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REPORT No. 3/15
PETITION 610-01
REPORT ON

NATALIO KEJNER, RAMON WALTON RAMIS, AND OTHERS
ARGENTINA

Approved by the Commission at its working meeting held on January 29, 2015

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REPORT No. 3/15
PETITION 610-01
REPORT ON ADMISSIBILITY
NATALIO KEJNER, RAMÓN WALTON RAMIS, AND OTHERS
ARGENTINA
JANUARY 29, 2015

I. SUMMARY

1. On September 4, 2001, a petition was presented to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) by the Argentine Human Rights Service (SADH) and Juan Carlos Vega (hereinafter “the petitioners”) on behalf of Natalio Kejner, Ramón Walton Ramis, Mr. Vega himself, and another 26 alleged victims,¹ alleging the international responsibility of the Republic of Argentina (hereinafter “the State” or “Argentina”) for failing to meet its obligations of investigating, prosecuting, punishing, and providing redress for illegal arrests, forced disappearances, arbitrary criminal prosecutions, usurpation, housebreaking, qualified theft, and abuse of authority as crimes against humanity following the military intervention of the construction company Mackentor S.A.C.C.I.A.I.F. (hereinafter “the Mackentor company”) in 1977, during the military dictatorship.

2. The petitioners claim a possible violation of the rights to life, to humane treatment, to personal liberty, to a fair trial, to freedom from *ex post facto* laws, to compensation, to private property, to equality before the law, and to judicial protection, as enshrined in Articles 4, 5, 7, 8, 9, 10, 21, 24, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), in conjunction with the obligation of respecting and ensuring rights set out in Article 1.1 thereof. They also claim the possible violation of the rights enshrined in Articles I, II, VIII, XXIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”). The State claims that their contentions are inadmissible because of the incorrect and incomplete exhaustion of domestic remedies, because of the IACHR’s lack of jurisdiction over a victim that is a corporate entity, because of the IACHR’s lack of temporal competence, and because the petitioners are seeking for the IACHR to act as a fourth instance.

3. After analyzing the positions of the parties in light of the admissibility requirements contained in Articles 46 and 47 of the American Convention, the Commission concludes that it is competent to hear the claim and that it is admissible as regards the alleged violation of the rights enshrined in Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 thereof, with respect to the 29 alleged victims. In addition, the Commission will, at the merits stage, analyze the petition as regards Article XXIII of the American Declaration (right to property) and Article 21 of the American Convention, (right to private property). In addition, the Commission will also examine Articles I (right to life, liberty, and personal security), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration when it decides on the merits of the matter.

4. Also, as regards the three alleged victims of forced disappearance, the Commission concludes that it is competent to hear the claim and that it is admissible for the alleged violation of the rights enshrined in Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention in conjunction with Article 1.1 thereof (obligation to respect right); in Articles I, III, IV, and XI of the Inter-American Convention on Forced Disappearance of Persons; and in Articles I (right to life, liberty, and personal

¹ Gustavo Adolfo Roca and his ex-wife, Lucio Garzón Maceda, Marta Kejner, Ángel Vitalino Sargiotto, Enzo Alejandro Manassero, Rapuzzi de Manassero, Edgardo Enzo Manassero, Carlos Enrique Zambón, Julio Héctor Casse Sr., Julio Héctor Casse Jr., Emilio Demetrio Virini, Emilio Sergio Limonti, Mariano del Valle Ureña, Lía Margarita Delgado, Miguel Ángel Roqué, Alberto Simón Tatian, Ermenegildo Bruno Paván, Luis Plácido Paván, Pedro Eugenio Salto, José Miguel Coggiola, Hugo Taboada, Carlos Felipe Altamira, Mario Hernández, Roberto Sinigaglia, and Eduardo Sanjurjo.

security), XVII (right to recognition of juridical personality and civil rights), XVIII (right to a fair trial), and XXV (right of protection from arbitrary arrest) of the American Declaration.

5. In addition, as regards the other 26 alleged victims, the IACHR concludes that the claim is inadmissible with respect to Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 9 (freedom from ex post facto laws), 10 (right to compensation), and 24 (right to equal protection) of the American Convention, in relation to the alleged violations to human rights that were completed before the ratification of the American Convention, and of Articles II (right to equality before the law) and VIII (right to residence and movement) of the American Declaration. Consequently, it resolves to notify the parties of this report, to order its publication, and to include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

6. The petition was recorded as No. 610-01. On April 9, 2002, the relevant parts were forwarded to the State for its comments. The State returned comments on June 25, July 3, and August 8, 2002, and on January 24, March 20, and April 9, 2003, which were forwarded to the petitioners.

