of its agents –the Central Bank of the Argentine Republic (Banco Central de la República Argentina - BCRA) and, secondarily, the Judicial Branch- for violation of Tomás Eduardo Jiménez Villada's

human rights under articles 11 (the right to have one's honor protected and dignity recognized) and 25(2)(c) (the guarantee that court rulings will be enforced within a reasonable period of time), in direct relationship to Article 1 of the Convention concerning the State's duty to ensure the free and full exercise of the human rights recognized therein, without any form of discrimination."

10. The petitioner contends that because of contractual difficulties associated with a loan he had taken out to finance the purchase of a vehicle, he was in a court battle to challenge the contractual basis and legitimacy of the balance of a loan that Citibank N.A. extended to him in August 1992.

11. According to the petitioner, while a court ruling on the dispute over the loan balance was still pending, in mid 1996 Citibank N.A. allegedly reported information to the Credit Information Database of the Central Bank of Argentina that rated the petitioner as a "grade 5 – irrecoverable - $1,800" borrower. The petitioner adds that Organización Veraz S.A., a business whose main activity is to report the credit histories and credit ratings of borrowers in order to limit its clients' lending risks, had interpreted the grade 5 credit rating as 'in default and irrecoverable'. The petitioner alleges that across the banking and business system in Argentina and the world, he was being represented as a bad debtor, or borrower whose debt was irrecoverable.

12. The petitioner observes that his Citibank loan had not been paid off because the court ruling on the matter was still outstanding. He argues, therefore, that he can hardly be described as in default when the question of whether any debt existed was still being litigated in court; he reasons that he was not required to pay off the debt until a ruling in the case was handed down.

13. To challenge his rating as a "grade 5 – irrecoverable" borrower and the disclosure of this credit rating by the Credit Information Database of the Central Bank of the Argentine Republic (hereinafter the "Central Bank" or the "BCRA") the petitioner filed a petition of habeas data against the Central Bank with Federal Court No. 3 of Córdoba, Argentina. In processing that petition, the Federal Judge of Cordoba dismissed the action brought against the Central Bank, and prosecuted Citibank N.A.

14. On September 10, 1997, the Judge deemed that Mr. Jiménez Villada had been rated a "grade 5, irrecoverable debtor in order to punish him for the civil suit and the criminal complaint he brought against Citibank N.A. He therefore ordered Citibank N.A. to take measures, within the space of five days, "to remove from the Credit Information Database, via the appropriate legal means, the information on the grade 5 (irrecoverable) debt that the plaintiff has with that banking institution in the amount of $2,200."

15. The petitioner points out that as of the date on which this petition was lodged, more than three years had passed since Federal Court No. 3 delivered its ruling, but Citibank N.A. had yet to comply with the writ, despite the various judicial and administrative remedies attempted. The petitioner observed that as of the date on which this petition was lodged with the Commission, the Central Bank's web site did not show the grade 5 irrecoverable rating; however, that information was on file in its records system, which contains the credit histories of the system's borrowers and that can be publicly accessed using computer disks.

16. The petitioner alleges that the substantive issue in this case is the failure to comply with a final court ruling in which the judge hearing the case had ordered that Tomás Jiménez Villada's rating as a "grade 5 irrecoverable" debtor was to be expunged from his credit records and credit history.

17. The petitioner contends that given the failure to comply with the court ruling, he requested that minatory fines be imposed against Citibank N.A. On November 13, 1998, the Judge of First Instance, sitting on the bench of Federal Court No. 3 of Cordoba, decided to set the fines [astreintes][FN2] that Citibank, N.A. was to pay at $60 a day, effective September 26, 1997. The petitioner asserts that this was a minatory fine that Citibank N.A. was to pay until such time as it abandoned its position. When both sides appealed the decision, the Federal Court of Appeals decided to increase the fine to $100 a day and to deny the special remedy filed. According to the petitioner, the Supreme Court upheld that ruling on December 2, 1999, when it denied Citibank's appeal.

