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REPORT No. 14/14
PETITION 265-00

REPORT ON ADMISSIBILITY

AGUSTINA ALONSO ET AL
ARGENTINA

Approved by the Commission at its session No. 1977 held on April 2, 2014
150 Regular Period of Sessions

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I. SUMMARY

1. On April 24, 2000, the Office of the Organization of American States in Argentina received a petition for the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") presented by María Cristina Martínez (hereinafter "the petitioner") that alleges the international responsibility of the Republic of Argentina (hereinafter "the State" or "Argentina") for noncompliance with judgments for *amparo* (protection) of the pensions of 46 retirees: Agustina Alonso, Adelaida Baccaro, Nilda Barbieri, Miguel Barranco, Héctor Benítez, Roberto Bonadé[1], Elvira Caruso, Gerardo Carrizo, Salvador Cerminaro, Rodolfo Cihal, Ada Civale de Milanese, A. Crestuzzo, Lucía del Río, María Di Nunzio, Laura Franco, Juan Espósito, Marta Girardi, Elena Gorosito, Rosendo Grau, Emilio lannantuoni, Victorio Kozulko, Mabel Landi, Elena Lisanti, Marta Martayan, Ana Martínez, José Martins, José Miguelez, Matilde Mones, Ernesto Mitsumori, Orlando Monzo, Tomás Morrone, Ricardo Nadir, Amelia Olive, Elvira Paszczuk, Primitivo Pereira (or Pereyra), Lourdes Pérez, Julio Pinjosovsky, Roberto Rago, Nélida Rodríguez, N. Roldán, Cecilia Rubinstein, Antonia Sánchez, Sara Tulman, Olga Vaamonde, Úrsula Valerbi, and Elvira Vicente de Lemongelli (or de Limongelli) (hereinafter "the alleged victims."[2].

2. The petitioner alleged the violation of the rights to physical, mental, and moral integrity (humane treatment), use and enjoyment of assets (property), and judicial protection of the alleged victims established in Articles 5, 21, and 25 of the American Convention on Human Rights (hereinafter "the American Convention"), and the obligation to respect and guarantee the rights, provided in its Article 1.1. The State alleged that the petitions are inadmissible for failure to comply with the requirement for exhaustion of domestic remedies, and with respect to the alleged violation of Article 21 of the American Convention, the Commission must apply Argentina's reservation to the Convention, so the Commission lacks competence by virtue of application of the doctrine of "fourth instance."

3. After examination of the positions of the parties in the light of the admissibility requirements stipulated in Articles 46 and 47 of the American Convention, the Commission concluded that it is competent to receive the complaints of 37 alleged victims and they are admissible with respect to the alleged violation of the rights set forth in Articles 8, 21, and 25 of the American Convention, in connection with its Article 1.1. It concluded that the petition was not admissible with respect to eight alleged victims for lack of substantiation. The Commission also concluded that the portion of the petition concerning the alleged violation of Article 5 of the American Convention is inadmissible for lack of substantiation. The Commission therefore decided to submit its report to the parties, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. The petition was received on April 24, 2000 (registered with number 265-00), and on January 10, 2002, the pertinent parts were transmitted to the State for its observations. On January 21, 2002, the State requested an extension for presenting its response. The State submitted its response on May 28, 2002, which was forwarded to the petitioner for her observations on February 23, 2004.

[1] He subsequently renounced the petition, so he will not be considered as an alleged victim.

[2] Adelaida Baccaro, Salvador Cerminaro, Rodolfo Cihal, Elena Gorosito, Rosendo Grau, Victorio Kozulko, Mabel Landi, Elena Lisanti, José Martins, José Miguelez, Ernesto Mitsumori, Julio Pinjosovsky, and Elvira Vicente de Lemongelli are deceased.

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5. The petitioner her response on May 5, 2004, which was sent to the State for its observations. On September 17, 2008, the IACHR repeated its request for information to the State. The State sent its response on April 23, 2009, which was forwarded to the petitioner for her observations. The petitioner presented her response on July 22, 2009, which was transmitted to the State for its observations.

6. On February 25, 2010, the State presented its response, which was sent on to the petitioner for her observations on March 3 and June 10, 2010. The petitioner submitted her response on April 21, 2010, which was forwarded to the State for its observations. The State replied on January 15, 2010. On July 20, 2010, the petitioner reiterated her previous response, and the communication was transmitted to the State for its observations. The State's response on June 10, 2011, was forwarded to the petitioner for her information.

7. On September 13, 2013, the IACHR requested updated information from both parties. On September 26, 2013, the State requested an extension, which was granted by the IACHR. The petitioner presented her response on October 16, 2013, which was sent on for the information of the State. On December 18, 2013, the State submitted its response, which was transmitted for the petitioner's information.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

8. The petitioner said the alleged victims had been employed by the civil service in various areas and at the time of retirement were covered by the special regime of Law 22.955 that provided for adjustable benefits (an increase in benefits proportional to the pay raises of civil servants) and therefore the payment of a pension equivalent to 82% of the salary received by a civil servant on active service in the same category from which the pensioner had retired.

9. As background, the petitioner said that under the system of General Law 18.037 there were special regimes that regulated the adjustability of retirement assets in a special way for specific sectors of the civil service: the regime of Special Law 22.955 and that of Law 23.682[3].

