REPORT No. 116/12
PETITION 374-97
INADMISSIBILITY
WORKERS OF THE NATIONAL TELECOMMUNICATIONS COMPANY (ENTEL)
ARGENTINA
November 13, 2012

I. SUMMARY

1. On October 20, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition lodged by Attorney Panayotis Blanas (hereinafter "the petitioner"), alleging international responsibility of the Federal Republic of Argentina ("Argentina," "the State" or the "Argentinean State") for reputedly depriving a group of workers[1] (hereinafter the "alleged victims") of the National Telecommunications Company (*Empresa Nacional de Telecomunicaciones*; hereinafter "ENTEL") of payment of salary benefits known as "*quinquenios"* during the military dictatorship, under Law 21.476 which rendered null the Collective Labor Agreement No. 165/75 "E" in 1976, as well as for failure to provide for an effective judicial remedy to challenge the alleged deprivation.

2. The petitioner contended that the State is responsible for violation of the rights set forth in Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair), 11 (right to privacy), 13 (freedom of thought and expression), 15 (right of assembly), 16 (freedom of association), 19 (rights of the child), 20 (right to nationality), 22 (freedom of movement and residence), 23 (right to participate in government), 24 (right to equal protection), and 25 (right to judicial protection) in connection with the obligations provided for in Articles 1.1 and 2 of the American Convention on Human Rights (hereinafter the "American Convention"). With regard to fulfillment of admissibility requirements, the petitioner claimed that the alleged victims exhausted domestic remedies within the time period provided for in Article 46 of the American Convention.

3. In response, the State argued that the petition is inadmissible because the alleged victims did not properly exhaust domestic remedies and because the alleged facts do not tend to establish violations of the American Convention, inasmuch as the Commission cannot function as a court of review or a "fourth instance." It further alleged that the petitioner never specifically identified what individuals he represented in the domestic courts.

4. After analyzing the position of the parties, the Commission concluded that it is competent to entertain the claim, but that it is inadmissible under Article 46.1.a of the American Convention. The Commission decided to notify the parties of this inadmissibility report, publish it and include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The petition was received by the IACHR on October 20, 1997 and was registered under the number P-374-97. The IACHR forwarded the petition to the State on April 19, 2002, granting it a

[1] As for the identification of the alleged victims in the petition, based on a submission dated November 6, 2002, filed with the IACHR by the petitioner to confirm his claim, several documents identified as "Annex B" were attached thereto in which, according to the petitioner, there appeared more than 8,000 names and signatures, and which included the following text: We are pleased to address you, confirming the petition relating to Juana Teresa Sicolo et al for violation of the American Convention on Human Rights, respectfully requesting that a copy be served upon the Argentinean State and the possibility be explored for placing yourselves at the disposal [of the parties] to reach a friendly settlement of the matter." Each document has the names of the alleged victims and other vital statistics to identify them. However, on August 21, 2009, the petitioner submitted a list to the IACHR identifying 312 alleged victims. In this submission, he asserted that he was referring to the persons that he represents in the case being processed before the Commission. The Commission notes that the list makes reference to the name of the retired individual or, as the case may be, their heir when they are deceased. He also advised that the alleged victim identified as Juana Teresa Sícolo had passed away leaving no heir and, therefore, no longer appeared on the appended list.

period of two months to submit its response. The Commission received the response of the State on June 26, 2002, which was duly forwarded to the petitioner.

6. The petitioner submitted comments and additional information on November 6, 2002, July 1, 2003, April 20, 2004, December 16, 2004, August 14, 2007, August 21, 2009, September 9, 2009, and March 11, 2010. While the State submitted comments and additional information on January 16, 2003, February 11, 2003, October 24, 2003, December 4, 2003, March 10, 2010, March 17, 2010, and October 4, 2011. The additional information and comments that were submitted by both parties were duly forwarded to the opposing party.