[FN2] The astreintes are fines or monetary penalties ordered paid to one of the parties when another party fails to comply with a court order.

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18. The petitioner affixed a court ruling dated September 13, 2000, in which the Federal Court denied his request to have the amount of the daily fine increased on the grounds that the fine would become less punitive in nature and more a source of undue enrichment for the plaintiff. However, the petitioner points out, the ruling also held that "it was not until October 1999 that the bank stopped disclosing the information; but the information on the loan is on file with the source from whence it came […] Almost three years have passed since the date on which the daily fine [astreintes] took effect (September 26, 1997), yet the party ordered to pay the fines has still not fully complied with the order contained in the final verdict." According to that same court ruling, in the period from September 26, 1997 to July 24, 2000, Mr. Jiménez Villada had allegedly been paid the sum of $103,300 in fines. According to the petitioner, the fact that Citibank N.A. had paid over $100,000 in court fines would suggest that it had no intention of complying with the court order. In practice, the petitioner claimed, the question of whether or not to comply with the court order had allegedly been left to the discretion of the banking institution.

19. According to information supplied by the petitioner, Federal Court No. 3 issued an interlocutory decree on December 17, 2001, in a proceeding titled "Execution of the daily fines ordered in Jiménez Villada, Tomás v/BCRA – Habeas Data" (Case File J-11-97). In that interlocutory decree the Federal Judge held that the sentence had not been carried out and denied a petition filed by Citibank N.A. The decree ordered Citibank N.A. to show that the BCRA had expunged the rating of the petitioner's credit history since 1996.

20. The petitioner forwarded to the Commission a document issued by the Central Bank on February 21, 2002, in which it reports to the Federal Judge of Córdoba the information shown for the tax identification code for Mr. Tomás Eduardo Jiménez in the credit histories reported by the

financial system's credit reporting agencies. According to those records, in August, September and October 2001, Citibank N.A. had allegedly reported Mr. Jiménez Villada as a grade 5 irrecoverable debtor.

21. The petitioner also supplied the Commission with a copy of a document issued by the Central Bank on July 23, 2002, in which it informs the Federal Judge of Córdoba that the records prepared by Citibank N.A. from August 2001 to December 2001 were not made public in the financial system's debtors database because the necessary precautions had been taken to block disclosure of any records that Citibank N.A. sent in connection with the petitioner, given the ruling in the petition filed seeking a writ of habeas data.

22. Throughout the processing of the present petition, the petitioner sent the Commission a number of reports issued by credit reporting or rating agencies which, the petitioner claims, make it clear that the rating that the writ of habeas data had ordered expunged from the Central Bank's debtors' credit histories is still being used.

23. Despite this fact, the petitioner reported that on February 25, 2004, the Córdoba Federal Appellate Chamber issued a ruling in which it reversed the order imposing the daily fines on Citibank N.A. The petitioner contends that the lifting of the court fine did not mean that the Central Bank had complied with the original court ruling; what it meant was that Citibank N.A. had done everything it could to comply with the writ of habeas data, but not that the writ had been carried out.

24. The petitioner alleges that Citibank's failure to comply with the writ of habeas data was the fault of the Central Bank as the highest level entity for control of financial activity. He emphasizes that although the petition of habeas data filed against the Central Bank was dismissed, the latter had an institutional and constitutional obligation to comply with and enforce a decision of a branch of government, which is final. He notes that the dismissal of the suit filed against the Central Bank did not overturn the Financial Agencies Act or the Organic Law of the Central Bank, which establish obligations incumbent upon the Central Bank as the State's organ of financial control.

25. The petitioner also informed the Commission of the other judicial actions that he brought in domestic courts against those that he holds accountable for the facts that are the subject of this petition. Thus, on October 6, 1997, he brought a private criminal case in the sixth-term trial court of Córdoba against the president of Citibank Argentina. The petitioner accused him of slander, on the grounds that the credit rating was an unlawful attack on his honor and reputation. On November 15, 2002, the court dismissed the case against the president of Citibank, whereupon the petitioner filed a remedy of cassation.