10. The petitioner said application of Law 24.019 on the pension emergency suspended all adjustability from January 1, 1992, to December 31, 1996, and the pensions received by the retirees were reduced to less than 60% of the amount received by active civil servants in the same categories.

11. She argues that when Law 24.019 took effect, Special Law 22.955 was revoked by Article 11 of Law 23.966, which generated two situations: (i) the beneficiaries who retired before December 31, 1991, who had acquired the right to special adjustments—by application of Article 27 of General Law 18.037—and were entitled to the 82% adjustment; and (ii) those who retired after December 31, 1991, who had no right to the special adjustment.

12. She indicated that there was also a third group of beneficiaries covered by the regime of Law 23.682, which had not been expressly revoked by Law 23.966, as the State alleged (see *infra* III B).[4]

13. She stated that in all the cases these pension rights had been suspended by Law 24.019 during the specified period (those that had not been revoked because they were acquired rights).

[3] The petitioner said that both laws had been an integral part of a broader group of laws that recognized the beneficiaries of these special benefit systems of portable retirement assets.

[4] The petitioner argued that Law 23.682 was not included in the catalogue of laws revoked by Law 23.966 and that it could not be considered implicitly revoked because it was a law of special rights. She said that furthermore General Law 24.241 (which replaced Law 18.037), promulgated on October 15, 1993, recognized the validity of Law 23.682.

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14. She maintained that as of January 1, 1997, when the law expired, the amounts of the pensions should have been restored to the original system of 82% of the assets, which was not done by the National Social Security Administration (hereinafter "the ANSES").

15. She said that after 1997 the alleged victims filed *amparo* (protection) motions against the ANSES in the Special Federal Social Security Court Social (hereinafter "the JFSS") for payment of the difference. Some of the suits referred to the application of Special Law 22.955 and others to the application of Law 23.682. The judgments had been favorable. The petitioner said that the judges had considered that Articles 5 and 7 of Law 24.019, applied between 1991 and 1996, were inapplicable after 1996 and therefore the prior system should have been used. The *amparo* decisions had also ordered payment of the outstanding assets (differences in the pensions).

16. She alleged that in all cases in which the ANSES filed appeal motions they had been denied by the CFSS. Subsequently, the ANSES had presented special motions that had also been denied by the Supreme Court (CSJN).

17. The petitioner sustained that payment of the final *amparo* judgments, which had the authority of *res judicata* after 1999, had been requested and that the deadline set in the judgments had not been met. She said that the judgment execution phase had begun and that the ANSES had incorporated administrative actions, which apparently had already been analyzed by the JFSS.

18. She stated that a year and a half after the judgments became final, in the judgment execution phase, in 14 cases[5] and without transferring the administrative actions presented by the ANSES, the JFSS decided to declare their compliance inapplicable because the judgments were erroneous, ignoring the specific law on the subject. She said that Article 13 of Law 16.986[6] provided the mechanism for rescinding the erroneous judgment by a subsequent regular suit, in which the ANSES could have requested a non-innovation measure and—respecting due process—guaranteed the exercise of the defense of the interested parties and not declared in an abusive and arbitrary manner that compliance with the *res judicata* judgments was inapplicable.

19. She said that these rulings of inapplicable compliance motivated a new instance of appeal for a different matter than the merits and had been appealed to the Federal Social Security Court (CFSS). Said appeals had argued that

> When a case is over, with a final judgment as in the denial of the special appeal, […] it is not possible at this instance to decide to add new evidence not presented in a timely manner by the defendant, and use it as a basis to alter what has already been resolved with the authority of *res judicata.*

20. The CFSS had confirmed the previous resolution and subsequently presented one appeal to the Magistrates' Council that was rejected. The information provided by the petitioner indicated that the CFSS said in its rulings that

> Giving priority to the invocation of procedural rules over the search for objective legal truth may be admissible in other types of litigation, but it is not admissible with respect to rights when the public treasury is involved. It is therefore justified that the courts have the authority to verify defects in *res judicata* judgments that are challenged […]. This is by virtue of the guarantee of due process […], because objective legal truth must prevail over any manifest excess of formalities […].

[5] Adelaida Baccaro, Nilda Barbieri, Elvira Caruso, Ada Civale de Milanese, Gerardo Carrizo, Lucía de Río, Maria Eugenia Di Nunzio, Juan Espósito, Elena Gorosito, Rosendo Grau, Victorio Kozulko, José Martins, Ernesto Mitsumori, and Fe Lourdes Pérez. See Appendix 1.

[6] Action for *Amparo*, Law 16.986. Enacted and promulgated on October 18, 1966 – B. O. (Official Gazette) October 20, 1966. Art 13.- The final judgment of the existence or inexistence of the injury, restriction, alteration, or arbitrary or manifestly illegal threat to a constitutional right or guarantee creates a *res judicata* with respect to the *amparo* (protection motion), without precluding the exercise of the actions or remedies that may be available to the parties aside from the *amparo*.

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21. She alleged that because of the surprising and improper rulings of inapplicable compliance, she had reached the conclusion that they contained an error that she could not control because she was not given the information provided by the ANSES, violating her right to defense. She said that for this reason the plaintiffs had filed a criminal suit against the petitioner that was in process.