7. The petitioners submitted additional information on August 8 and 28, 2002. On November 4 and 5, 2002, March 20 and 31, 2003, February 23 and March 22, 2004, and September 15, 2005, they submitted information and added representatives.² Those notes were forwarded to the State.

8. On October 18, 2005, the Commission made itself available to the parties with a view to reaching a friendly settlement agreement, and it conveyed the information furnished by the petitioners to the State for its comments. On October 21, 2005, the petitioners stated their interest in working toward a friendly settlement. On February 1, 2006, the State said it had no objections to opening up a dialogue. The Commission asked the parties for comments on March 10, 2006. On May 12, 2009, the Commission reiterated its request for information. On February 12, 2010, the State withdrew from the friendly settlement effort, and the notification thereof was forwarded to the petitioners for their comments.

9. The petitioners submitted replies and additional information on January 27, March 25, and April 29, 2010, and those communications were conveyed to the State. On September 10, 2010, the petitioners requested a public hearing. On September 27, 2010, the IACHR convened a working meeting that was held on October 27 of that year. On October 5, 2010, the State submitted additional information, which was forwarded to the petitioners for information purposes. On February 14, 2011, the petitioners asked that an admissibility report be adopted; and, on October 5, 2012, the petitioners requested a hearing, to which request the IACHR did not accede.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

10. As background information, the petitioners state that during the dictatorship that began on March 24, 1976, President of Argentina Jorge Rafael Videla and Luciano Benjamín Menéndez, the Commander of the Third Corps of the Argentine Army, carried out a series of raids, absent any warrants, on the homes of Gustavo Adolfo Roca, an attorney and the legal representative of the Mackentor company, and his ex-wife. They claim that those raids led to the arrest of Luis Garzón Maceda and to the forced disappearance of Carlos Felipe Altamira, Roberto Sinigaglia, and Eduardo Antonio Sanjurjo, his law-firm partners, on May 11, 1976.

11. They state that on April 24, 1977, Commander Menéndez ordered a military intervention of the Mackentor company, with the violent and illegal entry of soldiers “with their weapons drawn,” in which

² The representation was assumed by Rodolfo Ojea Quintana, Jorge Berardo, and Marisa Bollea, and, later, also by Claudio Orosz. On December 28, 2005, Rodolfo Ojea Quintana withdrew as a representative.

all its property and assets were confiscated. They claim that the reason for the intervention was that the military believed the Mackentor company was the financial base of the Montoneros guerrillas.

12. They report that the intervention led to the illegal arrest of Julio Héctor Casse Sr., Julio Héctor Case Jr., Emilio Sergio Limonti, Lía Margarita Delgado, Emilio Demetrio Virini, Mariano del Valle Ureña, Alberto Tatian, and Hugo Taboada, all company executives. They also state that the authorities went to the homes of Carlos Enrique Zambón, Ermenegildo Bruno Paván, Miguel Ángel Roqué, Luis Plácido Paván, Enzo Alejandro Manassero, Ángel Vitalino Sargiotto, and Ramón Walton Ramis, who were members of the board of the Mackentor company, and illegally arrested them on April 28, 1978.

13. The petitioners contend that these incidents were a part of the “systematic and criminal plan” that the State adopted to persecute its political opponents. They claim that this political persecution affected both the company and its shareholders. They contend that the facts alleged in the petition are notorious examples of how state terrorism was practiced during the dictatorship: not only through disappearances of opponents, but also for the illegal enrichment of government officials and their friends. They hold that the attacks on property carried out as a part of wide-scale, systematic, and planned political persecution constitute crimes against humanity.

14. Thus, they state that Marta Kejner, Natalio Kejner’s sister and the main shareholder in the Mackentor company, was illegally arrested on April 28, 1977, by the Army’s Fourth Airborne Brigade and remained disappeared until July 20, 1977, when she was officially taken to the Buen Pastor detention center, before being released on August 8, 1977.

15. They state that the seven arrested board members were taken to the La Ribera concentration camp. They report that on May 10, 1978, Messrs. Manassero, Sargiotto, and Zambón were sentenced to seven years in prison by the Third Special Stable Superior War Council for the offense of concealing subversive activities. They hold that Ramón Ramis was disappeared in that his arrest was not officially admitted until many days later, when his situation was regularized by the military authorities and he was sentenced, by that same Council, on May 10, 1978, to two and a half years in prison for concealing subversive activities.

