

**REPORT No. 107/13**  
PETITION 89-00  
INADMISSIBILITY  
ALFREDO ARRESSE ET AL  
(FORMER EMPLOYEES OF THE RACEWAYS DIVISION OF THE NATIONAL LOTTERY)  
ARGENTINA  
November 5, 2013

**I. SUMMARY**

1. On February 18, 2000, a petition was lodged by brothers Carlos Humberto, Carlos Javier and Diego Humberto Spaventa (hereinafter “the petitioners”) at the OAS National Office in Argentina, and was forwarded on March 3, 2000, to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”), claiming that the Republic of Argentina (hereinafter “the State” or “Argentina”) is internationally responsible for alleged discriminatory and arbitrary decisions and failure to rule on the issue at the heart of a claim in a judicial proceeding to overturn and reconsider an administrative decision, which allegedly infringed the rights of 484 former employees of the Raceways Division of the National Lottery,<sup>1</sup> an entity under the Ministry of Public Health and Social Services, (hereinafter “the alleged victims”).

2. The petitioners allege potential violation of the right to a fair trial, property, equal protection and judicial protection, as enshrined in Articles 8, 21, 24 and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), as well as a breach of the obligation to respect and ensure the rights set forth in Article 1.1. They also claim alleged violation of Article 7.a of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter “Protocol of San Salvador”). The State argues that the claims are inadmissible, inasmuch as they do not lay out facts that could tend to establish any violation of the American Convention and that the IACHR is not a court of review of the decisions of domestic courts.

3. Without prejudice to the merits of the petition, after examining the positions of the parties and the requirements set forth under Articles 46 and 47 of the American Convention, the Commission decided that the claim is inadmissible because it does not fulfill the requirement as provided under Article 47.a of the American Convention, in connection with Article 46.1.b, specifically, domestic remedies have not been properly exhausted. Additionally, it decided to notify the parties of this decision, publish it and include it in the Commission’s Annual Report to the OAS General Assembly.

**II. PROCEEDINGS BEFORE THE COMMISSION**

4. The petition was transferred to the IACHR on March 3, 2000, and was assigned the number 89-00. On January 10, 2002, the relevant portions of it were forwarded to the State for its response. The State submitted observations on April 26, 2002, March 5, 2002, September 21, 2005 and November 7, 2006, all of which were forwarded to the petitioners. The petitioners submitted their observations on July 2, 2002 and additional information on February 17, 2004 and July 21, 2006, which was all forwarded to the State. The petitioners submitted a request for a report on admissibility to be issued in May and November 2009, November 2010 and January 2011. On August 12, 2013, the IACHR requested

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<sup>1</sup> See Annex 1. List of alleged victims.

updated information from both parties. The petitioners responded on August 20, 2013, and this response was forwarded to the State for its reference. On September 12, 2013, the State requested and was granted an extension. As of the date of the approval of the instant report, no response from the State had been received.

### **III. POSTITIONS OF THE PARTIES**

#### **A. Position of the Petitioners**

5. By way of background information, the petitioners note that the National Lottery is an entity, which falls under the organizational structure of the Ministry of Health and Social Services and has two administrative divisions: one division managing state-owned gambling establishments (casinos) and the other division managing raceways. They indicate that National Lottery employees can receive productivity awards or bonuses,<sup>2</sup> which as part of their salary, are subjected to social security or retirement withholding tax. The social security tax withholding on such bonuses consists of the employer making a contribution of a certain percentage of the employee's salary (employer's contribution) and a contribution from the employee (employee's contribution). They charge that the National Lottery required employees to pay the employer's share of the contribution as well from June 1, 1975 to September 30, 1980 and from September 1, 1984 to November 30, 1986.

6. They recount that on December 10, 1975, the Union of Raceway Employees filed an administrative request with the National Lottery to put a stop to improper withholding and to pay back the employer's contributions to the employees (Case No. 385.649-75). They also assert that as of that point in time, the Union continued to file motions on an ongoing basis to terminate the improper withholding and to obtain repayment of the money withheld.

7. The Casino division employees had brought legal action in court (Abalde et al v. the National State) and as part of the settlement agreement, Law 19304 was enacted in 1976 partially amending Social Security Law 18037. The Supreme Court of Justice of the Nation (CSJN for the Spanish initials) had found Article 10.a of Law 18037 to be unconstitutional (Abruza et al v. the National State) and, in 1984, the National Appeals Court Chamber had ordered "the return of the amounts withheld from the plaintiffs as the employer's contribution." The petitioners argue that between the amendment to the Law and the Abruza judgment, public employees, particularly Casinos division workers were only required to pay the employee's contribution. In 1986, the Executive branch of government issued Decree No. 1327/86, recognizing repayment of the amounts withheld as the employer's contribution, to the employees of the Central Administrative Office of the National Lottery.

8. The petitioners claim that the 484 alleged victims, former employees of the Raceways Division, ceased in their functions on May 20, 1987.

9. They argue that as a consequence of the aforementioned proceedings and measures, on April 12, 1988, the Ministry of Health and Social Services and the Secretary of Public Service of the Office of the President of the Nation issued Joint Decisions 77/88 and 78/88 pertaining to Raceway employees, recognizing the legitimate repayment of social security tax withholdings for the employer's share of the

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<sup>2</sup> The petitioners claim that said bonus is provided for in the Collective Bargaining Agreement between the National Lottery and the Union of Raceway Employees CCT No. 68/75. Collective Bargaining Agreement (CCT) No. 67/75 applies to Casino Division employees.

contribution to the staff employees listed in Annex 1 of the Decisions (which only listed employees who were actively employed at the time). These decisions authorized reimbursing Raceway employees for the amounts withheld, by operation of the most favorable law to the worker, that is, under Article 4023 of the Civil Code, which establishes a period of 10 years for the statute of limitations to lapse.<sup>3</sup>

10. The petitioners allege that said Decisions provide that: (i) the Union requested the halting and refunding of the aforementioned withholdings on December 10, 1975, under case number No. 385.694-75; (ii) the Legal and Technical Secretariat of the Office of the President of the Nation ruled that payment of these claims should be recognized as legitimate; (iii) in 1987, the Office of Legal Counsel of the Treasury of the Nation ruled that the request filed by the aforementioned Union was admissible and extended the application thereof to employees providing service under a monthly contractual arrangement, who are covered by Collective Bargaining Agreement CCT No. 67/75; (iv) the “productivity bonus” constitutes variable and habitual remuneration; (v) the withholdings began in June 1, 1975; and (vi) Decree No. 1327/86 resolved a similar situation with regard to the Central Administrative Office and the Casinos Division.