22. In response to the State's allegation with respect to the lack of exhaustion of domestic remedies (see *infra* III. B), the petitioner said that by the date the petition had been submitted, the domestic courts had already decided the merits of the question, the declaration on the right to collect the pension. On this matter, she said that domestic remedies had been exhausted by the CSJN's denials of the special appeal made between October 1999 and March 2000.

23. The petitioner argued that the State's failure to comply with the *amparo* judgments handed down in favor of elderly persons whose only income source was those pensions had harmed the alleged victims physically and emotionally because it affected their right to food, in violation of Article 5 of the American Convention. She also considered that the State had violated the alleged victims' right to age with dignity.

24. She also argued that the State had violated the alleged victims' right to the use and enjoyment of their assets that had been confiscated by the abovementioned pensions' emergency law, contrary to the provisions of Article 21 of the American Convention. She alleges that the beneficiaries of these systems acquired that status because they had made higher monthly contributions to receive the benefit, so the State had illegally appropriated their patrimony, in abuse of their age and their limited ability to seek protection for their rights.

25. The petitioner argued that the Convention had been further violated by the delay of the payments made in some cases, five years after the final judgments. She said that the State had violated the alleged victims' right to have a rapid and efficient judicial mechanism, as guaranteed in Article 25 of the American Convention.

26. In response to the State's argument with respect to nonpayment of the judgments for budgetary reasons (see *infra* III.B), the petitioner said that the claims date from 1997 on, and as of the date of her response there had been seven fiscal years in which the State had the obligation to include them in its budget for payment. She said that nonpayment could have been justified in the first year, but at this point it is clear the State's will not to pay the claims.

27. Information provided by the petitioner[7] shows that 24 of the alleged victims had received full payment for the judgment in question between June 2000 and March 2006. Of these 24 persons, seven had collected the sums between June 2000 and February 2001.[8] The petitioner has not provided that information with respect to three alleged victims.[9] Also, 14 of the alleged victims had not received any payment at all and three of them had received a partial payment.[10]

28. Finally, the petitioner said that most of the retirees who had collected the money owed them did not do so in accordance with the judgment obtained. She also said that most of the alleged victims had died of old age.

B. Position of the State

29. As background, the State said that until 1994 General Law 18.037 governed the retirement and pension system of workers in their agencies. Its Article 49 had provided that the percentage of the initial

[7] See Appendix 1.

[8] Laura Franco, Marta Martayan, José Miguelez, Julio Pinjosovsky, Nilda Roldán, Antonia Sánchez, and Úrsula Valerbi.

[9] Ada Civale de Milanese, Elvira Vicente de Lemongelli, and Primitivo Pereira.

[10] Juan Espósito, Victoria Kozulko, and Lourdes Pérez Fe.

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payments would range from 70% to 82% of the monthly average of current salary. Article 53 had provided that the payments would be adjustable in accordance with changes in the general salary level.

30. The State also indicates that from the end of 1983 to 1991 in addition to that general system there was the system of Special Law 22.955 for certain employees. The State recalled that the pension jurisprudence principle establishes that "the right to retirement is governed by the law in force on the date of termination or services or death of the applicant."

31. The State said that with respect to the facts in the petition, given the country's economic emergency, Law 24.019 was enacted to establish a ceiling for special assessments, reducing the pensions to 70% of the salary of the active employee between January 1, 1991, and December 31, 1996. It said that at the end of that period, the ceiling had not been automatically lifted, so the alleged victims had filed *amparo* motions demanding adjustment to 82% of the salary. It said that those "*amparistas*" who claimed retirement under Special Law 22.955 had requested the corresponding adjustments and retroactivity.

32. The State sustained that although payment had been made in some of the cases presented by the petitioner, a check of the administrative records of the individuals revealed that they had sought the benefit of General Law 18.037 rather than Special Law 22.955 as invoked by the petitioner.[11]

33. Initially the ANSES had defined the situation of the alleged victims as follows: (i) 20 persons were not covered by the special regime of Law 22.955 or any similar regime (they had received an unfavorable ruling from the ANSES that had not been appealed, or the appeal was not attached)[12]; (ii) two persons[13] were on the preferential list for payment of their judgments; (iii) five persons were in the database of Office H, San Martín File, for inclusion on the preferential list[14]; (iv) 10 persons had their judgments executed and the sums owed them had been paid[15]; and (v) the remaining eight persons[16] were in process, without a final judgment that would permit their inclusion on the preferential list. The State said later that many of the cases had been archived or halted, due solely to the inactivity of the applicant, who has responsibility for initiating the process.

34. The State alleged that the favorable ruling on the *amparo* motions did not specify the payment of allegedly improperly retained payments; there was an administrative route that had to be followed to add the final judgments to the preferential list for payment. It said that said order is contingent upon sending the administrative file to the Judgment Liquidation Office along with the judgments issued in each instance, or if applicable, the denial of the special remedy and the appeal motion filed as a result of it.

35. In one of its initial responses the State indicated that except for 10 alleged victims whose judgments had been executed, the rest of them had not exhausted appeals. It argued that domestic remedies had not been exhausted because most cases were awaiting inclusion on the preferential list for payment of the judgments, or had received an unfavorable ruling from the ANSES, which could not be appealed.