7. Lastly, the petitioner reported that he was willing to enter into a friendly settlement agreement with the State. However, the State claimed that it was not appropriate to accept the request for friendly settlement.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

8. The petitioner claimed that the alleged victims were prevented from receiving payment of salary benefits of retirees (*quinquenios*),[2] as they are known, when Law 21.476 of December 10, 1976, came into force during the military dictatorship, which "determined that the benefits set forth in Collective Labor Agreements Numbers 20.774 and 21.297 were rendered null". He alleged that after democracy was restored in Argentina in 1983, the alleged victims did not have an effective remedy to claim the salary benefits (*quinquenios*) referred to in the Collective Labor Agreement No. 165/75 "E" [which was] applicable to the workers of ENTEL, a company totally owned by the national State.

9. He asserted that when Law 21.476 went into effect on December 10, 1976, payments of the salary benefits (*quinquenios*) were suspended throughout the military dictatorship. He noted that the military receivers appointed by the Ministry of Economy partially enforced Article 2.a of Law 21.476 until December 31, 1979,[3] because up until that date and pursuant to several different rulings, the *quinquenios* were paid out under other names ("special compensation" or "special allowances") to a variety of individuals who left as a result of retirement for disability or a regularly scheduled retirement. Notwithstanding, he noted that from January 1, 1980 to June 30, 1986, said benefits were not paid out, as said law was fully enforced.

10. He noted that as of July 1, 1986, an agreement was signed between ENTEL and the Federation of Telephone Workers and Employees of the Republic of Argentina (*Federación de Obreros y Empleados Telefónicos de la República de Argentina*) and payment of the salary benefits (*quinquenios*) resumed, without prejudice to the rights set forth in Article 66 of Collective Labor Agreement No. 165/75 "E," of those individuals who had not collected the benefits prior to that time. Lastly, he asserted that ENTEL was privatized on November 7, 1990 and new collective labor agreements were signed with the new private telecommunications companies, which kept payment of the *quinquenios* benefits in place.

11. He alleged that Law 21.476 had absolutely no effect, because it was enacted during the period from March 24, 1976, to December 9, 1983, when the National Constitution of Argentina was not in force and, therefore, nor was rule of law. He further argued that Article 36 of the National Constitution of

[2] The petitioner alleged that pursuant to Article 66 of Collective Labor Agreement 165/75 "E" "the worker, shall receive within thirty days of his departure, an amount equivalent to one month of his last total salary for every 5 (five) years of service or fraction greater than 3 (three) [years of service], in the instances described below, which may never be lower than the table 9 salary with 30 years of service: a) When the benefits of a regular retirement, voluntary retirement, or retirement for disability are claimed… f) In the event of the death of the worker, the benefit shall be granted to whomever the creditor is of the death benefit compensation set forth in this agreement."

[3] According to the petition, said provision "invalidates compensatory amounts for termination[,] for retirement or for any cause set forth in legal provisions, regulations, statutes or agreements, which preempt those set forth in Laws 20.744 and 21.297."

Argentina violates the rights enshrined in Articles 1, 2, 4, 5, 7, 8, 11, 13, 15, 16, 19, 20, 22, 23, 24 and 25 of the American Convention, as well as Article 27 of said international instrument, in not allowing for review of actions of the *de facto* government at the time, such as enactment of Law 21.476 and enforcement thereof.

12. With regard to exhaustion of domestic remedies, the petitioner claimed that the State did not adopt domestic legislation to provide for any legal action to make it possible to repeal Law 21.476, inasmuch as it "affected the right to collect the salary benefit (*quinquenios*) of the 2,025 persons" that he represents. He argued that, as a result of said law, the individuals he is representing were not paid said benefit, which should have been provided to them when they left ENTEL as a consequence of a regular retirement, retirement for disability or death.

13. He argued that pursuant to Law of Administrative Procedures No. 19.549, amended under Law No. 21.688, administrative procedures were exhausted by the alleged victims by submitting certified letters to ENTEL, given that said law was of mandatory enforcement and was applicable to companies of the State engaged in the process of liquidation, as was the case in this instance. He noted that pursuant to agreements entered into with the private companies, these companies would only assume "all obligations and debts, which were also the responsibility of ENTEL, with regard to transferred personnel, for work performed subsequently to the take over, if the transfer had not been carried out" and, given that all the debts of ENTEL were assumed by the National State, he noted that the legal actions were brought against the National State. With regard to ENTEL's rejection of the certified letters, the petitioner stated that the public administration "acted with violence" under the provisions of Law of Administrative Procedures No. 19.549.[4]

14. He contended that, since he was unsuccessful in this administrative proceeding, as it was found to be out-of-order, it was necessary to pursue judicial proceedings and, therefore, the alleged victims brought an administrative lawsuit against the National Sate, because the National State assumed the liabilities of ENTEL under Law No. 23.963.