16. They state that the National Supreme Court of Justice (hereinafter “CSJN”) overturned the Council’s judgment, but that Jorge Videla issued Decree 1806/79 ordering Messrs. Manassero, Sargiotto, Zambón, and Ramis to remain at the disposal of the National Executive Branch. That Decree was voided on October 3, 1980, which was when they were released.

17. They report that on September 29, 1979, criminal proceedings were brought against Natalio Kejner, the majority shareholder in the Mackentor company, for qualified conspiracy, accusing him of being the “financial lynchpin of the subversive group.” For that reason, the alleged victim abandoned the city of Córdoba and, months later, on December 11, 1981, an international warrant was issued for his arrest.

18. They state that on October 1, 1980, the First Federal Court in Córdoba began proceedings against Messrs. Manassero, Sargiotto, Zambón, and Ramis for breaches of Article 225 of the Criminal Code, and that they were provisionally dismissed from the trial on July 1, 1982. They report that Ramón Ramis received compensation under Law 24,043.

19. They state that following the restoration of democratic government, Natalio Kejner returned to Córdoba in 1984, after the criminal proceedings brought against him were partially dismissed. His final international arrest took place in Italy in 1984, and the international arrest warrant remained in force until October 1984. They report that Mr. Kejner was dismissed from the proceedings in April 1985 and that he received no compensation under Law 24,043 or for the confiscated property.

20. They state that control of the Mackentor company was returned on October 29, 1982; that effective restitution of the majority shareholding took place on December 10, 1984, to the benefit of Marta

Kejner; that the final package of stock was returned on August 15, 1985; and that the embargo on the share certificates was lifted in October 1985.

21. They state that in 1986 the Mackentor company filed a civil action for damages against the State with the federal judiciary in Córdoba, which concluded with a ruling that statutory limitations applied to their claims. In that action, the Mackentor company's representative sought for the State pay damages and interest for the harm it had caused the company, demanding:

the total amount of damages in the form of fees, expenses, traveling expenses, salaries, costs, and other items [...] caused through the arbitrary and illegitimate intervention [...] the effects of which finally concluded on August 15, 1985, with the restitution of the final stock package that was embargoed.

22. The CSJN upheld the statutory limitation ruling on February 15, 2000, in its decision on the special remedy filed by the company. The petitioners claim that the Mackentor company — and, consequently, the alleged victims — were ordered to pay the costs of the proceedings, in an amount equal to some US\$1,000,000. The Mackentor company was ruled bankrupt by the Court of Competitions and Bankruptcies on July 27, 2001, and a personal ban was placed on Mr. Kejner's leaving the country.

23. They report that on November 6, 1998, representing the Mackentor company and Messrs. Kejner and Ramis, Juan Carlos Vega filed for criminal action against Jorge Videla and Luciano Menéndez for the "extortive seizure" of the real estate and other property belonging to the Mackentor company and to Messrs. Kejner and Ramis, in which Mr. Vega appeared as the plaintiff and Natalio Kejner and Ramón Ramis as civil complainants. They claim that this action sought to establish the truth of what had happened, as regards both the company and the individuals who were persecuted, jailed, and convicted for being a part of the corporate entity.

24. They hold that the rights of the alleged victims that were violated go beyond their property rights over the Mackentor company and that they constitute crimes against humanity. Thus, they indicate that on August 11, 1999, in his request for committal proceedings, the federal prosecutor found that the case involved: 17 extortive abductions, 15 denials of freedom, four convictions handed down by military courts, four arrests at the disposal of the executive branch, illicit judicial proceedings, and four illegal international arrest warrants.

25. In addition, that the prosecutor assessed the facts as entailing abuse of power, usurpation, breaking and entering, qualified theft, abuse of authority, and he filed for action against Jorge Videla and Luciano Menéndez. They claim that the prosecutor ruled that illegal seizure of property was not covered by the "Full Stop" law or by the "Due Obedience" law, and that consequently, those offenses constituted crimes against humanity.

26. The petitioners contend that in spite of the clear presence of crimes against humanity, on September 14, 2000, the Third Federal Court of Córdoba (hereinafter "the Federal Court") dismissed the charges against Menéndez and Videla for the crimes of abuse of power, illegal breaking and entering, usurpation, and qualified theft, and ruled that the criminal action had expired under statutory limitations.

27. They claim that the State has hampered the alleged victims' efforts to establish the truth and contend that the State is under an obligation to investigate, punish, and provide redress for massive violations of human rights. They claim that the proceedings entailed violations of their right to a fair trial and to judicial protection, as enshrined in the American Convention.