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[11] The State said that there were even some cases in which the individuals did not file an *amparo* motion but rather a claim for pension adjustment based on another legal appeal, obtaining a ruling from the CSJN that had declared Articles 49, 53, and 55 of General Law 18.037 unconstitutional.

[12] Ada Civale de Milanese, Maria Eugenia Di Nunzio, Gerardo Carrizo, Fe Lourdes Pérez, Maria Elena Gorosito, Rosendo Grau, Marta Martayan, Nilda Barbieri, Ernesto Mitsumori, Victorio Kozulko, Adelaida Baccaro, Elvira Caruso, Juan Esposito, José Martins, Julio Pinjosovsky, Primitivo Pereyra, Nélida Rodríguez, Elvira Vicente, Elvira Paszczuk, and Antonia Sánchez. The State said that in these cases the employees had retired after December 31, 1991, when Law 22.955 had already been revoked. It said that nobody could apply its provisions, because according to the highest court's jurisprudence "there is no acquired right to the continuation of laws or regulations."

[13] Sara Tulman and Roberto Rago.

[14] Cecilia Rubinstein, Elena Lisanti, Ricardo Nadir, Rodolfo Cihal, and Héctor Benítez.

[15] Nilda Roldán, (Roberto Bonadé), Miguel Barranco, Ana María Martínez, Alicia Crestuzzo, Matilde Mones, Marta Girardi, José Miguelez, Laura Franco, and Úrsula Valerbi.

[16] Agustina Alonso, Olga Vaamonde, Orlando Monzo, Tomás Morrone, Mabel Landi, Salvador Cerminaro, and Amelia Olive.

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36. The State argued that the petitioner's allegation that the declaration of inapplicable compliance constituted "... a new instance of appeal…" (see *supra* III.A) showed that due process had been observed. It said the appeal had not been "... for a different matter than the merits of the same," since the appeals instance discussed questions related to the validity of the judgment, invoked by the claimants. It said that in that appeal the declarations of inapplicable compliance were upheld.

37. In response to the allegation of alleged violation of Article 21 of the American Convention (see *supra* III.A) the State said that the Inter-American Court had established that although an adjustable pension is an acquired right, the States may limit the enjoyment of the right to property for reasons of public utility or social interest. It said that States may only reduce the property effect of pensions (amount of the pensions) by proper legal means and for the reasons indicated. It said that the Court had also maintained that Article 5 of the Protocol of San Salvador permits States to establish restrictions and limitations on the enjoyment and exercise of economic, social, and cultural rights by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.

38. The State considered that there was no element of fact or law that could tend to establish a violation of rights or guarantees recognized in the American Convention. It alleged that the petition simply questioned the conduct of the ANSES for failing to pay the pensions in accordance with the court mandate. It said that the petition had ignored the internal mechanism of the ANSES established by law. It said this mechanism is not subject to review because it reflects the economic policies established by the State. Therefore, the State considers that Argentina's reservation to Article 21 of the American Convention is applicable

> "The Argentine Government establishes that questions relating to the Government's economic policy shall not be subject to review by an international tribunal. Neither shall it consider reviewable anything the national courts may determine to be matters of 'public utility' and 'social interest', nor anything they may understand to be 'fair compensation.'"

39. The State alleged that it had taken effective measures that make continuation of an international proceeding inapplicable, and that "the distinguished Commission is precluded from considering the matter by virtue of application of the doctrine of the 'fourth instance.'" It said that the Commission cannot act as an appeals court to examine alleged errors in fact or law that may have been committed by domestic courts acting within their limits of competence.

40. In addition, the State said that it detected irregularities in other *amparo* motions filed by the petitioner (not ones addressed in this petition) in which the authorities had requested a review of the petitioner's procedural conduct and copies of her actions had been submitted to the Ethics Commission of the Buenos Aires Bar Association. It said, for example, that in three of the other cases mentioned the monetary sum sought by the applicants had been rejected on the grounds that it was substantially below the amount owed, in order to unduly increase the amount that should be paid to the ANSES. In said cases the settlements sought by the petitioner had been rejected because there had not been undue retention.[17]

41. The State said that the Social Security Committee of the Buenos Aires Bar Association filed a complaint against the petitioner with the Discipline Court of the Bar Association [Colegio Público de Abogados]. It said that the investigation conducted had revealed the same modus operandi: the presentation of *amparo* motions under Special Law 22.955 in favor of persons who had retired under General Law

[17] The State said that in one case the court ruled "it was clear that a simple reading of the administrative actions, or at the least, the lawyer's minimum information, would have led her to frame the appeal correctly and avoid unnecessary court expense," saying that "in most of the cases pursued by the lawyer involved, Dr. María Cristina Martínez, the same lack of correlation with the administrative circumstances occurred."

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18.037.[18] It argued that the amount of pension payments differs depending on the applicable law at the time of retirement and that the payments that had been authorized and rejected by the ANSES demonstrated that the amounts were not the ones that had been declared and it had not been appropriate to make undue payments.

42. Finally, in 2013 the State supplied information (updating that supplied in 2009) on compliance with the judgments that is attached as Appendix 1, which shows that of the 45 cases: 14 had a declaration that compliance was inapplicable, 27 had the judgment executed, and four had been archived because they were not covered by Law 22.955, hence the State considered the petition inadmissible.