11. The above-mentioned Decisions were approved by Decree No. 712/88. The petitioners argue that under the Decisions and this Decree, the State recognized that it owes the amounts of money being claimed by the alleged victims and this constitutes the basis for its obligation to pay them.

12. The petitioners contend that in 1989, the alleged victims filed individual administrative claims, which make up case file No. 390.935-89, with the Office of the National Lottery for repayment of the contributions withheld over the aforementioned periods of time, arguing that they are the only ones who do not benefit from the repayment, thought they have the same rights and conditions (as the current and former employees of the Casinos Division and the current employees of the Raceways Division).

13. The administrative claims were dismissed in Ministerial Decision No. 936 of May 24, 1989 on the grounds that “despite recognition of the right emanating from Joint Decision No. 78/88, it [the list of the alleged victims names] did not appear on the lists annexed thereto.” They contend that the examination of the claim conducted by the authorities was based on the Report of the Office of the General Director for Legal Matters of the Ministry of Health and Social Services, which notes: ‘without entering into the legal consideration of the nature and possible legitimacy of the claim pursued in these proceedings, it must be noted that [...] the actual resources essential to cover the expenditures that will give rise to the appropriations stemming from the claim are not available.’ They allege that this is not a legally valid justification for dismissing the claims.

14. The petitioners argue that the Executive branch of government committed three violations against the alleged victims: (i) withholding the employer’s contributions from them; (ii) failing to refund said withheld contribution to the former employees of the Raceways Division under the Joint Decisions and Decree No. 712/88; and (iii) not ruling on the merits of the matter in Decision No. 936/89.

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<sup>3</sup> Article 10: The statute of limitations for all individual legal action for enforceable debt lapses in ten years, except when a special provision of the law provides otherwise. The same period of time shall apply to filing suit to nullify such decisions, whether the acts have already been nullified or are subject to nullification, when a shorter period of time is not provided for by law.

15. The petitioners claim that, as part of case No. 390.935-89, the National Lottery drew up a draft Decree and had included in the annexes of the Joint Decisions and Decree No. 712/88, the [names of the] alleged victims. They assert that on March 9, 1989, the President of the Raceways Division wrote a letter to the President of Lotteries, justifying said draft decree in stating that “the situation of the employees, who have resigned from their job for different reasons should be regularized [...] and that they are entitled to collect the amounts involved.” They contend that on that same day, the President of Lotteries wrote a letter to the Minister of Health and Social Services stating as well that the dismissed employees “are entitled to collect the amounts of money involved.” The petitioners regard these statements as recognition of their right.<sup>4</sup>

16. They allege that “in order to bring legal action in court against the National State, prior exhaustion of the administrative claim must be proven” and that after doing so the case may be brought before the judiciary. Citing the principle of equal protection under the law, on June 21, 1989, the alleged victims brought legal action in the courts to vacate and reconsider Administrative Decision No. 936 before National Labor Trial Court No. 59 (Palamara et al v. the National State), since their right had not been adjudicated, and on August 29, 1997, this Court sustained the defendant’s objection on the grounds that the action was time-barred because the statute of limitations had lapsed.<sup>5</sup>

17. The Court decided that the statute of limitations provided for under Article 256 of the Labor Contract Law (LCT for its Spanish initials *Ley de Contrato de Trabajo*) was applicable since this labor relationship was governed by two collective bargaining agreements and given that “the plaintiffs are suing to recover the withheld amounts of money [...] for the period of time encompassing from 6/1/75 to 11/20/1980 and from 11/1/84 to 11/30/86. Taking into account that the law suit was filed on June 21, 1989, it can be concluded that the payments being claimed have lapsed under the statute of limitations.” On this score, the petitioners contend that the Court did not examine the evidence introduced and that it did not rule on the object of the lawsuit, which is to render null and void and reconsider the Administrative Decision. They argue that the plaintiffs did not base their arguments on provisions of the collective bargaining agreement, but rather on provisions of administrative law and that the Judiciary was not being asked to recognize their right to payment. They also contend that the judge shifted the burden of proof because “he is placing on the head of the former employees the burden of having to prove that their right to be paid back is not time-barred,” when the burden is on the defendant to prove this, insomuch as it raised the objection as its defense.

18. The trial court judgment was upheld in an appeal filed by the alleged victims on August 3, 1998, before the Second Chamber of the National Labor Appellate Court of the Federal Capital.<sup>6</sup> The motion to grant leave of appeal to the court of last resort, the Supreme Court of Justice of the Nation

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<sup>4</sup> The petitioners indicate that said amounts are the same as the amounts refunded to the current employees and that the accrued interest on them is US\$20,000 per person.

<sup>5</sup> Based on information provided by the petitioners, the objection was raised citing Article 256 of the Labor Contract Law, which establishes a statute of limitations of two years for actions pertaining to payments stemming from individual labor relationships.

<sup>6</sup> Based on information provided by the petitioners, the Second Chamber of the Court pointed to “the existence of virtual uniformity of criterion on the subject matter under examination, with identical rulings having been issued by the First Chamber in the case of “Calicho, Ricardo F. et al v. Ministry of Health and Social Services – Office of the National Lottery” [...], the Third Chamber in the case of Gómez, Rodolfo et al v. Office of the National Lottery- Raceways” [...], the Fifth Chamber, in the case of “Storti, Hugo O. v. National Lottery S.E.” [...], and the Sixth Chamber, in the case of “Cuneo, José v. Office of the National Charity Lottery and Casinos.” Annexes to the petition.