26. On September 8, 1998, the petitioner brought a private criminal action in the fourth-term trial court of Córdoba charging the President of Organización Veraz, S.A. with slander. On June 6, 2000, a decision was made to join this slander case with the case against the president of Citibank Argentina. On November 29, 2002, the case against the president of Organización Veraz S.A. was dismissed, whereupon the petitioner filed a remedy of cassation.

27. On June 30, 2005, the Superior Court decided to admit the remedies of cassation and thus nullified the dismissals ordered on November 15, 2002 and November 29, 2002. On November 23, 2005, the third-term trial court decided to dismiss the slander case against the General Manager of Citibank in Argentina and the slander case against the President of Organización Veraz S.A. On December 9, 2005, the petitioner filed a remedy of cassation. The petitioner is alleging an unwarranted delay on the part of the domestic courts in rendering a final judgment on the cases he brought.

28. On June 23, 1998, the petitioner filed a complaint with the Public Prosecutor's Office for failure to enforce the writ of habeas data. As a result of this complaint, the Public Prosecutor's Office brought a criminal case against the General Manager of Citibank N.A. and the President of Organizacion Veraz S.A. for the alleged commission of the crime of contempt of authority. On September 12, 2002, Federal Court No. 2 of Buenos Aires decided to close the proceedings because there was no crime; it thus dismissed the case against the presidents of Citibank N.A. and Organización Veraz S.A. According to the petitioner, the argument used to dismiss the charge of contempt was that there was no lawful order from a public official that had to be obeyed, since the basis of the writ of habeas data was not the unlawfulness of the debt but discrimination. The petitioner contends that this court ruling overturned the decision in the habeas data ruling, which the petitioner argues was res judicata.

29. On September 7, 1999, the petitioner brought a private criminal case accusing the President of the BCRA of criminal slander. Federal Judge No. 2 reasoned that the Central Bank's refusal to comply with the court order would also constitute dereliction of duty on the part of a public official, which is a crime prosecuted by government action. Accordingly, on September 16, 1999, the judge issued a decree declaring that he did not have territorial jurisdiction to take cognizance of that crime. Mr. Jiménez Villada requested that the decree be nullified. The Federal Appellate Chamber did nullify the ruling on the grounds that the judge had not referred the matter to the Public Prosecutor's Office before considering the possibility that a crime prosecuted by government had been committed. Thereafter, the Buenos Aires courts were declared to have jurisdiction and the case was docketed with Federal Court No. 8. The latter found an objective nexus between the case against the General Manager of Citibank N.A. and the case against the President of Organización Veraz S.A. and therefore decided to refer the case to Federal Court No. 2. The latter decided to dismiss both cases.

30. The petitioner also reported that on October 20, 1998, he sent a memorandum to the President of the Central Bank complaining about the subject of this petition and asking that administrative proceedings be instituted to determine the personal and individual liabilities of Citibank and Organización Veraz S.A. He reports that on December 23, 2008, his complaint was classified as malicious, unfounded and inappropriate and any irregularities were denied.

31. The petitioner alleges that the Argentine State is responsible for violation of the right to judicial protection, as the Central Bank and the Judicial Branch have thwarted performance of the judgment that ordered that his rights cease to be violated. He contends that the Argentine State has willfully and capriciously violated his honor, reputation, and dignity and adds that the State has violated his right to juridical personality and his right to have his moral integrity respected, thereby violating the guarantee of free and full exercise of his rights. He also asserts

that he suffered financial, work-related and social discrimination as a result, constituting a violation of his right to equal protection of the law.