IV. ANALYSIS

A. The Commission's competence *ratione personae*, *ratione loci*, *ratione temporis* y *ratione materiae*

43. The petitioner is eligible to submit a petition to the Commission in accordance with Article 44 of the American Convention. The petition identifies as alleged victims individual persons for whom the State has assumed the commitment to respect and guarantee the rights established in the American Convention. With respect to the State, the Commission notes that Argentina has been a State party to the American Convention since September 5, 1984, the date it deposited its instrument of ratification. Therefore, the Commission has *ratione personae* competence to examine the petition.

44. The Commission has *ratione loci* competence to admit the petition, given that it alleges violations of rights protected by the American Convention that allegedly took place in the territory of a State party to that treaty. The IACHR has *ratione temporis* competence because the obligation to respect and guarantee the rights protected in the American Convention was in force for the State when the facts alleged in the petition were said to have occurred.

45. The State argues that the domestic mechanism of the ANSES established by law cannot be the subject of international review because it follows economic policies established by the State, given application of Argentina's reservation to Article 21 of the American Convention to the effect that questions relating to the Government's economic policy shall not be subject to review by an international tribunal.

46. With respect to the alleged applicability of that reservation to the American Convention, the Commission notes that the objective of the present petition concerns the alleged failure to execute judgments in favor of the alleged victims, not the State's economic policy or the laws that establish it, so said objective is not covered by the reservation. Therefore, the Commission has *ratione materia* competence regarding the alleged violation of Article 21 of the American Convention. The Commission has *ratione materiae* competence to consider the petition because it alleges violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

47. Article 46.1.a of the American Convention stipulates, as a requirement for admission of petitions alleging violations of that instrument, that remedies under domestic law have been exhausted in accordance with generally recognized principles of international law. Article 46.2 of the Convention states that the requirement for exhaustion of domestic remedies 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

[18] The State said that it had examined 40 cases with the same characteristics in which payment of the alleged sums retained had not been in order because the claimants had retired under General Law 18.037 although the petitioner claimed that they had obtained the pension benefit under Special Law 22.955.

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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.

48. According to the Commission's Rules of Procedure, and the jurisprudence of the Inter-American Court, whenever a State alleges the lack of exhaustion of domestic remedies by the petitioners, it shall be up to the State to identify the remedies to be exhausted, and to demonstrate that they are "suitable" to correct the alleged violation, i.e., that the function of the remedies in the domestic legal system is well-suited to address the infringement of a legal right.[19]

49. The State argues that with the exception of 10 alleged victims, whose judgments have been executed, the others have not yet exhausted remedies because they have not appealed the unfavorable administrative resolution of the ANSES or because they are waiting to be put on the preferential list for payment of the judgments. The petitioner, on the other hand, argues that domestic remedies were exhausted with the judgments that denied the special appeal filed by the ANSES between October 1999 and March 2000.

50. On this point, the Commission reiterates that the administrative remedies described the State, such as an administrative appeal of the decision by the ANSES, are not a domestic legal remedy under the terms of the American Convention and are not a suitable remedy for the alleged human rights violations in the instant case, because they are not effective in the sense established by the case law of the Inter-American system.[20]

51. The Commission notes that the ANSES filed appeals of the *amparo* judgments handed down between June 1998 and March 2000,[21] which were denied by the CFSS and also special appeals that were denied by the CSJN between October 1999 and March 2000, and that the execution phase had begun. During that phase, the ANSES reportedly supplied the administrative files of the alleged victims, resulting in the JFSS issuing declarations that compliance was inapplicable in 14 of the *amparo* judgments,[22] because of a judicial error given that they were not covered by the pension benefits of Law 22.955. Those declarations were said to have been appealed to the CFSS and the result was confirmation of the previous declaration. Then, in one of the cases, an alleged victim reportedly filed a complaint with the Magistrates' Council, which was rejected.

52. The Commission reiterates that the situation that must be taken into consideration in order to determine if the remedies under domestic law have been exhausted is that which exists at the moment of adopting a decision on admissibility, because the time of presentation of the petition and the time of ruling on its admissibility are two different moments.[23]

53. Given the characteristics of this petition, and for the purpose of evaluating the admissibility of the 45 cases, the Commission considers that with respect to the claims for the calculation of pensions domestic remedies were exhausted by the judgments issued by the CSJN between October 1999 and March 2000 that responded to the special appeal filed by the ANSES. With respect to the 14 persons whose cases were declared of inapplicable compliance, the Commission notes that they had reportedly presented an appeal of that declaration to the CFSS. Therefore, the requirement for exhaustion of domestic remedies established in Article 46.1.a of the American Convention has been satisfied.

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[19] Article 31.3 of the Commission's Rules of Procedure. See also I-A Court., *Case of Velásquez Rodríguez,* Judgment of July 29, 1988, para. 64.

[20] *Cf.* IACHR, Report No. 73/99 "Ojo de Agua" Cooperative vs. Mexico, Case 11.701, para. 16, and Report No. 36/05 Fernando A. Colmenares Castillo vs. Mexico, Case 12.170, March 9, 2005, paras. 38-39.

[21] See in Appendix 1 the dates of exhaustion of domestic remedies for each alleged victim.