(CSJN), (*recurso extraordinario*) was denied by the same Second Chamber, which found that the requirements set forth in Articles 14 and 15 of Law 48 had not been met.<sup>7</sup> The appeal against the refusal to grant leave to appeal (*recurso de queja*) filed against said denial was found inadmissible by decision of August 19, 1999, notice of which was served on September 2 that same year. The petitioners claim to have exhausted available domestic remedies.

19. They argue that they were discriminated against because of they were already former employees at the time. They claim that the State treated the alleged victims unequally in recognizing the right of the former employees of the Casinos Division to repayment and proceeding to pay them, inasmuch as the alleged victims were denied the same right and refund in the courts of law, on the grounds that the statute of limitations had lapsed. In this regard, they allege that the facts could tend to establish a violation of Article 24 of the American Convention.

20. To the State's argument that the petitioners requested a solution set forth in the law for a similar case (see *infra* III.B) to be applied by analogy, the petitioners respond that the alleged victims are merely seeking to be treated equally to the current employees of Raceways and current and former employees of Casinos, since they all had the same withholdings and only the alleged victims were not paid back.

21. To the State's argument that the statute of limitations has lapsed (see *infra* III.B), they respond that their right to bring legal action is not time-barred given that: (i) the legal action against the administrative decision was filed within the 90 day period provided by law;<sup>8</sup> (ii) Decree No. 1327/86 recognized the right to repayment of the employees of the Casinos Division in keeping with a statute of limitation of 10 years; (iii) the period runs from the time of the State's recognition of the right of the alleged victims under Decision 712/88 of June 9, 1988, and consequently the legal action was filed (on June 21, 1989) one year and two months later – still within the 2 year period under the LCT; and (iv) the law suit was filed a little later than three months after the alleged recognition by the President of the National Lottery of the right to payment at issue on March 9, 1989.

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<sup>7</sup> Art. 14. – Once a case is filed with the Provincial Courts, it shall be adjudicated and the provincial jurisdiction will have been exhausted, and only final judgments issued by the higher courts of the province may be appealed to the Supreme Court in the following instances:

1° When in the law suit the validity of a Treaty, a congressional statute, or of an authority exercised on behalf of the Nation has been called into question and the decision has been against its validity;

2° When the validity of a law, decree or a provincial authority has been called into question under the claim of being contrary to the National Constitution, Treaties or an act of Congress, and the decision has been in favor of the validity of the law or provincial authority.

3° When the meaning of any clause of the Constitution, or of a treaty or of an act of Congress, or a commission exercised on behalf of the national authority has been called into question and the decision is against the validity of the title, right; privilege or exemption that is based on said clause and is the subject of litigation.

Art. 15. – When an appeal is filed that invokes the preceding article, the complaint must be filed in keeping with the provisions set forth therein, such that it must have a basis in the case proceedings and a direct and immediate ruling on issues of the validity of the articles of the Constitution, statutes, Treaties or commissions in dispute, with it being understood that the interpretation or applications that the provincial courts have made of the Civil, Criminal, Commercial and Mining Codes, shall not be grounds for this appeal due to the fact that they are acts of Congress, as provided under subparagraph 11, Article 67 of the Constitution. Annexes to the petition.

<sup>8</sup> The petitioners cite Article 25 of Law of Administrative Procedures No. 15549.

22. The petitioners also argue that Decisions 77 and 78 of 1988 established that it was appropriate “to limit recognition of legitimate payment to rights of payment that are not time-barred” and that the authoritative legal opinion in the *Palamara et al* case, added by the Legal Counsel of the National Treasury establishes that “it is immoral for the National State to put forward the defense of the statute of limitations having lapsed.” They claim that the *pro homine* principle of applying the law most favorable to the person must prevail and that the principles of irreversibility and social and individual “progressivity,” as well as the concept of the common good are also operative in this case.

23. In response to the State’s argument regarding the petitioner’s failure to properly follow procedure (see *infra* III.B), the petitioners respond that:

The Government greatly harms the victims when, first it withholds a portion of their salary; then excludes them from a refund [...], and lastly tells them that they lack the know-how, that they lack the legal expertise and that, in short, they do not have the right to claim repayment even though, [...] it admits it has engaged in making illegal withholdings, that those amounts of money were paid back only to individuals that were in active employment and that it excluded the former employees because, by happenstance, they had left their jobs or service at the Raceways Division.

24. The petitioners argue that the Judiciary violated the rights of the alleged victims to due process of the law; to be heard; as well as to obtain a judgment based on the law, and that it did not rule on the motion to vacate judgment as requested in the law suit. They believe that judicial independence and impartiality means that judicial decisions are objective and that subjectivity and discretion should not be involved. The petitioners deem that the court judgments were arbitrary and illegal. They claim violation of Articles 8 and 25 of the American Convention. They also claim that the right to obtain a prompt judgment has been violated, given the delay of 10 years to settle the matter in the courts.

25. In response to the State’s argument that the petitioners pursue the review of an adverse judgment to their interests (see *infra* III.B), they respond that their petition deals with violations of the American Convention committed by both the Executive and the Judicial branches of government.

26. The petitioners also allege violation of the right to fair remuneration as set forth in Article 7.a of the Protocol of San Salvador and violation of the right to property established in Article 21 of the American Convention, for the alleged withholding of their salaries.

## **B. Position of the State**

27. The State contends that the petition is inadmissible inasmuch as it lays out no facts that could tend to establish violations of the American Convention. It argues that there has been no violation of due process rights in the judicial proceedings, that the petition pursues review of an adverse judgment to the interests of the alleged victims and that the Commission is not an appellate court of review of domestic judgments. It also claims that the petition was forwarded to the State after the time period to do so had expired, being that it was first served a copy of the petition two years after it was lodged with the IACHR.