32. The petitioner alleges that the bad faith demonstrated in his credit rating was an attempt to cause him personal and economic harm by discrediting him socially, financially and in business, especially when one considers the multiplier effects that credit reports of this kind have. According to the petitioner, the rating as a defaulter whose debt was irrecoverable made it impossible for him to obtain credit, caused an important business venture to fail, and other "significant difficulties" that necessitated the sale of his personal property, including the only family home.

33. The petitioner asserts that he is not asking for errors of fact or of law in a judgment to be corrected; what he seeks is enforcement of a final decision delivered in a proceeding conducted with all the guarantees of due process.

B. The State

34. The State asserts that although the petitioner describes certain judicial actions undertaken in relation to the alleged failure to comply with a ruling, he does not specifically show that he has complied with the rule requiring exhaustion of local remedies before filing a complaint with an international body. Nor does he show that he was prevented from exhausting domestic remedies. The State thus contends that the petitioner did not satisfy the rule requiring exhaustion of local remedies.

35. Specifically, the State contends that the rule requiring exhaustion of local remedies was not satisfied because the petitioner did not appeal the writ of habeas data in which the suit brought against the Central Bank was dismissed, but Citibank was prosecuted. It also observes that the failure to appeal this ruling implied that the petitioner concurred with the finding that the Central Bank had no obligation whatever to change his credit rating. The State further argues that if the petitioner believed that the Central Bank had failed to comply with the obligations arising out of the Financial Entities Act and the Organic Law of the Central Bank, he should have filed the corresponding legal actions in the domestic courts.

36. The State alleges that domestic remedies were not exhausted because the purpose of the petitioner's complaint with the Commission is to seek reparation for the harm that the Argentine State purportedly caused him. According to the State, the petitioner's own itemization of the legal actions he brought shows that he never filed an action in the domestic courts seeking compensation from the Central Bank or the State for the damages he alleges they caused to him. The State observes that the petitioner should have brought a suit in the federal administrative law courts seeking satisfaction, supplying evidence that supports his claims and explaining its legal grounds.

37. The State adds that the petitioner failed to invoke the remedies allowed under Law 25,326 on Personal Data Protection, which took effect in October 2000 and which, the State alleges, would be suitable remedies for resolving the case sub examine.

38. The State argues that the petitioner also consented to the February 25, 2004 ruling of the Federal Appellate Chamber of Córdoba in which it overturned the ruling that ordered Citibank to continue to pay court fines (astreintes). According to the State, the petitioner simply filed a petition seeking "clarification," a petition that the Chamber denied. The State makes plain that the petitioner could have exercised the special federal remedy to contest the decision of the lower court.

39. In addition to claiming a failure to exhaust local remedies, the State also contends that the matter being contested is not compliance with the writ of habeas data, but the scope that the petitioner seeks to attribute to it. The State observes that the federal court of Córdoba held that Citibank had been unable to show that the petitioner's past credit records had been expunged. However, when deciding the criminal case brought against the president of Citibank N.A. on charges of contempt, the federal criminal trial court found that Citibank had done everything legally possible to comply with the writ of habeas data. In this connection, the State notes that Citibank does not administer the financial system's database and that the mandate contained in the writ of habeas data is an obligation of means but not results. The State contends that Citibank has used every means within its reach to request that the petitioner's credit records be expunged and has thus complied with the writ of habeas data.

40. The State is requesting that the assertions regarding the Central Bank's potential responsibility be disregarded, since the writ of habeas data dismissed the case against the Central Bank. The presiding judge reasoned that the Central Bank did not have passive standing to answer to the charge. The State's argument is that the financial entities that use the credit information database system have sole responsibility for the information contained therein. The State observes that given the fact that the Central Bank was not convicted in the writ of habeas data and the petitioner never appealed that verdict, the Central Bank has no legal obligation to ensure compliance with the judgment that is the subject matter of the petitioner's complaint.