[22] Adelaida Baccaro, Nilda Barbieri, Elvira Caruso, Ada Civale de Milanese, Gerardo Carrizo, Lucía de Río, Maria Eugenia Di Nunzio, Juan Espósito, Elena Gorosito, Rosendo Grau, Victorio Kozulko, José Martins, Ernesto Mitsumori, and Fe Lourdes Pérez. See Appendix 1.

[23] IACHR, Report Nº. 52/00, *Dismissed Congressional Employees*, June 15, 2000, para. 21.

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2. Deadline for presentation of the petition

54. The American Convention requires that in order for petitions to be admissible they be submitted within six months of the date the petitioner is notified of the final judgment that exhausts domestic remedies. Article 32 of the Commission's Rules of Procedure establishes that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

55. In previous cases the IACHR has established that the concept of timeliness applies in a different way to claims alleging noncompliance with a final court ruling that could represent ongoing violations of the right to effective judicial protection.[24]

56. The Commission notes that the petition was received on April 24, 2000, and that the facts on which the claim is based began with the alleged noncompliance with the 45 judgments issued between October 1999 and March 2000 by the CSJN, so the alleged violation would be ongoing,[25] to the moment of execution.

57. Consequently, in light of the context and characteristics of the petition, the Commission believes that the petition was lodged on a timely basis and that the timeliness admissibility requirement must be taken as satisfied.

3. Duplication of international proceedings

58. The case file does not contain any information that would indicate that this matter is pending in another international proceeding for settlement or has been previously studied by the Inter-American Commission. Therefore, the IACHR concludes that the grounds for inadmissibility established in Article 46.1.c and in Article 47.d of the American Convention are inapplicable.

4. Nature of the allegations

59. The petitioner alleges the violation of the rights to physical, mental, and moral integrity (humane treatment), use and enjoyment of assets (property), and judicial protection of the alleged victims established in Articles 5, 21, and 25 of the American Convention. She also considers that the State has violated the alleged victims' right to age with a decent standard of living.

60. The State, for its part, alleges that there was no element of fact or law that could tend to establish a violation of rights or guarantees recognized in the American Convention. It also says that the Commission cannot act as an appeals court to examine alleged errors in fact or law that may have been committed by domestic courts acting within their limits of competence.

61. According to the jurisprudence of the Inter-American system, the Commission cannot review "decisions handed down by national courts acting within their authority and applying the appropriate legal guarantees, unless it is found that there has been a violation of some right protected by the Convention."[26] However, within its mandate to ensure the observance of the rights set forth in the Convention, the

[24] IACHR, Report No. 89/99, Case 12.034, Carlos Torres Benvenuto et al, Peru, September 27, 1999, paras. 22 and 23; Report No. 75/99, Cabrejos Bernuy, Peru, May 4, 1999, para. 22; Report No. 17/09, Adriana Victoria Plaza Orbe and Daniel Ernesto Plaza Orbe, Ecuador, March 19 2009, para. 39, and Report No. 147/11, petitions 4418-02 José Antonio Gómez Tello and Iván Víctor Enríquez Feijóo, 980-03 Sussy Ivette and Wendy Estahel Encalada Cherrez vs. Ecuador, November 1, 2011, para. 51.

[25] *Cfr.* IACHR, Report No. 147/11, petitions 4418-02 José Antonio Gómez Tello and Iván Víctor Enríquez Feijóo, 980-03 Sussy Ivette and Wendy Estahel Encalada Cherrez vs. Ecuador, November 1, 2011, para. 52.

[26] IACHR, Report Nº 8/98, Case 11.671, Carlos García Saccone vs Argentina, March 2, 1998, para. 53.

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Commission is necessarily competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or alleges other violations of rights protected by the American Convention.[27]

62. The Commission notes that although the petitioner alleges that the judgments have not been executed in four cases,[28] the State has argued that these alleged victims are not entitled to the benefits of Law 22.955, so their cases would be archived. In view of the parties' disagreement on this aspect of the petition, the Commission has decided that it will deal in the merits phase with the alleged international responsibility of the State to the detriment of Salvador Cerminaro, Nélida Rodríguez, Ana Martínez, and Primitivo Pereira, with respect to Articles 8, 21, and 25 in connection with Article 1.1 of the American Convention.

63. On another aspect, the petitioner has alleged the lack of due process in the 14 cases[29] in which a declaration of inapplicable compliance was issued, especially with respect to the alleged violation of the *res judicata* principle and the alleged lack of notification that would have impeded the alleged victims' right of defense. In this regard, the Commission notes that the CSJN judgment established *res judicata*. In view of that, the Commission considers that this tends to establish violations of the right to property, judicial protection, and a fair trial established in Articles 21, 25, and 8 of the American Convention.

64. With regard to other alleged victims, 27 of the *amparo* suits initiated after 1997 were said to be totally executed between 2000 and 2006. In eight of these cases, the judgments were reportedly executed in 2000.[30] In seven of them, the parties agree that the State complied with the judgments issued between October 1999 and March 2000, with payments made in 2000. In one of these eight cases, the State reported compliance with payment in 2000, and the petitioner did not dispute it.[31] In the 19 remaining cases, the judgments were said to be executed two or more years after they were handed down.[32]

65. In view of this, the Commission considers that the petitioner's allegations about the delay in execution of the judgment in question could tend to establish violations of the rights to a fair trial, private property, and judicial protection guaranteed in Articles 8, 21, and 25 of the American Convention, and the obligation to respect and guarantee the rights that is set forth in its Article 1.1, to the detriment of said 19 alleged victims.

66. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to specify the rights allegedly violated by the State in the matter submitted to the Commission, although petitioners may do so. It is up to the Commission, based on the system's jurisprudence, to identify in its admissibility reports which provisions of the relevant Inter-American instruments are applicable and would be violated if the alleged facts are sufficiently proved.

67. Finally, the Commission considers that the petitioner has not presented elements to substantiate the alleged violation of Article 5 of the American Convention. Therefore, this allegation does not

[27] IACHR, Report Nº 1/03, Case 12.221, Jorge Omar Gutiérrez vs. Argentina, February 20, 2003, para. 46, citing Report Nº 39/96, Case Nº 11.673, Marzioni vs. Argentina, October 15, 1996, paras. 50-51. See, IACHR, Report Nº 4/04, Case 12.324, Rubén Luis Godoy vs. Argentina, February 24, 2004, para. 44.

[28] Salvador Cerminaro, Nélida Rodríguez, Ana Martínez, and Primitivo Pereira.

[29] According to submissions from both parties, the alleged victims are: Adelaida Baccaro, Nilda Barbieri, Elvira Caruso, Gerardo Carrizo, Ada Civale de Milanese, Lucía de Río, Maria Eugenia Di Nunzio, Juan Espósito, Elena Gorosito, Rosendo Grau, Victorio Kozulko, José Martins, Ernesto Mitsumori, and Fe Lourdes Pérez.

[30] Laura Franco, Marta Girardi, Mabel Landi, Marta Martayan, Matilde Mones, Julio Pinjosovsky, Nilda Roldán, and Úrsula Valerbi. See Appendix 1.

[31] Marta Girardi.

[32] Agustina Alonso, Miguel Barranco, Héctor Benítez, Rodolfo Cihal, A. Cretuzzo, Emilio Iannantuoni, Elena Lisanti, José Miguelez, Orlando Monzo, Tomás Morrone, Ricardo Nadir, Amelia Olive, Elvira Paszczuck, Roberto Rago, Cecilia Rubinstein, Antonia Sánchez, Sara Tulman, Olga Vaamonde, and Elvira Vicente de Lemongelli. See Appendix 1.

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satisfy the requirements established in Articles 47.b and 47.c of the American Convention, so that allegation must be declared inadmissible.

V. CONCLUSIONS

68. The Commission has concluded that it is competent to examine the petitioner's claims with respect to the alleged violation of Articles 8, 21, and 25, in connection with Article 1.1 of the American Convention and they are admissible in accordance with the requirements established in Articles 46 and 47 of the American Convention, as has been noted. It has also concluded that the petition is inadmissible with respect to the alleged violation of Article 5 of the American Convention.

69. Based on the foregoing arguments of fact and law

THE INTER-AMERICAN HUMAN RIGHTS COMMISSION

DECIDES:

1. To declare the present petition admissible as regards Articles 8, 21, and 25 in connection with Article 1.1 of the American Convention, with respect to Agustina Alonso, Miguel Barranco, Héctor Benítez, Rodolfo Cihal, A. Crestuzzo, Emilio lannantuoni, Elena Lisanti, José Miguelez, Orlando Monzo, Tomás Morrone, Ricardo Nadir, Amelia Olive, Elvira Paszczuk, Roberto Rago, Cecilia Rubinstein, Antonia Sánchez, Sara Tulman, Olga Vaamonde, Elvira Vicente de Lemongelli, Salvador Cerminaro, Nélida Rodríguez, Ana Martínez, Primitivo Pereira, Adelaida Baccaro, Nilda Barbieri, Elvira Caruso, Gerardo Carrizo, Ada Civale de Milanese, Lucía del Río, María Di Nunzio, Juan Espósito, Elena Gorosito, Rosendo Grau, Victorio Kozulko, José Martins, Ernesto Mitsumori, and Lourdes Pérez.

2. To declare the petition inadmissible with respect to: Laura Franco, Marta Girardi, Mabel Landi, Marta Martayan, Matilde Mones, Julio Pinjosovsky, Nilda Roldán, and Úrsula Valerbi.

3. To declare the present petition inadmissible with respect to Article 5 of the American Convention.

4. To notify the Argentine State and the petitioner of this decision.

5. To continue with the analysis of the merits of the case.

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

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APPENDIX 1[33]