28. By way of background information, the State notes that employees of the National Lottery receive “productivity awards or bonuses,”<sup>9</sup> and because these bonuses are part of their salary, they are subject to social security or retirement fund taxes. It explained that because social security tax contributions were withheld from Casino and Raceways Division employees’ paychecks, which should have been directly contributed by the employer, active duty employees of the Casino and Raceways Divisions sued for this money to be refunded to them and successfully obtained repayment through their payroll check, as provided under Ministerial Decisions.<sup>10</sup>

29. The State further argues that, as former employees of the Raceways Division, the alleged victims did not appear on said payroll. On June 21, 1989, the alleged victims filed legal action with National Labor Court No. 59 to be paid this money back. It contends that the petitioners filed claims for the “Productivity Bonus” for the periods encompassing from June 1, 1975 to November 30, 1980, and from November 1, 1984 to November 30, 1986.

30. The State filed an objection on the grounds that the claims were time-barred, under Article 256 of the LCT, which establishes a period of two years for actions pertaining to the right to receive money stemming from individual labor relationships.<sup>11</sup>

31. The complaint of the alleged victims was dismissed on August 29, 1987, because the payments they were seeking were time-barred at the time the suit was filed, which runs from November 30, 1986. The State argues that the Second Chamber of the National Labor Court of Appeals upheld the previous trial court decision and that the motion for leave to appeal the Supreme Court (CSJN) was not granted.

32. The State contends that only judicial actions, and not administrative claims, can stop the clock from running toward the statute of limitations. It claims that the petitioners could have brought a judicial *amparo* proceeding for delay in judgment against the Administration, should they have felt that if their administrative claim would not be settled, the statute of limitations for judicial action could lapse and any lawsuit would become time-barred. In view of this line of argument, the State claims that the alleged victims lacked procedural know-how or expertise.

33. In response to the petitioners’ argument that the alleged victims were treated differently from how active duty employees of the Casino and Raceways Divisions were treated, the State believes that the principle of equal protection has not been violated inasmuch as time-barred rights should not be recognized and extended by analogy to the plaintiffs. It argues that the alleged victims were treated differently based on the following: (i) former employees did not appear on the list

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<sup>9</sup> The State notes that these incentive-creating rules were established under Collective Bargaining Agreements No. 67/75 and 68/75, which govern daily wage and monthly contract workers of the Raceways Division of the Argentine National Lottery.

<sup>10</sup> The State notes that repayment of the taxes withheld as the employer’s contribution on “productivity bonuses” was carried out under Joint Ministerial Decisions No. 77/88 and 78/88 of April 12, 1988, for employees, who at the time were actively serving at the Raceways Division. Repayment of employees of the Casinos division had been made prior to that time.

<sup>11</sup> The State cites Article 256: The statute of limitations lapses after two (2) years for actions pertaining to claims to the right to receive payments stemming from individual labor relationships and, in general, from provisions of collective bargaining agreements, awards with the force of collective bargaining agreements and provisions of labor law statutes or regulations. This provision is of a public nature and the time period may not be modified under individual or collective agreement. (Law 20.744).

of employees entitled to repayment, because the legal representatives of the employees requested refunds of the contributions to be made only for active duty employees and (ii) the former employees filed their complaint too late.

34. In this regard, the State contends that “recognition of the time-barred right to payment must be confined to persons expressly mentioned in the aforementioned legal provisions and it is not possible to extend it [recognition of this right] to the plaintiffs, who were not included in the aforementioned provision,” given that there was an objective circumstance that differentiated the plaintiffs from the employees included on the list, which was that the link [to the place of employment] of the current employees of Casinos and Raceways subsisted at the time of the recognition of the right. It further argues that enforceability of equal treatment is contingent upon equality of circumstances and that it is not discriminatory to differentiate based on an objective guideline, which goes to principles of the common good.

35. The State claims that the petitioners’ disagreement with the judgment handed down by the court, which they criticize as arbitrary, lies at the heart of their complaint. It argues that the alleged victims could have amply exercised their right to due legal process and due judicial protection, but that they failed to do so. It alleges that even though suitable and effective remedies were available to them, the petitioners opted to not pursue any action and, consequently, they cannot be considered harmed by the reasonable and predictable outcome of a tardy challenge in court.

36. The State contends that the intent of this petition is to submit an unfavorable judgment for review and, in so doing, ascribe to the Commission a duty befitting a court of appeals or of review, in order to cure the fatal consequences of inaction and modify the situation of the alleged victims, who forfeited their right in this case because the time limits had expired. It claims that the Commission is a subsidiary organ and may not review judgments of domestic courts issued under due process of the law, unless it deems that the American Convention has been violated. It alleges that the Commission may not act as a fourth instance after Argentine courts have adjudicated the matter at the three tiers of the judicial system.

#### IV. ANALYSIS

##### A. Competence of the Commission *Ratione Personae*, *Ratione Loci*, *Ratione Temporis*, and *Ratione Materiae*

37. The petitioners are entitled, under Article 44 of the American Convention, to file complaints with the Commission. The petition identifies individuals as the alleged victims, for whom the State undertook to respect and ensure the rights enshrined in the American Convention and the Protocol of San Salvador. As for the State, the Commission notes that Argentina has been a party to the American Convention since September 5, 1984 and to the Protocol of San Salvador since October 23, 2003, when it deposited the requisite instruments of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

38. The IACHR is competent *ratione loci* to entertain the petition, inasmuch as violations of rights protected in the American Convention and the Protocol of San Salvador are alleged therein to have taken place within the territory of a State Party to these instruments. The IACHR is competent *ratione temporis*, being that the facts alleged in the petition presumably occurred when the obligation to respect and ensure the rights protected in each instrument was already in effect for the State.

39. Lastly, the IACHR is competent *ratione materiae*, because the petition charges potential violations of human rights protected by the American Convention.