15. With regard to the administrative lawsuit against the State, the petitioner advised that on June 30, 1995, he filed a motion with National Federal Administrative Court No. 10, Office of Clerk No. 19, pursuant to Article 25 of Law No. 24.447 and National Executive Decree No. 825/95, which established the date of June 30, 1994 as deadline for filing, so that under Article 322 of the Code of Civil and Commercial Procedure of the Nation, it brings to an end "the state of uncertainty in which plaintiffs find themselves vis-à-vis the National State –National Telecommunications Company under liquidation proceedings-." He asserts that on August 15, 1995, he was notified of the ruling of August 8, 1995, whereby the administrative court found itself incompetent to entertain the claim and referred the proceedings to the national labor courts.

16. He claimed that the alleged victims filed an appeal on August 30, 1995 against the August 8, 1995 ruling, which was denied on the grounds of untimeliness in a resolution of April 10, 1996, of which notice was served on April 22, 1996. With regard to said denial, the petitioner alleged that the appeal was not filed with National Federal Administrative Court No 10, Office of Clerk No. 19 until August 30, 1995, because the clerk was out on vacation and, therefore, pursuant to domestic legislation, the procedural deadlines should not have continued running and the appeal should not have been found untimely.

17. As for the labor proceeding, the petitioner noted that on September 10, 1995, he was notified of the resolution of September 25, 1995, which dismissed *in limine* the suit brought before the labor courts. He further noted that, according to said judgment "regular proceedings are available to the plaintiffs to bring their claim of liability against ENTEL including the required institutional nullification." With regard to that statement, the petitioner claimed that it was not feasible for this suit against ENTEL to be

[4] "Article 9. – The Administration shall refrain: a) from substantive behavior involving *de facto* administrative procedures which infringe upon a constitutional right or guarantee;…".

independent of the National State, inasmuch as that the State assumed the liabilities of ENTEL at the time it was privatized. The petitioner filed a motion to set aside the judgment, which was denied *in limine* under a ruling of October 20, 1995.

18. The petitioner noted that the alleged victims filed a motion in error with the Fourth Chamber of the National Labor Appeals Court against the appeal denied by National Administrative Court No 10, Office of Clerk 19. They stated that the motion in error was denied under a ruling of June 18, 1996 of the labor court.[5] He also claimed that he filed a motion for leave to appeal to the Supreme Court of the Nation, which was denied under a ruling of November 18, 1996. Lastly, he noted that the alleged victims filed a motion in error with the Supreme Court of the Nation against the denial of the leave to appeal to the Supreme Court of the Nation, the denial of which was served notice to them on April 21, 1997. The petitioner claimed that with the filing of the motion in error with the Supreme Court of the Nation, the alleged victims exhausted domestic remedies, and stated that he lodged the petition with the Commission prior to the six-month period lapsing, as provided for in the American Convention.

19. As to the names and the number of alleged victims that the petitioner represents, the petitioner attached a list, which was received by the IACHR on August 21, 2009. The petitioner asserted that said list names the individuals that he represents and that thereon appears either the retired person or, as the case may be, his or her heir in the event of their death. Additionally, he advised that the alleged victim identified as Juana Teresa Sícolo was deceased and left no heirs and, therefore, she no longer appeared on the attached list.

B. Position of the State

20. The State alleged that the instant petition is inadmissible. Regarding prior exhaustion of domestic remedies, the State claimed that the suitable mechanisms to be pursued by the alleged victims in order to exhaust domestic remedies were: i) the labor proceeding, as the claim involved payment of the alleged debt of the State, which pursuant to the doctrine of "subsisting legal effects" of Collective Labor Agreements (*ultactividad)* and the statute of limitations provided for by law, should have been pursued two years after democracy was restored, that is, in 1985 in accordance with the legal precedents of domestic courts; and ii) the regular judicial proceeding, if they wished to obtain the intended declaration of institutional nullification, whereby they should have moved for the law or laws that infringed the rights of the claimants, and whose effect had lapsed when democracy was restored, to be rendered null and void.