28. They argue that the Federal Court's judgment, which ruled that statutory limitations applied to the action, was in itself a violation of the American Convention in that it ignored that the established facts of the case constituted crimes against humanity, thereby annulling the State's punitive and investigative duties and dismissing charges brought against persons guilty of genocide.

29. The petitioners compare this decision with other judgments adopted at the same time by the federal courts in Buenos Aires ruling that similar incidents constituted crimes against humanity and as such were not subject to statutory limitations.³ They contend that the position of the Córdoba federal judiciary as regards impunity for crimes against humanity is an isolated case and in breach of the American Convention.

30. They state that on March 27, 2001, they filed an appeal against the Federal Court's decision, seeking for it to be overturned and for the classification as crimes against humanity, as established by the prosecutor, to be maintained. According to the petitioners, on August 14, 2001, the Federal Appeals Chamber of Córdoba (hereinafter "the CFAC") upheld the original decision as regards the dismissal of Luciano Menéndez under statutory limitations and overturned the statutory limitations ruling and dismissal from the case with respect to Jorge Videla.

31. They claim that later, their attorney, Juan Carlos Vega, filed a special remedy with the CSJN against the CFAC's judgment; this was ruled inadmissible on November 19, 2001, on the grounds that the correct action was an appeal for annulment with the National Criminal Cassation Chamber (hereinafter "the CNCP"). The petitioners claim that it was that ruling that exhausted the domestic remedies.

32. They report that on February 25, 2004, (by means of a resolution recorded in Register No. 69 of 2004) the Federal Court upheld the activation of statutory limitations and dismissed Jorge Videla from the proceedings. On March 8, 2004, according to the petitioners, the federal prosecutor lodged an appeal against that dismissal, on the grounds that statutory limitations did not apply to crimes against humanity. They note that in both the prosecutor's request of 1999 and in this appeal, the State itself recognized the offenses as crimes against humanity. Accordingly, and in line with the principle of consistency with one's own actions, the State cannot now argue otherwise.

33. The petitioners state that on April 28, 2005, the CFAC overturned the earlier judgment. They state that on March 23, 2006, the Federal Court ruled that the criminal action had expired and that, on November 20, 2006, the CFAC upheld its expiration and the dismissal of Jorge Videla from the proceedings. They indicate that the federal prosecutor filed a cassation remedy against that decision and that on September 11, 2007, the CNCP upheld the remedy. They state that on February 25, 2008, the prosecutor requested that this case be combined with the proceedings for the illegal denial of freedom brought against Jorge Videla and Luciano Menéndez and, on October 9, 2008, requested that the preliminary proceedings request be expanded to cover 19 alleged victims⁴ and that a declaration of competence be issued with respect to the three victims who had disappeared. They indicate that the CNCP declined competence with respect to the three disappeared and that the proceedings are at the committal stage before the Federal Court.

34. They claim that they have pursued all the remedies provided by domestic law over a period of 37 years and that the State has systematically denied them the right of due process and the right of access to justice, in violation of Articles 8 and 25 of the American Convention.

35. They contend that the facts have persisted permanently and continuously for 37 years and that as of the date of the initial violations, the American Declaration was fully in force for Argentina. They maintain that crimes against humanity are not subject to statutory limitations and that the Commission has competence over them.

³ The petitioners cite Federal Judge Cavallo's decision of March 6, 2001, and the decision in the *Conrado Higinio Gómez* case, which ruled that the seizure of goods belonging to disappeared people constituted a crime against humanity and was not subject to statutory limitations.

⁴ Ángel Vitalino Sargiotto, Enzo Alejandro Manassero, Rapuzzi de Manassero, Edgardo Enzo Manassero, Carlos Enrique Zambón, Julio Héctor Casse Sr., Julio Héctor Casse Jr., Emilio Demetrio Virini, Emilio Sergio Limonti, Mariano del Valle Ureña, Lía Margarita Delgado, Miguel Ángel Roqué, Alberto Simón Tatián, Ermenegildo Bruno Paván, Luis Plácido Paván, Pedro Eugenio Salto, José Miguel Coggiola, Hugo Taboada, and Ramón Walton Ramis.

B. Position of the State

36. The State claims that the alleged facts occurred in 1977, before Argentina became a state party to the American Convention. It contends that not even the Convention itself came into effect until July 18, 1978, for which reason the Commission does not have temporal competence with respect to the petition.

37. The State maintains that the people identified as the alleged victims who were arrested and prosecuted were dismissed from the proceedings and released in 1980. It indicates that those persons returned to their posts in the Mackentor company in 1981, that the intervention came to an end in May 1982, and that the Mackentor company was returned. It contends that Ramón Ramis received reparations under Law 24,043.