## **B. Admissibility Requirements**

### **1. Exhaustion of Domestic Remedies**

40. In order for a claim of an alleged violation of the American Convention to be admitted, the requirement of prior exhaustion of available domestic remedies, as set forth in Article 46.1.a of said instrument, must be met in accordance with generally recognized principles of international law. However, Article 46.2 of the American Convention provides that the prior exhaustion of domestic remedies requirement shall not be applicable when (i) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or, (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

41. As established in the Rules of Procedure of the Commission and held by the Inter-American Court, any time a State alleges petitioners' failure to exhaust domestic remedies, it is incumbent upon the State to identify the remedies that should be exhausted and demonstrate that the remedies that have not been exhausted are "adequate" to rectify the alleged violation, that is to say, the function of those remedies within the domestic legal system is suitable to address an infringement of a legal right.<sup>12</sup>

42. In this regard, rather than arguing failure to exhaust domestic remedies strictly speaking, the State claimed that the alleged victims could have brought judicial *amparo* proceedings for delay in judgment against the administration in order to stop the clock from running on the statute of limitations of two years, which began to run as of November 30, 1986 and, in failing to do so, it cited the petitioners' lack of legal expertise. The petitioners, however, contend that in order to bring legal action against the State, you must first exhaust the available administrative claim, which in turn makes you eligible to pursue judicial remedies, given that they were pursuing nullification of an administrative decision. They argue that domestic remedies were exhausted with the judgment of the CSJN denying leave to appeal dated August 19, 1999 and notified on September 2, 1999.

43. The Commission notes that the purpose of the instant petition is related to the alleged discriminatory effect on the alleged victims. Specifically, the petition charges that the court decisions were arbitrary, the court did not adjudicate the issue of vacating and reconsidering the administrative decision and that the fundamental rights of the alleged victims to a fair trial, judicial protection, equal protection and property were infringed.

44. The Commission asserts that after Decision No. 936 of May 1989,<sup>13</sup> was handed down, the petitioners brought suit in June 1989 before the courts to render null and void and reconsider the

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<sup>12</sup> Article 31(3) of the Rules of Procedure of the Commission. Also see IA Court of HR, *Case of Velásquez Rodríguez*, Judgment July 29, 1988, paragraph 64.

<sup>13</sup> Said decision adjudicating the administrative proceeding, originally brought in 1975.

decision. Said complaint was dismissed in August 1997 because the action was time-barred. The petitioners appealed this decision in October 1997, and the original decision was upheld. The alleged victims filed a special motion for leave to appeal to the Supreme Court of the Nation against said decision, which was denied. The petitioners filed an appeal against the refusal to grant leave to appeal, which was dismissed in August 1999, and they were notified of the decision on September 2, 2000.

45. The Commission notes that the petitioners did not exhaust judicial remedies in a timely fashion vis-à-vis the decision of May 1989, and therefore, have not properly exhausted domestic remedies. Accordingly, given the particular circumstances of the instant petition, the Commission deems that the petition does not meet the requirement set forth in Article 46.1.a of the American Convention.

46. The Commission shall refrain from examining the other admissibility requirements provided for in the American Convention, inasmuch as they have now been rendered moot.<sup>14</sup>

## **V. CONCLUSIONS**

47. Based on the foregoing arguments of fact and law, the Commission finds that the petition is inadmissible in accordance with Article 47.a of the American Convention, due to failure to properly exhaust domestic remedies and accordingly,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To find the petition under examination inadmissible, in accordance with Article 47.a of the American Convention.
2. Notify the State and the petitioners of this decision.
3. Publish this decision and include it in the Annual Report, to be submitted to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 5th day of November 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Belle Antoine, Commissioners.

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<sup>14</sup> IACHR, Report No. 135/09, Petition 291-05, Jaime Salinas Sedó (Peru), November 12, 2009; Report No. 42/09, Petition 443-03, David José Ríos Martínez (Peru), March 27, 2009; Report No. 87/05, Petition 4580/02, Ricardo Antonio Cisco Ferrer (Peru), October 24, 2005; Report No. 73/99, Ejido "Ojo de Agua", Case 11.701 (Mexico), May 4, 1999; Report No. 24/99, Case 11.812, Ramón Hernández Berríos et al (Mexico), March 9, 1999; and Report No. 82/98, Case 11.703, Gustavo Gómez López (Venezuela), September 28, 1998, among other ones.

**Annex I**  
**LIST OF ALLEGED VICTIMS**

- 1) Alfredo Arresse
- 2) Telmo Matías Ávila
- 3) Nélide Agra de Beguer
- 4) Miguel Ángel Alifracó
- 5) Nilda Federico Apuzzo
- 6) Mario Alfredo Abbiati
- 7) Fernando Acuña
- 8) Rafael Aguilera
- 9) Josefa Abran de Mozzone
- 10) Rodolfo Alberto Anelli
- 11) Jorge Federico Apuzzo
- 12) Guillermo Alberto Alais Agrelo
- 13) Roberto Lorenzo Álvarez
- 14) Marcelo Romeo Álvarez
- 15) Daniel Marcelo Acosta
- 16) José Miguel Fernando Avellaneda
- 17) Francisco Aprea
- 18) Leonardo Burdino
- 19) Nélide Benintende de Vitola
- 20) Alva Bagnato de Avio
- 21) Angélica Concepción Ramona Bucio de Boschian
- 22) José Alfonso Barreiro
- 23) Carlos Alberto Bauza Moreno
- 24) Zunilda Benitez de Bello
- 25) Enrique José Bonamaison
- 26) Adelina Estela Barbieri de Fernández
- 27) Ángel Luis Bianchi
- 28) Rebecca Bogomolni de Forastieri
- 29) Aldo César Baratelli
- 30) Roberto Enrique Bensi
- 31) Horacio Domingo Bárbaro
- 32) Rosa Adela Burruchaga de Salcedo
- 33) Osiris Juan Cirilo Bianchi
- 34) Emilio Ramón Beviglia
- 35) José Raúl Biragnet
- 36) Rubén Carlos Bignone
- 37) Jorge Ángel Barco
- 38) Roberto Manuel Bastón
- 39) Mario Battista
- 40) Horacio Berlanga
- 41) Juan Carlos Catalano
- 42) Nuncio Cocimano
- 43) David Zelmiro Roque Casarino
- 44) María del. Carmen Cernogorchevich de Contardi
- 45) Emilio Cacabelos