21. With respect to the labor proceeding brought by the alleged victims, the State added that they ignored the text of Article 256 of Labor Contract Law No. 20.744 of 1976, which provides that "after two (2) years actions relating to credits stemming from individual labor relationships and, in general, provisions of collective labor agreements, awards applying to collective agreements and provisions of labor laws and regulations are time barred," as well as the text of Article 257 which states that 'without prejudice to the applicability of the provisions of the Civil Code, a claim before an administrative labor authority shall interrupt the course of the statute of limitations during the processing [of a claim], but in no instance for a period greater than six (6) months." Pursuant to said provisions and in conjunction with the fact of "continuing or subsisting legal effect or consequences" of Collective Labor Agreements (*ultractividad)*, the alleged victims should have claimed the monies owed to them, two years after restoration of democracy in 1983 and not just file a declaratory suit until 1995, such as the one they pursued through the motion lodged on June 30, 1995 with the administrative court and subsequently with the labor court.

[5] The judgment of June 18, 1996 held that "beyond the inadmissibility from the procedural standpoint of a complaint brought before a court of a different jurisdiction based on the subject matter with two different beneficiaries, in other words, the front of pg. 60 for the Federal Administrative Court and the back of said complaint for National Labor Court No. 5-the motion of the 60th page, based on its content, is linked to an issue that, because of its purpose, clearly exceeds the jurisdictional power belonging to the National Labor Court in terms of the ambit in which the supposed violation of the right that is alleged as infringed has occurred, in accordance with the doctrine set forth in Articles 60 and related articles of the L.O." (Underlining in original).

22. The State also argued that, in the event that the administrative claim and not the labor claim was found admissible, Article 51 of Law No. 11.672 established that on June 30, 1995, the rights lapsed and actions to collect credits against the National State or any entity encompassed under Law No. 23.982 were time-barred. With regard to this issue, the State alleged that the certified letters submitted in 1995 by the petitioner to ENTEL did not meet the essential formal requirements to consider them administrative claims and to be admitted, inasmuch as, in addition to not specifying the date as of which the claim was being brought nor identifying the persons represented by the petitioner nor the amount being claimed, the content of the claim was indeterminate. The State also argued that for these reasons these certified letters could not interrupt the running of the statute of limitations.

23. The State alleged that the rejection of the certified letters by ENTEL could not be considered an administrative act for a motion to reconsider an interlocutory ruling to be in order pursuant to Law of Administrative Procedures No. 19.549, given that, as ENTEL noted, it was not "clear what was being claimed, the right being asserted in said claim, as well as on behalf of whom it was being submitted. Even though administrative law is basically informal in its submissions, this excuse only refers to formal requirements, with the framework of said characteristic exceeding the letter." The State also claimed that it could not gain access to any appeal for relief without there previously existing an administrative act in favor of or against their claim under Law of Administrative Procedures No. 19.549 and it contended that such an administrative act was non existent in the instant case.

24. As for the administrative action pursued on June 30, 1995, the State claimed that the petitioner unilaterally interpreted that the administrative proceeding was exhausted when the certified letters were rejected without rectifying the situation and without exhausting the administrative remedies that were admissible and, therefore, it could not be considered on any grounds that the State precluded him from beginning the requisite administrative proceeding and much less that it acted with violence. Based on the foregoing, the State considered that the alleged victims did not properly exhaust domestic remedies.

25. As for the grievance pertaining to Article 2 of the American Convention and the claim that Law No. 21.576 had been declared null and void, the State clarified that Article 36 of the National Constitution, far from preventing the review of the acts of the military dictatorship, tended to apply the "theory of implicit nullifications" based on the fact that acts were involved, which emanated from the usurpers of power and, accordingly, held that the norms issued during the military government were explicitly or implicitly repealed by the restoration of the democratic government, and this applies to Law No. 21.576. It alleged that if the objective was to declare said law null and void, the alleged victims should have resorted to the regular justice system, not the labor courts or the administrative courts, in order to achieve their purpose in accordance with constitutional procedures.