41. The State is also of the view that the judgment handed down in the petition seeking a writ of habeas data is based on Citibank's silence but not on the petitioner's material proof of his claims. Therefore, the writ ordering that the Mr. Jiménez Villada's grade 5 rating be expunged from his credit records was established without determining whether a legitimate debt existed. The State observes that Mr. Jiménez Villada never denies the existence of his debt to Citibank N.A. or that the debt is unpaid.

42. The State explains that the petitioner's credit rating came about strictly in accordance with the rules governing the operation of the Central Bank's database. It claims that Citibank N.A.'s obligation to correct the information insofar as it was able does not in any way mean that the writ of habeas data should become the pretext for violating obligations arising out of the laws governing information on the financial system's debtors, which the banks are obligated to supply..

43. The State observes that the writ of habeas data called for correction of information as of a certain date, but did not apply to future information. Thus, the petitioner's rating thereafter would not necessarily constitute a failure to comply with a ruling; instead, it might be a banking

institution's rating based on the debt that Mr. Jiménez Villada never denied having with Citibank N.A.

44. The State also points out that the "unrecoverable" rating does not necessarily mean "default"; it may simply mean an inability to predict whether the loan will be repaid under the agreed terms and conditions.

45. The State argues that the ruling delivered in the petition of habeas data was carried out and that the Central Bank's files do not contain the records that the petitioner is referencing. It explains that the reporting of Mr. Jiménez Villada's rating as a grade 5 debtor ended on September 30, 1999, and the writ of habeas data had ordered that the information pertaining to that debt "be expunged from the Credit Information Database."

46. The State alleges that the Central Bank had itself confirmed that the grade 5 irrecoverable rating of Mr. Jiménez Villada was nowhere to be found in either its current or past records, the exception being those CD-ROMs acquired prior to the date on which that rating was expunged from the petitioner's credit records.

47. In August 2002, the State sent the Commission a document issued by the Central Bank, dated July 4, 2002, to the effect that no information in any way harmful to Mr. Jiménez had been disclosed since October 1999. The Central Bank therefore considered that it had complied with the writ and that the damages that the plaintiff was claiming did not exist.

48. The State observes that while certain private credit reporting or rating agencies might be publishing the complainant's old credit histories in which his previous situation is exposed, this would not constitute a failure to comply with the ruling, since those agencies were not party to the dispute and may be using out-of-date information acquired before the credit records in question were expunged. The State contends that the petitioner cannot prove that the Central Bank did not expunge the information from his credit records by showing reports issued by private credit reporting/rating agencies simply because they cite the Central Bank as the source of the date. The State also points out that the Central Bank was under no obligation to remove the data.

49. As for the daily fines [astreintes], the State contends that the petitioner's complaints were based on the amount of the fines and argues that the wealth of a banking institution cannot make it a source of undue enrichment, as the petitioner would have. The State also observes that the petitioner did not appeal the court ruling that confirmed the fine of $100 a day.

50. The State adds that the court discontinued the fines against Citibank because it held that the bank had complied with the writ. On September 20, 2004, the State reported that the decision of Federal Court No. 3 to continue to impose daily fines [astreintes] on Citibank was the subject of an appeal filed with the Federal Appellate Chamber of Córdoba. On February 25, 2004, the appellate court had decided to revoke the ruling on appeal. According to the State, the appellate court held that "[…] Citibank N.A. asked the BCRA to correct the information in the plaintiff's records; the CUIT's inquiry at 506/507 –which reports the plaintiff's STD (short-term debt) situation- shows […] that the BCRA confirms that the Financial System's Debtors Database is

disclosing Mr. Jiménez Villada's STD situation; therefore, Citibank has effectively complied with its obligation to expunge from the Credit Information Database the information referring to the plaintiff's debt in the amount of $2200.00, grade 5 (irrecoverable), and the grounds for imposing the daily fines [astreintes] no longer obtain."