- 46) Carmen Octavia Celaya
- 47) Jorge Héctor Cané
- 48) Raúl Aníbal Celerino
- 49) Jorge Felipe Cardoso
- 50) Oscar Perpetuo Carbery
- 51) Juan Manuel Caballero
- 52) Horacio Alberto Correa
- 53) Luis Pablo Corbella
- 54) Diego Nepomuceno Curbelo
- 55) Mario José Cáceres
- 56) Juan José Conicoba
- 57) Oscar Osvaldo Castro
- 58) Domingo Sergio Caruzo
- 59) Juan Carlos Cuestas
- 60) Julio Cura
- 61) Roberto Osvaldo Carabetta
- 62) Sara Caneda de Romero
- 63) Ismael Colavechia
- 64) Vito Catanzaro
- 65) Hugo Aníbal Canessa
- 66) Santos Centorbi
- 67) Horacio Osvaldo Corbella
- 68) Francisco Ciarallo
- 69) Juan Ernesto Cozzani
- 70) Guillermo José Canejo
- 71) Mario Roberto Capria
- 72) Luis Enrique Colombo
- 73) Francisco Luis Centorbi
- 74) Regina Margarita Cipolat de Calderone
- 75) Nicolás Antonio María Cosentino
- 76) Ricardo Daniel Callegari
- 77) Anunciada Cichello de González
- 78) Elsa Costa de Espósito
- 79) Hugo Eduardo Cortínes
- 80) Victorio Cantarini
- 81) Apolinario Cheppi
- 82) Emilio Augusto Chiesa
- 83) Susana Silvia Ghiocchio
- 84) Jorge Osvaldo Chiumo
- 85) Carlos Eusebio Chacania
- 86) Ernesto Oscar de La Sale
- 87) Alberto Dhufuka
- 88) Américo Hugo D'aloisio
- 89) Roberto Luis María de la Fuente
- 90) Luis Ángel Rolando Delgado
- 91) Juan Antonio Demaro
- 92) Miguel Lino Domínguez
- 93) Arnaldo Francisco D'Aguila

- 94) Julio César de Matteo
- 95) Federico Felipe Di Toro
- 96) Domingo Antonio Donato
- 97) Andrés Héctor Díaz
- 98) Rosa Máxima Dolina de Campi3n
- 99) Adolfo Carlos Dolina
- 100) Antonio de Lucía
- 101) Alejandro Blas Deve
- 102) Horacio Matías Deibele
- 103) Saverio Enrico
- 104) María Esp3sito de Verrengía
- 105) Alberto Eduardo Esviza
- 106) Leonor Escafit de Beck
- 107) María Ángela Fedele de Patane
- 108) Ideal Ferrari
- 109) Antonio Frade
- 110) Higinio Ángel Falc3n
- 111) José María Fernández
- 112) Joaquín Aníbal Fernández
- 113) Mariano Julián Fernández Podestá
- 114) Daniel Ferdman
- 115) José Francisco Fente
- 116) Angelina Juana Ferro
- 117) Juan Carlos Filardi
- 118) Héctor Oscar Fugardo
- 119) Sara Fiore de Passone
- 120) Elba del Valle Figueroa de Montevidone
- 121) Milcíades Figueroa
- 122) María Esther Ferro de Spinelli
- 123) Luis Ángel Ferro
- 124) José Heriberto Ferrari
- 125) Joaquín Fretre
- 126) Mario Rene Gua
- 127) Manuel Argamira García
- 128) Elsa Gimenez de Martinelli
- 129) Héctor Saverio Gianelli
- 130) Hermindo García
- 131) Jesús María Guerra
- 132) Carlos Alberto Giordano
- 133) Felipe Grillo
- 134) Ruperto Julio García Murphy
- 135) Jorge González
- 136) María Angélica García de Passarelli
- 137) Manuel Eulogio Gómez
- 138) Miguel Ángel González
- 139) Carlos Alberto Guarilia
- 140) Francisco José Gianotti
- 141) Matilde Gallegos de González

- 142) Osvaldo Rafael Garrido
- 143) Luis Alberto Granero
- 144) Luis Ángel Gerez
- 145) Leónides Alberto Gaitán
- 146) Julián García Peret
- 147) Encarnación Gómez de Lumerman
- 148) Julio César Gómez
- 149) Ricardo Pablo Graciano
- 150) Alberto Raúl García
- 151) Amelia Concepción García de Ginabrera
- 152) Vicente González
- 153) Carmelino Pedro Antonio Guzzi
- 154) Isidro Antonio García
- 155) Alberto Edgardo Giovannetti
- 156) Arturo Guerra
- 157) Blanca Azucena Gómez de Albarracín
- 158) Horacio Guimaraes
- 159) José Agustín Gutiérrez
- 160) Juan Carlos Galván
- 161) Pedro Francisco Guarnieri
- 162) Azucena Hermelinda Gutiérrez de Brondino
- 163) Norberto Carlos Heuberger
- 164) Ivonne Georgette Hardy de Vidal.
- 165) Francisco Heras
- 166) Luis Hernando
- 167) Ceferino Nicolás Hernández Echenique
- 168) Miguel Alfredo Iguacel
- 169) María Angélica Igarzábal de Zucca
- 170) Luis Isetta
- 171) Néstor Alberto Lucarelli
- 172) Oscar José Louzan
- 173) Alberto Domingo Longo
- 174) Indalecio Matías López
- 175) Bernardino Lescano
- 176) Carlos Alberto Lerzo
- 177) Ramón Angelino Leone
- 178) Rodolfo Raúl Landi
- 179) José Luis Lastra
- 180) Roberto Janeiro Lapido
- 181) Agustín Eduardo Lanza
- 182) Gustavo Carlos Lastra
- 183) Perla Linardo de Ribot
- 184) Héctor Rodolfo Labella
- 185) Hugo Oscar Lucci
- 186) Carlos Enrique Lavredo
- 187) Juan Carlos Lastra
- 188) Luís Antonio Luisi
- 189) José Aniseto Ledesma