26. The State alleged that the actual intent of the petitioner was for the Commission to set itself up as a "fourth instance," given that it did not accept the ruling of the Labor Court Judge who decided that the alleged victims should have pursued a regular judicial proceeding in order to obtain the repeal of all norms enacted between 1976 and 1983. For these reasons, the State requested the Commission to find the petition inadmissible or to archive it.

IV. ANALYSIS OF ADMISSIBILITY

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

27. The petitioner has standing under Article 44 of the American Convention to file petitions with the Commission. The petition indicates individuals as alleged victims with respect to whom the State committed to respect and ensure the rights enshrined in the Convention. With regard to the State, the Commission notes that Argentina has been a State Party to the American Convention since September 5, 1984, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

28. The Commission is competent *ratione loci* to consider the claim, inasmuch as the petition alleges violations of rights protected by the American Convention, which occurred within the territory of a State Party thereto. The IACHR is competent *ratione temporis* since the obligation to respect and ensure the rights protected in the American Convention was already in effect for the State on the date when it is claimed that the alleged violations of rights occurred. Lastly, the Commission is competent *ratione materiae* inasmuch as the petition alleges violations of human rights protected by the American Convention.

B. Other Admissibility Requirements

1. Exhaustion of Domestic Remedies

29. In order for a claim to be admissible as an alleged violation of the provisions of the American Convention, it must fulfill the requirements set forth under Article 46.1 of said international instrument. Article 46.1.a of the American Convention establishes that in order to determine the admissibility of a petition or communication submitted to the IACHR pursuant to Articles 44 or 45 of said convention, remedies under domestic law must be pursued and exhausted, in accordance with generally recognized principles of international law. Additionally, Article 47.b of the same instrument provides that the Commission shall consider inadmissible a petition when it does not state facts that tend to establish a violation of the rights guaranteed in the Convention.

30. The Commission notes that the parties disagree as to whether domestic remedies have been duly exhausted. The State argued that the suitable mechanisms available to the alleged victims to pursue in order to exhaust domestic remedies were: i) the labor proceeding, for the claim of payment of the alleged debt of the State, which could be pursued two years after democracy was restored, in other words, in 1985, five years prior to the privatization of ENTEL; and ii) a regular judicial proceeding, in order to obtain the declaration of institutional nullification they were pursuing, through which they should have moved for the law or the laws infringing the rights of the claimants to be rendered null and void. With respect to the administrative proceeding, the State alleged that the lack of procedural skill on the part of the petitioner, as evidenced by the case record, shows that domestic remedies have not been duly exhausted, inasmuch as in not properly submitting a complaint to ENTEL stating the amount being claimed, the legal basis thereof, and on behalf of whom the claim was being filed, the request before the administration was unsuccessful, due to flaws of form and substance, which should have been known by the representative and could have been properly rectified.

31. On this issue, the petitioner argued that it exhausted available domestic remedies in filing an administrative suit, even though he asserts that in reality no effective remedy was in place to challenge the failure of the State to pay the salary benefits of retirees (*quinquenios*). As for the administrative proceedings, the petitioner claimed that the Public Administration "acted with violence" in denying him an administrative proceeding, which was exhausted by means of the certified letters and the submitting of the motion to the administrative court within the deadline established in Law No. 24.447, that is, on June 30, 1995.

32. Both the Commission and the Inter-American Court have held that only adequate remedies need be exhausted to rectify alleged violations, in other words, remedies suitable to protect from infringement of a legal right. Therefore, remedies that do not have said effect or are manifestly absurd or unreasonable do not have to be exhausted.[6]

33. The IACHR has also held that for the State to be afforded the opportunity of rectifying the alleged violation of Convention rights before being raised before an international body, the judicial

[6] I.A. Ct of HR. *Case of Velásquez Rodríguez V. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, pars. 63 and 64. IACHR, Report No. 4/12, Petition 4115-02, Admissibility*, Ricardo Javier Kaplun and family*, Argentina, March 19, 2012, par. 28, IACHR, Report No. 14/12, Petition 670-06, Admissibility, *Carlos Andrés Rodríguez Cárdenas and family*, Ecuador, March 20, 2012, par. 32.