51. As for the court's dismissal of the contempt case against the President of Citibank N.A., the State denies the petitioner's allegation that the ruling was on the grounds that "there was no lawful order from a public official that had to be obeyed." The State explains that the ruling was based on the fact that there was no order with which to comply because the order had effectively been carried out with the notification that Citibank N.A. sent to the Central Bank informing it of the writ of habeas data. According to the State, therefore, the allegation that the criminal justice system had overturned an earlier court ruling is false.

52. As for the other criminal slander cases, the State pointed out, initially, that these were private cases being heard in the domestic courts. Its contention, therefore, was that the question of their admissibility was self-evident. Later, the State reported that both criminal slander cases had been dismissed in November 2002.

53. The State stresses the fact that the ruling in question has been carried out, and that Mr. Jiménez Villada had a simple, suitable and effective remedy. According to the State, the petitioner "has had unfettered access to the courts and has filed suits against the parties he believed to be responsible for the harm he believes he has suffered; he was assisted by an attorney; his complaints were resolved within a reasonable period of time; he had the opportunity to appeal to a higher court; as for the crux of his complaint, namely his legal battle against the BCRA, curiously enough he did not appeal the denial of his petition seeking a writ of habeas data against it. Furthermore, he brought criminal actions against the natural persons whom he believed to be responsible for a wide array of crimes – all couched in terms of his peculiar interpretation of the events and of the law- and has received over US$ 100,000.00 in daily fines [astreintes]." The State observes that the present petition appears to be just a slight twist of the domestic criminal court's own interpretation of the writ of habeas data's assessment of the conduct of the General Manager of Citibank N.A., so that the fourth instance principle would apply.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission

54. Under Article 44 of the American Convention, the petitioner is authorized to file a petition with the Commission. The petition indicates that the alleged victim was under the jurisdiction of the Argentine State at the time the facts alleged were said to have occurred. The State, for its part, is a State party to the American Convention, having deposited its instrument of ratification, in due and proper form, on September 5, 1984. The Commission therefore has competence ratione personae to examine the complaint lodged. It also has competence ratione materiae because the petitioner is alleging violation of rights protected by the American Convention.

55. The Commission has competence ratione temporis to examine the petition inasmuch as it is based on events alleged to have occurred starting on September 10, 1997, the date of issuance of the writ of habeas data in which Citibank N.A. was ordered to remove the information on the petitioner's debt with Citibank from the Credit Information Database. The facts alleged, therefore, occurred subsequent to the date on which the Convention obligations took effect for Argentina as a State Party to the American Convention. Further, inasmuch as the petition alleges violations of Convention protected rights said to have occurred within the territory of a State party, the Commission finds that it has competence ratione loci to take up the petition.

B. Other admissibility requirements

1. Exhaustion of local remedies

56. Article 46 of the American Convention provides that in order for a case to be admitted, "the remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." The purpose of this requirement is to afford national authorities the opportunity to address the alleged violation of a protected right, and where appropriate resolve it, before the matter is brought to the attention of an international body.

57. In the instant case, the State is alleging a failure to exhaust domestic remedies, observing that the petitioner failed to appeal the September 10, 1997 writ of habeas data that dismissed the case against the Central Bank and admitted the case against Citibank N.A. It adds that the petitioner did not file actions against the Central Bank, against Citibank or against the State itself seeking reparation of the harm allegedly caused to him. According to the State, the petitioner also failed to file a complaint in the federal administrative-contentious court seeking reparation of the harm alleged to have been caused. It also asserts that the petitioner never filed the legal action allowed under the Financial Entities Act and the Organic Law of the Central Bank and never invoked the remedies provided by the Personal Data Protection Act, which took effect in October 2000. Lastly, the State asserts that the petitioner has not exhausted all the remedies under domestic law because he did not appeal the February 25, 2004 decision that overturned the ruling ordering Citibank to continue to pay the astreintes.