- 190) Clara Lewnsztajn de Ostroviaki
- 191) Carlos Alberto Muzzopappa
- 192) Eduardo Ricardo Menéndez
- 193) Ernesto Macchia
- 194) Salvador Menaldi
- 195) Norberto Amado Martínez
- 196) Paulino Muro
- 197) Miguel Ángel Massollo
- 198) Francisco Marano
- 199) Yrachi Mabragaña
- 200) Roberto Oscar Mozzone
- 201) Marcelo Oscar Murinigo
- 202) Carlos Ricardo Muñoz
- 203) Bruno Minasi
- 204) Roberto Arístides Maillet
- 205) Manuel Méndez
- 206) Domingo Malvicino
- 207) Pedro Maffei
- 208) Ángel Martín
- 209) Jorge Márquez
- 210) Ernesto Raúl Matas
- 211) Juan José Moore
- 212) Amalia Leonor Magariños
- 213) Manuel Martínez Insúa
- 214) Daniel Martín
- 215) Eduardo Daniel Mestre
- 216) Victoria Morano de Pizzi
- 217) Leandro Miño
- 218) Paula Amelia Montenegro de González
- 219) Horacio Eduardo Martínez
- 220) María Teresa Sosa de Maggi
- 221) Eduardo Roberto Marino
- 222) Juan Pablo Moyano
- 223) Romaldo Domingo Marino
- 224) Jorge Lorenzo Morán
- 225) Alberto Nicolás Niño
- 226) Jorge Eduardo Neira
- 227) Marta Andrea Navarro de Paz
- 228) Rosario Mardone
- 229) Osvaldo Luis Nicolini
- 230) Fernando Naso
- 231) Nicanor Héctor Nieves
- 232) Nora Julia Nigro
- 233) Oscar Alberto Noguera
- 234) Pascual Neglia
- 235) Benedicto Ernesto Navarro
- 236) Rubén Nestor Norry
- 237) Alfredo Olivieri

- 238) María Rosa Orrico y Nicolás Francisco Orrico
- 239) Antonio Oteiza
- 240) Nélide Elisa Meceguer de Olivo
- 241) Blanca Ottone
- 242) Jorge Ricardo Otero
- 243) Lidia Oego de Belbusti
- 244) Elisa Noemí Oliva de Díaz
- 245) Aldo Natalio Palamara
- 246) Juan José Piantanida
- 247) Juana Palmieri de Castillo
- 248) Italia Anunciada Perrelli de Battista
- 249) Emilio José Parece
- 250) Josefa María Pignataro de Freire
- 251) Rafael Palacín
- 252) Ricardo Jesús Peña
- 253) Luciano Pasarin
- 254) Julio Alberto Pacheco
- 255) Francisco Piñeiro
- 256) Domingo Paolillo
- 257) Vicente Palacín
- 258) Antonio Paolillo
- 259) Enrique Roberto Putrino
- 260) José Luis Pasqualini
- 261) Pedro Alberto Picorelli
- 262) Ricardo Ángel Perillo
- 263) Eliseo Pérez Rodríguez
- 264) Santiago Peri
- 265) Francisco Porfilio
- 266) Jorge Pasada
- 267) Ramona Graciela Palacios de Claro.
- 268) María Haydeé Palazzo de Mozzone
- 269) Vicente Antonio Praino
- 270) Nilda Eva Luisa Perrota de Schiavo
- 271) Juan José Patiño
- 272) Jorge Bautista Piaggio
- 273) Ángel Parrado
- 274) Albeniz Ángel Palomba
- 275) Carlos Juan Pellaschini
- 276) Juan Carlos Pizlo
- 277) Rodrigo Prendes
- 278) Hugo Puig
- 279) Francisco Piera
- 280) Ernesto Daniel Passone
- 281) Federico Julio Pasart
- 282) Juan Carlos Queiróz
- 283) Jorge Eduardo Quinterno
- 284) Vicente Quintana
- 285) Rodolfo Ramírez

- 286) Enzo Normando Rosa
- 287) Héctor Jorge Retorta
- 288) Héctor Jorge Rolleri
- 289) Carlos Alberto Rey
- 290) Leonardo Luis Rubiño
- 291) Jorge Horacio Rafaelli
- 292) Roberto Enrique Regert
- 293) Elba Hilda Ruaro de Martínez
- 294) Atilio Calixto Roldán
- 295) Jorge Abel Requena
- 296) Juan Agustín Raggi
- 297) Mariano Rodríguez
- 298) Ricardo Omar Row
- 299) Avelino Río
- 300) Segundo René Ruíz
- 301) Nélide Elena Ribetti de Bignone
- 302) Inés Rabanal de Schirripa
- 303) Cecilia Leticia Rosso de Arias
- 304) Roberto Ruzzo
- 305) Pedro Ángel Ríos
- 306) Alberto José Rodríguez Rey
- 307) Jorge Alberto Ricci
- 308) Emilio Rosato
- 309) Clemente Rico
- 310) Carlos Enrique Ramato
- 311) Santos Inocencio Saravia
- 312) Hernán Manuel Sánchez
- 313) Cerafín Souto Latorre
- 314) Federico Andrés Semino
- 315) Héctor Saco
- 316) Juan Manuel Seco
- 317) Gerónimo Rafael Solari
- 318) Roberto Inocencio Souto
- 319) Jorge Solíz
- 320) Francisco Sacramone
- 321) Augusto Alberto Sánchez
- 322) Osvaldo Gregorio Stiep
- 323) Graciela Nidia Sabbarese
- 324) Luis Alberto Signorelli
- 325) Blanca Beatriz Sánchez de Iturriaga
- 326) María Elena Sullivan de Orsomarso
- 327) Emilio Roberto Serrano
- 328) Rimberto Eduardo Silva
- 329) Roberto Solito
- 330) María Ángela Schafer de Ruiz
- 331) Ángel Tomas Salvidea
- 332) Darío César Sosa
- 333) María Teresa Laura Delia Solari de Lavagna