remedies filed by the alleged victims should comply with reasonable requirements of admissibility as established in domestic law.[7] Both the Inter-American Court of Human Rights and the Commission have underscored that effectiveness of a judicial remedy means that, potentially, when the formal prerequisites for admissibility laid down by domestic law are complied with, the judicial organ may assess its merits.[8]

34. As to the use of the administrative courts, the Commission notes that, in 1995, Mr. Panayotis Blanas requested payment from ENTEL for the salary benefits of 2,015 former workers of said public enterprise pursuant to the wording of the certified letters. Nonetheless, it notices that the certified letters that he submitted do not specify the names of the former workers or what amounts were owed or the facts that would justify their claim.[9] It also takes notice that ENTEL responded to these certified letters by denying it is "owing any amount at all," concluding that "it is not clear what is being claimed, the right invoked in said claim, or on behalf of whom is it being submitted." The Commission also remarks that the petitioner proceeded to individually identify the alleged victims in submitting his motion of June 30, 1995 to the administrative court,[10] and that he himself advised that the action being pursued was "merely declarative as provided by Article 322 of the C.P.C.C. [Code of Civil and Commercial Procedure][11] in order to make the state of uncertainty cease in which the plaintiffs find themselves vis-à-vis the National State –NATIONAL TELECOMMUNICATIONS ENTERPRISE- under liquidation San Martin Street 320/22 –Federal Capital-," and that the motion was submitted "on the deadline of 6/30/95." Lastly, it notes that in the judgment of August 8, 1995, the Administrative Court declared itself incompetent and referred the case to the labor court in considering that court to be competent to adjudicate the matter.

35. The Commission also takes note that based on the domestic legislation cited by the parties, pursuant to Article 30 of National law of Administrative Procedures No. 19.549, which was in force in 1995, "the National State cannot be subject to a lawsuit in regular courts without an administrative claim previously being brought against the appropriate ministry or command in chief, except when judicial challenges of administrative acts of a specific or general scope are involved" and that the claim must "be about the same facts and rights that may be invoked in an eventual law suit before the courts and shall be settled by the Executive Branch, or by the authorities cited, should delegation of that power be involved." It also notes that Article 16 of Decree 1759/72 regulating Law of Administrative Procedures, amended by

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[7] IACHR, Report No. 120/11, Petition 55-05, Inadmissibility, *Teófilo Sánchez Minaya*, Peru, July 22, 2011, par. 27 and Report No. 18/11, Petition 871-03, Inadmissibility, *Víctor Eladio Lara Bolívar*, Peru, March 23, 2011, par. 27.

[8] I.A. Ct. Of H.R. *Case of Castañeda Gutman V. México*. Preliminary objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184, par. 94. IACHR, Report No. 120/11, Petition 55-05, Inadmissibility, *Teófilo Sánchez Minaya*, Peru, July 22, 2011, par. 27.

[9] The petitioner submitted four certified letters, the first one on January 30, 1995. Pursuant to the summary motion submitted on June 30, 1995 to National Federal Administrative Court No 10, Office of Clerk 19, the content of said letter was: "I am pleased to address you to file an administrative claim under Article 3 and related ones of Law of Administrative Procedures No. 19.549, so that the means are arbitrated for payment of 2,015 clients [who are] former agents of the company who were not paid the so-called salary benefits [*quinquenios*], set forth in Article 66 of Collective Labor Agreement No 165/75 and/or equivalents as provided in Article 75, subparagraph 22 of the National Constitution, this letter is filed prior to completion of the six month period, reserving the right to resort to the Inter-American Court of Human Rights." ENTEL's response to said letter was the following: "I reject your certified letter dated January 30, 1995 received on 2/1/95 because it is fallacious, inadmissible and unintelligible. We deny owing any amount at all. Based on the text thereof, it is not clear what is being claimed, the right being invoked in said claim, or on behalf of whom it is being submitted. Even though administrative law is basically informal in its submissions, this excuse refers only to the formal requirements, with the letter exceeding the framework of said characteristic, and therefore we reiterate the rejection stated above."