Num-ber	Name	Date of final *amparo* judgment by the JFSS	Date of appeal judgment by the CFSS	Compliance status (PETITIONER as of May 2009)	Compliance status (STATE as of July 2009)
1.	Alonso, Agustina	02/25/1999		Total payment in 2006	Total payment in 2006
2.	Baccaro, Adelaida†	11/10/1999		Declaration of inapplicable compliance	Not covered by Law 22.955
3.	Barbieri, Nilda	06/28/1998	11/04/2003	Declaration of inapplicable compliance	Not covered by Law 22.955
4.	Barranco, Miguel	09/30/1998		Total payment on 02/27/2006	Payment in 12/1999 and 01/2005
5.	Benítez, Héctor	12/29/1999		Total payment in August 2005	Payment in 12/2004 y 01/2005
6.	Caruso, Elvira	June 1999		Declaration of inapplicable compliance	Not covered by Law 22.955
7.	Carrizo, Gerardo†	12/16/1999		Declaration of inapplicable compliance	Not covered by Law 22.955
8.	Cerminaro, Salvador†	04/29/1998		Not paid	Not covered by Law 22.955
9.	Cihal, Rodolfo†	10/20/1999		Total payment in August 2003	Total payment in August 2003
10.	Civale de Milanese, Ada	06/29/1998		Declaration of inapplicable compliance	Not covered by Law 22.955
11.	Crestuzzo, A.	03/06/2000		Total payment on 03/29/2005	Total payment in 03/2005
12.	Del Río, Lucía	12/16/1999	27/06/2002	Declaration of inapplicable compliance	Not covered by Law 22.955
13.	Di Nunzio, María Eugenia	12/04/1998	24/11/2003	Declaration of inapplicable compliance	Not covered by Law 22.955
14.	Franco, Laura	12/16/1999		Total payment in September 2000	Total payment in 08/2000
15.	Esposito, Juan			Declaration of inapplicable compliance Partial payment	Not covered by Law 22.955
16.	Girardi, Marta	05/30/1999		Unpaid	Total payment in March 2000

[33] Table compiled with information available in the file. Missing information in the table has not been supplied by the parties.

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Num-ber	Name	Date of final *amparo* judgment by the JFSS	Date of appeal judgment by the CFSS	Compliance status (PETITIONER as of May 2009)	Compliance status (STATE as of July 2009)
17.	Gorosito, Elena†	06/15/1999		Declaration of inapplicable compliance	Not covered by Law 22.955
18.	Grau, Rosendo†	07/06/1999	23/04/2002	Declaration of inapplicable compliance	Not covered by Law 22.955
19.	Iannantuoni, Emilio	11/09/1999		June 2005	Total payment in 04/2006
20.	Kozulko, Victorio†	02/13/1999		Declaration of inapplicable compliance Partial payment	Not covered by Law 22.955
21.	Landi, Mabel†	10/28/1999		Paid	Total payment in 08/2000
22.	Lisanti, Elena†	07/15/1999		Total payment on 01/06/2004	Payment in 12/2003 and 04/2005
23.	Martayan, Marta†			Total payment in June 2000	Payment in 12/2000
24.	Martínez, Ana	07/15/1999		Unpaid	Not covered by Law 22.955
25.	José Martins†	11/25/1999		Declaration of inapplicable compliance 2001	Not covered by Law 22.955
26.	Miguelez, José†	05/10/1999		Total payment in February 2004	Payment in 01/2000, 09/2003, 12/2003 and 01/2004
27.	Mones Ruíz, Matilde	07/16/1999		Total payment in September 2000	Payment in 09/2000 and 12/1999
28.	Mitsumori, Ernesto†	12/23/1999	18/09/2001	Declaration of inapplicable compliance	Not covered by Law 22.955
29.	Monzo, Orlando	03/14/2000		Total payment in April 2004	Payment in 08/2003
30.	Morrone, Tomás	02/26/1999		Total payment on 04/01/2005	Payment in 12/2004 and 01/2005
31.	Nadir, Ricardo	07/15/1999		Total payment in December 2004	Payment in 11/2004
32.	Olive, Amelia	12/03/1999		Total payment in October 2005	Payment in 09/2000, 10/2005 and 11/2005
33.	Paszczuk, Elvira	1999		Total payment in August 2005	Payment in 01/2000 and 09/2005
34.	Pérez, Fe Lourdes	11/09/1999	17/10/2002	Declaration of inapplicable compliance Partial payment	Not covered by Law 22.955
35.	Pereira, Primitivo F.	1998			Not covered by Law 22.955

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Num-ber	Name	Date of final *amparo* judgment by the JFSS	Date of appeal judgment by the CFSS	Compliance status (PETITIONER as of May 2009)	Compliance status (STATE as of July 2009)
36.	Pinjosovsky, Julio†	05/28/2000		Total payment in September 2000	Total payment in September 2000
37.	Rago, Roberto	03/12/1999		Total payment in February 2006	Total payment in February 2006
38.	Rodríguez, Nélida	02/17/1999		Unpaid	Not covered by Law 22.955
39.	Roldán, Nilda	05/10/1999		Total payment in June 2000	Payment in 12/1999 and 02/2000
40.	Rubinstein, Cecilia	06/02/1999		Total payment on 08/02/2005	Payment in 01/2000 and 01/2004
41.	Sánchez, Antonia	03/09/1999		Total payment in February 2001	Payment in 01/2000 and 01/2007
42.	Tulman, Sara	12/03/1999		Payment in November 2003	Payment in 12/2004
43.	Vaamonde, Olga	11/12/1999		Payment in May 2005	Payment in 08/2004, 02/2005 and 03/2005
44.	Valerbi, Úrsula			Payment in June 2000	Payment in 12/1999
45.	Vicente de Lemongelli, Elvira†	02/14/2000		Died without payment	Survivor pension of Horacio Lemongelli collected retroactively in 10/2005

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