58. For his part, the petitioner alleges that the crux of his petition is Citibank's failure to comply with the September 10, 1997 ruling in which it was ordered to expunge the "grade 5 debtor – irrecoverable" rating from the petitioner's credit records and credit histories. He claims to have exhausted the domestic remedies because he requested precautionary measures from the judicial branch and the use of minatory fines or astreintes, which were allegedly ordered on September 26, 1997 and lasted until February 25, 2004. The petitioner also contends that he attempted various judicial actions, mainly criminal complaints against the executives of Citibank N.A., the Central Bank and Organización Veraz S.A. The petitioner is alleging that the State cannot demand that he continue to prosecute legal actions indefinitely in order to secure compliance with and enforcement of a final judgment, which is why he is asking the Commission to apply the exception allowed under Article 46(2) of the American Convention, given the unwarranted delay in remedying his situation.

59. As the Commission has previously stated, to satisfy the prior exhaustion rule, petitioners must exhaust the remedies that are suitable, i.e., those that are available and effective for remedying the situation denounced. In the instant case, the Commission deems that the petitioner's complaint centers around an alleged failure to comply with the September 10, 1997 ruling in which the petition of habeas data was decided in his favor. The examination of the rule requiring exhaustion of local remedies must be done on a case by case basis, and the relationship between the situation raised with the Commission and the manner in which the internal remedies were invoked; in other words, for whom and in relation to what facts and which rights.

60. The Commission observes that as the writ of habeas data had ordered, Citibank N.A. did in fact ask the Central Bank to remove any debtor's credit rating from the petitioner's files in the Financial System's Debtors Database. However, if the petitioner's allegations are true, what has not been shown is that the petitioner's grade 5 (irrecoverable) credit rating has been eliminated from the files in the Credit Information Database that predate 1999. Hence, the party that has yet to comply would not be Citibank; it would be the Central Bank which, by the decision of the court, was excluded from the action seeking a writ of habeas data.

61. The Commission notes that the petitioner did not file any remedy to challenge the decision that dismissed the petition of habeas data brought initially against the Central Bank. Nor did he bring any legal action against the Central Bank to demand that it comply with the writ of habeas data. This despite the fact that the petitioner had full access to the Argentine courts, which used the means available to them to demand that Citibank N.A. comply with the judgment delivered against it. Citibank N.A. was even ordered to pay various amounts of money in the form of daily fines [astreintes], which it regularly deposited and the petitioner collected for the period from September 1997 to February 2004. In this sense, the petitioner invoked and exhausted the available remedies against Citibank N.A., but not against the Central Bank, even through his petition holds the State mainly responsible for the Central Bank's negligent conduct.

62. Based on the foregoing considerations and given that the internal remedies must be exhausted in accordance with generally recognized principles of international law in order for a petition to be admissible, the Commission deems that in the instant case, while the petitioner had access to the internal remedies afforded under Argentina's laws, he did not exhaust them in accordance with Article 46(1)(a) of the American Convention.

63. Given the foregoing, the Commission will refrain from examining the other admissibility requirements set forth in the Convention on the grounds that they are irrelevant and immaterial.[FN3]

[FN3] IACHR, Report No. 87/05 of October 24, 2005, petition 4580/02 (Peru); Report No. 73/99 of May 4, 1999, case 11.701 (Mexico); Report No. 24/99 of March 9, 1999, case 11.812 (Mexico); Report No. 82/98 of September 28, 1998, case 11.703 (Venezuela), among others.

V. CONCLUSIONS

64. Concerning the alleged violations of the Convention, the Commission concludes that the petitioner did not pursue and exhaust the proper procedure under Argentine domestic law, and thus did not satisfy the rule set forth in Article 46(1)(a) of the American Convention, requiring exhaustion of local remedies.

65. Given the foregoing considerations of fact and of law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case inadmissible.
2. To notify the parties of this decision.
3. To make this decision public and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on March 19, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Florentín Meléndez, and Paolo Carozza, members of the Commission.