[10] The IACHR notes that in the motion of June 30, 1995, the following individuals appear as plaintiffs: Juana Teresa Sícolo, Hilda Etelvina Terrén de Fernández, María Rosa Camuso, Elida Agüero, Olga Haydee Álvarez, Pedro Amillar Correa, Catalina Esther Buldain, Eva Antonia Vega, Miguel Ángel Di Rossi, Nelci Ethel Gaspari, Nelly Rosas de Medina, Lucía Jorgelina Larsen, Ricardo Luis Ferrara, Víctor Manuel Roldán, Carlos Alberto Del Rosso, Arturo Jesús Gutiérrez, José Rodrigo Labra, Haydee Tamborín de Guiz and "the list of plaintiffs in Annex A for whom power of attorney is invoked." It must be noted that the list of victims to which is referred in the aforementioned motion of June 30, 1995 as Annex A is not clear in the IACHR's case file.

[11] Article 322 stated that "an action aimed at obtaining a merely declarative judgment could be brought, to make a state of uncertainty cease regarding the existence, scope or modalities of a legal relationship, whenever that lack of certainty could cause present damage or harm to the plaintiff and he or she did not have any other legal means available to immediately put an end to it…"

Decree 1883/91 and referred to by the State, [states] "all written requests whereby someone begins procedures before the Public Administration must contain the following supporting information: a) first and last name, indication of identity and actual and official domicile of the interested party; b) statement of the facts….; c) the concrete request in clear and precise terms."

36. In light of the arguments of the parties, the law of Argentina in force in 1995 and the decisions of domestic courts; the Commission concludes that the petitioner did not fulfill the requirements of admissibility established in domestic legislation to file an administrative proceeding, because the certified letters did not contain the essential elements for ENTEL to be able to issue an administrative act and, therefore, affect the legally protected right of the alleged victims so that they could exhaust the appropriate administrative remedies and subsequently gain access to an administrative court proceeding. Accordingly, the Commission finds that the representative of the alleged victims did not prove that he met the requirements of admissibility set forth in the legislation that regulates administrative proceedings. Additionally, the Commission notes that the representative of the alleged victims filed an untimely appeal with the administrative court against the judgment of August 8, 1995, given that the administrative court found that it was filed outside of the time period referred to in Article 244 of the Code of Civil and Commercial Procedure of the Nation.[12]

37. With regard to the labor proceeding and the regular judicial proceeding, the State specifically argued that Dr. Blanas should have sought "the collection of the amounts of money claimed, because labor credit actions are time-barred after two years,[13] but the legal precedents of the courts were unanimous in counting the period of the statute of limitations from when democracy was restored so that, regardless of the time that transpired, he could have filed the suit when the military government ceased." Additionally, it mentioned that the "alleged victims had all remedies available to them with regard to bringing a regular law suit against the State, which assumed the liabilities of ENTEL on the date of the privatization, on November 7, 1990, taking over all of the obligations and debts relating to its personnel. The same lawsuit could sue the State for the claim of responsibility for institutional nullification in the issuance of Law 21.476." In response, the petitioner argued that the *in limine* denial by the labor court under the ruling dated September 25, 1995, violates Article 8 of the American Convention, in addition to the fact that it shows that no effective procedural remedy was available. With regard to the regular judicial proceeding, the petitioner argued that said action against ENTEL was not viable independently from the National State, inasmuch as it assumed the liabilities of ENTEL on the date of its privatization, November 7, 1990.

38. The Commission notes that once the administrative court declared itself incompetent and referred the proceedings to the labor court, the labor court rejected *in limine* the motion of June 30, 1995 under a ruling dated September 25, 1995, because it found that the representative of the alleged victims brought a declarative action to make the state of uncertainty cease in which the victims were vis-à-vis the lawsuit and institutionally render null and void all laws, decrees and rulings issued between March 24, 1976 and December 9, 1983, which infringed the economic rights of the plaintiffs. In this regard, the IACHR notes that the court concluded that the plaintiffs had 'available to them the regular judicial proceeding to file their claim against ENTEL, including the required declaration of institutional nullification."