38. It claims that in connection with the events of 1977, the representatives of the Mackentor company filed suit against the State for damages on March 4, 1986, but that the action was rejected under statutory limitations. It holds that in 1998, following the rejection of the damages action, Juan Carlos Vega, representing Messrs. Kejner and Ramis, filed a criminal complaint for the extortive seizure of the Mackentor company against Jorge Videla and Luciano Menéndez.

39. It holds that the legal figure of “extortive seizure of real estate” proposed by the plaintiff is not provided for by law as a criminal offense. Argentina maintains that although Mr. Vega’s complaint named Messrs. Kejner and Ramis as victims of the alleged extortive maneuver, both the prosecutor and the plaintiff identified the assets affected by the alleged seizure and only property belonging to the Mackentor company was included therein.

40. Argentina contends that the Mackentor company, as a corporate entity, is excluded from the protection of the American Convention and, consequently, cannot be named as a victim of violations of the rights and guarantees that it establishes. It argues that the fact that Messrs. Kejner and Ramis were civil complainants in a criminal suit addressing the alleged seizure of assets belonging to corporate entities does not, *per se*, give them the status of victims subject to the protection of the American Convention.

41. It contends that they were not individual persons who had exhausted domestic remedies in their own right in pursuit of redress for harm to their assets, but rather civil complainants in a criminal complaint involving alleged harm to a group of companies and not to those individuals’ personal property, and so they do not qualify as victims under the terms of the Article 1.2 of the American Convention.

42. It argues that both the first-instance and appeal courts, and even the prosecutor who requested the committal proceedings, identified the facts as “abuse of power,” “usurpation,” “illegal housebreaking,” and “qualified theft”: as common crimes.

43. It adds that the petitioners, at the domestic level, merely questioned the suitability of those who carried out the intervention and challenged the consequences of alleged corporate mismanagement. It holds that no kind of crime against humanity was the main object of the alleged facts at the domestic level; instead, the aim was to pursue the hypothetical seizure of a portion of the assets of a business group and that, in addition, those contentions were not proven.

44. It notes that the CFAC issued judgment on August 14, 2001, ruling the criminal action to have expired under statutory limitations. It holds that the CFAC overturned Jorge Videla’s dismissal from the proceedings ordered by the first-instance court and, instead of enforcing the Due Obedience and Full Stop laws, ruled that the statutory limitations governing common crimes applied to the criminal action.

45. Argentina maintains that the domestic remedies were incorrectly exhausted, in that a special remedy was filed instead of an appeal for annulment, and neither was a complaint remedy filed against the judgment that dismissed the special remedy. It believes that by pursuing the incorrect appeals, the petitioners lost the opportunity to review the judgment in question, allowing it to become final and to acquire the status of *res judicata*.

46. It contends that the criminal complaint was not brought until 1998: close to what the State points out is 30 years after the alleged incidents occurred and more than 19 years after the rule of law was reinstated in Argentina in 1983. It adds that there are no apparent reasons why, in 1983, the alleged victims did not file timely complaints for having suffered the alleged “crimes against humanity” instead of pursuing redress before the civil courts. It argues that that was not until 1986 that the alleged victims brought action against the State, seeking alleged damages, and nor for crimes against humanity, which was brought more than 20 years after the facts occurred.

47. It notes that the petitioners describe the CFAC’s 2001 judgment as a “violating” the American Convention, in that it enshrined “legal impunity” for the alleged perpetrators of the facts and annulled the alleged victims’ right to redress. Argentina holds that no impunity can be claimed and, in addition, that the only possible victims of the alleged violation were those companies that had assets seized in the alleged seizure.

48. It contends that the petitioners have enjoyed unrestricted access to justice, that suitable and effective remedies have been available for them to challenge the decisions adopted, and that their petition was resolved within a reasonable time with absolute and unrestricted respect for the guarantees of due process. It holds that the petitioners dispute the judicial decision, but not because of any inherent vices in the proceedings but because of the contents of the decision adopted. It contends that what they seek is the review of a decision adopted by the local courts that respected the international standards of due process.

49. Regarding the alleged delay in resolving the proceedings, which were not settled until 2003, the State argues that those claims are groundless in that the CFAC’s judgment of 2001 resolved the case brought by Mr. Vega in November 1998. It therefore maintains that the complaint was examined and resolved by two instances in less than three years, a period of time that in no way deserves criticism.