- 334) Dolores Santo Domingo Montes
- 335) Alfredo Soriano
- 336) José Nicolás Sassone
- 337) Pedro Slafman
- 338) Aníbal Argentino Seirgalea
- 339) Gregorio Delfín Sandoval
- 340) Alfredo Samuel Saenz Valiente
- 341) Berta Amanda Sagasti de Vivot
- 342) Héctor Osvaldo Solari
- 343) María Eugenia Solari
- 344) Enrique Miguel Turconi
- 345) Pedro Antonio Agustín Traverso
- 346) Elisa Alcira Tomkinson
- 347) Rubén Ángel Tiscornia
- 348) Héctor Enrique Tarrio
- 349) Miguel Ángel Tesone
- 350) Rosa Dalia Tomaro
- 351) Jorge Tomás Tomkinson
- 352) Ana Teresa Torresi de Somosa
- 353) Eduardo Agatino Tricarico
- 354) José Taboada
- 355) Héctor Jorge Ungaro
- 356) Pedro Víctor Uriburu
- 357) Blanca Nieve Victoriana Urroz
- 358) Ramón Vidal
- 359) Horacio Arturo Vilela
- 360) Osvaldo Antonio Varela
- 361) Roberto Luis Velga
- 362) Antonio Alberto Vidal
- 363) Héctor Ramón Vivot
- 364) Luis Antonio Venturelli
- 365) Ana Teresa Torresi (hermana de Domingo Torresi)
- 366) Enrique Guillermo Augusto Vidal
- 367) Marcelo Américo Varrente
- 368) Juan José Agustín Vazquez
- 369) Marcelina Valiente de Correa
- 370) Ernestina Valle de Orrico
- 371) Jorge Romano Vizio
- 372) Hipólito Ismael Vieytes
- 373) Andrés Adolfo Vergara
- 374) Oscar Miguel Violetto,
- 375) Ricardo Bernabé Zalazar
- 376) Domingo P. Massara
- 377) Luis Alberto Leguizamón Laurencena
- 378) Hugo Víctor Fernández
- 379) Juan Lavalle
- 380) Regina Rego de Ramos
- 381) Juan Gallardo

- 382) Juan José Porfilio
- 383) Horacio Manuel Ramírez
- 384) Roque D'Adano
- 385) Adolfo Eusebio Badino
- 386) Roberto Rodolfo Badino
- 387) Juan Bautista Barberio
- 388) Marta Azucena Barbieri
- 389) Carlos Alberto Benítez
- 390) Carlos Bartolomé Bollini
- 391) Daniel Horacio Bonamaison
- 392) Juan Daniel Bonamaison
- 393) Juan Emilio Bonamaison
- 394) Carmen Rosa Cecilia Castillo de Cajigal
- 395) Carlos Alberto D'Agostino
- 396) José María Delgado
- 397) Juan Carlos Del Gesso
- 398) Jorge Raúl Juan Di Lella
- 399) César Rodolfo Fernández
- 400) Carlos Luis García
- 401) Juan Carlos García
- 402) Juan Nicolás Lapasta
- 403) Micaela del Carmen Lazarte
- 404) Amalia Mozzone de Bor
- 405) Carlina Nuñez de Sardelli
- 406) Luís Camila Oliva
- 407) Alberto Pacheco
- 408) Oscar Juan Paganini
- 409) José Manuel Rico
- 410) Adalberto Riquelme
- 411) Marcelo Avelino Sánchez Viamonte
- 412) Juan Antonio Sandoval
- 413) Alberto Scarinci
- 414) Héctor Damián Tesoro
- 415) Héctor Variego
- 416) Amalia Emma Viana de Artacho
- 417) María del Tránsito Vitularo de Ruiz
- 418) Osvaldo Alí
- 419) Jorge Luciano Berretta
- 420) Marcial Samuel Castello
- 421) Mónica Celia de los Santos Simonelli
- 422) Raúl Omar Gallegos
- 423) Rubén Antonio García
- 424) Ricardo Francisco Garzón Gordillo
- 425) Nelly Beatriz Gómez de Rizzo
- 426) Juana Grinboin de Cernadas
- 427) Miguel Gropallo
- 428) Arturo Matías
- 429) Sara Millian de Cernadas

- 430) Silvia Laura Merlo de laconis
- 431) Carmen Neder de García
- 432) Bartola Ortellado de García
- 433) Ricardo José Retamar
- 434) Ángel Orlando Romano
- 435) Julio César Sánchez
- 436) Beatriz Irma Sobrino de Palomino
- 437) Luis Carlos Stafforini
- 438) Vicente Strano
- 439) Gloria Carlota Suardi de García
- 440) Florencio Ignacio Suárez
- 441) Ricardi Tittone
- 442) Oscar Vicente Varela
- 443) Francisco Vitaliti
- 444) Alberto Ricardi Albornoz
- 445) Raúl Enrique Andrade
- 446) Eliseo Arean
- 447) Norberto Aumente
- 448) Pedro Antonio Baglietto
- 449) Roxana Beatriz Barsi
- 450) Raúl José Benedine
- 451) Eliseo Benjamín Chiosso
- 452) Gerardo Mario Dupuy
- 453) Norma Lili Eyheralde Núñez
- 454) Celestina María Fernández
- 455) Luis Remigio Fernández
- 456) Francisco José Gesú
- 457) María Lucrecia Guevara
- 458) María Inés Hernández
- 459) Antonio Modesto Jardón
- 460) Jorge Manuel Canicoba
- 461) Rodolfo Héctor Fernández Larravide
- 462) Pedro Ángel Leiva
- 463) Antonio Miguel Mancini
- 464) Luis Fiorentino Márquez
- 465) Francisco Mazzara
- 466) Jaime Mizraji
- 467) Alfredo Mario Navarro
- 468) Mario León Murekian
- 469) Alberto Pane
- 470) Aníbal Luis Perrota
- 471) Jorge Porto
- 472) Héctor Sosa
- 473) Manuel Héctor Toyos
- 474) José Alfredo Trevisani
- 475) Juan Antonio Varsallona
- 476) Clemente Braña
- 477) Mario Teodoro Cruz

- 478) Ángel De Santis
- 479) Pedro Polieri
- 480) Juan Varde
- 481) Roberto Ángel Ciampichini
- 482) Jorge Enrique Zanna
- 483) Ernesto Norberto D'Aiello
- 484) Raúl Alberto Lamas