39. Pursuant to the arguments of the parties, the law of Argentina in force at the time of the events and the decisions of the domestic courts, the Commission believes that the alleged victims had

[12] The judgment of April 10, 1996, establishes that notice of the August 8, 1995 judgment was served on him on August 15, 1995 and that pursuant to Article 322 of the Code of Civil and Commercial Procedure of the Nation was untimely. Based on this fact, the Commission remarks that 15 days went by from the date of notification of the judgment of April 10, 1996 until the date that the appeal of August 30, 1995 was filed and that Article 244 establishes that "unless otherwise ordered, the deadline to appeal shall be FIVE (5) days."

[13] Pursuant to Article 256 of Law No. 20.744 of the Labor Contract in force since 1976, "actions pertaining to credits stemming from individual labor relations and, in general, provisions of collective agreements, effective awards of collective contracts and provisions of Labor laws or regulations, lapse in two (2) years. The nature of this norm is of public order and the time period can not be modified under individual or collective agreements."

the labor proceeding to sue ENTEL for payment of the salary benefits (*quinquenios*) which they were allegedly deprived of during the military dictatorship in Argentina, and that they had a period of two years counted from the resumption of democracy in Argentina in 1983 to present the lawsuit. Additionally, the IACHR notices that the petitioner did not argue why he did not appeal between 1983 and 1985 directly before the labor courts to claim payment of the salary benefits (*quinquenios*) once democracy was restored.[14] In addition, the Commission also notes that the petitioner did not argue in concrete terms why he did not exhausted the regular judicial proceeding, referred to by both the labour court and the State to the IACHR, in order to declare the unconstitutionality of Article 2.a) of Law No. 21.476.[15] Based on this fact, since the representative of the alleged victims did not duly exhaust the proceedings available to him under domestic law, the Commission finds that the prior exhaustion of domestic remedies requirement set forth in Article 46.1 of the American Convention has not be met.

40. The Commission refrains, since the matter is rendered moot, from examining the other requirements of admissibility provided for in the Convention.[16]

V. CONCLUSIONS

41. Based on the aforementioned arguments of fact and law, the Commission concludes that the petition is inadmissible due to a failure to meet the requirement set forth in Article 46.1.a of the American Convention, and consequently,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition inadmissible for failing to meet the requirements set forth in Article 46.1.a of the American Convention;

2. To notify the parties of this decision;

3. To publish this decision and include it in the Annual Report to be submitted to the OAS General Assembly.

[14] The Commission notes that, pursuant to some court judgments, ENTEL workers demanded payment of benefits through labor courts prior to the privatization of said public enterprise in 1990, which were not found procedurally inadmissible. See Judgment No. 56677 of the National Labor Appeals Court Chamber 1, December 30, 1988, case of "*Cicilliato, Dora Julia y otros c/ENTEL s/cobro de pesos".* The summary of the case indicates that "the deadline for the statute of limitations to lapse for credits of salary benefits owed begins to run as of 30 days from the time the worker leaves."

[15] The Commission deems it pertinent to cite a precedent of the Supreme Court of Justice of the Nation which, once democracy was restored, declared in 1985 that Article 2, subparagraph a) of Law 21.476 of December 31, 1979 was unconstitutional in a case of arbitrary dismissal of a worker. The IACHR notes that in said case the majority of the justices of the Supreme Court of the Nation based their ruling on the consideration that "the effect produced by said norm, exceeds… the valid exercise of the powers of emergency of the State". This precedent would demonstrate *prima facie* that between 1983 and 1985 it could be argued the unconstitutionality of Article 2, subparagraph a) of Law 21.476 before a labor court, as long as a claim related to an employment benefit was submitted against a company of the State, as the dismissal indemnity referred to in this case. See Supreme Court of Justice of the Nation, "*Nordensthol, Gustavo Jorge c/Subterráneos de Buenos Aires Sociedad del Estado s/Despido*", April 2, 1985.

[16] IACHR, Report No. 14/10, Petition 3576-02, Inadmissibility, *Dismissed Workers from Lanificio del Peru S.A.*, Peru, March 16, 2010, par. 35; Report No. 135/09, Petition 291-05, Inadmissibility, *Jaime Salinas Sedó*, Peru, November 12, 2009, par. 37 and Report No. 42/09, Petition 443-03, Inadmissibility, *David José Ríos Martínez*, Peru, March 27, 2009, par. 38.