50. It should be noted that the State presented substantive information regarding the admissibility of the petition and the progress with the criminal trial only up until 2003; although it presented comments up until 2010, they were related to the attempt to open up a dialogue toward a possible friendly settlement, the failure of those attempts, and the State’s preparatory policy.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

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

51. Argentina has been a member state of the OAS since 1948, when it ratified the OAS Charter and, consequently, it is subject to the Commission’s competence with respect to individual complaints since the establishment of that competence by Statute in 1965 in connection with the American Declaration. Argentina deposited its instrument of ratification of the American Convention on September 5, 1984. The petitioners are entitled to lodge petitions with the Commission under the terms of Article 44 of the American Convention. The petition names, as the alleged victims, 29 individual persons with respect to whom the State had assumed the commitment of respecting and ensuring human rights according to the terms of the OAS Charter, the American Declaration, and the Statute of the Commission at an initial stage and, at a subsequent stage, those of the American Convention.

52. The State maintains that the petition is inadmissible *ratione temporis* because the initial facts on which it is based predate the entry into force of the American Convention for Argentina on September 5, 1984. As regards those initial facts, as already stated, the American Declaration establishes the applicable criteria for the Commission to examine a given matter. With respect to any member state that has not yet ratified the American Convention, the fundamental rights that the State undergoes to uphold are those set out in the OAS Charter, together with those enshrined in the American Declaration, which is a source of

international obligations.⁵ The Commission's Statute and Rules of Procedure establish additional provisions related to the exercise of the IACHR's competence in that regard. That competence was in effect on the date of the facts alleged by the petitioners. Once Argentina's ratification of the American Convention came into force, that instrument became the principal source of legal obligations⁶ and the rights and obligations expressly identified by the petitioners became enforceable. Accordingly, with regard to the alleged facts occurring after September 1984, the Commission will apply the terms of the American Convention. Consequently, the Commission is competent *ratione temporis* as regards the petitioners' claims.

53. In addition, the Commission has competence *ratione temporis* with respect to the Inter-American Convention on Forced Disappearance of Persons, given that Argentina deposited its instrument of ratification thereof on February 28, 1996.

54. Furthermore, the Commission has competence *ratione materiae*. In addition, given that the petition describes alleged violations of rights protected by the American Declaration and the Convention taking place within the territory of an OAS member state, the Commission concludes that it has competence *ratione loci* to examine the matter.

55. Finally, the IACHR has competence *ratione personae* to examine the petition with regard to the 29 individuals named as the alleged victims. However, the Commission notes that the petitioners have also presented claims involving a series of matters brought before the domestic courts in connection with a corporate entity — namely, the Mackentor company — in a suit for the recovery of damages. The State in turn contends that those claims are not related to the rights of individuals who exhausted the domestic remedies in their own right, and so the status of victim as established by the terms of the Article 1.2 of the American Convention does not exist.

56. On this point, the Commission has repeatedly stated that the Preamble to the American Convention and Article 1.2 thereof provide that “for the purposes of this Convention, ‘person’ means every human being,” and that the protection afforded by the inter-American human rights system is restricted exclusively to individual persons.⁷ Consequently, the Commission lacks competence *ratione personae* to rule on alleged violations to the direct detriment of a corporate entity such as the Mackentor company, and, similarly, it is competent to examine the claims submitted by the 29 alleged victims.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

57. Article 46.1.a) of the American Convention requires the prior exhaustion of the resources available under domestic law, in accordance with generally recognized principles of international law, as a requirement for the admissibility of claims regarding alleged violations of the American Convention. In turn, Article 46.2 of the Convention states that the prior exhaustion of domestic remedies shall not be required 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.

⁵ I/A Court H. R., Advisory Opinion OC-10/89, July 14, 1989, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, Ser. A No. 10, paras. 43 – 46. See: IACHR, Report No. 3-02, José Fernando Grande (Argentina), February 27, 2002, para. 34.

⁶ I/A Court H. R., Advisory Opinion OC-10/89, July 14, 1989, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, Ser. A No. 10, para. 46. See: IACHR, Report No. 3-02 José Fernando Grande (Argentina), February 27, 2002, para. 34.

⁷ IACHR, Report No. 10/91, Bank of Lima; Report No. 47/97, Tabacalera Boquerón, S.A., paras. 24 and 25; and Report No. 47/97, Members of Union of State Workers of Antioquia (SINTRAOFAN), para. 54.

58. The State claims that the domestic remedies were not properly exhausted in that a special remedy was filed instead of an appeal for annulment, and that no complaint remedy was filed against the judgment rejecting the special remedy. In turn, the petitioners contend that the remedies were exhausted with the CSJN's judgment ruling the special remedy inadmissible.

59. According to the Commission's Rules of Procedure, and as the Inter-American Court has established, whenever a State claims that a petitioner has not exhausted the relevant domestic remedies, it is required to identify the remedies that have not been exhausted and to demonstrate that they are "suitable" for remedying the alleged violation and that the function of those resources within the domestic legal system is applicable for protecting the violated juridical situation.⁸

60. The Commission notes that Juan Carlos Vega, representing Messrs. Kejner and Ramis, filed a criminal complaint against Jorge Videla and Luciano Menéndez in November 1998 for the "extortive seizure of the Mackentor company," in which Mr. Vega appeared as the plaintiff and Natalio Kejner and Ramón Ramis as civil complainants. Following a number of different judicial decisions on statutory limitations or the revocation of action, in September 2007 the CNCP upheld the appeal for annulment filed by the federal prosecutor on the grounds that no statutory limitations applied to crimes against humanity. Following the prosecutor's 2008 request for the case to be combined with the proceedings for illegal denial of freedom brought against Videla and Menéndez and that the preliminary proceedings request be expanded to cover for 19 alleged victims, the CNCP accepted the expansion, and it ruled itself incompetent over the three disappearances. Finally, according to the information submitted, as of the date of this report's adoption, the case against Jorge Videla and Luciano Menéndez is being pursued for abuse of power, usurpation, housebreaking, qualified theft, abuse of authority, and aggravated illegitimate denial of freedom, and is at the committal stage before the Federal Court.

61. Regardless of the parties' claims regarding the exhaustion of domestic remedies, the Commission notes that the criminal proceedings dealing with the main matters addressed in the petition are pending and at the committal stage as the result of the appeal and annulment remedies filed, on an official basis, by the federal prosecutor.

62. Consequently, given the characteristics of this petition and the time that has passed since the start of the criminal proceedings in 1998, the Commission believes that the exception provided for in Article 46.2.c of the American Convention regarding delays in the pursuit of that criminal trial is applicable in the instant case, and so the requirement of the prior exhaustion of domestic remedies is waived under that exception.

63. Furthermore, the invocation of Article 46.2's exceptions to the prior exhaustion rule bears an intimate relation with the possible violation of certain rights protected by the Convention, such as its guarantees of access to justice. However, by its very nature and purpose, Article 46.2 is a provision with autonomous content vis-à-vis the Convention's substantive precepts. So, the decision as to whether the exceptions to the exhaustion of domestic remedies rule are applicable in the case at hand must be taken before the merits of the case are examined and in isolation from that examination, since it depends on a different criterion from the one used to determine whether Articles 8 and 25 of the Convention were indeed violated. It should be noted that the causes and effects that prevented the exhaustion of domestic remedies in the case at hand will be analyzed in the Commission's future report on the merits of the controversy, in order to determine whether or not the American Convention was in fact violated.

2. Timeliness of the petition

64. The American Convention requires that for the Commission to admit a petition, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was

⁸ Art. 31.3 of the Commission's Rules of Procedure. See also: I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, para. 64.

notified of the final judgment. In the instant case, the IACHR has admitted the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedure states that in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, petitions must be presented within what the Commission considers a reasonable period of time. For that purpose, the Commission is to consider the date on which the alleged violation of rights occurred and the circumstances of each case.

65. The petition was received on September 4, 2001, and the criminal proceedings that allegedly violated the American Convention reportedly began on November 6, 1998; initially, statutory limitations were ruled to apply on August 14, 2001; and, as of the date of this report's adoption, the case is still at the committal stage. Consequently, considering the context and characteristics of this petition, the Commission believes that it was lodged within a reasonable time and that the admissibility requirement regarding the timeliness of the petition must be deemed met.

3. Duplication of international proceedings

66. The record of the petition does not contain any information that could tend to establish that the subject of the petition is pending in another international proceeding for settlement, or that it has been previously decided by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions provided for by Articles 46.1.d and 47.c of the American Convention are not applicable.

4. Colorable claim

67. This petition sets out a series of arguments on the alleged violation of the rights to life, to humane treatment, to personal liberty, to a fair trial, the principles of legality and freedom from *ex post facto* laws, to compensation, to property, to equality before the law, and to judicial protection, enshrined in Articles 4, 5, 7, 8, 9, 10, 21, 24, and 25 of the American Convention. In addition, it claims violations of the rights enshrined in Articles I, II, VIII, XXIII, XXV, and XXVI of the American Declaration. In turn, the State contends that the petitioners seek the review of a decision adopted by the local courts in accordance with the international standards of due process and the use of an international venue as a fourth instance, which is not something within the Commission's competence.

68. In light of the contributions presented by both parties, the nature of the matter placed before it, and, in particular, the fact that the criminal proceedings referred to in this petition are still at the committal stage, the IACHR believes it must establish, *prima facie*, that the claims related to the alleged violation of the right to a fair trial and to judicial protection could tend to establish violations of the rights protected in Articles 8 and 25 of the American Convention, in conjunction with Article 1.1 thereof, and regarding the alleged facts occurred before the ratification of the American Convention, of articles I, XXV and XXVI of the American Declaration, to the extent that is necessary, with respect to the 29 alleged victims.

69. Moreover, the Commission notes that the criminal proceedings in question identify 26 persons as the alleged victims, given that the CNCP ruled itself incompetent with respect to the three persons who were allegedly disappeared. Accordingly, the Commission believes that at the merits stage it must analyze the alleged violations of the State's duty of investigating the alleged violations committed against those three persons, in accordance with Articles 3, 4, 5, 7, 8, and 25 of the American Convention, given that they constitute a continuous violation; with Articles I, III, IV, and XI of the Inter-American Convention on Forced Disappearance of Persons, for its noncompliance with the obligation of preventing, punishing, and eliminating the practice of forced disappearance within its jurisdiction; and, finally, Articles I, XVII, XVIII, and XXV of the American Declaration of the Rights and Duties of Man, for possible violations of the right to life, the right to the recognition of juridical personality, the right to justice, the right of protection from arbitrary arrest, and the right to a fair trial committed during the period from May 11, 1976, to September 5, 1984, when Argentina ratified the American Convention.

70. Finally, to the extent that is necessary, the Commission will also examine, in its analysis of the merits of the matter, the applicability of Article XXIII of the American Declaration and Article 21 of the American Convention, as regards the alleged violation of the right to property described by the petitioners.

71. Regarding the claims of alleged violations of the right to equality before the law and to residence and movement provided for in Articles II and VIII of the American Declaration, the Commission finds that the petitioners have not presented sufficient evidence to show that the alleged facts could tend to establish a violation thereof. It must therefore rule them inadmissible.

V. CONCLUSIONS

72. The Commission concludes that it is competent to examine the petitioners' claims related to the alleged violation of the rights enshrined in Articles 8 and 25 of the American Convention, in conjunction with Article 1.1 thereof, with respect to the 29 alleged victims. Likewise, at the merits stage, the Commission will analyze Article XXIII of the American Declaration and Article 21 of the American Convention. In addition, the Commission will also examine Articles I, XXV, and XXVI of the American Declaration in ruling on the merits of the case.

73. The Commission also concludes that it is competent to examine the claims related to the 3 alleged victims who were allegedly disappeared and that it is admissible for the alleged violation of the rights enshrined in Articles 1.1, 3, 4, 5, 7, 8, and 25 of the American Convention, of Articles I, III, IV, and XI of the Inter-American Convention on Forced Disappearance of Persons, and Articles I, XVII, XVIII, and XXV of the American Declaration of the Rights and Duties of Man.

74. Finally, with regards to the other 26 alleged victims, the IACHR concludes that the claim is inadmissible as regards Articles 4, 5, 7, 9, 10, and 24 of the American Convention, in relation to the alleged human rights violations that were completed before the ratification of the American Convention, and Articles II and VIII of the American Declaration.

75. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the petition admissible as regards Articles 8, 21, and 25 of the American Convention, in conjunction with Article 1.1 thereof, and as regards Articles I, XXIII, XXV, and XXVI of the American Declaration.

2. To declare the petition admissible as regards Articles 1.1, 3, 4, 5, 7, 8, and 25 of the American Convention, Articles I, III, IV, and XI of the Inter-American Convention on Forced Disappearance of Persons, and Articles I, XVII, XVIII, and XXV of the American Declaration of the Rights and Duties of Man, with regards to the three persons that are allegedly disappeared.

3. As for the other 26 alleged victims, to declare the petition inadmissible as regards Articles 4, 5, 7, 9, 10, and 24 of the American Convention in relation to the alleged human rights violations that were completed before the ratification of said treaty and Articles II and VIII of the American Declaration, for the explained reasons.

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

5. To continue with its analysis of the merits of the complaint.

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

Done and signed in the city of Washington, D.C., on the 29th day of the month of January, 2015.
(Signed): Tracy Robinson, President; Felipe González, Second Vice President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.